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

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Editors:
[Burcu Çelik Gökçen](#)
[Alper Turhan](#)

Key Changes Introduced by the European Commission to the Technology Transfer Block Exemption Regulation and the Technology Transfer Guidelines

Technology licensing agreements constitute an important area of consideration under competition law. Indeed, relationships arising from innovation-driven developments have generally been regarded not as an obstacle to competition, but as an important means of facilitating the dissemination of innovation. Accordingly, regulatory efforts to encourage such arrangements have continued over the years. [\(Page 2\)](#)

Assessing the Impact of Legislative Changes on Pending Proceedings from the Perspective of the Rule of Law

The society in which we live is constantly changing and evolving, and these changes also affect the legal system. In response to changing social needs, the legislature enacts new laws and introduces amendments to existing regulations. Whether and to what extent these new rules, once they enter into force, should alter the legal position that existed under the previous regulations remains an ongoing debate in legal scholarship and practice. [\(Page 11\)](#)

Legal Consequences of Failing to Object to Expert Reports

The court may, either upon the request of one of the parties or on its own motion, order that an expert's opinion be obtained where the resolution of an issue requires specialized or technical knowledge outside the field of law. However, an expert may not be appointed in matters that can be resolved through general knowledge or experience, or through the legal knowledge required by the judicial office. [\(Page 20\)](#)

Can Claims not Included in the Statement of Claim be Introduced by Partial Amendment? An Analysis of the Grand General Assembly for the Unification of Judgments of the Court of Cassation's Decision of 8 May 2026

In civil procedure, the subject matter of the proceedings and the relief sought are determined by the parties' will. In civil litigation, the scope within which the court adjudicates the dispute is, as a general rule, limited to the claims submitted by the parties and the facts relied upon in support of those claims. [\(Page 28\)](#)

Recent News

What Changes Will the 12th Judicial Package Bring to the Turkish Penal Code and the Code of Criminal Procedure? [\(Page 5\)](#)

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12th Judicial Package Introduces Disciplinary Penalties for Judges and Prosecutors who Seek Expert Opinions on Legal Matters! [\(Page 19\)](#)

Court of Cassation Grand General Assembly Rules that New Claims cannot be Introduced by Partial Amendment! [\(Page 27\)](#)

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Regulation Providing that a New Lease Agreement Invalidates an Eviction Undertaking the Leased Premises Published in the Official Journal! [\(Page 31\)](#)

An Analysis of the Abolition of Actions for Unliquidated Claims and the Introduction of Limitation Period and Claim Increase Rules in Partial Actions

Upon the entry into force of the Code of Civil Procedure Nr. 6100 in 2011, one of the most significant innovations introduced into Turkish civil procedural law was the action for an unliquidated claim, set out under Article 107 of the CCP. This type of action has been the subject of extensive debate in practice and legal doctrine throughout the approximately fifteen years during which it remained in force. [\(Page 6\)](#)

The Legal Dimensions of Processing Location Data in Mobile Applications

The rapid developments in digital technologies have made mobile applications an integral part of everyday life. While a wide range of services including social media, transportation, banking, e-commerce and navigation are provided through mobile applications, these applications process various categories of users' personal data depending on the nature of the services they offer. Among the personal data processed, location data is of particular importance. [\(Page 14\)](#)

Artificial Intelligence and Copyright

Generative artificial intelligence is fundamentally transforming the traditional mechanisms of intellectual creation, making it imperative for copyright law to adapt to this new technological reality. AI models capable of generating text, images, music, videos and computer code are permanently reshaping artistic, scientific and professional activities. While these technologies offer significant time savings, they also give rise to numerous legal issues, many of which remain largely unresolved. [\(Page 23\)](#)

KEY CHANGES INTRODUCED BY THE EUROPEAN COMMISSION TO THE TECHNOLOGY TRANSFER BLOCK EXEMPTION REGULATION AND THE TECHNOLOGY TRANSFER GUIDELINES

TECHNOLOGY TRANSFER GUIDELINES

1. Introduction

The transformation of technological innovations into economic value depends not only on the development of an innovation but also on its ability to be used by other undertakings. When an undertaking holding a patent, design right, know-how, or copyright in software makes a technological innovation available to another undertaking through licensing, this may increase production capacity, accelerate the market entry of new products, and enable the same technology to be applied across different sectors.

Technology licensing agreements therefore constitute an important area of consideration under competition law. Indeed, relationships arising from innovation-driven developments have generally been regarded not as an obstacle to competition, but as an important means of facilitating the dissemination of innovation. Accordingly, regulatory efforts to encourage such arrangements have continued over the years.

The key point to consider here is that a licensing relationship does not merely grant the parties the right to use a new technology; it may also affect matters such as pricing, production volumes, sales territories, customer groups, the ability to develop competing technologies, and access to third parties. As a result, such arrangements may also have implications for areas that are sensitive from a competition law perspective. While certain provisions in a licensing agreement may be necessary to reduce investment risks and ensure the efficient use of the technology, others may make market entry more difficult or weaken competition between competitors.

The fundamental challenge for competition law at this stage is therefore to strike a balance between the technology owner's legitimate interest in its innovation and the need to keep markets open to competition.

The Technology Transfer Block Exemption Regulation Nr. 2026/877 adopted by the European Commission, together with the

new Guidelines on technology transfer agreements, aims to re-establish this balance in light of the current conditions of the digital economy. The new framework, which entered into force on May 1, 2026 and will apply until April 30, 2038, introduces notable changes, particularly with regard to data licensing agreements, licensing negotiation groups, technologies that have not yet been commercialized, and technology pools.

The significance of the new framework lies not only in updating the existing rules, but also in the effort to adapt competition law's approach to technology to evolving forms of production and business relationships.

2. The Role and Importance of the Block Exemption System

To understand the newly adopted Guidelines and Regulation, it is first necessary to understand the function of the block exemption system. Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU"), like Article 4 of the Turkish Competition Law ("TCL"), prohibits agreements between undertakings that restrict competition. Article 101(3) of the TFEU, similarly to Article 5 of the TCL, provides an exemption for agreements that meet the relevant conditions.

The Technology Transfer Block Exemption Regulation establishes a "safe harbor" for technology transfer agreements that fall within certain market share thresholds and contractual conditions. This allows the parties to assess, with a reasonable degree of predictability, whether their agreements meet the conditions set out under the Regulation. However, falling outside the scope of the block exemption does not, in itself, mean that an agreement is unlawful. In such cases, the agreement's actual effects on the market and the conditions set out under Article 101(3) of the TFEU must be assessed on an individual basis.

The sensitivity and importance of this area lie in ensuring legal certainty in the face of changing conditions and evolving technologies, without discouraging investment in innovation. Accordingly, clarity in the applicable legal framework is of par-

ticular importance. While a technology owner needs to be able to anticipate whether it can obtain a return on its development costs, a licensee needs to know, before commencing production, which contractual restrictions are likely to be considered acceptable. Clear rules therefore not only reduce the risk of infringement but also facilitate faster licensing negotiations and help bring technologies to the market sooner.

3. The New Role of Data Licensing in Competition Law

One of the most notable aspects of the 2026 Guidelines is that they address data licensing agreements for production purposes under a separate heading. Today, data is no longer merely a by-product of commercial activity. From training artificial intelligence models and developing connected devices to pharmaceutical research and financial risk analysis, data has become a direct part, material, and input of production in many fields. Accordingly, access to a particular dataset may be as decisive in certain markets as access to technology or physical infrastructure.

Where databases are protected by copyright or the sui generis database right under EU law, their licensing may be assessed under principles similar to those applicable to technology transfer. The Commission's approach is that data licensing can, in principle, promote competition. Indeed, gaining access through a license to data of a scale or quality that an undertaking could not collect on its own may enable it to develop a new product or improve an existing service. Such access can strengthen the division of labor between the data owner and the licensee, thereby fostering innovative outcomes in the market. However, as the economic value of data increases, so too does the risk of exclusionary conduct in the market, including, in the terminology used under Turkish competition law, the "abuse of a dominant position."

This risk is particularly relevant where the data concerned is indispensable or difficult to substitute for competitors seeking to operate in the market.

In such cases, granting a license only to certain undertakings, imposing unnecessarily broad restrictions on the permitted uses of the data, or assigning all improvements derived from the data exclusively to the data owner may affect competitive conditions.

Similarly, the use of commercially sensitive information shared within a licensing relationship in a manner that facilitates coordination between the parties may give rise to concerns regarding concerted practices.

Accordingly, the assessment of data licensing agreements can no longer be limited to determining the scope of the underlying intellectual property right.

The source and currency of the data, its substitutability, the production process in which the licensee uses the data, whether access is exclusive, and the treatment of outputs derived from the data after the license expires should all be considered together.

By recognizing the actual role of data in the modern production economy, the new Guidelines pave the way for a more practical and effective competition analysis of licensing arrangements.

4. Licensing Negotiation Groups: Drawing the Line Between Collective Bargaining and Buyer Cartels

Another structure addressed systematically in the new Guidelines is that of “licensing negotiation groups.” These groups are formed when implementers that require access to the same technology come together to negotiate licensing terms with technology owners.

Particularly in sectors where access to numerous patents is necessary to implement a product standard, requiring each manufacturer to negotiate separately may result in high transaction costs and prolonged disputes.

Collective negotiation can make licensing terms more transparent and predictable. However, an important consideration is that the undertakings engaging in collective bargaining are often competitors in the product market.

Accordingly, cooperation on license fees and licensing terms can easily extend beyond the technology concerned and

develop into the coordination of competitive conduct.

The exchange of information among group members concerning product prices, production volumes, investment plans, or market entry strategies may blur the line between legitimate licensing negotiations and a buyer cartel.

In a properly structured licensing negotiation group, the objective should not be to eliminate the bargaining power of the technology owner, but rather to reduce inefficiencies in the licensing process and create incentives for efficient licensing arrangements.

Voluntary participation in the group, the ability of members to negotiate licenses individually outside the group, limiting information exchange to data necessary for the licensing negotiations, and processing commercially sensitive information through an independent entity are among the measures that may reduce the risk of anti-competitive coordination.

The Commission’s clarification on this issue is particularly relevant for sectors with a high concentration of standard-essential patents, such as telecommunications, automotive, the internet of things, and consumer electronics.

The new approach does not treat collective negotiation as inherently problematic; instead, it assesses its effects based on the scope of the cooperation, the market power of the members, and the nature of the information exchanged.

5. Uncommercialized Technologies and the Market Share Issue

Market share thresholds are an important safe-harbor criterion in technology licensing. However, calculating market shares can be difficult where the technology in question has not yet been commercialized.

An invention that has not yet been translated into market sales has no existing market share, while it is also uncertain which products it may replace in the future or the extent of potential demand for those products.

The practical difficulties created by the previous approach in such cases could therefore result in legal uncertainty for innovative projects.

The new framework addresses this issue by simplifying the application of market share thresholds to pre-commercialization licensing, with the aim of enabling the parties to proceed with greater predictability.

This approach is particularly important in fields that require lengthy development processes, such as biotechnology, clean energy, advanced materials, semiconductors, and artificial intelligence.

Where the licensee must make significant investments to turn the technology into a marketable product, being able to assess the competition law risks associated with the licensing arrangement from the outset can directly influence investment decisions.

6. Implications for Companies and Contractual Practice

The new TTBER (Technology Transfer Block Exemption Regulation) and the Guidelines are not merely theoretical documents of interest to competition law specialists.

They will directly affect the licensing agreements of companies operating in the European Union market or supplying technology, software, data, or technology-enabled products to that market.

Companies should first assess whether the parties are competitors, their positions in the relevant technology and product markets, the exclusivity structure of the agreement, and any restrictions on sales or production.

The purpose of use, access period, sublicensing, derived data and model outputs, data update obligations, and post-termination usage rights should be clearly set out for data licenses.

In licensing negotiation groups, membership requirements, information-sharing protocols, the use of independent advisers, and the freedom to negotiate individually should likewise be governed by written rules.

Companies should not assume that an agreement previously considered compliant with competition law will automatically receive the same treatment under the new regulatory framework. Periodic competition law reviews would be advisable, particularly for long-term licenses, automatic renewal provisions, and data uses whose scope may expand over time.

It is also important for legal, technical, and commercial teams to work together, as whether a dataset is substitutable or a patent is essential to a standard cannot always be determined from the contractual terms alone.

These developments should also be closely monitored by Turkish companies. Undertakings that license technology to customers in the European Union, obtain licenses from technology owners based in the EU, or manufacture products based on European standards may be subject to EU competition rules due to their effects on the EU market, even where their agreements are governed by Turkish law.

Moreover, the new approach adopted in the European Union may influence the regulatory framework in Türkiye and lead to further legislative developments. This is another important reason for Turkish companies to closely follow these developments.

7. Conclusion

The new Guidelines represent a comprehensive legal framework adapted to current economic realities. While preserving the fundamental logic of the block exemption system, they recognize that technology transfer is no longer limited to traditional patent and know-how licensing. Datasets, standard-essential technologies, collective licensing negotiations, and multi-party technology pools have become common features of today's commercial relationships.

The key message of the new framework is clear: cooperation that facilitates access to technology can strengthen competition; however, where the same arrangements are used to exclude competitors, facilitate coordination, or entrench market power, competition law intervention may become necessary.

Accordingly, the focus should not be limited to the legal form of an agreement but should also extend to its actual function in the market. The 2026 TTBER and Guidelines provide companies with a more up-

to-date roadmap while also calling for a more careful, interdisciplinary, and effects-based approach to compliance in the licensing of data and technology.

For further information:

[Att. Melda İz](mailto:Att.Melda.iz)

info@ozgunlaw.com

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COMPANIES SHOULD FIRST ASSESS WHETHER THE PARTIES ARE COMPETITORS, THEIR POSITIONS IN THE RELEVANT TECHNOLOGY AND PRODUCT MARKETS, THE EXCLUSIVITY STRUCTURE OF THE AGREEMENT, AND ANY RESTRICTIONS ON SALES OR PRODUCTION.

WHAT CHANGES WILL THE 12TH JUDICIAL PACKAGE BRING TO THE TURKISH PENAL CODE AND THE CODE OF CRIMINAL PROCEDURE?

The bill publicly known as the “12th Judicial Package,” titled the Bill on Amendments to Certain Laws Regarding the Effective and Efficient Functioning of the Judiciary, was adopted by the General Assembly of the Grand National Assembly of Türkiye.

Although it has not yet been published in the Official Journal, the bill introduces significant changes to the Turkish Penal Code and the Code of Criminal Procedure, particularly regarding participation in fraud offenses, the retention of genetic examination results, and the deferral of the announcement of the verdict (HAGB).

Under the current system, there is no specific sentence reduction provision for individuals who provide their bank account, credit card or payment instrument to another person for use in committing a fraud offense.

Under the provision to be added to Article 158 of the Turkish Penal Code, where participation in fraud or aggravated fraud is limited solely to providing a person’s bank account, payment instrument or the information and means enabling their use, the sentence will be reduced by half.

Thus, the amendment aims to ensure that the difference in the contribution to the offense between the principal offenders and those who allow their accounts to be used, in what is commonly known as “IBAN lending”, is reflected in the sentence imposed.

Article 80 of the Code of Criminal Procedure provides that the results of genetic examinations constitute personal data and must be destroyed immediately following certain decisions but does not provide for a centralized data retention system. Under the bill, the data would be recorded in a dedicated system after being anonymized, with a copy retained in the case file as evidence and, in certain circumstances, preserved for twenty years.

The person concerned would be entitled to request the deletion of the data where the relevant conditions are met, and the information could only be used in an ongoing investigation or prosecution upon a decision of a judge, court or public prosecutor.

The right to appeal HAGB decisions is not being introduced for the first time. This avenue of appeal was introduced by Law Nr. 7499, which entered into force in 2024. Following the Constitutional Court’s annulment decision, the bill re-regulates Article 231 of the Code of Criminal Procedure, maintaining the possibility of applying HAGB to prison sentences of two years or less or judicial fines, while expressly providing that HAGB may not be applied to the offenses of torture and torment, or to offenses committed by public officials in connection with their duties that may constitute ill-treatment within the scope of Article 17 of the Constitution.

For decisions rendered by a regional court of appeal or by the Court of Cassation acting as a court of first instance, the right to appeal to the Court of Cassation is maintained.

The regulation adopted by the Grand National Assembly of Türkiye (TBMM) is expected to enter into force upon its publication in the Official Journal following approval by the President.

The amendments aim to strengthen uniformity in the application of the criminal justice system and make judicial proceedings more effective.

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AN ANALYSIS OF THE ABOLITION OF ACTIONS FOR UNLIQUIDATED CLAIMS AND THE INTRODUCTION OF LIMITATION PERIOD AND CLAIM INCREASE RULES IN PARTIAL ACTIONS

1. INTRODUCTION

Upon the entry into force of the Code of Civil Procedure Nr. 6100 in 2011, one of the most significant innovations introduced into Turkish civil procedural law was the action for an unliquidated claim, set out under Article 107 of the Code of Civil Procedure ("CCP"). This type of action, which allows a creditor who is unable to determine the exact amount or value of its claim at the time of filing the action to initiate proceedings by indicating the underlying legal relationship and a minimum amount, and subsequently to increase the amount claimed without being subject to the prohibition on extending or altering the claim, has been the subject of extensive debate in practice and legal doctrine throughout the approximately fifteen years during which it remained in force.

With the legislative amendment publicly known as the "12th Judicial Package," which has been adopted by the Grand National Assembly of Türkiye and enacted into law and will enter into force upon its publication in the Official Journal, the action for an unliquidated claim is abolished in its entirety.

At the same time, a new mechanism for "increasing the claim" in partial actions is introduced through an additional paragraph to Article 109 of the CCP. Under the new provision, with respect to the increased portion of the claim in a partial action, the limitation period will be deemed to have been interrupted as of the date on which the action was filed. The legislative rationale states that the action for an unliquidated claim has been

abolished due to problems arising in practice and that, as a result of introducing the possibility of increasing the claim in partial actions, the legal benefit previously afforded by an action for an unliquidated claim will instead be achieved through a partial action.

The provision of Article 107 of the CCP governing actions for unliquidated claims will, however, continue to apply to actions filed before the date on which its repeal takes effect.

This study will first provide an overview of actions for unliquidated claims and partial actions, as well as the principal differences between these two types of actions. It will then examine the process leading to the abolition of actions for unliquidated claims and the reasons for their abolition.

The primary focus of the study will be the newly introduced mechanism for increasing the claim in partial actions and, in particular, one of the most significant issues that this mechanism is likely to give rise to in practice: determining the date from which interest accrues on the increased portion of the claim.

As the amendment has not yet entered into force, there is currently no judicial precedent concerning the increase of claims in partial actions. Nevertheless, the issue of the commencement date for interest will be addressed by analogy with the established case law of the Court of Cassation concerning the increase of claims in actions for unliquidated claims.

2. GENERAL OVERVIEW OF PARTIAL ACTIONS AND ACTIONS FOR UNLIQUIDATED CLAIMS

2.1. Partial Actions

A partial action is a type of action in which the claimant brings proceedings in respect of only a portion of a divisible claim arising from the same legal relationship, while reserving the right to assert and pursue the remaining portion at a later stage. Although not expressly set out by law under the former Code of Civil Procedure Nr. 1086, partial actions were widely recognized and applied in practice and

were given an explicit statutory basis for the first time under Article 109 of the CCP.

The Grand General Assembly for the Unification of Judgments of the Court of Cassation has held that, for an action to qualify as a partial action, the entire claim must arise from the same legal relationship and only a portion of the claim must be asserted for the time being. It has further held that the divisibility of the subject matter of the claim is sufficient for a partial action to be brought and that it is not necessary to expressly state in the petition that the action is a partial action [1].

In practice, a claimant's reservation of its "rights with respect to the excess" or statement that it is, for the time being, claiming a specified amount of the claim is considered sufficient for the action to be characterized as a partial action [2].

Pursuant to Article 109(3) of the CCP, bringing a partial action does not, unless the remaining portion of the subject matter of the claim is expressly waived, constitute a waiver of the unasserted portion.

Prior to the new regulation introduced by the 12th Judicial Package, a claimant who brought a partial action could recover the portion of the claim reserved as the excess only by bringing a separate additional action or by seeking amendment within the same proceedings. Under the new regulation, however, as explained below, the claimant will be able to include the reserved portion of the claim in the pending action by increasing the amount claimed, without having to resort to amendment.

2.2. Action for an Unliquidated Claim

Pursuant to former Article 107(1) of the CCP, where the creditor could not reasonably be expected to determine the exact amount or value of the claim at the time the action was filed, or where such determination was impossible, the creditor could bring an action for an unliquidated claim by indicating the underlying legal relationship and a minimum amount or value.

Under paragraph 2 of the same Article, once it became possible to determine the exact amount of the claim, the claimant could increase the amount claimed as initially stated in the action without being subject to the prohibition on extending the claim. This provision constituted an exception to the requirement under Article 119/1-ġ of the CCP to clearly specify the relief sought in the statement of claim.

The Court of Cassation has required two elements for an action for an unliquidated claim to be brought: one objective and the other subjective. The objective element is the objective impossibility of determining the amount of the claim or the value of the action, while the subjective element is that the claimant cannot reasonably be expected to determine the amount at issue [3]. Since an action for an unliquidated claim is an exceptional type of action, it has been accepted that the claimant must expressly indicate under the statement of claim that the action is being brought as an action for an unliquidated claim [4].

2.3. Key Differences Between the Two Types of Actions: Limitation Period and Commencement of Interest

The most significant practical difference between an action for an unliquidated claim and a partial action arose in relation to the interruption of the limitation period and the commencement of interest. In an action for an unliquidated claim, the filing of the action interrupted the limitation period not only with respect to the minimum amount stated under the statement of claim, but with respect to the entire claim. In a partial action, by contrast, the limitation period was interrupted only with respect to the portion of the claim asserted in the action and continued to run with respect to the portion reserved by the claimant.

A similar distinction applied with respect to the commencement of interest. According to the established case law of the General Assembly of Civil Chambers of the Court of Cassation, in an action for an unliquidated claim, where the defendant had not previously been placed in default, interest accrued on the entire claim, including the portion subsequently added to the action through an increase in the amount claimed, as of the date on which the action was filed. In a partial action, by contrast, interest accrued on the amount initially claimed as of the date of filing and on the portion subsequently incorporated

into the action by way of amendment as of the date of the amendment. Decision, dated 14.01.2020 and bearing the Basis number 2016/1107 and the Decision number 2020/16, of the General Assembly of Civil Chambers of the Court of Cassation reads as follows:

“As explained above, in an action for an unliquidated claim, the limitation period is interrupted for the entire claim upon the filing of the action, whereas in a partial action, it is interrupted only with respect to the portion of the claim asserted in the action. On the other hand, in an action for an unliquidated claim, where the defendant has not previously been placed in default, interest on the entire claim accrues as of the date of filing, whereas in a partial action, interest accrues on the amount initially claimed as of the date of filing and on the portion subsequently incorporated into the action by way of amendment as of the date of the amendment.” [5]

Indeed, in another decision, the General Assembly of Civil Chambers held that the substantive and procedural legal effects arising from the filing of an action for an unliquidated claim also apply to the amounts subsequently increased, and accordingly found it appropriate for interest to accrue, as of the date of filing, on the entire claim, including the amounts increased through the petition for increasing the amount claimed [6].

Consistent with this approach, the Court of Cassation has held that, where the defendant had not been placed in default before the date of filing, default with respect to the entire claim whose amount was determined subsequently in an action for an unliquidated claim occurred upon the filing of the action and, therefore, interest should be awarded as of the date of filing [7].

As can be seen, under the system that has now been abolished, an action for an unliquidated claim, where the requisite conditions were satisfied, provided the creditor with significantly more favorable protection than a partial action, both in terms of the interruption of the limitation period and the commencement of interest.

Under the new regulation, as explained in detail below, the mechanism for increasing the amount claimed in an action for an unliquidated claim has been made available in partial actions. Accordingly, the disadvantages of partial actions with

respect to the limitation period and the commencement of interest have also been eliminated.

3. REASONS FOR THE ABOLITION OF ACTIONS FOR UNLIQUIDATED CLAIMS

The provisions governing actions for unliquidated claims and partial actions were subject to several legislative amendments during the period in which they remained in force. Article 107 of the CCP originally consisted of three paragraphs and was headed “Action for an unliquidated claim and action for declaratory relief”. In addition to the action for an unliquidated claim, the provision also regulated an action for declaratory relief in respect of an unliquidated claim. However, since neither legal scholarship nor practice had reached a clear understanding as to the precise scope of the action for declaratory relief contemplated in the third paragraph, this paragraph was repealed by Law Nr. 7251 in 2020, the possibility of bringing such an action was abolished, and the heading of the provision was changed to “Action for an unliquidated claim”.

With respect to partial actions, Article 109/2 of the CCP, which provided that a partial action could not be brought where the subject matter of the claim was undisputed between the parties or clearly determinable, was repealed by Law Nr. 6644 in 2015 on the ground that, in practice, it had effectively eliminated the right to bring a partial action.

Despite these legislative amendments, the fundamental problems surrounding the action for an unliquidated claim remained unresolved. Throughout its more than ten years of application, the questions of which claims should be regarded as determinate and which as unliquidated, as well as whether the lack of legal interest in an action for an unliquidated claim brought without the requisite conditions being satisfied constitutes a curable deficiency in a condition of action, gave rise to significant disagreements both in legal doctrine and in the decisions of the Court of Cassation.

In its 2018 decision, the Grand General Assembly for the Unification of Judgments of the Court of Cassation likewise left the issue unresolved, holding that a claim cannot be classified as determinate or unliquidated solely by reference to its type, and that this matter must be assessed separately by the courts in light of the circumstances of each individual case.

Accordingly, it concluded that there was no need to unify the conflicting case law [8].

The divergence of opinion among the Chambers concerning the fate of an action for an unliquidated claim brought without the requisite conditions being satisfied could only be resolved following the closure of the 22nd Civil Chamber, when the 9th Civil Chamber held that the lack of legal interest was not a curable deficiency in a condition of action and that the action should therefore be dismissed on procedural grounds [9].

However, under the application of İsmail Avci, the Constitutional Court adopted an approach directly contrary to that of the Court of Cassation, holding that dismissing an action brought as an action for an unliquidated claim without examining its merits, on the ground that a condition of action was lacking, violated the right of access to a court [10]. This approach broadens the scope of actions for unliquidated claims and weakens their exceptional nature.

Against this background, certain scholars have expressly argued that there is no longer a need for the action for an unliquidated claim and that the mechanism should be abolished. YILMAZ argued that the confusion in the case law, which could not be resolved even through a decision on the unification of judgments and which resulted in diametrically opposed final judgments in similar cases, seriously undermined the principle of legal certainty and public confidence in the courts.

He further observed that the mechanism, which the legislator had introduced to address an exceptional problem, had deviated from its intended purpose in practice and had come to cause more harm than benefit, and therefore proposed removing Article 107 of the CCP from the respective law [11]. KARAASLAN, for his part, stated that the predictions that the mechanism would entail uncertainty in numerous respects had proved correct and argued that the most appropriate solution would be to regulate actions for unliquidated claims and partial actions in a single provision [12].

Finally, with the 12th Judicial Package, the legislator acted in line with these criticisms and brought an end to actions for unliquidated claims by repealing Article 107 of the CCP in its entirety. The legislative rationale points out that the uncer-

tainties in practice as to which claims may be pursued through this type of action have prolonged proceedings and notes that the Constitutional Court, in its individual application decisions, has found that such uncertainty undermines the right to seek legal remedies.

The rationale further states that, through the mechanism for increasing the amount claimed introduced in partial actions, the legal benefit previously afforded by an action for an unliquidated claim will be achieved through a partial action.

Pursuant to the transitional provision introduced by the amendment, pending actions for unliquidated claims that were filed before the amendment entered into force will continue to be heard in accordance with former Article 107 of the CCP.

4. INCREASE OF THE CLAIM IN PARTIAL ACTIONS UNDER THE NEW REGULATION

The 12th Judicial Package seeks to fill the gap created by the abolition of actions for unliquidated claims by strengthening the legal framework for partial actions. Pursuant to the paragraph added to Article 109 of the CCP, where only a portion of a claim is asserted in an action, the claimant may, without resorting to amendment and without being subject to the prohibition on extending the claim, increase the relief sought once only until the conclusion of the examination of the merits and thereby seek the remaining portion of the claim within the same action.

The most significant innovation introduced by the new provision is the express stipulation that, with respect to the increased portion of the claim, the limitation period shall be deemed to have been interrupted as of the date on which the action was filed. Thus, the protection afforded to creditors by an action for an unliquidated claim—namely, the interruption of the limitation period for the entire claim as of the date of filing—has been extended to partial actions.

The newly introduced mechanism for increasing the amount claimed must be distinguished from amendment. Amendment is a general procedural mechanism set out under Articles 176 et seq. of the CCP, which enables the parties to correct their procedural acts. Where the subject matter of an action is increased by way of partial amendment, as explained above, interest on the increased portion is, as a rule, awarded as of the date of the amendment. By contrast, an increase in

the amount claimed is a special procedural mechanism independently of amendment and expressly granted to the claimant by law. In this respect, the new mechanism is substantively identical to the mechanism for increasing the amount claimed that was previously provided for actions for unliquidated claims under former Article 107/2 of the CCP.

In both cases, the claimant may increase the relief sought, without being subject to the prohibition on extending the claim and without requiring either the consent of the opposing party or amendment, provided that the requisite court fee is paid.

The difference lies in the fact that, under the former provision, the possibility of increasing the amount claimed without resorting to amendment was available only to a claimant whose claim was unliquidated, whereas under the new provision, this possibility is granted, once only, to every claimant bringing a partial action, regardless of whether the claim is determinate or unliquidated.

Accordingly, under the new system, a claimant who reserves its rights with respect to the excess may, in the partial action it has brought, have the entire claim adjudicated in the same proceedings by increasing the amount claimed once, without having to resort to amendment. It is therefore clear that the legislator has effectively reconstructed the function of the action for an unliquidated claim within the framework of the partial action.

5. COMMENCEMENT OF INTEREST ON THE INCREASED PORTION OF THE CLAIM IN PARTIAL ACTIONS

The new regulation expressly provides that, with respect to the increased portion of the claim, the limitation period shall be deemed to have been interrupted as of the date of filing; however, it does not contain an express provision concerning the commencement of interest. The date from which interest accrues may therefore be expected to be one of the issues giving rise to the most significant debate in practice.

Nevertheless, this issue can be resolved by reference, by analogy, to the legal nature of the mechanism for increasing the amount claimed and the established case law of the Court of Cassation concerning increases in the amount claimed in actions for unliquidated claims.

As explained under the heading “2.3. Key Differences Between the Two Types of Actions: Limitation Period and Commencement of Interest” of this article, according to the established case law of the Court of Cassation, in a partial action, interest on the portion of the claim increased by way of amendment accrues as of the date of the amendment.

In actions for unliquidated claims, however, where the claimant increases the relief sought by way of an increase in the amount claimed without resorting to amendment, interest accrues as of the date of filing (or the date of default).

It should first be noted that the established practice [13], according to which interest on the portion of the claim increased by way of amendment in a partial action accrues only as of the date of the amendment, is based on the legal nature of amendment.

Since the portion increased by way of amendment had not been asserted as part of the subject matter of the action until the date of the amendment, the debtor is deemed to have been placed in default with respect to that portion only upon the amendment.

By contrast, as explained above, the newly introduced mechanism for increasing the amount claimed in a partial action is not an amendment. It is a special mechanism incorporated by law into the framework of the partial action itself, extending to the remaining portion of the claim the legal effects attached to the filing of the action, such as the interruption of the limitation period.

Accordingly, applying the case law concerning amendment to the new mechanism without any modification would be incompatible with the legal nature of the increase in the amount claimed.

By contrast, the case law concerning the mechanism for increasing the amount claimed under former Article 107/2 of the CCP provides direct guidance with respect to the new mechanism.

The General Assembly of Civil Chambers of the Court of Cassation held that, in an action for an unliquidated claim, the substantive and procedural legal effects arising from the filing of the action also apply to the amounts subsequently increased. Accordingly, it held that interest should accrue, as of the date of filing, on the

entire claim, including the amounts increased through the petition for increasing the amount claimed [14].

The rationale underlying this case law is not that the claim is unliquidated, but rather that the increase in the amount claimed does not constitute a new action and that the legal effects attached to the filing of the action (including the interruption of the limitation period and default) arise with respect to the entire claim as of the date of filing.

Under the new regulation, by expressly providing that the limitation period with respect to the increased portion of the claim shall be deemed to have been interrupted as of the date of filing, the legislator has manifested its intention to extend to the remaining portion of the claim the substantive legal effects attached to the filing of the action.

The approach adopted with respect to the limitation period should likewise apply to default, and consequently to interest, as another legal consequence of filing an action.

This is required both by the legal nature of the mechanism for increasing the amount claimed and by the legislator's intention.

In light of all the foregoing considerations, it is concluded that, under the new regulation, interest on the portion of the claim increased through the mechanism for increasing the amount claimed in a partial action should accrue in the same manner as under the former regime governing actions for unliquidated claims.

Where the claimant had placed the debtor in default before filing the action, interest should accrue on the entire claim, including the portion subsequently increased, as of the date of default.

In the absence of such a default, interest should accrue on the entire claim, including the increased portion, as of the date on which the action was filed.

A possible approach that interest may accrue on the increased portion only as of the date of the increase in the amount claimed would, however, be unpersuasive in light of the legal nature of the mechanism for increasing the amount claimed and the legal benefit sought by the legislator through the provision concerning the interruption of the limitation period.

6. CONCLUSION

The 12th Judicial Package represents a significant turning point in Turkish civil procedural law.

During the fifteen years in which the action for an unliquidated claim was in force, it was not even possible to establish with certainty which claims could be pursued through this type of action, while profound divergences of opinion emerged among the Chambers of the Court of Cassation and, ultimately, between the Court of Cassation and the Constitutional Court.

Consistent with the calls in legal doctrine for its abolition, the action for an unliquidated claim has been repealed, and the legal benefit it afforded to creditors has been incorporated into the framework of the partial action.

The mechanism for increasing the amount claimed introduced by the paragraph added to Article 109 of the CCP is a special procedural mechanism that is independent of amendment, directly granted by law to a claimant bringing a partial action, and may be exercised only once. The provision that the limitation period with respect to the increased portion of the claim shall be deemed to have been interrupted as of the date of filing is a clear indication of the legislator's intention to extend the legal effects attached to the filing of the action to the entire claim.

In light of this legislative intent and the established case law of the Court of Cassation concerning increases in the amount claimed in actions for unliquidated claims under the former regime, interest on the increased portion in a partial action should therefore accrue as of the date of default or, in the absence of prior default, the date on which the action was filed.

Nevertheless, following the publication of the amendment in the Official Journal and its entry into force, it will be important to closely monitor how the issues addressed in this article, particularly the commencement of interest, will be shaped by judicial practice.

For further information:

[Osman Serhat Demirci, Legal Intern](#)

info@ozgunlaw.com

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ASSESSING THE IMPACT OF LEGISLATIVE CHANGES ON PENDING PROCEEDINGS FROM THE PERSPECTIVE OF THE RULE OF LAW

1. Introduction

The society in which we live is constantly changing and evolving, and these changes also affect the legal system. In response to changing social needs, the legislature enacts new laws and introduces amendments to existing regulations. Whether and to what extent these new rules, once they enter into force, should alter the legal position that existed under the previous regulations remains an ongoing debate in legal scholarship and practice. When applying new regulations, the principles of the rule of law, legal certainty, foreseeability, and the right to seek judicial remedies should be taken into consideration.

The retroactive application of new laws may undermine legal stability and predictability. At the same time, it is important to ensure that changes introduced during pending proceedings do not adversely affect the right to a fair trial.

Accordingly, an appropriate balance must be struck by taking into account the specific circumstances of each case. The legislature and the judiciary are expected to observe these principles when applying regulations and to ensure the effective protection of the parties' rights.

2. Temporal Application of Laws

The temporal application of laws refers to the rules that determine which events a newly enacted law applies to, from which date and within what limits it applies. [1]

The principles governing the temporal application of laws are a consequence of, and an integral part of, the rule of law. Article 2 of the Constitution provides that the Republic of Türkiye is a state governed by the rule of law. The Constitutional Court has also stated in numerous decisions that the principle of the rule of law encompasses the principles of legal certainty and legal foreseeability.

The principle of legal certainty aims to enable individuals to conduct legal transactions in reliance on the rules of law in force and to ensure that they are not exposed to unforeseeable consequences as a result of subsequent legislative changes. The principle of legal certainty, on the other hand, requires laws to be clear, foreseeable, and stable.

Accordingly, when applying newly enacted laws, the principles of the rule of law, legal certainty, and the right to seek judicial remedies should be observed. This is particularly important when applying new statutory provisions to pending proceedings, where consideration should be given to the legal position of the parties at the time the proceedings were initiated. The parties' legal position should be preserved to the greatest extent possible, and their legitimate legal expectations should be taken into account.

In legal doctrine and practice, the temporal application of laws is generally addressed under two main categories: substantive law and procedural law. The general principle governing substantive law is that laws do not apply retroactively. In procedural law, by contrast, the principle of immediate application applies. However, in pending proceedings, determining which law applies cannot be based solely on this distinction.

Even where a new provision concerns procedural matters, if it directly affects the parties' legal position or produces such effects, the principles of legal certainty, legitimate expectations, and vested rights must also be taken into consideration. Accordingly, the protection of legitimate expectations and the rule of law, set out under Article 2 of the Constitution, must also be taken into account when determining the temporal application of laws.

3. Key Principles Governing the Temporal Application of Laws

The events to which a new law applies are determined within the framework of the general principles governing the temporal application of laws. Legal scholarship and judicial practice recognize certain fundamental principles in this area.

These are the principle of non-retroactivity of laws and the principle of immediate application.

3.1. Principle of Immediate Application

As a general rule, events and legal transactions are governed by the rules of law in force at the time they occur. The application of the law in force at that time to a

particular event is referred to as the principle of immediate application.

Under this principle, a new law applies to events and legal transactions occurring after its entry into force and does not have retroactive effect.

By contrast, the application of a legal rule that subsequently enters into force to an event or transaction that occurred in the past is referred to as "the principle of retroactivity". Retroactive application is essentially an exception.

One example can be found in criminal law, where a law more favorable to the defendant may be applied. In civil proceedings, however, the general principle governing legislative amendments is immediate application. [2]

Under this general rule, procedural acts carried out under the previous law should be governed by that law, whereas proceedings that have not yet been completed should be concluded in accordance with the new law.

The provisions of a new procedural law also apply to the continuing effects, under the new law, of incomplete procedural acts relating to events and legal relationships that arose while the previous law was in force.

However, legal situations and procedural acts that were completed and became final under the previous law, and whose legal consequences had already taken effect for the parties, are not affected by the new law.

They remain valid and do not need to be renewed.

Accordingly, procedural laws cannot disrupt a legal situation that was validly established before they entered into force, nor can they revive a legal situation that was never validly established or had already become invalid. [3]

The Constitutional Court has also issued decisions affirming the principle that laws should not have retroactive effect. Under its decision dated 30.05.2006, and bearing the Basis number 2003/82 and the Decision number 2006/66, the Constitutional Court held as follows:

"The legal certainty that the rule of law is required to safeguard, as a general principle, necessitates that laws do not have retroactive effect. Under the principle of non-retroactivity of laws, legislation is, as a rule, enacted to apply to events, transactions, and acts occurring after its entry into force, except in certain exceptional circumstances, such as the protection of vested rights required by the public interest and public order, or improvements to financial rights." [4]

Under another decision, the Constitutional Court held as follows:

"The legal certainty that the rule of law, as set out under Article 2 of the Constitution, is required to safeguard, as a general principle, necessitates that laws do not have retroactive effect."

Under the principle of non-retroactivity of laws, legislation is, as a rule, enacted to apply to events, transactions, and acts occurring after its entry into force, except in certain exceptional circumstances, such as those required by the public interest and public order, the protection of vested rights, or improvements to financial rights. The past therefore remains outside the scope of newly enacted legislation."

Accordingly, it is a general principle of law that laws entering into force subsequently should not affect the past or legal situations that have acquired a definitive status." (Decision, bearing the Basis number 2013/86, the Decision number 2013/117, and dated 10.10.2013, of the Constitutional Court) [5]

"The principle of legal certainty, which the rule of law is required to safeguard, is a common value that requires legal norms to be foreseeable, enables individuals to have confidence in the state in all their acts and transactions, and requires the state to refrain from methods that may undermine this confidence when enacting legislation. As a general rule, legal certainty requires that laws do not have retroactive effect."

Under this principle, known as the 'principle of non-retroactivity of laws,' laws may apply only to legal situations arising after their entry into force; therefore, a law enacted subsequently does not apply to events that occurred before its entry into force." (Decision, bearing the Basis number 2012/102, the Decision number 2012/207, and dated 27.12.2012, of the Constitutional Court) [6]

Under another decision, the Court of Cassation explained the principle as follows:

"Although there is no consensus in legal doctrine on the definition of the principle of non-retroactivity, the principle may generally be defined as a general principle of law that prohibits a newly enacted rule from producing legal effects for the period preceding its entry into force and requires the rule to apply only to events occurring after its entry into force." (Decision, bearing the Basis number 2021/86, the Decision number 2021/516, and dated 20.04.2021, of the General Assembly of Civil Chambers of the Court of Cassation) [7]

3.2. Principle of Legal Certainty

The principle that laws should not have retroactive effect is a general principle, rooted in the principle of legal certainty [8]. The principle of legal certainty requires that legal stability and predictability not be undermined through frequent changes to legal rules and that retroactive rules safeguard individuals' fundamental rights and freedoms without interfering with vested rights. Individuals are entitled to rely on the continued validity and application of the legislation in force.

If individuals' acts and transactions may subsequently be deemed invalid on the basis of a legal rule that was not in force and could not have been known at the time, confidence in the law is undermined. Under the principle of non-retroactivity, the rules governing the procedure to be followed in pending proceedings should, as a general principle, apply only to the procedural aspects that have not yet been completed.

This is because a completed procedural act cannot subsequently be assessed under rules that were enacted after the act was completed, regardless of how the completed stage is characterized. Individuals cannot reasonably be expected to act in accordance with rules that have not yet entered into force and whose content is unknown to them [3].

4. Application of New Laws to Pending Proceedings and the Principle of Legitimate Expectations

Under Turkish law, procedural rules are generally subject to the principle of immediate application. This is expressly provided for in Article 448 of the Code of Civil Procedure Nr. 6100, which states:

"The provisions of this Law shall apply immediately, provided that they do not affect completed procedural acts." As the wording of the provision makes clear, the principle of immediate application is subject to the condition that completed procedural acts remain unaffected. This does not, however, mean that the principle of immediate application is without limitations. In particular, where a new provision affects the parties' legal position as it stood when the proceedings were initiated or has an impact on the outcome of the proceedings, the principles of legal certainty and legitimate expectations, which derive from the rule of law, should also be taken into consideration.

The Constitutional Court defined the concept of legitimate expectations in an individual application concerning an alleged violation of the right to property as follows:

"A legitimate expectation is an expectation of sufficient substance arising from an enforceable claim that has been reasonably established and is based either on a specific provision of domestic law or on settled and consistent case law indicating a high likelihood of success."

Under the decisions in which it has used this definition, the Constitutional Court directly refers to the definition adopted by the European Court of Human Rights. Under its constitutional review decisions, the Court approaches the concept by emphasizing whether individuals who have relied on the long-standing application of legislation have structured their lives accordingly, and whether such reliance is worthy of protection in a state governed by the rule of law. [9]

Similarly, the Court of Cassation has recognized in its case law that vested rights arising from certain procedural acts should be protected. The opposite approach could make judicial proceedings unpredictable due to constantly changing rules and prevent the parties from having a foreseeable and stable litigation process.

Article 36 of the Constitution guarantees the right to seek judicial remedies. It provides that everyone has the right to assert and defend their rights and claims before judicial authorities. This right encompasses not only access to the courts, but also the ability to obtain effective judicial protection within the legal system to which the individual has had recourse.

Accordingly, where a person initiates proceedings in reliance on the legal rules in force at the time the action is brought, subjecting that person during the proceedings to new obstacles that could not have been foreseen and did not exist at the outset as a result of subsequent legislative amendments may constitute an infringement of the right to seek judicial remedies. This is particularly the case where a new provision significantly alters the person's ability to bring an action, the manner in which their claim is assessed, or the legal criteria to be applied in resolving the dispute. Such changes may undermine the right to a fair trial.

The right to a fair trial is set out under Article 6 of the European Convention on Human Rights and guarantees that proceedings are conducted fairly and concluded within a reasonable time. The European Court of Human Rights recognizes legal certainty and foreseeability as fundamental elements of the right to a fair trial. Accordingly, subsequent legislative amendments that intervene in pending proceedings should not undermine the parties' legitimate expectations regarding the course and outcome of those proceedings.

5. Conclusion

When determining whether new laws should apply to pending proceedings, the analysis should not be based solely on the law's date of entry into force and the principle of immediate application. The parties' legal position at the time the proceedings were initiated, their legitimate expectations, and the procedural rights and opportunities available to them should also be taken into consideration. In particular, the right to seek judicial remedies, as protected under the Constitution and the European Convention on Human Rights, must not be infringed. From the perspective of the right to seek judicial remedies and the right to a fair trial, individuals' confidence in the legal system should be protected. Where subsequently enacted laws produce consequences that the parties could not have foreseen and could not reasonably be expected to accept, the principles of legal certainty and legitimate expectations should be safeguarded. The concept of vested rights is also an important safeguard in determining the limits of applying new laws to pending proceedings. Although new legislation may be enacted in pursuit of the public interest, its effects on legal proceedings initiated in the past

should be assessed in accordance with the principle of proportionality. The rule of law requires not only that new legislation be enacted, but also that such legislation be applied in a foreseeable and consistent manner that protects individuals' legitimate expectations.

For further information:

[Fatma Şengün, Legal Intern](mailto:Fatma.Sengun@ozgunlaw.com)
info@ozgunlaw.com

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**UNDER THE PRINCIPLE
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THE LEGAL DIMENSIONS OF PROCESSING LOCATION DATA IN MOBILE APPLICATIONS

1. Introduction

The rapid developments in digital technologies have made mobile applications an integral part of everyday life. While a wide range of services including social media, transportation, banking, e-commerce and navigation are provided through mobile applications, these applications process various categories of users' personal data depending on the nature of the services they offer.

Among the personal data processed, location data is of particular importance, as it not only indicates the point at which an individual is located but also enables significant inferences to be drawn regarding the individual's daily life, habits, and social environment.

In Turkish law, the right to the protection of personal data is safeguarded under Article 20 of the Constitution, and, as the statutory manifestation of this constitutional protection, the Personal Data Protection Law Nr. 6698 ("PDPL") was enacted.

Although the Law does not contain a specific definition of location data, information concerning an individual's location that can be associated with an identified or identifiable natural person is generally considered to constitute personal data.

Accordingly, the processing of location data by mobile applications must be carried out in compliance with the data processing conditions prescribed under the PDPL and the obligations imposed on data controllers.

In this study, the legal nature of location data processed by mobile applications will be examined within the framework of the Law Nr. 6698. The obligations of data controllers concerning the provision of information to data subjects, data security, and the deletion, destruction, and anonymization of personal data will be examined. Subsequently, the administrative, civil, and criminal consequences of the unlawful processing of location data will be evaluated in light of the relevant applicable regulations, decisions of the Personal Data Protection Board, and judicial decisions.

2. The Legal Nature of Location Data in Mobile Applications

Although the personal data processed by mobile applications varies depending on the services provided by the respective application, location data has become one of the most frequently processed categories of data today. In particular, navigation, transportation, social media, and online ordering applications may access users' real-time or continuous location information to provide their services.

In practice, however, it can also be observed that certain applications request access to location data even where such access is not necessary for the provision of the service. This makes it necessary to properly determine the legal nature of location data and to ensure that data processing activities are carried out within the boundaries prescribed by law.

Article 3(1)(d) of the Personal Data Protection Law Nr. 6698 defines personal data as "any information relating to an identified or identifiable natural person." Although the Law does not contain a separate definition specifically addressing location data, location information that can be associated with an identified or identifiable natural person is considered to constitute personal data. Indeed, location data collected over a certain period of time may enable detailed inferences to be drawn regarding an individual's place of residence, professional life, daily routines and social environment. In this respect, location data constitutes personal data that is directly connected with an individual's private life.

The Personal Data Protection Authority has likewise emphasized under the guidelines it has published concerning data processing activities carried out through mobile applications that data controllers should process only the location data necessary for the provision of the service, clearly and comprehensibly inform the data subject of the purpose of the processing, and act in accordance with the principle of proportionality. Accordingly, the processing of location data should take into account not only technological capabilities but also the fundamental rights and freedoms of individuals. [1]

The impact of location data on private life has also been recognized in the judgments of the European Court of Human Rights. In its judgment in "Uzun v. Germany", the Court held that location tracking carried out through GPS could constitute an interference with the right to respect for private life under Article 8 of the European Convention on Human Rights and made the following assessment:

"... In the Court's view, GPS surveillance is, by its very nature, distinguishable from other methods of visual or acoustic surveillance, which are, as a rule, more likely to interfere with an individual's right to respect for private life, as they may disclose more information about a person's behavior, opinions or feelings. Nevertheless, having regard to the principles established in its case-law, the Court considers the factors set out above sufficient to conclude that the surveillance of the applicant by means of GPS, in the circumstances of the case, and the processing and use of the data thereby obtained in the manner described above, constituted an interference with his private life protected under Article 8/1." [2]

The aforementioned judgment demonstrates that location data should not be regarded merely as technical information, but rather as personal data capable of enabling comprehensive inferences to be drawn concerning an individual's private life. Therefore, ensuring that the processing of location data by mobile applications is carried out in compliance with the data processing conditions and fundamental principles set forth in the Personal Data Protection Law Nr. 6698 is of particular importance for the effective protection of the right to the protection of personal data.

3. Obligations of the Data Controller

In the processing of location data through mobile applications, data controllers are responsible not only for processing personal data lawfully but also for fulfilling the obligations set forth under the Personal Data Protection Law Nr. 6698.

The Law imposes a number of obligations on data controllers aimed at protecting the fundamental rights and freedoms of data subjects at every stage of the personal data processing process. In the context of mobile applications, the principal obligations include the obligation to provide information, the obligation to ensure data security, and the obligation to delete, destroy, or anonymize personal data.

3.1. Obligation to Provide Information

Pursuant to Article 10 of the Personal Data Protection Law Nr. 6698, the data controller is obliged, at the time of obtaining personal data, to inform the data subject about the identity of the data controller, the purposes for which the personal data will be processed, the persons to whom the data may be transferred, the legal basis for the collection of the data, and the rights of the data subject set forth under Article 11 of the Law.

This obligation is independent of explicit consent and is intended to ensure that data processing activities are carried out in a transparent manner.

In the context of mobile applications, the obligation to provide information is generally fulfilled through privacy policies or information notices.

However, merely providing such texts as a matter of form is not sufficient. Users must be able to learn, in a clear, comprehensible, and easily accessible manner, for what purposes their location data is being processed.

Indeed, in its Principle Decision, numbered 2026/347 and dated 18.02.2026, the Personal Data Protection Board stated that merely fulfilling the obligation to provide information in a formal manner is not sufficient and emphasized that data subjects must be effectively informed about data processing activities. Accordingly to the Decision:

"... Where the processing of personal data is carried out on the basis of explicit consent, the information notice and the explicit consent text should be prepared as separate documents under distinct headings;

... Clear, comprehensible, and plain language should be used in the texts; general, ambiguous, incomplete, misleading, or inaccurate information should not be included;

Overly detailed, complex, and lengthy texts should not be used;

The personal data processed and the categories of such data, together with the purposes and legal basis of the personal data processing activity, should be stated clearly and explicitly under the information notices." [3]

In line with this Decision, mobile application developers are required, as a matter of the transparency principle under the Personal Data Protection Law Nr. 6698, to prepare information notices that users can readily understand, rather than lengthy and complex texts.

3.2. Ensuring Data Security

Pursuant to Article 12 of the Personal Data Protection Law Nr. 6698, the data controller is obliged to take all necessary technical and administrative measures to prevent the unlawful processing of and access to personal data and to ensure the secure retention of personal data. Accordingly, location data must be stored securely, unauthorized access must be prevented, access privileges must be restricted, and the necessary security measures must be implemented against potential data breaches.

The Personal Data Protection Board has also emphasized in various decisions that data security is not limited to establishing a technical infrastructure, and that data controllers are also required to take appropriate organizational measures.

Indeed, in several of its decisions concerning personal data breaches, the Board has imposed administrative sanctions on data controllers that failed to implement the necessary security measures. This demonstrates that data security constitutes not only a technical but also a legal obligation.

3.3. Deletion, Destruction, and Anonymization of Personal Data

Pursuant to Article 7 of the Personal Data Protection Law Nr. 6698, where the reasons requiring the processing of personal data cease to exist, the data controller is obliged to delete, destroy or anonymize such data ex officio or upon the request of the data subject.

In the context of mobile applications, this obligation is particularly significant with regard to location data. Indefinitely retaining location information obtained for

the purpose of providing a service after that purpose has ceased is incompatible with the fundamental principles set forth under the Law.

Accordingly, data controllers are required to establish personal data retention and destruction policies and to destroy, without any undue delay, personal data for which the purpose of processing has ceased to exist.

The "Guideline on the Deletion, Destruction or Anonymization of Personal Data" published by the Personal Data Protection Authority likewise establishes that data controllers are required to carry out these processes in a planned and auditable manner.

"The deletion of personal data is the process of rendering personal data completely inaccessible and unusable by the relevant users. The data controller is obliged to take any and all necessary technical and administrative measures to ensure that deleted personal data is inaccessible and unusable by the relevant users ...

The destruction of personal data is the process of rendering personal data completely inaccessible, irretrievable and unusable by anyone in any manner. The data controller is obliged to take any and all necessary technical and administrative measures in relation to the destruction of personal data ...

For personal data to be considered anonymized, the data must be rendered incapable of being associated with an identified or identifiable natural person, even through the use of appropriate techniques, having regard to the recording medium and the relevant field of activity, such as reversing the anonymization process by the data controller or recipient groups and/or matching the data with other data.

The data controller is obliged to take any and all necessary technical and administrative measures to anonymize personal data. The anonymization of personal data shall be carried out in accordance with the principles set forth in the personal data retention and destruction policy, using the following methods." [4]

Thus, the aim is to prevent personal data from being retained for longer than necessary and thereby to protect the private lives of data subjects.

4. Consequences of the Unlawful Processing of Location Data

Where location data processed through mobile applications is unlawfully obtained, processed or disclosed to any third parties, data controllers may incur administrative, civil and criminal liability. Given that location data may reveal extensive information concerning an individual's private life, the unlawful processing of such data may give rise to various sanctions not only under the Personal Data Protection Law Nr. 6698, but also under the Turkish Code of Obligations and the Turkish Penal Code.

4.1. Administrative Liability

Article 18 of the Personal Data Protection Law Nr. 6698 sets forth the administrative sanctions that may be imposed where data controllers violate the obligations prescribed under the Law. Pursuant to this provision:

"ARTICLE 18- (1) Under this Law:

(a) Those who fail to fulfill the obligation to provide information prescribed under Article 10 shall be subject to an administrative fine ranging from TRY 5,000 to TRY 100,000;

(b) Those who fail to fulfill the obligations concerning data security prescribed under Article 12 shall be subject to an administrative fine ranging from TRY 15,000 to TRY 1,000,000;

(c) Those who fail to comply with the decisions issued by the Board pursuant to Article 15 shall be subject to an administrative fine ranging from TRY 25,000 to TRY 1,000,000;

(ç) Those who fail to comply with the obligation to register with and notify the Data Controllers' Registry as prescribed under Article 16 shall be subject to an administrative fine ranging from TRY 20,000 to TRY 1,000,000;

(d) (Supplemented: 2/3/2024 – 7499/Art.35) Those who fail to fulfill the notification obligation prescribed under Article 9(5) shall be subject to an administrative fine ranging from TRY 50,000 to TRY 1,000,000."

(2) (Amended: 2/3/2024 – 7499/Art.35) The administrative fines prescribed under subparagraphs (a), (b), (c) and (ç) of paragraph 1 shall be imposed on data control-

lers, whereas the administrative fine prescribed under subparagraph (d) shall be imposed on data controllers or natural persons and private-law legal entities acting as data processors.

(3) (Supplemented: 2/3/2024 – 7499/Art.35) An action may be brought before the administrative courts against administrative fines imposed by the Board.

(4) Where any of the acts specified in paragraph 1 are committed within public institutions and organizations or professional organizations having the status of public institutions, disciplinary proceedings shall be initiated, upon notification by the Board, against civil servants and other public officials employed by the relevant public institutions and organizations, as well as persons employed by professional organizations having the status of public institutions, in accordance with the applicable disciplinary provisions, and the outcome thereof shall be notified to the Board."

In particular, administrative fines may be imposed on data controllers where they fail to fulfill the obligation to provide information, fail to take the necessary technical and administrative measures concerning data security, or act contrary to decisions of the Board.

Accordingly, Decision, numbered 2021/361 and dated 13.04.2021, of the Personal Data Protection Board constitutes an important example with regard to data processing activities carried out through mobile applications. In the case at issue, the Board initiated an investigation after a bank sent promotional messages to a data subject through its mobile application without duly obtaining the data subject's explicit consent. Following its examination, the Board rendered the following decision:

"... On the basis of the assessment that the data controller's unlawful processing of personal data by sending promotional messages without duly obtaining the explicit consent of the data subjects demonstrated that the data controller had failed to take the necessary technical and administrative measures to ensure an appropriate level of security, as referred to in paragraph (1) of Article 12 of the Law;

Considering that the processing of the data subject's personal data by the data controller for the purpose of sending promotional messages through mobile appli-

cations without duly obtaining explicit consent was unlawful, it was concluded that the data controller had failed to take the necessary technical and administrative measures to ensure an appropriate level of security within the meaning of paragraph (1) of Article 12 of the Law, and that accordingly, an administrative fine be imposed on the data controller pursuant to subparagraph (b) of paragraph (1) of Article 18 of the Law;

Furthermore, the data controller be instructed to arrange the processes of the mobile applications under its control in such a manner as to ensure that explicit consent could be duly obtained, and the Board be informed of the outcome of this process." [5]

The aforementioned decision demonstrates that, in the context of mobile applications, obtaining users' explicit consent for the processing of their personal data alone is not sufficient; data controllers are also obliged to design their data processing processes in compliance with the Personal Data Protection Law Nr. 6698 and to take any and all necessary technical and administrative measures.

4.2. Civil Liability

The unlawful processing of personal data may also give rise to the data controller's liability under private law. Pursuant to Article 11 of the Personal Data Protection Law Nr. 6698, data subjects may, upon learning that their personal data have been unlawfully processed, request the rectification or deletion of such data, as well as compensation for any damage they have suffered. In addition, claims for pecuniary and non-pecuniary damages may be brought under the provisions of the Turkish Code of Obligations concerning tortious acts. Indeed, in its judgment, 13.02.2025, and bearing the Basis number 2022/3953 and the Decision number 2025/2404, the 4th Civil Chamber of the Court of Cassation emphasized that damages arising from the unlawful processing of personal data may be compensated under the general provisions of law.

"The PDPL has refrained from introducing specific provisions concerning the compensation of damages arising from the unlawful processing of personal data and has instead opted to refer to the general provisions by expressly preserving the right to compensation of persons whose personality rights have been infringed.

In this context, Article 11/ğ of the PDPL, which sets forth the rights of data subjects, provides that data subjects have the right to request compensation for damages arising from the unlawful processing of their personal data.

Furthermore, Article 14/3 expressly provides that the right to compensation of persons whose personality rights have been infringed is reserved in accordance with the general provisions of law. Accordingly, it follows that the PDPL makes reference to the provisions of the Turkish Civil Code concerning the protection of personality rights. The PDPL does not distinguish between pecuniary and non-pecuniary damages. Although the Turkish Civil Code does not contain a provision directly concerning the protection of personal data, given that personal data overlap with personality values and fall within the scope of protection afforded to personality rights, the provisions of the Turkish Civil Code protecting personality rights shall also apply to the protection of personal data.” [6]

In particular, the disclosure of location data to any third parties or its use for purposes other than those for which it was collected, without the data subject's knowledge or a valid legal basis, may constitute an infringement of personality rights and consequently give rise to the data controller's liability for damages. Accordingly, data controllers must carry out data processing activities not only in compliance with the formal requirements of the Law but also in accordance with the general principles of law concerning the protection of personality rights.

4.3. Criminal Liability

The unlawful processing of personal data may, in certain circumstances, constitute a criminal offense under the Turkish Penal Code. Accordingly, particular importance should be attached to the offense of recording personal data set out under Article 135 of the Turkish Penal Code, the offense of unlawfully giving or obtaining personal data set out under Article 136, and the offense of failing to destroy personal data set out under Article 138.

Indeed, in one of its judgments, the 12th Penal Chamber of the Court of Cassation made the following assessment concerning the unlawful disclosure of personal data: “... Given that the provisions concerning the protection of personal data under Articles 135 and 136 of the Turkish

Penal Code contain no provision limiting such protection solely to personal data of a confidential nature, and, conversely, that the reasoning of Article 135 states that any information relating to a natural person should be regarded as personal data, the acts of unlawfully giving, disseminating, or obtaining any personal data constitute the offense of unlawfully giving or obtaining personal data under Article 136 of the Turkish Penal Code. Accordingly, personal information that is known to the public and/or readily accessible and knowable by anyone is also regarded as ‘personal data’ within the meaning of law. However, in order to prevent the scope of application of the offense of unlawfully giving or obtaining personal data from being expanded beyond its intended purpose, thereby resulting in uncertainty in practice and the undesirable consequence of virtually every act constituting a criminal offense, a careful assessment must be made in light of the circumstances of the specific case. It must be determined whether there is any ground of justification recognized under any branch of law or any other circumstance that may be taken into consideration in this context, and it must also be established that the perpetrator knew or was in a position to know that her/his conduct was unlawful.” [7]

This approach of the Court of Cassation demonstrates that the unlawful transfer or dissemination of location data obtained through mobile applications to any third parties may also give rise to criminal liability. Accordingly, it is of great importance that data controllers act in compliance not only with the provisions of the Personal Data Protection Law Nr. 6698, but also with the provisions of the Turkish Penal Code concerning the protection of personal data.

5. Conclusion

Location data processed by mobile applications has become an integral part of digital life as a natural consequence of technological developments. Nevertheless, the fact that location data may reveal extensive information concerning an individual's daily life, habits, and private life renders the processing of such data particularly significant from the perspective of personal data protection law. Therefore, in the processing of location data, a balanced approach must be adopted that reconciles the protection of individuals' fundamental rights and freedoms with technological developments.

The Personal Data Protection Law Nr. 6698 imposes significant obligations on data controllers to ensure the lawful processing of personal data. In particular, fulfilling the obligation to provide information, taking any and all necessary technical and administrative measures, and deleting, destroying or anonymizing personal data for which the purpose of processing has ceased to exist are among the fundamental obligations that data controllers are required to fulfill.

Decisions of the Personal Data Protection Board and judicial precedents further demonstrate that these obligations must be fulfilled not merely as a matter of form, but effectively and in practice.

On the other hand, the unlawful processing of location data does not merely result in administrative fines; depending on the circumstances of the specific case, it may also give rise to liability for damages and criminal sanctions.

This makes it necessary for data controllers, when fulfilling their obligations concerning the protection of personal data, to take into account not only the provisions of the Personal Data Protection Law Nr. 6698 but also the practice shaped by judicial decisions.

In conclusion, with the increasing prevalence of mobile applications, legal disputes concerning the processing of location data are also expected to increase.

In this process, it is of great importance that data controllers conduct their data processing activities in accordance with the principles of lawfulness, proportionality, transparency, and data security, while users act consciously with regard to their rights over their personal data.

In this way, it will be possible both to make effective use of the opportunities offered by digital technologies and to ensure the effective protection of the right to the protection of personal data guaranteed by the Constitution and the Personal Data Protection Law Nr. 6698.

For further information:

[Ceren Nur Aplak, Law Student Intern](mailto:info@ozgunlaw.com)
info@ozgunlaw.com

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7. Decision, bearing the Basis number 2019/12886, the Decision number 2020/513 and dated 15.01.2020, of the 12th Penal Chamber of the Court of Cassation

THE UNLAWFUL PROCESSING OF LOCATION DATA DOES NOT MERELY RESULT IN ADMINISTRATIVE FINES; DEPENDING ON THE CIRCUMSTANCES OF THE SPECIFIC CASE, IT MAY ALSO GIVE RISE TO LIABILITY FOR DAMAGES AND CRIMINAL SANCTIONS.

PRECEDENT-SETTING DECISION FROM THE COURT OF CASSATION: BANKS MAY COLLECT BITT FROM CONSUMERS UNDER CERTAIN CONDITIONS!

According to a decision of the 3rd Civil Chamber of the Court of Cassation published in the Official Journal dated July 22, 2026, Banking and Insurance Transactions Tax (BITT) may be charged to consumers. The plaintiff initiated debt enforcement proceedings against the defendant seeking reimbursement of the amounts collected by the defendant as Banking and Insurance Transactions Tax (BITT) in connection with the loans obtained by the plaintiff. The defendant objected to the debt enforcement proceedings, resulting in their suspension. Following the suspension of the proceedings, the plaintiff filed a lawsuit seeking annulment of the objection, continuation of the debt enforcement proceedings, and debt enforcement denial compensation. Following the proceedings, the court of first instance ruled in favor of the plaintiff. The court concluded that, under the law, the liability for BITT rests with the bank. It held that the relevant contractual provision, which had been included in the consumer agreements without negotiation, constituted an unfair term and was therefore null and void, and accordingly ruled that the tax liability rested with the bank.

The Ministry of Justice sought reversal of the decision in the interest of law, and the Court of Cassation re-examined the decision. Following its review, the Court of Cassation concluded that BITT may be passed on to the consumer through an agreement between the parties, and that the relevant provisions in the agreement between the parties do not constitute unfair terms.

The Court of Cassation's reasoning was that where the loan agreement and the pre-contractual information form expressly stipulate that the tax will be paid by the consumer, such a provision does not constitute an unfair term. The following conclusions can be drawn from the decision of the Court of Cassation:

- Banks may pass on BITT to consumers in consumer loan agreements.
- For BITT to be passed on to the consumer, this must be expressly and clearly set out in the agreement.
- Where the agreement clearly provides for this provision and the consumer has been informed in advance that BITT will be paid by the consumer, the relevant contractual provision cannot be deemed an unfair term.

In conclusion, the bank remains the statutory taxpayer liable for BITT. However, if this is expressly and clearly provided for in the loan agreement, the bank may pass this cost on to the consumer.

Source: <https://www.resmigazete.gov.tr/eskiler/2026/07/20260722-3.pdf>

12TH JUDICIAL PACKAGE INTRODUCES DISCIPLINARY PENALTIES FOR JUDGES AND PROSECUTORS WHO SEEK EXPERT OPINIONS ON LEGAL MATTERS!

The "Law on Amendments to Certain Laws on Ensuring the Effective and Efficient Functioning of the Judiciary," publicly known as the "12th Judicial Package," was adopted by the General Assembly of the Grand National Assembly of Türkiye on July 16, 2026, and subsequently enacted. The package, which introduces amendments to several key laws, particularly the Debt Enforcement and Bankruptcy Law, the Code of Civil Procedure, and the Code of Criminal Procedure, also includes a significant provision concerning the use of expert witnesses, with important implications for practice.

The amendment adds a new paragraph to Article 63 of Law Nr. 2802 on Judges and Prosecutors, which sets out the disciplinary penalty of reprimand. Accordingly, seeking an expert opinion on matters that can be resolved based on the legal knowledge required of judges and prosecutors has been included among the acts subject to a reprimand for judges and public prosecutors.

Article 266 of the Code of Civil Procedure Nr. 6100 and the Expert Witness Law Nr. 6754 already prohibited the appointment of an expert witness on matters that can be resolved through general knowledge and experience or the legal knowledge required by the judicial profession. Nevertheless, despite this prohibition, it had long been criticized in practice that numerous disputes requiring merely legal characterization were nevertheless referred to expert witnesses, with the resulting reports effectively serving as draft judgments, thereby prolonging proceedings and imposing unnecessary costs on the parties. The new regulation makes obtaining an expert report on legal matters subject to disciplinary sanctions despite the existing prohibition. The regulation aims to ensure that the expert witness system operates in accordance with its intended function and to strengthen the role of judges and prosecutors in judicial proceedings. Seeking expert opinions on matters requiring technical or specialized expertise will, however, remain permissible.

Source: *Law on Amendments to Certain Laws on Ensuring the Effective and Efficient Functioning of the Judiciary (Grand National Assembly of Türkiye – Text of the Law)*

LEGAL CONSEQUENCES OF FAILING TO OBJECT TO EXPERT REPORTS

1. INTRODUCTION

Expert examination is an evidentiary mechanism set out under the Code of Civil Procedure (CCP) under the heading of “Proof and Evidence,” to which courts resort when the resolution of disputes before them requires knowledge in fields outside the legal domain.

“Judges cannot be expected to possess specialized or technical knowledge in fields outside the law; it is precisely at this point that the expert comes into play. By providing specialized or technical knowledge within their expertise, an expert plays an important role in the resolution of the dispute at issue. To this end, however, the expert must prepare the report in accordance with the law.” [1]

Objections to an expert report are set out under Article 281 of the CCP as follows: *“The parties may, within two weeks from the date on which the expert report is served on them, request the court to have the expert complete any matters they consider to be missing in the report, provide clarification on any matters that are unclear, or appoint a new expert.”*

This article examines the legal consequences of failing to object to an expert report under Article 281 of the CCP, in light of legal scholarship and previous case law, with particular reference to a 2026 decision of the General Assembly of Civil Chambers of the Court of Cassation.

2. LEGAL NATURE OF AN EXPERT REPORT

The court may, either upon the request of one of the parties or on its own motion, order that an expert’s opinion be obtained where the resolution of an issue requires specialized or technical knowledge outside the field of law. However, an expert may not be appointed in matters that can be resolved through general knowledge or experience, or through the legal knowledge required by the judicial office. In terms of its legal classification, expert examination is set out under the CCP within the section on proof and evidence.

The legal nature of an expert report is subject to debate. According to one view, *“if the adjudicating authorities can learn about traces and remnants of the past*

only through the expert’s statement, the expert opinion will constitute evidence. If the expert merely explains a rule of experience to the adjudicating authorities or assists them in drawing certain conclusions through the application of such a rule, the expert opinion will serve to assist in the evaluation of evidence and will not constitute evidence. Accordingly, depending on the circumstances, an expert opinion may at times constitute evidence, at times serve as a means of evaluating evidence, and at times perform both functions.” [2]

The following is a leading decision of the Court of Cassation addressing the legal nature of an expert opinion. Decision, bearing the Basis number 2017/494, the Decision number 2021/506 and dated 15.04.2021, of the General Assembly of Civil Chambers of the Court of Cassation

“Article 266 of the Code of Civil Procedure Nr. 6100 (CCP) provides that, where the resolution of an issue requires specialized or technical knowledge outside the field of law, the court may, upon the request of one of the parties or on its own motion, order that an expert’s opinion be obtained. Pursuant to Article 282 of the said Code, the court freely assesses expert opinions, which constitute discretionary evidence, together with the other evidence. Under Article 281/2 of the CCP, it is for the court to remedy or clarify any deficiencies or ambiguities identified in expert reports. In such circumstances, the court may obtain a supplementary report from the experts who prepared the report or, pursuant to Article 281/3 of the CCP, appoint a new panel of experts and obtain a report following a renewed examination.” [3]

An expert report may be regarded as discretionary evidence. The judge freely assesses the expert’s opinion together with the other evidence. Although an expert report constitutes evidence, the judge is not bound by the expert’s findings and may assess them within the scope of the judge’s discretionary power.

3. OBJECTION TO AN EXPERT REPORT UNDER ARTICLE 281 OF THE CCP

The parties may, within two weeks from the date on which the expert report is served on them, request the court to

have the expert complete any matters they consider to be missing from the report, provide clarification on any matters that are unclear, or appoint a new expert. If it is very difficult or impossible to prepare the submission within this period, or if doing so requires specialized or technical work, the party applying to the court within the prescribed period may be granted an additional period, commencing upon expiry of the original period, for one time only and not exceeding two weeks. In order to remedy or clarify any deficiencies or ambiguities in the expert report, the court may obtain a supplementary report from the expert by formulating new questions, or may, on its own initiative, require the expert to provide oral explanations at a hearing designated for that purpose. Where the court considers it necessary for the truth to be established, it may also order a renewed examination to be conducted by a newly appointed expert.

The parties may object to an expert report within two weeks of its being served on them. The statutory time limit is a forfeiture period. The right to object to an expert report is provided for within the scope of the parties’ right to be heard.

4. DECISION OF THE 10TH CIVIL CHAMBER OF THE COURT OF CASSATION, BEARING THE BASIS NUMBER 2024/957 AND THE DECISION NUMBER 2024/2592, HOLDING THAT A PROCEDURAL VESTED RIGHT HAD ARISEN

“Pursuant to Article 266 of the Code of Civil Procedure Nr. 6100 (CCP), where the resolution of an issue requires specialized or technical knowledge outside the field of law, the court may, upon the request of one of the parties or on its own motion, order that an expert’s opinion be obtained. (Amended sentence: 03.11.2016-6754/ art.49) However, an expert may not be appointed in matters that can be resolved through general knowledge or experience, or through the legal knowledge required by the judicial office. (Supplemented sentence: 03.11.2016-6754/art.49) Persons with a legal education may not be appointed as experts unless they can document that they possess separate expertise in a field outside the law.

Article 281/1 of the same Code provides: 'The parties may, within two weeks from the date on which the expert report is served on them, request the court to have the expert complete any matters they consider to be missing from the report, provide clarification on any matters that are unclear, or appoint a new expert. (Supplemented sentence: 22.07.2020-7251/art.24) Where it is very difficult or impossible to prepare the submission within this period, or where doing so requires specialized or technical work, the party applying to the court within this period may be granted an additional period, commencing upon expiry of the original period, for one time only and not exceeding two weeks.'

... As expressly stated in the judgment, dated 18.02.2021 and bearing the Basis number 2018/10(21)-94, and the Decision number 2021/111, of the General Assembly of Civil Chambers of the Court of Cassation: 'A procedural vested right arises in favor of the party who objects to an expert report when the opposing party fails to object to that report.'

In other words, where one party does not object to an expert report, a new expert examination is conducted upon the objection of the other party, and the second expert report is even more unfavorable to the party who objected to the first report, the court must render its decision on the basis of the first expert report, since that report has become final with respect to the party who failed to object to it, thereby giving rise to a procedural vested right in favor of the other party.'" (Kuru, B., *Hukuk Muhakemeleri Usulü* (Civil Procedure), İstanbul 2001, Volume:3, p. 2753)" [4]

The decision of the 10th Civil Chamber of the Court of Cassation, also referring to the decision of the General Assembly of Civil Chambers of the Court of Cassation, expressly establishes that failure to object to an expert report gives rise to a procedural vested right.

5. AN ANALYSIS OF THE GENERAL ASSEMBLY OF CIVIL CHAMBERS' DECISION DATED 06.05.2026, AND BEARING THE BASIS NUMBER 2026/129 AND THE DECISION NUMBER 2026/299, HOLDING THAT FAILURE TO OBJECT DOES NOT GIVE RISE TO A PROCEDURAL VESTED RIGHT

"...The judge freely assesses the expert's opinion together with the other evidence. Since the legal assessment and characteri-

zation of the facts fall within the judge's duties, a deficient or erroneous report should not be regarded as acquiring binding finality merely because the parties have failed to object to it. Accordingly, failure to object to an expert report cannot be deemed to give rise to a procedural vested right. Moreover, since an expert report constitutes discretionary evidence, it is subject to the judge's free assessment. The mere fact that a party has failed to object to a report does not preclude the judge from assessing that report together with the other evidence.

Any contrary approach would effectively transform the expert report into conclusive evidence and would be incompatible with the principles governing the assessment of evidence. Likewise, requiring the judge to render a decision in accordance with an expert report would be incompatible with the principle of judicial independence set out under Article 138 of the Constitution.

Moreover, situations may arise in which neither party objects to the expert report. In such a case as well, the parties' failure to object to a report that is unsuitable to serve as a basis for a judgment does not give rise to a procedural vested right that would bind the judge as to the outcome of the proceedings.

Accepting that the judge must resolve the dispute on the basis of an erroneous report merely because neither party has objected to it would be incompatible not only with the express statutory provisions and the fundamental principles of procedural law referred to above, but also with the judge's duty to ascertain the material truth.

Furthermore, attaching a legal consequence in the nature of a vested right to every procedural act performed by the court or the parties would also be contrary to the principle that the court is bound by the parties' claims.

In any event, the fact that certain procedural acts may be performed only within a specified procedural period is a consequence of procedural economy; the expiry of such period does not confer a right on the opposing party, but merely results in the party who failed to act within the prescribed period being unable to exercise that right.

...It was concluded that interpreting the relevant provision of the Code concerning

objections to expert reports as establishing a procedural vested right in favor of the opposing party as a consequence of failing to object to an expert report would not constitute a foreseeable interpretation of that provision.

Accordingly, it was found that there was no statutory basis for the interference in question, whereby the portion of the claim exceeding the amount calculated in the first expert report obtained during the proceedings was dismissed on the ground that a procedural vested right had arisen in favor of the defendant because the report had not been challenged. ..."

The decision therefore emphasized that a procedural vested right arising from an expert report had no statutory basis and, consequently, that the interference with the right of access to a court could neither be regarded as pursuing a legitimate aim nor considered proportionate.

... Since the claimant's counsel did not make any declaration of intent in the nature of a procedural act disposing of the action in response to the expert report dated 03.03.2023, the claimant's counsel's failure to object to the report cannot be construed as acceptance of the report.

Accordingly, it cannot be accepted that a procedural vested right arose in favor of the defendant on this ground.

In conclusion, given that the claimant's failure to object to the accounting expert report does not constitute acceptance of the report, and that there is no basis for finding that a procedural vested right arose in favor of the defendant, and also that failure to object to an expert report, as a procedural act, cannot be construed as extinguishing a substantive right of the claimant, it is concluded that the judgment maintaining the previous decision was well-founded.

Although, during the deliberations of the General Assembly of Civil Chambers, it was argued that it was erroneous to reach a decision by disregarding the procedural vested right that had arisen in favor of the defendant as a result of the claimant's failure to object to the accounting expert report dated 03.03.2023, and that the judgment maintaining the previous decision should therefore be reversed and a decision rendered in accordance with the grounds set out in the reversal decision, this view was not adopted by the majority of the General Assembly." [5]

As is evident from the above-mentioned decision of the General Assembly of Civil Chambers dated 06.05.2026, the judge must freely assess an expert report together with the other evidence.

The judge is not bound by the report, as an expert report constitutes discretionary evidence. The parties' failure to object to the report does not render it binding or prevent the judge from assessing it together with the other evidence.

Failure to object cannot give rise to a procedural vested right, since it merely results in the party's failure to exercise that right and does not confer any corresponding right on the opposing party.

5. CONCLUSION

An expert report is a document prepared and submitted to the court for the resolution of a dispute where the matter requires specialized or technical knowledge beyond the field of law.

By its nature, an expert report constitutes discretionary evidence and is not binding on the judge. The parties may object to the report within two weeks from the date on which it is served on them.

The right granted to the parties to object is set out within the scope of their right to be heard. The failure of either or both parties to object to the report does not give rise to a procedural vested right.

In this respect, failure to object merely means that the party's right to object can no longer be exercised; it cannot result in a procedural vested right arising in favor of the opposing party.

The parties' silence with respect to the report does not constitute acceptance of the report. Objecting to an expert report is a procedural act, and failure to object cannot result in the creation of a substantive right.

In conclusion, the parties are granted a mandatory two-week period within which to object to an expert report, and their failure to object within this period does not constitute acceptance of the report.

Accordingly, no procedural vested right arises, since the judge is not bound by an expert report, which constitutes discretionary evidence, and has the authority to assess it freely together with the other evidence.

In its recent decision dated 06.05.2026, the General Assembly of Civil Chambers adopted a change in approach and made clear that failure to object to an expert report does not give rise to a procedural vested right.

For further information:

[Alper Turhan, Legal Intern](mailto:info@ozgunlaw.com)

info@ozgunlaw.com

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THE FAILURE OF EITHER OR BOTH PARTIES TO OBJECT TO THE REPORT DOES NOT GIVE RISE TO A PROCEDURAL VESTED RIGHT. IN THIS RESPECT, FAILURE TO OBJECT MERELY MEANS THAT THE PARTY'S RIGHT TO OBJECT CAN NO LONGER BE EXERCISED; IT CANNOT RESULT IN A PROCEDURAL VESTED RIGHT ARISING IN FAVOR OF THE OPPOSING PARTY.

ARTIFICIAL INTELLIGENCE AND COPYRIGHT

I. INTRODUCTION

Generative artificial intelligence is fundamentally transforming the traditional mechanisms of intellectual creation, making it imperative for copyright law to adapt to this new technological reality. AI models capable of generating text, images, music, videos and computer code are permanently reshaping artistic, scientific and professional activities. While these technologies offer significant time savings as well as new opportunities for creation and innovation, they also give rise to numerous legal issues, many of which remain largely unresolved.

Under French and European Union law, copyright protects original intellectual and artistic works that reflect the personality of their author. Such protection arises automatically upon the creation of the work, without the need for any registration, and extends to intellectual and artistic works regardless of their type, form of expression, value or purpose.

Accordingly, scientific articles, novels, musical works, photographs, computer programs and graphic designs may benefit from copyright protection provided that they meet the requirement of originality. However, the assessment of originality is made on a case-by-case basis, taking into account the specific circumstances of each work. In particular, products limited merely to the communication of data or factual information may not qualify as protected works where they do not embody a sufficient degree of creative contribution.

However, generative artificial intelligence calls into question certain fundamental principles of the copyright regime. These systems are often trained on vast datasets that may include copyright-protected works. Through text and data mining techniques, they analyze online content to identify specific structures and statistical patterns and can subsequently generate new content based on these data.

Under European Union law, this process is governed by “Directive (EU) 2019/790 of 17 April 2019 on Copyright and Related Rights in the Digital Single Market”. The Directive adopts a novel framework that departs from the traditional principles of copyright law. Accordingly, although the use of a work is, as a general rule, subject

to the prior authorization of the rights holder, text and data mining activities may be carried out without obtaining such authorization where lawful access to the content is available, provided that the rights holder has not expressly reserved or opted out of such use.

Accordingly, research organizations and private entities developing artificial intelligence systems may, subject to certain conditions, use protected works for the purpose of training their models.

Nevertheless, this framework gives rise to significant legal uncertainties. In practice, rights holders are often unaware of whether their works have been used in the training of an AI model, while users of AI systems may be unable to determine whether the content generated reproduces pre-existing works.

This lack of transparency significantly complicates the assessment of copyright infringement and contributes to an increasing number of disputes. Indeed, in recent lawsuits brought against certain AI providers, rights holders have alleged that copyright-protected works were used without authorization during the training process or that the generated content was sufficiently similar to existing works to create a likelihood of confusion and thereby constitute copyright infringement.

They also point out that AI systems may infringe authors’ moral rights by analyzing and transforming their works. In addition, operators that derive economic benefit from protected works without obtaining authorization may potentially be held liable under the provisions of unfair competition law relating to parasitism (“*parasitisme*”).

Beyond the debates surrounding training data, the legal status of AI-generated content also remains uncertain. Under the current legal framework, AI cannot be recognized as the author of a work, since copyright is based on the intellectual creation of a natural person.

Accordingly, content generated entirely by AI will, as a general rule, not benefit from the copyright protection afforded to intellectual and artistic works. By contrast, protection is not necessarily excluded where AI is used as a tool to support human creative activity.

As with software such as Photoshop or Word, AI may contribute to the creation of an original work where the user’s creative contribution is sufficiently determinative. Today, determining whether such human contribution is sufficient constitutes one of the central issues in the ongoing debate over copyright law in the context of AI.

In addition, an important issue arises concerning ownership of rights in content generated with the assistance of AI. Although AI itself cannot hold rights, companies that develop or operate these technologies may assert certain rights over outputs generated by their systems, arguing that they have contributed to the creative process.

In this context, it remains debatable whether such rights should belong exclusively to the user, to the developer of the AI system, or whether a regime of joint ownership should be adopted. Positive law has yet to provide a definitive solution to this issue, clearly highlighting the disconnect between the rapid development of technological innovation and the comparatively slower evolution of statutory regulation.

II. EUROPEAN UNION’S APPROACH TO GENERATIVE ARTIFICIAL INTELLIGENCE: THE EUROPEAN PARLIAMENT’S RESOLUTION OF 10 MARCH 2026

Identifying the inadequacies of the existing legal framework, the European Parliament calls for enhanced protection of rights holders, greater transparency obligations for AI providers, clarification of the conditions under which protected works may be used for the purpose of training AI models, and greater legal certainty regarding the status of AI-generated content. The resolution reflects the European Union’s intention to strike a balance between fostering technological innovation and safeguarding the fundamental rights of authors and other rights holders.

The development of generative artificial intelligence is fundamentally challenging the traditional foundations of copyright law. These systems, which are capable of generating content such as text, images, music, and video, are often trained on vast datasets that include copyright-protected works.

This technological development raises a fundamental legal question: does copyright law, designed to protect human creativity, provide an adequate and appropriate legal framework for works resulting from the automated processing of protected content?

To address these issues, on 10 March 2026, the European Parliament adopted a resolution aimed at adapting EU law to new technological developments while preserving the fundamental principles of copyright law. The Parliament emphasizes that copyright and related rights guaranteed under, in particular, Article 17 of the Charter of Fundamental Rights of the European Union, continue to apply in full in the digital environment. In this regard, it stresses that authors and other rights holders should retain control over the use and commercial exploitation of their works.

The Parliament also notes that many AI providers have trained their models using protected works on a large scale without obtaining prior authorization. To address this issue, the resolution proposes requiring AI providers to maintain a detailed inventory identifying the works used in training their models. It further emphasizes that rights holders should remain free to authorize or refuse the use of their works and that they should retain the right to negotiate the terms and conditions under which their works may be used.

However, the resolution preserves the existing exceptions provided for the benefit of scientific research, education, and non-commercial innovation activities, while also reiterating that any use for commercial purposes remains subject to the authorization of rights holders.

With regard to AI-generated content, the Parliament reiterates that only original intellectual creations reflecting the personality of a human author may benefit from copyright protection. Accordingly, it states that content generated entirely by AI without any creative human intervention should not be protected under copyright law and may instead fall within the public domain.

At the same time, the resolution acknowledges that creative processes are becoming increasingly hybrid in nature and that AI is, in many cases, used merely as an assistive tool. Accordingly, determining the level of human contribution required for copyright protection to apply will be

one of the key legal issues facing European courts.

III. COPYRIGHT PROTECTION FOR AI-GENERATED WORKS IN THE UNITED STATES: THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT OF 2 MARCH 2026

The approach of the United States to the protection of works generated by artificial intelligence likewise confirms the human-centered nature of copyright law. In its decision of 2 March 2026, the United States Court of Appeals for the District of Columbia Circuit held that a work created entirely by artificial intelligence, without human creative intervention, is not eligible for copyright protection under the “Copyright Act”. The decision became final after the U.S. Supreme Court declined to review the appeal.

In this present case, the owner of an artificial intelligence system sought to register an image generated entirely autonomously by the system and identified the AI itself as the author of the work. The U.S. Copyright Office rejected the application on the grounds that U.S. copyright law necessarily requires the existence of a human author. This interpretation was upheld first by the federal district court and subsequently by the appellate court and was ultimately affirmed when the Supreme Court declined to review the case.

This approach is based on a literal interpretation of the “Copyright Act”. Indeed, many provisions of U.S. copyright regulations are premised on the assumption that the author of a work is a natural person. In particular, the provisions governing the duration of copyright based on the author’s lifetime, as well as those concerning the transfer of economic rights by inheritance, are clear manifestations of this assumption. Accordingly, an artificial intelligence system that has no legal personality and lacks legal capacity cannot be recognized as an author under U.S. law. As a result, creations generated entirely autonomously by an AI system are considered to fall within the public domain and may be freely used by anyone.

Although there are various differences between the American and European legal systems, both systems adhere to a common fundamental principle: Accordingly, the central legal debate is no longer whether an AI can be recognized as the author of a work, as judicial authorities

today clearly answer this question in the negative. The key issue is to determine the extent of human intervention required for a creation produced with the assistance of AI to still qualify as an intellectual or artistic work. For such a qualification to be made, the user’s creative contribution must be sufficiently substantial and identifiable to justify copyright protection.

IV. PROTECTION OF AI-ASSISTED WORKS UNDER GERMAN LAW: THE MUNICH COURT’S DECISION OF 13 FEBRUARY 2026

The decision rendered by the Munich Court on 13 February 2026 constitutes a significant milestone in shaping the legal framework applicable to works created with the assistance of generative artificial intelligence. Without calling into question the traditional principles of copyright law, the German court clarified the circumstances under which an AI-assisted creation may qualify for copyright protection.

The dispute concerned a lawsuit brought by a user who had created three logos using multiple “prompts” through a generative AI system. The plaintiff alleged that the logos had been reproduced without authorization and brought a copyright infringement action. However, the Munich Court dismissed the action on the grounds that the logos did not qualify as works eligible for copyright protection. According to the Court, the plaintiff had failed to demonstrate that her/his personal contribution had exerted a predominant human creative influence over the final form of the images. Accordingly, even where detailed “prompts” are used, the mere use of generative AI is not, in itself, sufficient to confer authorship on an individual. Accordingly, for a product to benefit from copyright protection, it must constitute an original intellectual creation reflecting the personality of its author and resulting from free and creative choices.

The application of this principle in the context of generative AI demonstrates that the decisive factor is not the use of AI itself, but rather the existence of a sufficiently significant and objectively identifiable human contribution to the final result. Accordingly, AI is regarded merely as a technical tool at the service of the creative individual. However, the Court adopted an “in concreto” approach, assessing each creation at issue separately and taking into account the specific circumstances of the case.

The Court acknowledged that human contribution may arise through the progressive formulation of prompts, the selection of results generated by the AI, or modifications made to the image after it has been generated.

By contrast, the time spent preparing the prompts, the length or complexity of the prompts, the use of a paid version of the software, or the user's personal effort and investment were not, in themselves, considered sufficient to establish the existence of an original creation.

The Court does not establish a special category of works for AI-generated creations; rather, it reiterates that copyright protection depends on demonstrating that the user's creative choices have genuinely shaped the final form of the work.

The decision also demonstrates that documenting and tracing the creative process are becoming increasingly important. Accordingly, the protection of a work created with the assistance of AI will depend on the author's ability to demonstrate the creative process through which the work was produced.

In this context, it is particularly important to keep records of the prompts used, the different versions generated, subsequent modifications, and the artistic choices made throughout the process.

This approach is also consistent with the practice of the U.S. Copyright Office, which requires human contribution to be demonstrated in a concrete and detailed manner.

V. LEGAL STATUS OF AI-GENERATED WORKS UNDER TURKISH LAW

Under Turkish law, there is currently no precedent-setting decision by the Court of Cassation or the Constitutional Court concerning the copyright protection of works generated by artificial intelligence.

Accordingly, the issue is assessed primarily within the framework of the provisions of Law Nr. 5846 on Intellectual and Artistic Works (FSEK) and the views put forward in legal doctrine.

The legal attribution of content generated by generative AI systems, the parties who may hold rights in such content, and the means by which such rights may be asserted are currently the subject of extensive debate.

One of the most significant aspects of these debates concerns the issue of liability. Where content generated by AI infringes the copyright of third parties, it remains unclear against which individual or entity the rights holder should direct its claim. Under the current legal framework, attributing the infringement directly to the AI system itself does not appear to be legally possible.

Under Turkish law, AI cannot, in itself, be recognized as the author of a work. Pursuant to Article 1/B of the Law on Intellectual and Artistic Works, a work is defined as *"any kind of intellectual and artistic product that bears the characteristics of its author and falls within the categories of works of science and literature, music, fine arts, or cinematographic works,"* while an author is defined as *"the person who creates the work"*.

Although the statutory text does not expressly provide that the author must necessarily be a natural person, the prevailing view in legal doctrine is that authorship may be attributed only to natural persons, since authorship is the result of creative intellectual activity. Accordingly, AI systems, which lack legal personality and creative intent, cannot acquire the status of an author.

On the other hand, legal entities likewise cannot acquire the status of author under the framework of the Law on Intellectual and Artistic Works. Even where a work is created under the instructions and supervision of a legal entity within the scope of an employment relationship, an employment contract, or a similar legal relationship, authorship belongs to the natural person who created the work.

By contrast, pursuant to Article 18 of the Law on Intellectual and Artistic Works, unless otherwise agreed by the parties, the authority to exercise the economic rights in works created by civil servants, employees and workers in the performance of their duties belongs to the person or institution employing them.

Accordingly, a legal entity may not be the author of a work but may have the authority to exercise the economic rights therein within the scope of the authority granted by law.

Thus, what is acquired in such circumstances is not authorship, but economic rights in the copyright.

As regards whether content generated entirely autonomously by AI can benefit from copyright protection, the prevailing view in Turkish legal scholarship is negative.

The main rationale is that, under the Law on Intellectual and Artistic Works, a product must qualify as a work, reflect the author's individual character, and result from human intellectual creation in order to be eligible for protection.

Since content created entirely by AI, such as a text or image, does not involve human creative contribution, it is generally accepted that such content cannot benefit from copyright protection.

This approach is also broadly consistent with the approach adopted in the decision rendered in the United States in 2026 and in the Munich Court's 2026 decision.

By contrast, a different legal assessment applies where AI is used merely as a tool. According to the prevailing view in legal scholarship, where the creative process is directed by a human and the decisive intellectual contribution to the creation of the work is attributable to that person, the resulting products may qualify as works under the Law on Intellectual and Artistic Works and benefit from copyright protection.

In such cases, AI remains a technical tool supporting the creative process, while the person making the intellectual choices that shape the final form of the work holds the status of author.

Accordingly, creative interventions such as determining aesthetic preferences and selecting, modifying, or enhancing outputs generated by AI are considered among the factors that may demonstrate the existence of human contribution, and the resulting work may therefore be protected under the Law on Intellectual and Artistic Works.

By contrast, where AI operates entirely autonomously and the human makes no creative contribution to the creative process, authorship cannot be established in respect of the resulting product.



Therefore, merely writing a “prompt” does not, in itself, confer authorship. The prevailing view in legal scholarship is that the act of writing a “prompt” alone cannot be regarded as a creative intellectual activity.

For copyright protection to apply, beyond formulating the “prompt,” the user must make creative choices, modifications, interventions, and aesthetic decisions that influence the final appearance of the work.

This approach is also broadly consistent with the Munich Court’s decision of 13 February 2026, which identifies human creative contribution as the decisive criterion.

In addition, the prevailing view in legal scholarship is that the use of protected works without obtaining the authorization of the rights holders during the training of AI models may constitute an infringement of the reproduction right under the Law on Intellectual and Artistic Works and may violate the economic rights of authors.

VI. CONCLUSION

In conclusion, although generative AI has reopened debate on the fundamental concepts of copyright law, recent developments in both the European Union and the United States, as well as the prevailing doctrine in Turkish law, demonstrate that human creative contribution remains at the heart of copyright protection.

At the same time, significant uncertainties persist in a number of areas, including the training of AI models, the legal status of generated content, and the applicable liability regime.

In light of the rapid pace of technological development, establishing a balanced and predictable legal framework that both promotes innovation and effectively safeguards the interests of rights holders will be one of the most important legal policy challenges in the period ahead.

For further information:
[Elif Keskin, Law Student Intern](mailto:Elif.Keskin@ozgunlaw.com)
info@ozgunlaw.com

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CREATIVE INTERVENTIONS SUCH AS DETERMINING AESTHETIC PREFERENCES AND SELECTING, MODIFYING, OR ENHANCING OUTPUTS GENERATED BY AI ARE CONSIDERED AMONG THE FACTORS THAT MAY DEMONSTRATE THE EXISTENCE OF HUMAN CONTRIBUTION, AND THE RESULTING WORK MAY THEREFORE BE PROTECTED UNDER THE LAW ON INTELLECTUAL AND ARTISTIC WORKS.

COURT OF CASSATION GRAND GENERAL ASSEMBLY RULES THAT NEW CLAIMS CANNOT BE INTRODUCED BY PARTIAL AMENDMENT!

The Grand General Assembly for the Unification of Judgments of the Court of Cassation has put an end to a significant debate in civil proceedings, ruling that a new claim not included in the statement of claim cannot be introduced into the proceedings by way of partial amendment.

In civil procedural law, the claims with which the parties apply to the court are regarded as one of the fundamental elements defining the scope of the proceedings.

In this context, the judge is bound by the relief sought by the parties and cannot rule on a matter that has not been asserted in the statement of claim on their own initiative.

The amendment procedure, set out under Article 176 et seq. of the Code of Civil Procedure Nr. 6100 and intended to allow parties to remedy deficiencies or errors in certain procedural acts performed during the proceedings, enables the parties to modify their procedural acts in whole or in part. In practice, however, differing views had emerged, particularly regarding the limits of partial amendment.

At the heart of the debate was whether a claim that was entirely absent from the statement of claim could subsequently be asserted by way of partial amendment. Some chambers of the Court of Cassation argued that this should be permitted, particularly for claims arising from the same legal relationship, on the grounds of procedural economy and the right to seek judicial remedies.

The opposing view, however, maintained that such an approach would effectively amount to bringing a new action.

In its decision addressing the divergent approaches, the Grand General Assembly for the Unification of Judgments of the Court of Cassation held that partial amendment is intended to remedy deficiencies in the existing proceedings, and that a new claim that had never previously been the subject of the action cannot be asserted by this means.

The decision aims to preserve the boundaries between the subject matter of the action and the relief sought.

According to the Court of Cassation, it is important, in terms of legal certainty and the right to be heard, that the defendant knows from the outset what claim they are facing and can prepare their defense accordingly.

The decision is expected to have significant implications in practice, while also drawing criticism in certain respects. In particular, it has been argued that requiring a separate action to be brought for claims arising from the same legal relationship and based on the same facts could prolong the judicial process and conflict with the principle of procedural economy.

In conclusion, with the decision of the Grand General Assembly for the Unification of Judgments of the Court of Cassation dated May 8, 2026, it has been definitively established that a new claim not included in the statement of claim cannot be added to the proceedings by way of partial amendment.

The decision is regarded as an important precedent in civil proceedings with respect to preserving the subject matter of the action, the principle that the court is bound by the relief sought, and the legal certainty of the parties.

Source: <https://www.resmigazete.gov.tr/eskiler/2026/06/20260630-7.pdf>

CAN CLAIMS NOT INCLUDED IN THE STATEMENT OF CLAIM BE INTRODUCED BY PARTIAL AMENDMENT? AN ANALYSIS OF THE GRAND GENERAL ASSEMBLY FOR THE UNIFICATION OF JUDGMENTS OF THE COURT OF CASSATION'S DECISION OF 8 MAY 2026

1. INTRODUCTION

In civil procedure, the subject matter of the proceedings and the relief sought are determined by the parties' will. In civil litigation, the scope within which the court adjudicates the dispute is, as a general rule, limited to the claims submitted by the parties and the facts relied upon in support of those claims. This is a natural consequence of both party disposition and legal certainty.

However, civil procedure law has introduced certain mechanisms to mitigate the excessive formalism of procedural law and help reduce the loss of rights that such formalism may cause. One such mechanism is amendment, which allows the parties to correct, in whole or in part, procedural acts they have previously undertaken.

This is because parties may make errors in their claims and defenses, or their claims and defenses may be incomplete. In such circumstances, parties may suffer a loss of rights if they fail to set out their claims and defenses fully and accurately. [1]

Nevertheless, the scope of amendment, particularly whether a claim that was not included in the statement of claim at all may subsequently be introduced, remains a matter of debate in legal doctrine and practice.

While the General Assembly of Civil Chambers of the Court of Cassation and several chambers of the Court of Cassation had adopted the view that a matter not included in the subject matter of the proceedings could not be introduced by way of amendment, certain chambers had held, particularly on the grounds of procedural economy and the right to seek judicial remedies, that new claims could be introduced by way of amendment under certain circumstances.

Indeed, following an application prompted by this divergence in case law, the Grand General Assembly for the Unification of Judgments of the Court of Cassation considered the issue and definitively resolved the dispute. The decision concerned the question of *"whether a claim not included in the statement of claim*

may be introduced into civil proceedings by way of partial amendment."

2. THE CONCEPT OF AMENDMENT AND ITS FUNCTION IN CIVIL LITIGATION

Amendment is an important mechanism of civil procedural law, regulated under Articles 176 et seq. of the Code of Civil Procedure Nr. 6100, which allows the parties to remedy deficiencies or errors in certain procedural acts performed during the proceedings. Pursuant to Article 176 of the Code of Civil Procedure, each party may amend, in whole or in part, the procedural acts it has undertaken. Through this provision, the legislature sought to prevent the loss of rights that may arise from the strict application of procedural rules.

Two types of amendment are contemplated: *"amendment of the entire proceedings"* and *"partial amendment of the proceedings"*. The Code of Civil Procedure does not specify the circumstances in which a complete or partial amendment may be made; rather, it sets out only the procedural steps to be taken, and the legal consequences attached to each type of amendment. [1]

Complete amendment is a type of amendment that allows the plaintiff to modify all of the procedural acts undertaken in the proceedings. In the case of complete amendment, the plaintiff is entitled to revise all procedural acts previously performed, with effect from the outset. For example, changing the type of action or entirely abandoning the relief sought in the statement of claim and asserting new claims may be regarded as complete amendment.

However, it is accepted that the statutory right to complete amendment does not confer unlimited authority on the plaintiff and must be exercised within the statutory limits, particularly with regard to fundamentally altering the subject matter of the proceedings and the underlying facts.

Partial amendment, on the other hand, is a form of amendment whereby the parties modify or correct only a specific procedural act. In such cases, the parties do not alter all of the procedural acts they

have undertaken, but only a particular part thereof. For example, increasing the amount of a claim set out in the statement of claim or correcting a specific procedural act may be considered partial amendment. The fundamental difference between complete amendment and partial amendment lies in the scope of the amendment. While complete amendment affects the entirety of the procedural acts undertaken in the proceedings, partial amendment brings about a change only with respect to a specific procedural act or claim.

Decision, bearing the Basis number 2021/8, the Decision number 2026/1 and dated 08.05.2026, of the Grand General Assembly for the Unification of Judgments of the Court of Cassation reads as follows:

"Amendment is divided into two types: complete amendment and partial amendment. In the case of partial amendment, pursuant to Article 179 of the Code of Civil Procedure, a claim set out in the statement of claim may be increased/expanded or modified. In the case of complete amendment, by contrast, the cause of action or the subject matter of the proceedings is modified and a new statement of claim is submitted. Although the amended action is not entirely unrelated to the original action, it acquires a new character. Accordingly, where the plaintiff seeks to expand or modify the relief sought, partial amendment should be used; where the plaintiff wishes to assert an entirely new claim based on new facts, complete amendment should be used. Complete amendment effectively takes the proceedings back to the beginning. Pursuant to Article 179 of the Code of Civil Procedure, since the effects of the amendment extend back to the commencement of the proceedings, the procedural acts previously performed become ineffective. Partial amendment, on the other hand, takes effect from the time the amendment is made and therefore does not invalidate the procedural acts performed from the commencement of the proceedings; the proceedings continue from the point they have reached." [2]

Under the decision of the Grand General Assembly for the Unification of Judgments of the Court of Cassation under review, the issue arises as to whether a new claim that was not included in the statement of claim at all may be introduced into the proceedings by way of partial amendment. In other words, the dispute does not concern the modification or increase of the amount of an existing claim, but whether an independent claim that was not originally made the subject matter of the proceedings may be added to the proceedings through partial amendment.

Accordingly, what is significant for the purposes of the decision is not the existence of the mechanism of amendment itself, but rather where the boundaries of partial amendment begin and end. The primary purpose of amendment is to enable the parties to remedy procedural errors or deficiencies arising during the proceedings. In this respect, amendment is regarded as one of the means of overcoming the prohibition on the expansion or modification of claims and defenses.

However, whether amendment grants the parties an unlimited power to modify their claims remains a matter of debate. According to a view adopted by certain chambers of the Court of Cassation, amendment should be limited to modifications made within the existing subject matter of the proceedings. Accordingly, a new action cannot be brought within pending proceedings by way of amendment, and therefore an additional claim cannot be added to the relief sought through amendment. In such a case, what is involved is no longer the correction of an existing procedural act, but the assertion of a new claim. [3]

By contrast, another view adopts a more flexible approach, particularly with respect to claims arising from the same legal relationship. According to this view, where the material facts have been set out in the statement of claim but a claim arising therefrom has been inadvertently omitted, allowing such omission to be remedied by way of amendment, provided that the opposing party's right to defense is preserved, would better serve procedural economy.

3. THE STATEMENT OF CLAIM, THE RELIEF SOUGHT, AND THE PRINCIPLE OF CONFORMITY WITH THE RELIEF SOUGHT

In civil litigation, the plaintiff is required

to clearly set out in the statement of claim the legal protection sought. Indeed, pursuant to the principle of party disposition set forth in Article 24 of the Code of Civil Procedure, one of the fundamental principles governing civil litigation, the court may not examine or adjudicate any case *ex officio* without a request from one of the parties. Likewise, under the principle of conformity with the relief sought, set forth in Article 26 of the Code of Civil Procedure, the court is bound by the relief sought by the parties and may not award more than what is sought or grant relief on a matter different from that sought.

These principles governing civil litigation clearly demonstrate that the subject matter of the proceedings is determined by the parties' will. The court cannot render a decision on a matter that has not been requested by the plaintiff. Accordingly, the subsequent assertion, by way of partial amendment, of a new claim that was not included in the statement of claim must be assessed directly in light of the principle of conformity with the relief sought.

On the other hand, pursuant to the principle of procedural economy set forth in Article 30 of the Code of Civil Procedure, which plays an important role in civil procedure, the court is required to ensure that the proceedings are conducted within a reasonable time and without unnecessary expense. Accordingly, methods that enable the dispute to be resolved within a single set of proceedings are of particular importance in civil litigation.

4. DIVERGENT APPROACHES IN THE CASE LAW OF THE COURT OF CASSATION

The fundamental issue addressed by the decision on the unification of judgments was the divergence in practice among the different chambers of the Court of Cassation.

Some chambers of the Court of Cassation and the General Assembly of Civil Chambers of the Court of Cassation have adopted the view that a claim not included in the statement of claim cannot be added to the proceedings by way of amendment. According to this approach, amendment is intended to correct procedural acts within the scope of the existing proceedings; the addition of a claim that has never been made the subject matter of the proceedings, however, constitutes a new action. In other words, although the

plaintiff may increase or expand the relief sought along the same line, a claim that was not originally made the subject matter of the proceedings cannot be brought within the scope of the action by way of amendment. [4]

By contrast, certain chambers have adopted a different approach. Particularly in disputes involving multiple claims arising from the same legal relationship, such as employment receivables, it has been accepted that a claim inadvertently omitted from the statement of claim may be subsequently asserted by way of amendment. The principal grounds underlying this approach include procedural economy and the right to seek judicial remedies. Indeed, the 9th Civil Chamber of the Court of Cassation has held that where the facts have been set out in the statement of claim but certain heads of claim have been inadvertently omitted, it should be possible to assert such claims by way of amendment. According to the Chamber, such an approach would reduce the need to bring a separate action and contribute to the more efficient conduct of the proceedings.

5. DECISION OF THE GRAND GENERAL ASSEMBLY FOR THE UNIFICATION OF JUDGMENTS OF THE COURT OF CASSATION

The Grand General Assembly for the Unification of Judgments of the Court of Cassation, having considered the divergent views outlined above, concluded that a claim not included in the statement of claim cannot be introduced into the proceedings by way of partial amendment.

Decision, bearing the Basis number 2021/8, the Decision number 2026/1 and dated 08.05.2026, of the Grand General Assembly for the Unification of Judgments of the Court of Cassation reads as follows:

"... In light of the nature of amendment as explained in detail above, it is not possible to introduce into the proceedings, by way of partial amendment, a matter that was not originally made the subject matter of the action and thereby make it part of the proceedings. The issue here is not the increase or expansion of an existing claim, which the law permits by way of amendment, but rather the addition of a new claim that has never previously been asserted or made the subject matter of the action."

However, given that partial amendment is intended to correct omissions or errors in the statement of claim and that, following partial amendment, the proceedings remain the same action that was originally brought, allowing a new claim that was not previously made the subject matter of the action to be introduced by way of partial amendment would, in effect, amount to bringing a second action.

In other words, subsequently making a claim that was not included in the statement of claim the subject matter of the proceedings by way of partial amendment would, technically speaking, amount to using the mechanism of amendment in the pending proceedings in a manner that results in the initiation of a new/second action. This would, so to speak, transform partial amendment into a means of bringing an additional action, which is clearly not permitted under the applicable statutory provisions.

...

Following the deliberations conducted in light of all the foregoing considerations, it was decided that, in civil litigation, a claim not included in the statement of claim cannot be introduced into the proceedings by way of partial amendment.” [2]

The fundamental approach adopted in the decision is that amendment is intended to correct existing procedural acts and cannot, however, be used as a means of introducing a new subject matter into the proceedings.

The most significant consequence of this approach is that a claim not expressly set out in the statement of claim cannot subsequently be asserted by way of amendment. This preserves the connection between the subject matter of the proceedings and the relief sought, while reinforcing the principle that the scope of the court’s adjudicatory authority is determined by the parties’ will.

The decision also clearly makes an important contribution to legal certainty. The defendant knows from the outset of the proceedings which claims it is required to defend against and can prepare its defense accordingly. The subsequent introduction of a new claim may give rise to certain issues concerning the defendant’s right to be heard.

However, according to the views opposing the decision, particularly with respect

to claims arising from the same legal relationship and based on the same facts, requiring a separate action to be brought would prolong the proceedings and conflict with the principle of procedural economy.

6. GENERAL ASSESSMENT OF THE DECISION

The decision of the Grand General Assembly for the Unification of Judgments sets out an important and systemically consistent approach with respect to the fundamental principles of civil procedure law. The determination of the subject matter of the proceedings and the relief sought at the outset is essential both for enabling the parties to anticipate their legal positions and for defining the scope of the proceedings.

However, a strictly narrow interpretation of the mechanism of amendment may, in certain cases, make it more difficult to obtain substantive relief. Particularly in disputes involving multiple claims arising from the same legal relationship, requiring a party to bring a separate action merely because one claim was inadvertently omitted may raise concerns from the perspective of procedural economy.

7. CONCLUSION

In civil procedure, the subject matter of the proceedings and the relief sought are determined by the parties’ will, which is a natural consequence of the principles of legal certainty and party disposition. At the same time, the legislature has introduced the mechanism of amendment to remedy deficiencies in procedural acts and prevent the loss of rights.

Amendment allows the parties to modify, in whole or in part, procedural acts they have previously undertaken, but it does not confer an unlimited power to make changes.

In particular, partial amendment is intended to correct specific procedural acts within the scope of the existing proceedings and cannot result in the introduction of a new claim that was not included in the statement of claim at all.

The decision of the Grand General Assembly for the Unification of Judgments of the Court of Cassation dated 8 May 2026 likewise held that a claim not included in the statement of claim cannot be added to the proceedings by way of partial

amendment. This approach may be regarded as sound in terms of the principle of conformity with the relief sought, the principle that the parties must introduce the factual basis of the proceedings, and the protection of the defendant’s right to be heard. Indeed, asserting a new claim outside the subject matter of the proceedings by way of amendment could exceed the boundaries of the existing action and effectively result in the initiation of a new action.

However, with respect to certain claims arising from the same legal relationship and based on the same facts, it remains open to debate whether requiring a separate action to be brought is compatible with the principle of procedural economy.

Therefore, the application of the mechanism of amendment requires a balanced approach between legal certainty, the right to seek judicial remedies, and procedural economy.

In conclusion, the decision on the unification of judgments has resolved the divergence of views in practice by defining the limits of partial amendment and has established an important precedent for preserving the subject matter of the proceedings in civil litigation.

For further information:

[Alperen Furkan Balat, Legal Intern](#)
info@ozgunlaw.com

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2. Decision, bearing the Basis number 2021/8, the Decision number 2026/1 and dated 08.05.2026, of the Grand General Assembly for the Unification of Judgments of the Court of Cassation
3. Research Assistant Dr. Alper Tunga KÜÇÜK, “Medenî Usûl Hukukunda Davacının Talep Sonucunu Genişletmesi veya Değiştirmesi” (*Expansion or Modification of the Relief Sought by the Plaintiff in Civil Procedure Law*), Journal of the Court of Jurisdictional Disputes, Year 9, Issue No: 18, December 2025, p. 229.
4. Elif AKSOY, “Objektif Dava Birleşmesi” (*Objective Joinder of Claims*), TBB (Union of Turkish Bar Associations) Journal, 2015 (117), p. 217

12TH JUDICIAL PACKAGE AMENDMENTS: CHANGES TO ADMINISTRATIVE JUDICIAL PROCEEDINGS!

Under the Law, the scope of cases to be heard by a single judge in administrative and tax courts has been expanded, with the aim of ensuring faster and more efficient judicial proceedings. Under the amendment, except for cases concerning regulatory acts, annulment and full remedy actions involving amounts not exceeding TRY 486,000.-, as well as certain cases concerning student-related administrative actions, certain personnel matters involving public officials, disciplinary penalties of reprimand, certain disciplinary penalties imposed by professional organizations, and disputes arising from old-age pensions for persons aged 65 and over, will be heard by a single judge. Likewise, tax cases involving amounts not exceeding TRY 486,000.- will be adjudicated by a single judge at the tax court.

Under the new regulation, a regional administrative court will be able to dismiss an appeal by correcting the reasoning of the court of first-instance's decision. Where certain procedural deficiencies exist, such as lack of jurisdiction, lack of subject-matter jurisdiction, or lack of capacity to sue, it will set aside the decision and remand the case to the court of first instance for a new decision. In cases involving deficiencies in an inspection, expert examination or hearing, the regional administrative court will remedy the deficiencies itself and rule on the merits. In cases other than these, it will not remand the case to the court of first instance.

Under the amendment, decisions rendered by the court of first instance following the setting-aside decision of a regional administrative court may, as a rule, be appealed to the Council of State within 30 days. However, no appeal to the Council of State will be available in cases heard by a single judge, certain specific types of cases listed under the law, or decisions concerning only attorney's fees and litigation costs. Under the new regulation, the provision allowing appeals to the Council of State against new decisions rendered following the setting-aside of a court of first instance on appeal in tax cases, full remedy actions, and actions concerning administrative acts with an amount in dispute between TRY 270,000.- and TRY 920,000.- is repealed. Under the adopted motion, no appeal to the Council of State will be available against decisions rendered anew following a regional administrative court's setting-aside decision where the difference in the monetary amounts between the court of first instance's decision and the regional administrative court's decision does not exceed TRY 55,000.- for 2026. In addition, decisions rendered anew in cases heard by a single judge will not be appealable even if this difference exceeds TRY 55,000.-.

Sources:

<https://www.tbmm.gov.tr/Haber/Detay?Id=f613369e-6185-4b47-913f-019eeec65b37>

<https://www.adalet.gov.tr/12-yargi-paketi-tbmm-genel-kurulunda-kabul-edildi>

REGULATION PROVIDING THAT A NEW LEASE AGREEMENT INVALIDATES AN EVICTION UNDERTAKING THE LEASED PREMISES PUBLISHED IN THE OFFICIAL JOURNAL!

The decision providing that a new lease agreement invalidates an eviction undertaking was published in the Official Journal dated July 18, 2026 and bearing the issue number 33313. The decision invalidating the eviction undertaking reads as follows:

"In this present dispute, counsel for the defendant argued that the lease agreement had been renewed by signing the lease agreement that was the subject of the eviction proceedings and served as the basis for the debt enforcement proceedings. Counsel for the plaintiff accepted the agreement submitted and filed a statement dated October 22, 2024, indicating that the parties had reached an agreement and that the case had become moot. Accordingly, as the Court of First Instance's decision was contrary to procedural law and applicable law, having been rendered without taking into consideration that the lease agreement had been renewed through the agreement commencing on September 11, 2014, which was not contested by the plaintiff, following the execution of the eviction undertaking, and that the eviction undertaking had thereby become invalid, the decision to accept the Ministry of Justice's request for an appeal in the interest of law was rendered. It was unanimously decided to accept the Ministry of Justice's request for an appeal in the interest of law pursuant to Article 363/1 of the Code of Civil Procedure Nr. 6100 and, pursuant to Article 363/2 of the same Code, to REVERSE THE DECISION IN THE INTEREST OF LAW, without affecting the outcome of the case."

Pursuant to this decision of the Court of Cassation, an eviction undertaking obtained in connection with an existing lease agreement has been held to become invalid upon the renewal of the lease agreement. Accordingly, it is no longer possible to seek eviction on the basis of an eviction undertaking that has become invalid as a result of the renewal of the lease agreement.

Source: <https://www.resmigazete.gov.tr/eskiler/2026/07/20260718-13.pdf>



Sülün Sok. No:8 34330 1.Levent Beşiktaş / TÜRKİYE
Phone : +90 212 356 3210 (pbx) / +90 212 325 2307 (pbx)
Fax : +90 212 356 3213
E-mail : info@ozgunlaw.com
Webpage: www.ozgunlaw.com

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