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LAW BULLETIN

Issue: 14 January, 2026

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Determination of the Amount in Dispute and its Impact on Legal Remedies in Actions Adjudicated in Foreign Currency

Article 341(2) of the Code of Civil Procedure Nr. 6100 (CCP) sets forth the monetary threshold required for filing an appeal before the regional courts of appeal. Likewise, Article 362(1)(a) of the CCP stipulates that decisions rendered in cases where the amount or value in dispute does not exceed forty thousand Turkish liras (inclusive) are not subject to appeal before the Court of Cassation. Pursuant to these provisions, not every dispute involving a monetary claim may be subjected to appellate or appellate review. ***(Page 2)***

The 'Wage at the Date of the Claim' Principle in Reinstatement Lawsuits and the Resulting Losses for Employees

Job security provisions constitute one of the fundamental mechanisms aimed at preventing the arbitrary or unjust termination of an employee's employment contract and protecting the employee in cases where the termination is deemed invalid. One of the most important instruments under these provisions is the reinstatement lawsuit, which is specifically set out between Articles 18 and 21 of Labor Law Nr. 4857. In particular, Article 21 elaborates in detail on the consequences of a dismissal made on invalid grounds. ***(Page 4)***

A Legal Analysis of the Amendments under the 11th Judicial Reform Package

The 11th Judicial Reform Package includes provisions such as increasing penalties for certain types of offenses, extending the scope of the "Covid-19 regulation" that allows early release for prisoners except for certain exceptional crimes based on the date of the offense, regulating attorney disciplinary provisions in line with the Constitutional Court's annulment decision, and accelerating the process of annulling auctions under the Debt Enforcement and Bankruptcy Law. ***(Page 7)***

Penalty Clause in Case of Contract Termination

In legal transactions, the failure of parties to perform their obligations properly and timely often renders the continuation of the legal relationship unbearable. In such cases, as a general rule, the sanctions provided under Articles 112 and et seq. of the Turkish Code of Obligations are applied. The failure of parties to fully and properly perform their contractual obligations often leads the creditor to seek termination of the contract. ***(Page 13)***

A Constitutional Assessment of the Commercial and Economic Integrity Decision Adopted by the Savings Deposit Insurance Fund

Pursuant to Article 134 of the Banking Law Nr. 5411, the authority granted to the Savings Deposit Insurance Fund (SDIF) to establish "Commercial and Economic Integrity" (CEI) and to sell gives rise to significant constitutional debates with respect to third-party creditors who stand in a debtor–creditor relationship. The inability to impose attachment on the assets included within the scope of the CEI for a period of two years, as well as the prohibition on requesting their sale through debt enforcement proceedings, constitutes a legal obstacle that effectively prevents third-party creditors from accessing their claims. ***(Page 18)***

Recent News

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11th Judicial Reform Package Published in the Official Journal! ***(Page 21)***

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DETERMINATION OF THE AMOUNT IN DISPUTE AND ITS IMPACT ON LEGAL REMEDIES IN ACTIONS ADJUDICATED IN FOREIGN CURRENCY

1. Introduction

Article 341(2) of the Code of Civil Procedure Nr. 6100 (CCP) sets forth the monetary threshold required for filing an appeal before the regional courts of appeal. Likewise, Article 362(1)(a) of the CCP stipulates that decisions rendered in cases where the amount or value in dispute does not exceed forty thousand Turkish liras (inclusive) are not subject to appeal before the Court of Cassation. Pursuant to these provisions, not every dispute involving a monetary claim may be subjected to appellate or appellate review. In other words, whether a case may be brought before the appellate courts or the Court of Cassation depends on the amount in dispute exceeding the statutory monetary thresholds prescribed for the relevant legal remedies.

Moreover, Additional Article 1 of the CCP, entitled "Increase of the Monetary Threshold," provides that the monetary thresholds stipulated in Articles 200, 201, 341, 362 and 369 shall be applied, as of the beginning of each calendar year, by increasing the amounts applicable in the preceding year at the revaluation rate determined and announced by the Ministry of Finance pursuant to Article 298 bis of the Tax Procedure Law Nr. 213 dated 04/01/1961.

In this article, in light of the decision, dated 30.04.2025 and bearing the Basis number 2025/1175, and the Decision number 2025/1821, of the 6th Civil Chamber of the Court of Cassation [1], the issue of which date should be taken as the basis for the exchange rate calculation, where the subject matter of the case is determined in foreign currency, will be examined with respect to the monetary finality thresholds prescribed for recourse to appellate review.

2. Analysis of the Decision, dated 30.04.2025 and bearing the Basis number 2025/1175, and the Decision number 2025/1821, and the Dissenting Opinion

The content of the decision is as follows: "Final decisions in cases where the amount or value does not exceed the appellate review threshold under Article 362 of the Code of Civil Procedure Nr. 6100 (CCP) cannot be appealed. If the amount subject to appeal falls below the threshold, pursuant to Article 366 of the said Code, the appeal petition must be rejected in accordance with Article 352(1)(b) of the said Code. According to the case file, the total amount that was adjudicated, rejected, and simultaneously appealed is USD 111,727.84.-, which corresponds to TRY 322,893.46.- at the exchange rate on the date of the claim. For the plaintiff, the amount is USD 36,044.13.-, equivalent to TRY 104,167.54.- at the exchange rate on the date of the claim, which is below the monetary threshold of TRY 544,000.00.- as of the date of the decision by the Regional Court of Appeal."

As can be seen, the decision emphasizes that, pursuant to Article 362 of the Code of Civil Procedure Nr. 6100, final decisions in cases where the amount or value does not exceed the appellate review threshold cannot be subjected to appellate review. It further states that, where the monetary amount subject to appeal falls below the threshold, the appeal petition must be rejected in accordance with Article 352(1)(b) of the CCP, as referred to through Article 366 of the said Code. In the case underlying the decision, it was determined that the total amount adjudicated, rejected, and simultaneously subject to appeal was converted into Turkish lira based on the exchange rate on the date of the claim.

As a result of this conversion, the amounts remained below the appellate review threshold of TRY 544,000.- in effect as of the date of the Regional Court of Appeal's decision. Consequently, it was concluded that recourse to appellate review was not possible due to the monetary threshold. In this respect, the decision demonstrates that, in cases concerning claims denominated in foreign currency, the exchange rate on the date of the claim should be used when determining the appellate review threshold, and that this approach directly affects access to the legal remedy.

In the dissenting opinion regarding the decision, the essence of the ruling and the dispute was explained as follows: *"In cases filed for claims or debt enforcement actions denominated in foreign currency, where a judgment is rendered in foreign currency, the issue centers on whether the amount in dispute should be calculated based on the exchange rate on the date of the claim or the exchange rate on the date of the decision. This is because if the exchange rate on the date of the claim is taken as the basis, access to appellate review may be closed, whereas if the exchange rate on the date of the decision is used, legal remedies may remain available."*

As understood from the dissenting opinion, in this present case, the plaintiff submitted a claim in foreign currency under the petition, and the court rendered its judgment for collection in the same foreign currency. This indicates that the claim concerns performance in kind of the foreign currency. Where the creditor requests performance in kind, the debt must, as a rule, be satisfied in the foreign currency.

However, pursuant to Article 58(3) of the Debt Enforcement and Bankruptcy Law, in debt enforcement proceedings concerning claims in foreign currency, it is mandatory to clearly indicate the exchange rate and the relevant date used to determine the Turkish lira equivalent of the claimed amount. While the creditor's request for performance in foreign currency grants a limited choice to the debtor, the debtor may discharge the debt either by paying the foreign currency in kind or by paying the Turkish lira equivalent calculated at the exchange rate on the actual date of payment. Within this framework, initiating debt enforcement proceedings in foreign currency does not automatically or necessarily require that the foreign currency be collected in kind from the debtor and delivered to the creditor. On the contrary, a creditor requesting payment in foreign currency must claim the Turkish lira equivalent calculated based on the exchange rate on the actual date of payment.

In the dissenting opinion, reference is made to the decision, dated 07.04.1993 and numbered 13-41/145, of the General Assembly of the Court of Cassation, which stated that *"By requesting payment of the principal in kind, the plaintiff is deemed to have requested payment in Turkish lira at the prevailing rate on the actual date of payment."* This clearly demonstrates, within the framework of the Debt Enforcement and Bankruptcy Law, that a claim for payment in foreign currency in kind also encompasses payment in Turkish lira calculated at the exchange rate on the actual date of payment. Accordingly, where the creditor does not have a claim converted into Turkish lira based on the exchange rate on the due date or the date of the claim, it is accepted that the amount adjudicated corresponds to the foreign currency amount at the date of the judgment.

On the other hand, the question of which exchange rate should be used for determining the monetary threshold for appellate review in judgments concerning claims in foreign currency has been a subject of debate both in judicial decisions and in the doctrine. In this context, Prof. Dr. Hakan Pekcanıtez [2] has stated that where a foreign currency claim appreciates in value by the date of judgment, the threshold should be calculated based on the exchange rate at the date the court renders its judgment rather than the exchange rate on the date of the claim.

Indeed, within the framework of this debate, which directly affects access to appellate review, it is observed that, upon an application for unification of precedents, the 11th Civil Chamber of the Court of Cassation and the abolished 15th Civil Chamber held that the exchange rate on the date of the claim should be taken as the basis, whereas the 9th, 12th, and the abolished 23rd Civil Chambers held that the exchange rate on the date of the judgment should be used. However, on the grounds that this divergence does not constitute a persistent conflict of precedents, the First Presidency Board of the Court of Cassation, by its decision dated 9.12.2020 and numbered 338, concluded that there was no need to unify the precedents.

It is stated, under the dissenting opinion, that due to the continuous fluctuations of foreign currency under a floating exchange rate regime, it is necessary to base the determination of monetary thresholds and attorney's fees on the date of the judgment. This approach is emphasized as being both required by statutory provisions and ensuring that the actual and current value of the adjudicated claim is accurately reflected. Furthermore, it is noted that, in the enforcement of a judgment for a foreign currency claim through debt enforcement office, the Turkish lira equivalent of the foreign currency at the date of the judgment should also be taken as the basis.

Within this framework, as in the dispute underlying the decision, it is argued that, both with respect to attorney's fees and the monetary threshold for appellate review and court fees, the relevant basis should be the Turkish lira equivalent of the foreign currency at the date of the judgment. Accordingly, it is concluded that the dissenting opinion does not concur with the majority opinion, which rejected the appeal on the grounds of the monetary threshold, and emphasizes that the case should be examined on its merits.

3. Conclusion

In the Court of Cassation's decision under review, the majority opinion holds that, in cases concerning claims in foreign currency, the determination of the monetary threshold for appellate review should be based on the Turkish lira equivalent of the foreign currency on the date of the claim. Under this approach, the amount in dispute established at the time the lawsuit is filed is considered decisive for access to appellate review, and in disputes where the calculation based on the exchange rate on the date of the claim results in an amount below the threshold, appellate review is not permitted.

In contrast, the dissenting opinion emphasizes that, due to the continuous fluctuations of foreign currency under a floating exchange rate regime, it is more appropriate—both in terms of statutory provisions and the actual and current value of the adjudicated claim—to base the determination of monetary thresholds and attorney's fees on the date of the judgment. According to the dissenting opinion, since the Turkish lira equivalent of the foreign currency at the date of the judgment is also taken as the basis during the enforcement of a judgment for a foreign currency claim, the exchange rate on the date of the judgment should likewise be applied when determining the monetary threshold for appellate review and court fees.

Accordingly, the fundamental divergence between the majority decision of the Court of Cassation and the dissenting opinion centers on which exchange rate date should be used in determining the monetary threshold for appellate review in foreign currency claims.

While the majority opinion restricts access to appellate review by relying on the exchange rate on the date of the claim, the dissenting opinion argues that the exchange rate on the date of the judgment should be applied to preserve both the actual value of the claim and the opportunity to seek appellate review.

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THE 'WAGE AT THE DATE OF THE CLAIM' PRINCIPLE IN REINSTATEMENT LAWSUITS AND THE RESULTING LOSSES FOR EMPLOYEES

1. INTRODUCTION

Job security provisions constitute one of the fundamental mechanisms aimed at preventing the arbitrary or unjust termination of an employee's employment contract and protecting the employee in cases where the termination is deemed invalid. One of the most important instruments under these provisions is the reinstatement lawsuit, which is specifically set out between Articles 18 and 21 of Labor Law Nr. 4857. In particular, Article 21 elaborates in detail on the consequences of a dismissal made on invalid grounds.

According to Article 21 of Labor Law Nr. 4857 reading as follows: *"If the employer fails to present a valid reason or if the reason presented is found by the court or a private arbitrator to be invalid, and the dismissal is declared null and void, the employer is obliged to reinstate the employee within one month."*

As can be seen, in cases where the dismissal is deemed invalid, the employer is required to reinstate the employee within one month. This provision demonstrates that a reinstatement lawsuit is not solely aimed at monetary compensation but also seeks, to the extent possible, to ensure the continuation of the employment relationship.

However, the legislator also anticipated the possibility that the employer might not actually reinstate the employee in every case and provided a specific sanction for such situations. Accordingly, if the employee applies to the employer to be reinstated within ten working days as of the notification of the final court decision, and the employer still fails to reinstate the employee within one month, the employer is obliged to pay the employee a non-reinstatement compensation equivalent to a minimum of four months' and a maximum of eight months' salary. This compensation constitutes the legal consequence of the employer's failure to comply with the reinstatement obligation and serves as a deterrent element within the job security system.

Moreover, the consequences of a reinstatement lawsuit in favor of the employee are not limited to non-reinstatement compensation. Pursuant to the third paragraph of the Law, the employee is also entitled to receive wages and other rights accrued for the period during which they were not employed, up to a maximum of four months, until the decision becomes final. This payment, referred to in doctrine and practice as "wages for the idle period", aims to partially compensate for the income loss suffered by the employee due to the invalid dismissal.

On the other hand, the employee is also subject to some certain obligations to ensure the proper functioning of the reinstatement process. If the employee does not apply to the employer to be reinstated within ten working days as of the notification of the final court or private arbitrator decision, the dismissal becomes valid, and the employer is only liable for the legal consequences of a valid dismissal. This provision demonstrates that the outcome of a reinstatement lawsuit does not automatically favor the employee and that the process must also be actively pursued by the employee.

2. THE ISSUE OF THE APPLICABLE WAGE IN REINSTATEMENT LAWSUITS

One of the most debated issues in practice concerning reinstatement lawsuits, and a frequent source of claims regarding loss of rights, is the question of which date's gross wage should be used to determine non-reinstatement compensation and wages for the idle period. At the center of these discussions are the amendments introduced to Article 21 of Labor Law Nr. 4857 by Law Nr. 7036 dated 12.10.2017. These amendments, most recently enacted by Law Nr. 7036, have introduced a financial determination and mediation dimension to the reinstatement process. At this point, the question of which wage should be taken as the basis in reinstatement lawsuits—whether the wage at the date of dismissal or the wage at the date of the claim (or mediation)—has become one of the most debated issues in practice and a matter that can lead to significant loss of rights. This article, particularly in light of the Court of Cessation jurisprudence since 2018, will examine the current practice regarding the determination of the applicable wage in reinstatement lawsuits and the problems arising from this practice.

3. COURT OF CESSATION PRACTICE BEFORE 2018: THE "ASSUMPTION OF CONTINUED EMPLOYMENT"

Before the amendments to Article 21 of Labor Law Nr. 4857 by Law Nr. 7036, there was no explicit statutory regulation regarding the date on which the wage should be determined in reinstatement lawsuits. During this period, practice was largely shaped by the Court of Cessation's jurisprudence; in particular, the approach adopted by the Court of Cessation with respect to wages for the idle period differed significantly from current practice.

In the Court of Cessation's established practice prior to 2018, in cases of invalid dismissal, the employee's situation was assessed as if "the dismissal had never occurred and the employee continued to work."

As a natural consequence of this approach, when calculating wages for the idle period, the wage was not considered a fixed amount determined at the date of dismissal; rather, it was assumed that the calculation should reflect the wage and other financial rights the employee would have had if they had actually continued working.

In its decision dated 28.12.2009, and bearing the Basis number 2009/34595 and the Decision number 2009/37899, the 9th Chamber of the Court of Cessation held: *"For wages and other rights for a period of up to four months of idle time, the calculation should be made based on the wages following the dismissal. During the idle period of up to four months after the dismissal deemed invalid, wages and other rights should be determined as if the employee had continued working. If there is a wage increase or a new collective bargaining agreement comes into effect during this period, calculations should be made separately for each period."* [1]

This clearly illustrates the approach adopted before 2018. Under this approach, when calculating wages for the idle period, not only the base wage but also wage increases, collective bargaining agreement increments, bonuses, premiums, and similar financial rights were taken into account, and the assumption that the employee had actually worked during the four-month period was applied.

Therefore, under the pre-2018 practice, although the wage calculation was not technically performed "as of the date of the decision," the wage was not frozen. The employee benefited from wage increases occurring during the four-month period following the dismissal; in other words, the judicial process was prevented from producing an adverse economic effect for the employee. This approach appeared to be consistent with the fundamental principle of employee protection, which is the core purpose of the job security system.

In summary, under the Court of Cessation's pre-2018 practice, the issue of which date's wage should be used did not constitute a matter of debate in the modern sense; the fundamental principle applied was the protection of the employee as if they had continued working despite the invalid dismissal.

This approach allowed wages, increases, and financial rights to be considered dynamically, and the length of the judicial process did not result in adverse effects for the employee. The "wage as of the date of the claim" rule introduced after Law Nr. 7036, however, eliminated this dynamic approach by fixing the wage at a specific date, giving rise to significant disputes in practice.

4. THE "WAGE AS OF THE DATE OF THE CLAIM" PRINCIPLE INTRODUCED BY LAW NR. 7036

Law Nr. 7036 on Labor Courts (which came into force in 2018) amended Article 21 of Labor Law Nr. 4857 to introduce the "wage as of the date of the claim" principle. The paragraph added to the article provides that: *"The court or the special arbitrator shall determine, in monetary terms, the compensation regulated in the second paragraph and the wages and other rights set out in the third paragraph based on the wage as of the date of the claim."*

Thus, the legislator has clearly and unequivocally regulated the issue of which date's gross wage should be used in calculating both the reinstatement refusal compensation and the wages for the idle period. The Court of Cessation has also adopted this amendment as a rule of practice. In recent case law, the Court of Cessation emphasizes that, particularly in reinstatement lawsuits filed following mediation, the wage as of the date of the claim must be taken as the basis for determining compensation.

The legislator's purpose underlying this regulation is to eliminate the long-standing uncertainties in the practice of reinstatement lawsuits and to ensure that monetary amounts in court decisions are determined in a clear, precise and enforceable manner.

Indeed, previously, there were differing views on whether the wage should be determined based on the date of dismissal, the date of the court decision, or the date the employee was required to return to work; this situation created unpredictability for both the parties and practitioners. By adopting the "wage as of the date of the claim" standard, the aim was to remove this uncertainty and to limit the impact of the judicial process on the wage calculation.

Under this new approach, the wages for the idle period and the reinstatement refusal compensation are calculated not based on the employee's wage at the time of dismissal or at the conclusion of the proceedings, but rather on the employee's gross wage as of the date the claim is filed. In this way, the court determines these monetary rights in its decision using a fixed and definite wage, without taking into account subsequent increases in wages or changes in economic conditions.

5. THE RIGHTS LOSSES CAUSED IN PRACTICE BY THE "WAGE AS OF THE DATE OF THE CLAIM" PRINCIPLE

However, this regulation has also given rise to new debates in practice. In particular, during periods of prolonged litigation and high inflation, fixing the wage as of the date of the claim may result in the employee's inability to recover the economic losses incurred throughout the course of the proceedings. By their nature, reinstatement lawsuits can be lengthy; when the first-instance proceedings, appeals, and cassation stages are considered together, the process often extends over several years.

During this period, the employee does not actually work, cannot earn a regular income, and frequently has to take temporary jobs with lower wages. Nevertheless, fixing the reinstatement refusal compensation and the wages for the idle period based on a wage determined at the outset of the litigation produces a result that is far from reflecting the economic reality experienced by the employee.

It should also not be overlooked that the "wage as of the date of the claim" principle represents a significant departure from the pre-2018 Court of Cessation practice, which adopted the approach that the employee is to be protected "as if continuing to work."

Under the previous practice, the wages for the idle period were determined based on the wages and monetary rights the employee would have earned if they had actually continued working, taking into account wage increases and collective bargaining agreement provisions.

Under the new practice, however, this dynamic approach has been abandoned, the wage is frozen at a specific date, and the employee is prevented from benefiting from subsequent economic developments. This constitutes a structural change that weakens the protective character of the job security system.

6. CONCLUSION

The wages and other entitlements for the idle period, as well as the reinstatement compensation, should be awarded on a gross basis, with any deductions to be applied at the enforcement stage. For the idle period of up to four months following the date of the annulled dismissal, the wages and other entitlements should be determined as if the employee had continued working.

All monetary values the employee would have earned during this period had they actually continued working should be taken into account. However, payments that can only arise from actual work, such as overtime pay, remuneration for work on weekly rest days, public and religious holidays, or sales-based commissions, cannot be considered part of the "other entitlements" payable for the idle period of up to four months. [2]

In conclusion, while the "wage as of the date of the claim" principle introduced by Law Nr. 7036 provides methodological clarity and facilitates practical implementation in monetary calculations, it remains insufficient to compensate for the real losses suffered by the employee, particularly in cases where litigation is prolonged and economic fluctuations are significant.

Freezing the wage at a single point in time prevents the employee from benefiting from inflationary erosion or wage increases occurring during the course of the proceedings. This, in turn, undermines the protective purpose of the job security system and leads to outcomes that are inconsistent with the level of effective protection required under the principle of a social state.

Within this framework, legal doctrine emphasizes that, in light of prolonged litigation and economic realities, more flexible approaches should be adopted in determining the wage, without rigidly adhering to a fixed date.

Such approaches should take into account the specific circumstances of the case and uphold the principle of interpreting provisions in favor of the employee.

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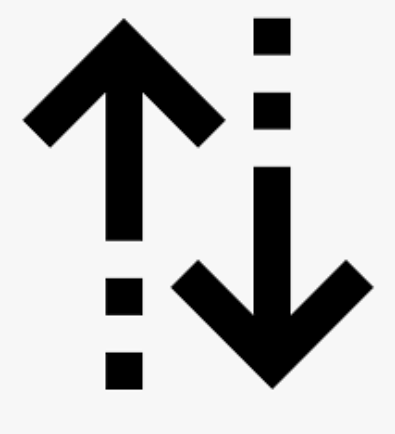

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THE WAGES AND OTHER ENTITLEMENTS FOR THE IDLE PERIOD, AS WELL AS THE REINSTATEMENT COMPENSATION, SHOULD BE AWARDED ON A GROSS BASIS, WITH ANY DEDUCTIONS TO BE APPLIED AT THE ENFORCEMENT STAGE.

A LEGAL ANALYSIS OF THE AMENDMENTS UNDER THE 11TH JUDICIAL REFORM PACKAGE

1. INTRODUCTION

The law commonly referred to as the 11th Judicial Reform Package, namely the "Law Nr. 7571 on Amendments to the Turkish Penal Code and Some Certain Laws and Decree Law Nr. 631", was promulgated in the Official Journal on 25.12.2025 and entered into force [1]. In recent years, the judicial reform packages consecutively enacted in the Turkish legal system have been prepared with the aim of addressing issues that arise in practice.

Accordingly, the 11th Judicial Reform Package includes provisions such as increasing penalties for certain types of offenses, extending the scope of the "Covid-19 regulation" that allows early release for prisoners except for certain exceptional crimes based on the date of the offense, regulating attorney disciplinary provisions in line with the Constitutional Court's annulment decision, and accelerating the process of annulling auctions under the Debt Enforcement and Bankruptcy Law [2].

This article will systematically examine the amendments introduced under the 11th Judicial Reform Package and assess their legal implications.

2. AMENDMENTS TO TURKISH PENAL CODE

The 11th Judicial Reform Package introduced amendments to various provisions of the Turkish Penal Code Nr. 5237.

The provisions amended and the content of these amendments are as follows:

2.1. Imposition of an Additional Security Measure in Case of Mental Illness (Art. 32 of TPC)

With the amendment to the second paragraph of Article 32 of the Turkish Penal Code, a new execution and security measure regime has been introduced for individuals with partial mental illness whose criminal liability is recognized.

Prior to the amendment, it was deemed sufficient to apply a reduction in the sentence for such individuals, and there was no explicit or mandatory regulation concerning the imposition of security measures.

With this amendment, it has been explicitly set out that, in addition to the execution of the prison sentence imposed on an individual who has criminal liability despite partial mental illness, a security measure specific to persons with mental illness shall also be ordered.

In this way, the legislator aims both to punish such individuals for the acts they have committed and to apply protective measures to safeguard society against the state of dangerousness arising from mental illness.

2.2. Duration of Security Measures Specific to Persons with Mental Illness (Art. 57 of TPC)

With the sentence added to the second paragraph of Article 57 of the Turkish Penal Code, the minimum periods that persons with mental illness are required to spend in a healthcare institution for treatment and protection purposes have been determined.

Accordingly, for persons with mental illness against whom a security measure has been ordered, the following minimum periods to be spent in a healthcare institution have been made mandatory:

-At least one year for offenses punishable by aggravated life imprisonment or life imprisonment,

-At least six months for offenses punishable by imprisonment with an upper limit exceeding ten years.

The regulation aims to ensure the treatment and rehabilitation of persons with mental illness who have committed criminal offenses.

2.3. Inclusion of the Offense of Insult within the Scope of Prepayment (Art. 75 of TPC)

The amendment to Article 75 of the Turkish Penal Code constitutes a regulation expanding the prepayment regime for the offense of insult.

Prior to the amendment, the prepayment provisions could only be applied if the insult was committed through a verbal, written or visual communication—in other words, in a digital form.

With the recent change, this scope has been broadened: insults committed face-to-face or in the absence of the victim are now also included within the prepayment framework.

Thus, for the offense of insult, as set out under Article 125 of the Turkish Penal Code, the prepayment provisions can now be applied to all forms of commission, except for the case specified in paragraph (a) of the third clause concerning insults directed at a public official due to their duty.

Insults committed against a public official on account of their official duties remain outside the scope of prepayment, and investigations and prosecutions for such offenses continue to be conducted under the general provisions.

With this regulation, the aim is to reduce the burden of criminal proceedings for offenses of insult and to ensure that related disputes are resolved more swiftly.

2.4. Increasing the Penalty Limits for Crime of Negligent Injury (Art. 89 of TPC)

The penalties for the crime of negligent injury, as set out under Article 89 of the Turkish Penal Code, have been increased. Under the amendment, the minimum and maximum terms of imprisonment prescribed in the first paragraph for a person who causes pain to another's body or impairs their health or perceptual abilities through negligence have been raised. Previously set at three months to one year, the sentence is now regulated as four months to two years. Similarly, the penalty for causing injury to multiple persons has also been increased; the imprisonment term previously set at six months to three years in the fourth paragraph has been changed to nine months to five years.

The amendment aims to increase deterrence by imposing harsher consequences for violations of the duty of care and diligence.

2.5. New Aggravating Circumstance in the Crime of Abuse of Trust (Art. 155 of TPC)

Article 155 of TPC has been amended by adding a third paragraph, which establishes that the abuse of trust involving a motorized land, sea, or air vehicle constitutes an aggravated form of the crime. In such cases, the penalty for the crime of abuse of trust is increased by one degree.

The amendment introduces a more effective sanction specifically against the misuse of vehicles, a conduct frequently encountered in the vehicle rental sector.

2.6. Increase of Penalties for the Crime of Deliberately Endangering Public Safety (Art. 170 of TPC)

The amendment to Article 170 of the TPC increased the primary penalty for the crime; the previous sentence of six months to three years' imprisonment was revised to one to five years' imprisonment. Firearms capable of discharging blank cartridges pistol or gas, commonly referred to as "kurusıkı" in public discourse, have been explicitly included within the scope of the offense. In addition, it is stipulated that if the crime is committed in places where people gather collectively, the penalty shall be increased by half.

This amendment aims, in particular, to prevent the use of firearms or blank cartridges pistols during celebrations such as weddings, engagements, or military send-offs, and more generally in residential areas.

2.7. Increase of Penalties for the Crime of Forming an Organization for the Purpose of Committing a Crime (Art. 220 of TPC)

The amendment to Article 220 of the TPC introduced significant changes aimed at increasing penalties in organized crime. Accordingly, the minimum and maximum imprisonment sentence for those who establish or manage an organization for the purpose of committing a crime have been raised; under the previous regulation, the sentence ranged from four to eight years, whereas it has now been set at five to ten years of imprisonment. For those who are members of the organization, the maximum penalty has also been increased; under the previous regulation, imprisonment could be up to four years, whereas it has now been revised to up to five years. In addition, if the organization is armed, the sentence enhancement rate—previously left to the judge's discretion, ranging from one-quarter to one-half—has been clarified to a fixed one-half increase.

With the newly added provision, the use of children as instruments in criminal activities within the scope of an organization has been explicitly established as an aggravating factor. Accordingly, when children are exploited in crimes committed as part of organizational activities, the sentence for the organization's leaders shall be increased by one-half to a full additional increment.

This provision introduces harsher penalties in the fight against criminal organizations and aims to prevent the exploitation of children as instruments in the commission of crimes.

2.8. Redefinition of the Offense of Obstructing the Movement of Transportation Vehicles, Hijacking or Detaining Vehicles (Art. 223 of TPC)

Article 223 of the TPC has been amended in its entirety, including its title. The new title has been broadened, and unlike the previous version, the expression "obstructing the movement of transportation vehicles" explicitly details acts that impede the operation of transportation vehicles.

Prior to the amendment, the offence of obstructing the movement of transportation vehicles, or hijacking or unlawfully detaining them, required the act to involve force or threat. Under the new regulation introduced within the scope of the 11th Judicial Reform Package, the phrase "force or threat" has been removed and replaced with the expression "an unlawful act." In other words, the element of force or threat has been excluded from the statutory definition of the offence, and any unlawful conduct has been deemed sufficient for the commission of the crime. Consequently, the scope of the offence has been expanded.

The amendment also increases the statutory penalty ranges for unlawful interference with transportation vehicles. Accordingly, with respect to road transportation vehicles, imprisonment from one to three years is prescribed for acts involving the obstruction of a vehicle's movement or stopping a vehicle while in motion through an unlawful act; where the vehicle is taken to a destination other than the one to which it was heading, a sentence of two to five years' imprisonment is prescribed. For sea and railway transportation vehicles, the penalties have been increased, providing for three to seven years' imprisonment.

With regard to air transportation vehicles, a more severe sanction has been adopted: five to ten years' imprisonment where the movement of the vehicle is obstructed, and seven to twelve years' imprisonment where the vehicle is taken to another location.

The amendment aims to enhance the sanctioning framework against unlawful acts targeting transportation vehicles by expanding the scope of the offence and increasing the applicable penalties.

3. COMPETENT COURT IN FRAUD OFFENCES

Following the amendment introduced to Law Nr. 5235 on Establishment, Duties and Powers of the Courts of First Instance and the Regional Courts of Appeal, it has been stipulated that criminal courts of first instance shall have jurisdiction over the offence of aggravated fraud.

Prior to the amendment, the basic form of the offence of fraud was adjudicated by criminal courts of first instance, whereas cases concerning aggravated fraud fell within the jurisdiction of high criminal courts. As these offence types could potentially transform into one another during the course of criminal proceedings, jurisdictional conflicts frequently arose in practice. Through the amendment, it is aimed to resolve jurisdictional conflicts resulting from proceedings being conducted before different courts, and to vest jurisdiction over both offence types in the criminal courts of first instance.

4. AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE

Following the 11th Judicial Reform Package, various provisions of the Code of Criminal Procedure Nr. 5271 have been amended. The amended provisions and the content of these changes are as follows:

4.1. Suspension and Seizure of Accounts Containing Proceeds of Cybercrimes (Article 128/A of the Code of Criminal Procedure)

With the 11th Judicial Reform Package, a new protective measure regarding cybercrime has been incorporated into the Code. Article 128/A of the Code of Criminal Procedure sets out the procedure for the swift suspension and seizure of accounts containing proceeds of cybercrime. According to the amendment, where there is reasonable suspicion that offences such as aggravated theft, aggravated fraud, and the misuse of bank or credit cards, as defined under the Turkish Penal Code, have been committed, accounts held with the relevant bank, payment service provider, or crypto-asset service provider may be suspended by the financial institution for up to 48 hours. The suspension and any account transactions must be immediately reported to the public prosecutor's office. Upon request by the account holder, the public prosecutor is required to issue a decision regarding the suspension within 24 hours.

According to the amendment, the proceeds in a suspended account may be seized either by a court decision or, in cases requiring urgent action, by a written order of the public prosecutor; judicial approval must be obtained within twenty-four hours, otherwise the seizure automatically lapses. In the newly established seizure measure for cybercrime, the requirement to obtain a report from the relevant institution, as is prescribed for the seizure of immovable property, rights, and receivables, has not been included.

4.2. Expansion of the Reversal Powers of Regional Courts of Appeal (Article 280 of the Code of Criminal Procedure)

With the amendment to Article 280 of the Code of Criminal Procedure, the scope of the reversal powers of Regional Courts of Appeal has been expanded. Under the amendment, a Regional Court of Appeal may issue a reversal decision where any of the instances of absolute unlawfulness set out under Article 289 of the Code of Criminal Procedure exist. Prior to the amendment, paragraphs (g) and (h) of Article 289—(g: the judgment lacking reasoning as required under Article 230; h: the limitation of the defense right by the court in matters essential to the judgment)—were excluded from the scope of reversal. Under the new regulation, all instances of absolute unlawfulness set out under the said article may now constitute grounds for reversal.

5. AMENDMENT TO THE ENFORCEMENT CODE: "COVID-19 REGULATION"

By and through the 11th Judicial Reform Package, Provisional Article 10 of the Law Nr. 5275 on Penalties and Security Measures has been amended. This provisional article, widely known in the public as the "COVID-19 Regulation" or "prison amnesty", allowed inmates to be temporarily released during the COVID-19 pandemic, provided they met the relevant conditions, with the exception of certain specified offences.

Under the amendment introduced on 15.07.2023, inmates who were on COVID-19 leave and had less than five years remaining until the completion of their supervised release are not required to return to prison, and their sentences continue under supervised release.

With the amendment to Provisional Article 10 under the 11th Judicial Reform Package, the scope of the COVID-19 Regulation has been expanded.

Accordingly, in addition to inmates who were released on leave during the COVID-19 period, those entering penal institutions for offences committed on or before 31.07.2023 are now also eligible to benefit from early supervised release under this regulation.

The amendment has also expanded the scope of exceptional offences.

Accordingly, the offences excluded from the regulation are as follows:

a. Intentional homicide committed against a descendant, ascendant, spouse, sibling, divorced spouse, woman, child, or a person unable to defend themselves due to physical or mental incapacity (Articles 82/1(d), (e), and (f) of Turkish Penal Code)

b. Homicides resulting from the collapse, destruction or damage of buildings or other structures due to an earthquake

c. Sexual assault (Art. 102 of Turkish Penal Code), Sexual abuse of children (Art. 103 of Turkish Penal Code), Aggravated forms of sexual intercourse with a minor (Arts. 104/2 and 104/3 of Turkish Penal Code)

d. Offences against the security of the state (Arts. 302–308 of Turkish Penal Code), Offences against the constitutional order (Arts. 309–316 of Turkish Penal Code), Offences against national defense (Arts. 317–325 of Turkish Penal Code), Offences against state secrets and espionage (Arts. 326–339 of Turkish Penal Code)

e. Offences within the scope of Anti-Terror Law and offences committed in the context of terrorist organizational activity

Accordingly, excluding the aforementioned exceptional offences, inmates who are serving sentences for offences committed prior to 31.07.2023 will be eligible to benefit from early supervised release for an additional three years, in addition to the existing enforcement regime.

The amendment is stated to aim at resolving issues of inequality in practice arising from the application of different enforcement regimes for offences committed during the same period. However, the regulation has been criticized in the public sphere for allegedly undermining the deterrent effect of the enforcement regime and leading to impunity.

6. AMENDMENTS TO DEBT ENFORCEMENT AND BANKRUPTCY LAW

With the 11th Judicial Reform Package, various provisions of Debt Enforcement and Bankruptcy Law Nr. 2004 have been amended. The amended provisions and the content of these changes are as follows:

6.1. Restriction of Persons Entitled to Request the Annulment of an Auction (Article 134 of the Debt Enforcement and Bankruptcy Law)

With the amendment to Article 134 of the Debt Enforcement and Bankruptcy Law, the scope of persons entitled to request the annulment of an auction has been restricted, aiming to resolve practical issues and expedite auction procedures. Accordingly, requests for the annulment of an auction made by persons not explicitly listed as interested parties in the law are to be summarily and definitively rejected by the court. This amendment seeks to prevent individuals who are neither parties to the auction nor have a legal interest from abusing the annulment process to delay proceedings.

Another significant amendment to the same article concerns the deposit and fee requirements. Where the deposit or fee required for filing a request for auction annulment is either not paid or insufficiently paid, a written notice with a strict two-week deadline is to be served to remedy the deficiency. If the deficiency is not remedied within this period, the court is to summarily and definitively reject the request for auction annulment.

6.2. Amendment Concerning Donations and Gratuitous Transfers in Actions for the Annulment of Dispositions (Article 278 of Debt Enforcement and Bankruptcy Law)

Article 278 of the Debt Enforcement and Bankruptcy Law sets out the annulment of donations and other gratuitous transfers made by the debtor with the intent to defraud creditors. Under the previous version of the article, transfers between adoptive parents and adopted children were considered donations and were therefore subject to annulment.

The Constitutional Court, in its decision dated 09.05.2024 and bearing the Basis number 2023/200 and the Decision number 2024/103, reviewed the provision in terms of the right to property and the principle of legal certainty. The Court held that treating transfers between close relatives as donations without examining whether they involved genuine consideration constitutes a disproportionate interference. While recognizing that the legislator's objective of protecting creditors is legitimate, the Court emphasized that achieving this objective through absolute presumptions that are practically impossible to rebut is inconsistent with Articles 13, 35, and 36 of the Constitution.

Pursuant to the annulment decision, Article 278 of Debt Enforcement and Bankruptcy Law has been revised, abandoning the approach of automatically treating transfers between close relatives as donations. Under the new regulation, transfers between descendants and ascendants, spouses, in-laws, and similar persons can be considered donations only if it cannot be proven that they were made for adequate consideration corresponding to their actual value. This allows parties who claim that the transfer was made for genuine consideration to present evidence, thereby removing the presumption of donation as absolute.

Similarly, the presumption of donation is maintained with respect to contracts in which the debtor explicitly accepts a consideration that is clearly below the value of what is given, as well as in contracts for lifetime care, usufruct or lifetime income. However, it is explicitly clarified that these presumptions are rebuttable. In this respect, the new wording of the article aims to balance the protection of the creditor with the property rights of the debtor and third parties in actions for the annulment of dispositions.

In conclusion, following the Constitutional Court's decision, bearing the Basis number 2023/200 and the Decision number 2024/103, the amendments made to Article 278 of Debt Enforcement and Bankruptcy Law have established a normative and proportionate framework regarding the rules on donations, allowing assessment based on the specific circumstances of each case. With this amendment, while the presumption of donation in transfers between close relatives is maintained, it is explicitly provided that this presumption can be rebutted.

6.3. Determination of the Relevant Date for Monetary Limits in Legal Remedies (Supplementary Article 1 of Debt Enforcement and Bankruptcy Law)

With the amendment to Supplementary Article 1 of Debt Enforcement and Bankruptcy Law, it has been clarified which date should be taken as the basis for the monetary limits set forth in Articles 363 and 364. Accordingly, for the purpose of accessing legal remedies, the monetary limits are to be determined based on the amounts in effect on the date the complaint is filed or the lawsuit is initiated. This amendment resolves practical uncertainties, particularly those arising from changes in monetary limits during the course of proceedings and prevents potential loss of rights. In this way, the amendment strengthens the principles of predictability and legal certainty regarding access to legal remedies.

7. DISCIPLINARY ACTIONS FOR LAWYERS

With the 11th Judicial Reform Package, the provisions of Legal Practitioners Act Nr. 1136 concerning disciplinary actions against lawyers have been comprehensively revised following a Constitutional Court's annulment decision.

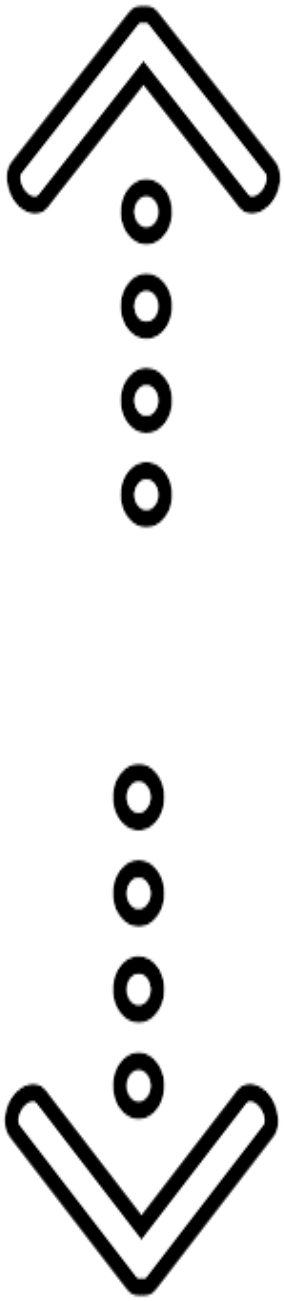
These amendments were made pursuant to the Constitutional Court's decision dated 06.03.2025 and bearing the Basis number 2025/50, and the Decision number 2025/47. The decision was based on the annulment of Articles 134 and 135 of Legal Practitioners Act Nr. 1136, which pertain to disciplinary sanctions, on the grounds that they were incompatible with the principle of the rule of law under the Constitution.

In its annulment decision, the Constitutional Court emphasized that the disciplinary offenses and sanctions under Legal Practitioners Act were not set out in accordance with the principles of clarity and predictability, and that it was insufficiently clear which specific acts would trigger which disciplinary sanctions.

According to the decision, the previous regulation granted broad and indeterminate discretion to the bar's disciplinary bodies, which carried the potential for arbitrary application. The Court therefore stressed that disciplinary law must be governed by clear, precise and proportionate rules as a necessary consequence of the principle of the rule of law.

Following this annulment decision, the legislator revised Legal Practitioners Act to set out disciplinary sanctions and the acts warranting such sanctions in a detailed and graduated manner.

Under the amendments, disciplinary sanctions applicable to lawyers were clearly classified as reprimand, warning, fine, suspension from practice, and disbarment, with each type of sanction specifically linked to the corresponding conduct. In this way, the amendments aim to eliminate uncertainties in disciplinary law and ensure consistency in practice.



Under the new regulation, a clear link has been established between the definitions of disciplinary sanctions and the acts that trigger them, with conduct contrary to professional honor, the sanctity of the right to defense, and the duties of diligence and integrity explicitly specified. This approach is aimed at eliminating the uncertainty highlighted by the Constitutional Court in its decision.

In addition, the regime for recidivism, application of more favorable sanctions, and aggravation of penalties has been detailed in the disciplinary framework. It is stipulated that if a lawyer who has previously received a disciplinary sanction commits a new disciplinary offense within five years of the sanction becoming final, a sanction one degree more severe shall be applied. Conversely, except in cases warranting disbarment, the regulation allows for the application of a lighter sanction for a lawyer committing a disciplinary offense for the first time.

The provisions on statutes of limitation for disciplinary actions have also been reconsidered in line with the reasoning of the Constitutional Court's decision. It is stipulated that if the Bar's Disciplinary Board waits for the outcome of a criminal proceeding, and no disciplinary sanction is imposed within one year as of the date the final court decision is communicated to the bar, the authority to impose the sanction shall expire due to the statute of limitations.

Finally, regarding disciplinary sanctions other than disbarment, the possibility of expungement from the professional record has been preserved. It is stipulated that if five years have passed since the imposition of a reprimand, warning, fine or suspension, the sanction may be expunged from the lawyer's record upon any such request.

In conclusion, the amendments fulfilled the requirements of the Constitutional Court's decision, and the circumstances warranting disciplinary sanctions against lawyers have been revised in accordance with the principle of legal certainty. Consequently, the discretion of bar's disciplinary bodies has been limited, and the normative framework of disciplinary sanctions has been strengthened.

8. OTHER AMENDMENTS

- With the amendment made to Article 53 of the Public Procurement Law, a system has been introduced whereby the objection application fee is refunded in proportion to the degree of justification of the complaint, and accordingly, the procedures for refunding the application fee, the applicable time limits, and the application of interest have been set out in detail.

-With the amendment made to the Law on Professional Organizations of Tradesmen and Craftsmen, the procedures for the preparation, approval, and objection to price tariffs have been restructured; furthermore, the composition of the reconciliation commission and the evaluation criteria have been determined at the statutory level.

-With the provisional article incorporated into the Social Insurance and General Health Insurance Law, the collection of unpaid general health insurance (GHI) premium debts accrued prior to 01.01.2016, together with their ancillary charges, has been abandoned.

-With the amendments introduced to the Electronic Communications Law, mandatory biometric verification and identity authentication requirements have been imposed for the establishment of subscriptions; furthermore, limitations on the number of lines, subscription procedures specific to foreign nationals, and administrative sanctions have been set out in detail.

- With the provisional article incorporated into the Tax Procedure Law, a rule has been introduced stipulating that inflation adjustment shall not be applied for certain accounting periods; furthermore, the President has been granted the authority to extend this period.

-With the amendments made to the Turkish Civil Code, it has been stipulated that the right of pre-emption may not be exercised in forced auctions and in sales conducted within the scope of the Public Procurement Law; furthermore, the rules concerning the deposit of the pre-emption price and the time limits for bringing an action have been restructured.

9. ASSESSMENT AND CONCLUSION

The provisions introduced by the 11th Judicial Reform Package present the appearance of a comprehensive reform aimed at enhancing deterrence within the criminal justice system and addressing problems encountered in practice.

Indeed, through the increase of the minimum and maximum penalty limits for numerous offence types under the Turkish Penal Code, the introduction of new aggravated forms, and the expansion of the scope of certain offences, a stricter penal policy has been adopted, particularly with respect to acts threatening public order and social security. In this regard, the provisions give the impression that an effort is being made to combat the perception of impunity.

However, within the same package, the expansion of the scope of the COVID-19–related regulations concerning the law of execution is capable of producing results that conflict with this penal policy.

By extending the execution regime on the basis of the date of the offence, the way has been paved for a large number of convicted persons to benefit from early probation; consequently, the actual period of imprisonment has been significantly reduced.

This situation demonstrates that, while the legislator increases the severity of penalties on the one hand, it adopts an approach that, on the other hand, refrains from enforcing those penalties through actual incarceration.

One of the fundamental functions of criminal law—deterrence—derives its significance not only from the penalties prescribed in the wording but also from their actual enforcement.

In a system where penalties are increased, the broad neutralization of the execution regime through extensive exceptions carries the risk of reinforcing the public perception of "impunity." In this context, the structural contradiction between the toughening of criminal norms and the relaxation of their enforcement may undermine the integrity of the criminal justice system.

Moreover, the exclusion of certain offences from the aforementioned execution regulation raises a constitutional issue with respect to the principle of equality.

On the other hand, regarding the amendments made to the Legal Practitioners Act and the Law on Debt Enforcement and Bankruptcy under the 11th Judicial Reform Package, a more normative and measured approach appears to have been adopted in line with the decisions of the Constitutional Court.

In particular, the enhancement of certainty in disciplinary law and the abandonment of absolute presumptions in annulment actions concerning discretionary acts represent positive developments in terms of strengthening the rule of law.

In conclusion, the 11th Judicial Reform Package includes provisions that enhance legal predictability and address practical problems in implementation, while also containing deterrent penalties for acts that threaten public safety.

However, the contradiction arising from the weakening of the practical effect of these penalties through the execution regime, even as penalty amounts are increased, contributes to the public perception of "impunity."

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THE PROVISIONS INTRODUCED BY THE 11TH JUDICIAL REFORM PACKAGE PRESENT THE APPEARANCE OF A COMPREHENSIVE REFORM AIMED AT ENHANCING DETERRENCE WITHIN THE CRIMINAL JUSTICE SYSTEM AND ADDRESSING PROBLEMS ENCOUNTERED IN PRACTICE.

PENALTY CLAUSE IN CASE OF CONTRACT TERMINATION

1. Introduction

In legal transactions, the failure of parties to perform their obligations properly and timely often renders the continuation of the legal relationship unbearable. In such cases, as a general rule, the sanctions provided under Articles 112 and et seq. of the Turkish Code of Obligations are applied.

The failure of parties to fully and properly perform their contractual obligations often leads the creditor to seek termination of the contract. In particular, in cases that undermine the very basis of the contract, such as a breach of the obligation to pay the price, the issue of which claims the creditor may pursue following termination becomes practically significant.

At this point, although the debtor is generally obliged to compensate the creditor for any resulting loss in the event of non-performance or defective performance, if a penalty has been stipulated for such non-performance or defective performance, the creditor's right to claim the penalty also arises under Articles 179–182 of the Turkish Code of Obligations.

However, particularly with respect to cumulative penalty clauses, the question of whether the right to claim such a penalty continues in the event of contract termination remains a controversial issue both in doctrine and in the decisions of the Court of Cassation.

On the one hand, the penalty is regarded as a sanction for non-performance; on the other hand, the termination of the contract results in the extinguishment of the primary obligation to perform, which renders the claimability of a performance-linked penalty debatable.

For this reason, the legal nature of the penalty must be assessed together with the effects of termination on the contractual relationship.

2. The Concept of Penalty Clause

A penalty clause refers to the obligation that the debtor undertakes in advance to perform toward the creditor in the event that the principal obligation is not performed, either partially or fully, or not performed properly in the future. Accordingly, a penalty clause is an ancillary obligation dependent on the principal obligation and arises only upon the breach of that obligation.

Once the debtor has undertaken to pay the penalty, the creditor can obtain compensation without having to claim that any loss occurred or prove the extent of such loss.

The nature of the principal obligation is not relevant for the stipulation of a penalty clause; a penalty may be agreed upon for obligations to deliver, to do, or not to do. [1]

The type of the principal obligation is not determinative for the stipulation of a penalty clause; a penalty may be provided for obligations to give, to do, or not to do. However, the existence and enforceability of a penalty clause generally depend on the presence of an explicit provision to that effect in the contract.

Under Article 179 of the Turkish Code of Obligations, penalty clauses are set out in three different types: optional penalty clauses, cumulative penalty clauses, and penalties in lieu of performance (termination/ rescission penalties).

This distinction is significant in determining the circumstances and scope in which a penalty clause may be claimed.

Article 179 of the Turkish Code of Obligations reads as follows:

"If a penalty has been stipulated for the non-performance or defective performance of a contract, the creditor may demand either the performance of the obligation or the penalty, unless the contract indicates otherwise.

If the penalty has been stipulated for failure to perform the obligation at the agreed time or place, the creditor may demand the performance of the penalty together with the principal obligation, unless they have expressly waived their right or accepted performance without reservation.

The debtor retains the right to prove that, by fulfilling the stipulated penalty, they are authorized to terminate the contract by termination or rescission."

The first paragraph of the article sets out the optional penalty clauses.

With respect to optional penalty clauses, the General Assembly of Civil Chambers of the Court of Cassation rendered as follows under its decision dated 12.10.2021, and bearing the Basis number 2017/2736 and the Decision number 2021/1218:

"If a penalty has been promised to be paid in the event of non-performance or defective performance of the contract, and the contract does not provide otherwise, the creditor may demand either the performance of the contract or the payment of the penalty. In the optional penalty clause, the creditor holds a discretionary right. Accordingly, upon the occurrence of the stipulated condition—that is, the debtor's failure to perform the principal obligation fully or properly—the creditor may either demand the performance of the principal obligation or waive it and claim payment of the penalty. Under the optional penalty clause, the creditor may not demand both the performance of the principal obligation and the payment of the penalty simultaneously.

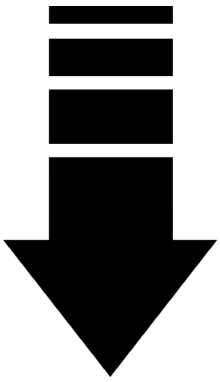
For example, if it has been stipulated that the buyer may claim a penalty of TRY 100,000.- in the event that the seller fails to deliver the goods, the buyer may either demand the delivery of the goods or claim the penalty. As can be seen, a discretionary right is involved here: the creditor may demand either the performance of the principal obligation or the payment of the penalty, but, as a general rule, may not demand both simultaneously. It should be noted, however, that if subsequent impossibility renders the performance of the principal obligation impossible, this discretionary right granted to the creditor becomes meaningless. When the performance of the principal obligation is impossible, the creditor is entitled only to claim compensation, if applicable. Accordingly, the creditor may demand either compensation for the loss suffered or the payment of the penalty."

Accordingly, an optional penalty clause is a type of penalty agreed upon to apply in the event of non-performance or defective performance of the obligation, granting the creditor the opportunity to choose between the performance of the principal obligation and the payment of the penalty. Pursuant to Article 179(1) of the Turkish Code of Obligations, unless the contract provides otherwise, the creditor may demand either the performance of the obligation or the payment of the penalty.

In this type of penalty clause, the creditor may not demand both the performance of the principal obligation and the payment of the penalty simultaneously. The right of choice in this context belongs to the creditor, not the debtor. The debtor does not have the right to be released from the obligation merely by paying the penalty in the event of non-performance; the creditor may continue to demand the performance of the principal obligation.

The second paragraph of the article sets out the cumulative penalty clauses.

The decision, dated 07.07.2021 and bearing the Basis number 2017/3169 and the Decision number 2021/948, of the General Assembly of Civil Chambers of the Court of Cessation reads as follows: *"If the penalty has been stipulated for failure to perform the obligation at the agreed time or place, the creditor may, unless they have expressly waived their right or accepted performance without reservation, demand the payment of the penalty together with the principal obligation. In this way, a cumulative penalty clause is established. This type of penalty is also referred to as a delay penalty.*



According to the aforementioned provision, in the event of the debtor's non-performance, the creditor may demand both specific performance and the payment of the stipulated penalty. Accordingly, it is possible for the penalty to be claimed in addition to performance, i.e., on a cumulative basis.

If the claim that the creditor demands in addition to performance in the event of the debtor's non-performance constitutes a penalty claim, no actual damage is required. The creditor may claim the stipulated penalty even if they have not suffered any loss as a result of the debtor's non-performance.

In order to claim a cumulative penalty clause, it must be explicitly stipulated under the contract that delayed performance is not to be accepted without reservation. Otherwise, the right to claim the penalty is lost. If, prior to the delayed performance, a notice reserving the right to claim a delay penalty has been issued, or the contract provides that no reservation is required to claim the penalty, or the creditor has engaged in conduct indicating that they are preserving this right, then the right to claim the penalty is not lost even if the subsequent performance is accepted without reservation; the penalty may still be demanded."

Accordingly, a cumulative penalty clause is a type of penalty agreed upon for circumstances such as the failure to perform the obligation at the agreed time or place, granting the creditor the right to claim the penalty in addition to the principal obligation.

Pursuant to Article 179(2) of the Turkish Code of Obligations, the creditor may demand the payment of the penalty together with the principal obligation, unless they have expressly waived their right or accepted performance without reservation.

In this type of penalty clause, the penalty may be claimed in addition to performance (on a cumulative basis). It is not necessary for the creditor to have suffered any loss in order to claim the penalty.

Delayed or defective performance of the obligation is sufficient for the penalty to be enforceable.

The third paragraph of the article sets out the penalty in lieu of performance (termination/ rescission penalty).

The decision, dated 29.06.2021 and bearing the Basis number 2017/2245 and the Decision number 2021/880, of the General Assembly of Civil Chambers of the Court of Cessation reads as follows:

"The penalty that prevents performance, also referred to as the rescission (termination) penalty, is set out under paragraph 3 of the article. Here, the debtor retains the authority to prove that they are entitled to unilaterally rescind the contract by paying the penalty. Accordingly, the debtor may agree with the creditor that they will rescind the contract and pay only the stipulated penalty.

In this type of penalty clause, the debtor may rescind the contract by paying the penalty, while the creditor may claim only the payment of the penalty. In such a case, the creditor can no longer demand the performance of the principal obligation from the debtor.

While optional and cumulative penalty clauses provide the creditor with a right to claim in response to the debtor's breach, the rescission penalty allows the debtor to terminate the contract by paying a specified amount, regardless of whether the obligation has been breached. The debtor may extinguish the contract by paying the penalty even in the absence of non-performance. Here, the performance of the principal obligation is replaced by the rescission penalty. Therefore, it can be said that the rescission penalty does not serve to secure the performance of the principal obligation in favor of the creditor; on the contrary, it functions to weaken it."

Accordingly, the penalty in lieu of performance is a type of penalty clause that grants the debtor the right to unilaterally terminate the contract by paying the stipulated penalty. Pursuant to Article 179(3) of the Turkish Code of Obligations, the debtor is entitled to rescind or terminate the contract by paying the agreed penalty.

In this type of penalty clause, the penalty replaces the performance of the principal obligation. The debtor may exit the contractual relationship by paying the penalty even without having committed a breach. Therefore, unlike cumulative or optional penalty clauses, the rescission (termination) penalty does not serve to secure the performance of the principal obligation.

Within this framework, a penalty clause appears in the system of the Turkish Code of Obligations as a contractual sanction linked to the non-performance or defective performance of an obligation; however, its relationship with the principal obligation varies depending on the type.

In an optional penalty clause, the creditor is granted the discretion to choose between the principal obligation and the penalty, whereas in a cumulative penalty clause, it is possible to claim both the performance of the principal obligation and the penalty simultaneously. In a penalty in lieu of performance, the penalty replaces the performance of the principal obligation. This distinction is significant not only for determining the circumstances and scope in which a penalty may be claimed but also for ascertaining the fate of the penalty in the event of contract termination. Indeed, particularly in the case of a cumulative penalty clause, whether the right to claim the penalty persists after termination requires a joint consideration of the legal nature of the penalty and the consequences of rescission.

3. Cumulative Penalty Clause in Case of Contract Termination

The cumulative penalty clause constitutes a sanction envisaged for circumstances such as the failure to perform the obligation at the agreed time or place, granting the creditor the right to claim the penalty in addition to the principal obligation. In this respect, the cumulative penalty clause primarily applies in situations where the performance relationship continues and the obligation is fulfilled, albeit late or partially. However, the termination of the contract necessitates a different legal assessment regarding the enforceability of the cumulative penalty clause.

Termination of a contract is a right that brings about a novation, terminating the contract prospectively and, as a general rule, releasing the parties from the obligation to perform the principal obligation.

Consequently, upon termination, not only can the performance of the principal obligation no longer be demanded, but the fate of rights that could be claimed alongside performance also becomes a matter of debate. In this context, the question of whether a cumulative penalty clause may be claimed after termination should be considered within the framework of the balance between the accessory nature of the penalty, which is closely tied to the principal obligation, and its function as a sanction for non-performance.

According to the predominant view in doctrine, a cumulative penalty clause cannot be claimed following the termination of the contract. From this perspective, since the obligation to perform ceases upon termination, the legal basis for a penalty that could be claimed alongside performance also disappears. Therefore, claiming a cumulative penalty clause after termination would be inconsistent with the function of the penalty and the systematics of Article 179(2) of the Turkish Code of Obligations.

The case law of the Court of Cassation essentially supports this approach. The decision, dated 26.2.2016 and bearing the Basis number 2014/524 and the Decision number 2016/192, of the General Assembly of Civil Chambers of the Court of Cessation reads as follows:

"If a penalty is stipulated to be paid in the event of a breach of contract, that is, when the contract is either not performed at all or only partially performed, it constitutes an optional penalty (Article 158/1 of the former Code of Obligations Nr. 818; Article 179/1 of the Turkish Code of Obligations Nr. 6098).

The enforceability of an optional penalty depends on the maturity of the principal obligation. If the debtor has not performed or has only partially performed the principal obligation, the creditor who does not terminate the contract may, unless otherwise agreed, demand either the performance of the contract or the payment of the optional penalty. However, the contract may stipulate that both performance and the penalty may be claimed together.

The penalty, as set out in Article 158/2 of the former Code of Obligations Nr. 818 (Article 179/2 of the Turkish Code of Obligations Nr. 6098), constitutes a cumulative penalty clause. Here, the penalty is stipulated in the event that the principal obligation is not performed at the specified time or place.

The creditor accepts the debtor's performance despite the delay or fault but acquires the right to claim the penalty stipulated in the contract due to non-performance at the agreed time or place.

The cumulative penalty clause is particularly applied in cases of late performance and represents the most commonly encountered type of penalty clause in practice.

In order for the penalty, as set out in Articles 158/1 and 158/2 of the former Code of Obligations Nr. 818 (Articles 179/1-2 of the Turkish Code of Obligations Nr. 6098), to be enforceable, the contract pertaining to the principal obligation must not have been rescinded or terminated. In other words, the contract must still be in force.

A party that has rescinded or terminated the contract cannot claim a penalty based on provisions of a contract that has ceased to have legal effect."

In line with the foregoing decision, it is clearly established that the enforceability of a cumulative penalty clause depends on the contract remaining in force and the continuation of the performance process of the principal obligation. Indeed, a cumulative penalty clause is envisaged as a sanction for non-performance arising from delay or partial performance, even when the creditor accepts the debtor's performance. In this respect, this type of penalty clause ceases to serve its function once a novatory right that terminates the contract, such as rescission, is exercised.

However, if the contract contains a clear and unequivocal provision stipulating that the penalty shall also apply in the event of termination, the legal nature of the penalty must be reassessed. In such a case, a sanction initially designated as a cumulative penalty clause, by the parties' intention, becomes enforceable even after termination. Consequently, the penalty can no longer be regarded as a cumulative penalty clause but should instead be considered, by its nature, as a penalty linked to termination—a rescission or termination penalty. In this situation, the enforceability of the penalty should be assessed not under the rules governing cumulative penalty clauses, but as an independent sanction connected to the termination of the contract.

Indeed, in some of its decisions, the Court of Cassation has held that, regardless of whether the obligation has become due prior to termination, a penalty stipulated in the contract cannot be claimed upon termination.

However, it has also emphasized that the parties may agree otherwise. (The decision, dated 13.11.2017, and bearing the Basis number 2016/1632 and the Decision number 2017/3919, of the 15th Civil Chamber of the Court of Cessation)

Accordingly, it cannot be universally asserted that the enforceability of a cumulative penalty clause completely ceases upon the termination of the contract.

Termination is a legal act that ends the contract prospectively, and the contract continues to produce effects and consequences up to the moment of termination. Therefore, with respect to breaches occurring prior to the termination date, if the penalty stipulated in the contract has already arisen, the creditor's right to claim it should be considered as continuing to be protected.

The decision, dated 04.04.2011 and bearing the Basis number 2010/7438 and the Decision number 2011/2040, of the 15th Civil Chamber of the Court of Cessation reads as follows:

"According to the established case law and practice of our Chamber, while it is generally not possible to claim a cumulative delay penalty or delay damages within the scope of positive damages under Article 158/II of the former Code of Obligations in the event of termination, if the penalty stipulated in the contract is expressly linked to a period during which the contract cannot be terminated due to delay, the contractor cannot be considered in default until the expiration of that period. In such cases, even if the plaintiff, the landowner, subsequently exercises the right of termination, they may only claim the delay penalty or damages limited to the period during which termination was not permissible."

Accordingly, the decisive factor for the enforceability of a cumulative penalty clause is the period to which the penalty relates and whether the breach occurred before or after the termination of the contract. Since a contract continues to produce effects and consequences up to the moment of termination, a penalty may be claimed for breaches that occur prior to the termination date.

Therefore, there is no absolute prohibition on claiming a cumulative penalty clause upon the termination of a contract. It is necessary to distinguish whether the penalty relates to a period before or after termination. Since the contract remains in force up to the moment of termination, penalties arising from defaults or breaches occurring during that period are considered to have accrued and remain enforceable. Conversely, for the period following termination, as the obligation to perform ceases, it is not possible to claim a cumulative penalty.

Within this framework, in determining the legal fate of a cumulative penalty clause upon the termination of a contract, factors such as the type of termination, the function of the penalty within the contract, the period to which the penalty relates, and the timing of the breach should be evaluated together.

From this point, it is also necessary to examine which compensation claims the creditor may pursue beyond the cumulative penalty clause upon the termination of the contract, and to what extent post-termination damages can be claimed. Indeed, in cases where the penalty cannot be claimed or can only be claimed to a limited extent due to termination, the provisions on compensation become particularly important for remedying the losses suffered by the creditor.

4. Assessment of Cumulative Penalty Clauses in Terms of Post-Termination Compensation Claims

In the context of the Court of Cassation's established jurisprudence, the general rule that a cumulative penalty clause cannot be claimed upon the termination of a contract does not mean that the creditor is left entirely unprotected in post-termination period. Since a penalty clause constitutes a contractual sanction for non-performance, its inapplicability after termination cannot be interpreted as leaving the debtor's unlawful conduct without consequence.

Indeed, the inability to claim a cumulative penalty clause arises solely from the fact that this sanction is specific to the contract and contingent upon performance. In such cases, the creditor may still seek compensation for the losses suffered due to the debtor's breach under general legal provisions. In other words, within the framework of the Court of Cassation's established jurisprudence, even if a cumulative penalty clause becomes inapplicable upon termination, the legal consequences of the breach do not completely cease to exist.

Within this framework, following the termination of the contract, the legal basis for the claims the creditor may pursue is no longer the provisions on the penalty clause, but the general liability for damages arising from the breach. However, unlike with a penalty clause, in this case the creditor will need to prove both the damage suffered and the causal link between the breach and the loss.

Accordingly, in the post-termination period, it is not possible to speak of an automatic sanction replacing the cumulative penalty clause. The creditor's protection can only be ensured through claims for damages brought under general provisions. This situation illustrates that the relationship between a cumulative penalty clause and contract termination is a natural consequence of the ancillary and performance-dependent character of the penalty clause.

In this context, within the framework of the Court of Cassation's established jurisprudence, the principle that a cumulative penalty clause cannot be claimed upon contract termination does not nullify the consequences of the breach; it merely ends the applicability of the specific contractual sanction agreed upon by the parties.

5. Conclusion

In contracts, a penalty clause serves as an important safeguard for the creditor, functioning as a contractual sanction linked to the non-performance or defective performance of the obligation. However, the relationship between the penalty clause and the principal obligation varies depending on the type of clause, which is particularly significant for determining the legal fate of the penalty clause in the event of contract termination.

The cumulative penalty clause, as set out under Article 179 of the Turkish Code of Obligations, is, by its nature, an ancillary and performance-linked sanction that can be claimed alongside the principal obligation. Therefore, as a general rule, it cannot be claimed in the event of contract termination. This is because termination extinguishes the obligation to perform the principal duty, and the penalty clause, being linked to performance, consequently loses its legal basis.

However, since contract termination produces prospective effects, the contract continues to have legal force and effect up to the moment of termination. Therefore, with respect to breaches occurring prior to the termination date, if the penalty clause has already arisen, its enforceability should be maintained. Indeed, the case law of the Court of Cassation also indicates that an assessment must consider the period to which the penalty clause applies and the timing of the breach.

On the other hand, if the contract contains a clear provision stipulating that the penalty clause applies even upon termination, this remedy should no longer be regarded as a cumulative penalty clause, but rather as an independent penalty tied to the termination in nature.

In such a case, the enforceability of the penalty clause should not be assessed under the rules governing cumulative penalty clauses, but rather within the framework of a termination penalty determined by the parties' agreement.

Finally, in cases where the cumulative penalty clause cannot be claimed or can only be claimed to a limited extent due to termination, it should be accepted that the creditor may pursue compensation for the damages suffered as a result of the debtor's breach of contract under the general provisions.

This demonstrates that the inapplicability of the penalty clause does not completely eliminate the legal consequences of the breach, but merely ends the scope of the special remedy provided by the contract.

Consequently, the claimability of a cumulative penalty clause upon termination of the contract should be determined by considering collectively the nature of the penalty, the period to which it applies, and whether the breach occurred before or after the termination.

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THE CREDITOR'S PROTECTION CAN ONLY BE ENSURED THROUGH CLAIMS FOR DAMAGES BROUGHT UNDER GENERAL PROVISIONS. THIS SITUATION ILLUSTRATES THAT THE RELATIONSHIP BETWEEN A CUMULATIVE PENALTY CLAUSE AND CONTRACT TERMINATION IS A NATURAL CONSEQUENCE OF THE ANCILLARY AND PERFORMANCE-DEPENDENT CHARACTER OF THE PENALTY CLAUSE.

A CONSTITUTIONAL ASSESSMENT OF THE COMMERCIAL AND ECONOMIC INTEGRITY DECISION ADOPTED BY THE SAVINGS DEPOSIT INSURANCE FUND

1. INTRODUCTION

Pursuant to Article 134 of the Banking Law Nr. 5411, the authority granted to the Savings Deposit Insurance Fund (SDIF) to establish "Commercial and Economic Integrity" (CEI) and to sell gives rise to significant constitutional debates with respect to third-party creditors who stand in a debtor–creditor relationship.

The inability to impose attachment on the assets included within the scope of the CEI for a period of two years, as well as the prohibition on requesting their sale through debt enforcement proceedings, constitutes a legal obstacle that effectively prevents third-party creditors from accessing their claims.

This mechanism, which aims to ensure the effective collection of public receivables, suspends the legitimate claims of third-party creditors for a prolonged and indeterminate period. In this respect, it gives rise to concerns in terms of the "right to property", secured under Article 35 of the Constitution, and the "freedom to seek legal remedies", set out under Article 36.

The constitutional limits of the CEI decision in question will be examined within the framework of the principles of proportionality and legal certainty, and it will be assessed— in light of constitutional principles and the case law of the high courts— whether the SDIF's priority in collection turns into a disproportionate and excessively onerous burden on third-party creditors.

2. THE ROLE OF THE SDIF AS TRUSTEE UNDER ARTICLE 133 OF THE CODE OF CRIMINAL PROCEDURE AND ITS RELATION TO THE BANKING LAW

The SDIF, whose legal basis is established by Banking Law Nr. 5411, was founded in 1983 as a public institution aiming to safeguard Türkiye's financial security through insurance and supervisory mechanisms in adverse situations such as the bankruptcy of banks or the suspension of their operations. [1]

At present, if there is strong suspicion that the catalogue offenses, listed under Article 133 of the Code of Criminal Procedure titled "Appointment of a Trustee for Company Management", are being committed within the scope of a company's activities, the court appoints a trustee to such companies. Pursuant to this statutory provision, under Decree Law Nr. 674, the trusteeship of companies appointed a trustee within the scope of Article 133 of the Code of Criminal Procedure was transferred to the SDIF. This Decree Law was later codified by Law Nr. 6758, issued in 2016, which also included regulations concerning the state of emergency.

The second paragraph of article 19 of Law Nr. 6758 reads as follows:

"After the entry into force of this article and for the duration of the state of emergency, if it is decided to appoint a trustee to companies under Article 133 of the Code of Criminal Procedure or to assets under Article 13 of the said Law due to affiliation, connection, or contact with terrorist organizations, the Savings Deposit Insurance Fund (SDIF) shall be appointed as the trustee."

Thus, it has been firmly established that the institution to perform the trusteeship in companies appointed a trustee under Article 133 of the Code of Criminal Procedure is henceforth the SDIF.

Moreover, the provisions of the Banking Law Nr. 5411, which also set out the decisions adopted by the SDIF in its capacity as trustee for banks, are applied analogously to companies to which the SDIF is appointed as trustee by court order pursuant to Article 133 of the Code of Criminal Procedure.

This is explicitly provided for in Provisional Article 2, incorporated into Article 7 of Law Nr. 7539, promulgated on the Official Journal on 04/02/2025:

"…If it is decided to appoint a trustee to companies pursuant to Article 133 of the Code of Criminal Procedure or to assets pursuant to the tenth paragraph of Article 128, the Savings Deposit Insurance Fund (SDIF) may be appointed as trustee for a period of five years from the entry into force of this article.

In this case, with respect to trusteeship rights and authorities, the rights and powers granted to the SDIF under Banking Law Nr. 5411, dated 19/10/2005, shall apply mutatis mutandis."

3. LEGAL NATURE AND PURPOSE OF THE "COMMERCIAL AND ECONOMIC INTEGRITY" (CEI) DECISION

The Savings Deposit Insurance Fund (SDIF) plays a role both in resolving the financial crises of banks and in combating the proceeds of crime resulting from certain criminal acts.

At the forefront of the institutions subject to debate within this broad scope of authority granted to the SDIF is the "Commercial and Economic Integrity" (CEI) Decision. The provision in which the CEI Decision is embodied is Article 134 of Banking Law Nr. 5411.

The relevant article treats economic integrity as a method of sale. Accordingly, in cases where the assets seized due to the debts of a bank or company under the trusteeship of the SDIF—including movable and immovable property, rights and receivables, and intellectual and industrial property rights—would lose value if sold separately, or where selling them as a whole would enable a more effective and advantageous collection of the claim, these assets may be consolidated through a decision of the Board of SDIF to establish "Commercial and Economic Integrity". In this way, the CEI decision adopted by the SDIF aims to ensure that the debtor's assets are realized in a manner that maximizes the collection of the claim.

4. ASSESSMENT OF THE COMMERCIAL AND ECONOMIC INTEGRITY DECISION IN TERMS OF THE RIGHT TO PROPERTY AND THE FREEDOM TO SEEK LEGAL REMEDIES

Paragraph 5 of Article 134 of Banking Law Nr. 5411, as mentioned hereinabove, reads as follows: *"… Within two years from the date of the decision to establish Commercial and Economic Integrity, the seizure, preservation or sale of the assets forming the CEI—including movable and immovable property, all types of rights and receivables, and cash assets held by third parties, including preferential creditors—may not be requested by third parties; the owners of the seized assets may not be declared bankrupt; termination of financial leasing contracts may not be requested; return of assets under such contracts may not be ordered; and statute of limitations or preclusive periods shall not apply to the relevant encumbrances."* This provision was introduced by Decree Law Nr. 678, dated 31/10/2016, and was adopted without any change by Law Nr. 7071, dated 01/02/2018.

The provision in the relevant paragraph establishes that, for a period of two years from the date of the decision, no additional attachment may be imposed by any third parties on the assets subject to a CEI decision, nor may their sale be requested.

Although the SDIF seeks, through the CEI decision, to effectively collect public receivables, the claims of third-party creditors are placed at risk, giving rise to certain constitutional debates. Indeed, this regulation suspends, for as long as two years, the legal collection of claims of all creditors—including preferential creditors—within the scope of the "right to property" protected under Article 35 of the Constitution, thereby constituting an indefinite and severe interference with property rights.

At this point, under its individual application decision numbered 2013/865 and dated 01/06/2016 (the "Cemtur Decision"), the Constitutional Court ruled that a sale conducted within the scope of economic integrity violates the right to property, and that ignoring the claims of bona fide third parties—even those confirmed by final court judgments—for a prolonged period of two years is incompatible with the principle of proportionality.

In this individual application decision, the Court expressed the violation of the right to property and the inconsistency with the principle of proportionality as follows: [2]

"Another dimension of the issue concerns the payment of service providers for ongoing services of the same nature by companies seized by the SDIF. In this context, the rights of bona fide third parties who provided the same services to these companies prior to the date of seizure—and for whom no finding exists indicating that they caused loss to the seized bank or misused its resources—are completely disregarded, and their receivables remain unpaid. It is, of course, reasonable that the assets and operations of companies whose management and supervision have been taken over by SDIF continue to procure goods and services and make corresponding payments. However, the suspension of payments for outstanding debts arising from similar past procurements—or, indeed, the complete disregard of all such debts, including those subject to debt enforcement or bankruptcy proceedings and confirmed by court decisions—cannot be justified under the principle of proportionality or the rule of law."

170. In conclusion, the applicant's ability to collect a receivable from the debtor company—unrelated to its banking activities and already at the stage of enforceable collection—was obstructed after the company was seized by SDIF. This obstruction occurred through interventions based on the relevant legislation, applied to past debt-claim relationships and collection procedures already underway. Despite SDIF having the authority to use the proceeds from the sale of all assets of the debtor company to satisfy past debts, these assets were instead allocated entirely to other public receivables and SDIF's claims arising from the seized bank, without regard for the rights of the applicant, who was recognized as a bona fide third party. Moreover, the applicant was indirectly burdened with losses caused by the bank, which was under state supervision. Considering the legal uncertainty imposed on the applicant for these reasons, it is concluded that, when weighed against the public interest aim of "covering the losses undertaken by the state" on behalf of the failed bank, an excessive burden was placed on the applicant, thereby disrupting the fair balance that should be maintained between the applicant's right to property and the public interest.

171. For the reasons outlined hereinabove, it should be concluded that the applicant's right to property, as secured under Article 35 of the Constitution, has been violated."

Similarly, in its recent individual application decision numbered 2016/9303 and dated 29/11/2023, the Constitutional Court held that the failure to protect the rights of third-party creditors during the process of preparing the priority list and distributing funds following CEI sale constitutes a violation of the right to property. The Court referred to the above-mentioned "Cemtur Decision" and issued a ruling in the same direction. [3]

It should also be noted that the provision in the last sentence of paragraph 5 of Article 134 of Banking Law Nr. 5411, which completely eliminates the ability of third-party creditors to request attachment, preservation, or sale of assets for a period of two years from the establishment of Commercial and Economic Integrity (CEI) decision, is also inconsistent with the "freedom to seek legal remedies", secured under Article 36 of the Constitution.

This is because the freedom to seek legal remedies encompasses not only the right of individuals to apply to judicial authorities, but also the right to claim their entitlements and to have these rights effectively protected and resolved within a reasonable time, ensuring effective access to the courts.

By suspending, for a period of two years, the creditors' authority to resort to compulsory debt enforcement through an administratively issued CEI decision without judicial review, the exercise of this right is rendered meaningless, and judicial protection is effectively neutralized.

As emphasized in the Constitutional Court's established case law, any restrictions on the right to property and the enforcement powers that serve as its guarantee must not affect the essence of the right and must comply with the principle of proportionality.

Regardless of the nature of the claim (whether privileged or not), the two-year administrative restriction applied during this period without providing the creditor with an effective means of application or objection disproportionately limits the effective exercise of the freedom to seek legal remedies and exceeds the constitutional framework envisaged by the principle of a democratic state governed by the rule of law.

5. CONCLUSION

The authority granted to the Savings Deposit Insurance Fund under Article 134 of Banking Law Nr. 5411 to establish and Commercial and Economic Integrity (CEI) and to sell carries significant constitutional implications, particularly for third-party creditors.

Although the CEI decisions adopted by SDIF—both in its capacity as trustee under Article 133 of the Code of Criminal Procedure and under the powers conferred by the Banking Law—are designed as a mechanism prioritizing the collection of public receivables, in practice they impose substantial restrictions on fundamental rights and freedoms.

The CEI decision serves a legitimate public interest objective, such as the effective and rapid collection of public receivables. However, the provision in paragraph 5 of Article 134 of the Banking Law, which absolutely prevents third-party creditors from requesting attachment, preservation, or sale of assets for a period of two years from the establishment of the CEI decision, constitutes severe interference with the creditors' right to property, as secured under Article 35 of the Constitution.

This general and rigid prohibition, applied without regard to the nature or source of the claim or the good faith of the creditor, disrupts the fair balance that should be maintained between property rights and public interest and undermines the principle of proportionality.

In the "Cemtur decision" of the Constitutional Court, as well as in other individual application rulings on the subject, it has been clearly established that the complete disregard of the rights of bona fide third-party creditors in transactions conducted within the scope of CEI imposes an excessive and disproportionate burden on creditors.

Interventions carried out in the name of public interest, which render even claims based on final court judgments ineffective, have been considered a violation of the right to property.

Recent case law continues to uphold this approach, indicating that the failure to respect the rights of third-party creditors when preparing the priority list following CEI sales constitutes a constitutional violation.

On the other hand, the suspension of creditors' ability to resort to compulsory debt enforcement through an administrative decision without judicial review raises serious concerns regarding the freedom to seek legal remedies guaranteed under Article 36 of the Constitution.

The freedom to seek legal remedies is not limited to access to the courts; it also encompasses the effective protection and enforcement of recognized rights within a reasonable time. In this regard, the provision imposing absolute prohibition on debt enforcement for a period of two years effectively prevents creditors from benefiting from judicial protection mechanisms, rendering the freedom to seek legal remedies meaningless.

In conclusion, it is evident that the application of the CEI decision within the existing legal framework constitutes an intervention that exceeds the purpose of protecting public receivables and produces disproportionate effects for third-party creditors.

In accordance with the principle of a democratic state governed by the rule of law, a reasonable and fair balance must be maintained between public interest and individual rights.

Within this framework, it becomes a constitutional requirement to strengthen effective judicial review mechanisms for CEI decisions, to provide differentiated and proportionate limitations depending on the circumstances of the creditors, and to establish safeguards that protect the property and freedom to seek legal remedies of bona fide third-party creditors in particular.

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2. Individual Application Decision, dated 01/06/2016 and numbered 2013/865, of the Constitutional Court

3. Individual Application Decision, dated 29/11/2023 and numbered 2016/9303, of the Constitutional Court

REVERSAL DECISION OF THE 3RD CIVIL CHAMBER OF THE COURT OF CESSATION FOR THE SAKE OF LAW PUBLISHED IN THE OFFICIAL JOURNAL!

Reversal decision for the sake of law was published in the Official Journal, dated 30.12.2025 and bearing the issue number 33123, with the ruling of the 3rd Civil Chamber of the Court of Cassation, dated 30.09.2025, bearing the Basis number 2025/3440, and the Decision number 2025/4430.

In its decision, the Court of First Instance found that the lease agreement dated 15.02.2021, with a term of one year, which formed the basis of the debt enforcement proceedings and was relied upon in the judgment, had been signed by the plaintiff as a guarantor, and that the agreement did not specify either the duration of the guarantor's liability or the maximum amount for which the guarantor would be held liable, and that, therefore, the guarantor's liability was limited to the term of the lease agreement, and that the rental amounts sought to be collected related to May 2021 and June 2021, which fell within the lease term. On these grounds, the court ruled that the plaintiff guarantor was liable for the rental amounts subject to the debt enforcement proceedings and dismissed the case.

The lease agreement dated 15.02.2021, with a term of one year, which formed the basis of the action and was relied upon in the judgment, was signed by the plaintiff in the capacity of the guarantor. Article 583 of Law Nr. 6098 provides that "A guarantee agreement shall not be valid unless it is executed in writing and specifies the maximum amount for which the guarantor shall be liable and the date of the guarantee. The guarantor must state, in her or his own handwriting in the guarantee agreement, the maximum amount of liability, the date of the guarantee, and, where acting as a joint and several guarantor, that the obligation has been assumed in such capacity or by using any expression to that effect." As the lease agreement subject to the debt enforcement proceedings did not comply with the formal requirements set forth in the aforementioned article, the guarantee agreement was deemed invalid; moreover, the fact that the rental receivables subject to the debt enforcement proceedings fell within the term of the lease agreement does not affect the outcome.

In view of these circumstances, the Court of First Instance should have ruled in favor of the plaintiff guarantor, taking into account that it is legally impossible to hold the guarantor liable for the rental receivables subject to the debt enforcement proceedings. However, since the court rendered a decision to the contrary in writing, which is contrary to procedure and law, the Ministry of Justice's request for revision in the interest of the law was accepted.

Source: ***https://www.resmigazete.gov.tr/eskiler/2025/12/20251230-26.pdf***

11TH JUDICIAL REFORM PACKAGE PUBLISHED IN THE OFFICIAL JOURNAL!

The law known to the public as the 11th Judicial Reform Package, officially titled "Law Nr. 7571 on Amendments to the Turkish Penal Code and Certain Other Laws and Decree Law Nr. 631" was published in the Official Journal dated December 25, 2025 and entered into effect.

Under the new regulation, penalties for certain types of offenses under the Turkish Penal Code have been increased, while the scope of the temporary enforcement regime, known to the public as the "Covid-19 regulation," has been expanded based on the date of the offense. Within the package, disciplinary provisions in the Legal Practitioners Act have been revised in line with the Constitutional Court's decisions; significant changes have been made to the procedures for annulling auctions and transactions under the Debt Enforcement and Bankruptcy Law. The regulation also includes amendments to various laws aimed at resolving practical issues, such as limiting the number of mobile lines, erasing Social Security premium debts dated 01.01.2016 and earlier, and regulating the exercise of pre-emption rights.

Source: ***https://www.resmigazete.gov.tr/eskiler/2025/12/20251225-33.htm***

€30 DUTY-FREE ALLOWANCE FOR OVERSEAS SHOPPING ABOLISHED!

The €30 duty-free allowance long applied to individual e-commerce purchases from abroad has been abolished with the regulation promulgated in the Official Journal. The new system will come into effect as of February 6, 2026.

Previously, orders not exceeding €30, including shipping costs, benefited from tax exemption under simplified customs procedures. Under the new regulation, all overseas shipments, regardless of order value, will be subject to the standard customs regime.

In practice, the date taken as reference is not the date of placing the order but the date the goods actually enter Türkiye (date of customs clearance procedures). Accordingly, even if the order was placed earlier, shipments entering Türkiye on or after February 6, 2026 will no longer benefit from the exemption.

Source: ***https://www.resmigazete.gov.tr/eskiler/2026/01/20260107-3.pdf***

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