

Consumer Courts Ruled to Have Jurisdiction in Turkey for Compensation Cases Initiated from Bank Cartel

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Turkey's Court of Cassation recently held that the Consumer Court is the appropriate forum for a lawsuit filed by a consumer against a bank, seeking compensation for damages arising from the bank's competition law violation. The dispute arose from a consumer credit agreement. Accordingly, the highest body within the Court of Cassation held that the Consumer Court should have jurisdiction to hear the case, rather than the Commercial Court.

In 2013, the Competition Board ("**Board**") ruled that a group of banks formed a cartel for consumer deposit, credit cards and credits services, violating Article 4 of the Law on Protection of Competition No. 4054 ("**Competition Law**"). The Board ruled that the banks must compensate all damages arising from the violations (Article 57, Competition Law).

The Competition Law allows courts to award compensation for breaches amounting to up to three times the damages incurred, or profits derived by the breaching party (Article 58).

In the case at hand, the plaintiff initiated a case at the Ankara 9th Consumer Court, seeking 3,300 Turkish Lira from a bank which had been included in the Board's cartel ruling. The claimed amount represented three times the amount for credits, credit cards and services provided by the bank, which would not have been paid if the bank was not involved in competition law violations between 2007 and 2011(i.e. the difference between the actual amount paid by the plaintiff to the bank and the amount required to be paid if the bank was not involved in competition law violations).

The Consumer Court ruled that it did not have jurisdiction for the dispute and the matter should be referred to the commercial court of first instances. The plaintiff appealed the Consumer Court's non-jurisdiction decision.

At the end of appeal process, the 13th Civil Chamber of the Court of Cassation ruled that the contractual relationship between the plaintiff and the bank falls within the scope of Law on Protection of Consumer No. 6502 ("**Consumer Law**") because the dispute arises from consumer credit agreements between the parties. Accordingly, it overturned the Consumer Court's non-jurisdiction decision and sent the dispute back to the Consumer Court for re-consideration.

In reaching its decision, the higher court emphasized:

- Consumer" is defined as being a real or legal person, acting without commercial or professional purpose (Article 3, Consumer Law)
- "Consumer transaction" is defined as all types of agreements and legal transactions between real or legal persons acting with commercial or professional purposes in the goods and service market

(Article 3, Consumer Law)

- Consumer courts have jurisdiction to adjudicate all disputes arising out of execution of the Consumer Law (Article 73, Consumer Law)
- Even if a legal transaction is stipulated in the Consumer Law, related disputes are not always required to be heard by consumer courts
- For a legal transaction to fall within the scope of the Consumer Law, one of the parties must fit the definition of "consumer".

Case Reference: 13th Civil Chamber of Turkish Court of Cassation decision number 2016/12718 E. and 2016/18811 K., dated 19 October 2016.

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