

## The Court of Cassation: Mediation is not Mandatory for Compensation Cases Initiated with Non-Monetary Claims

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The 11<sup>th</sup> Civil Chamber of the Court of Cassation ruled that where the lawsuits are backlogged, mediation is not mandatory for commercial cases initiated with non-monetary claims. Accordingly, it overruled the Regional Court's decision.

In the dispute subject to the decision, the plaintiff requested the claims for material and immaterial damages, determination, cessation and prevention of the infringement, destruction of the products constituting infringement, cancellation of the defendant's trade name, and suspending the social media accounts.

The first instance court dismissed the case on the procedural ground due to the fact that mediation is a mandatory step for commercial lawsuits with monetary claims in accordance with the article 20 of the Turkish Commercial Code ("TCC"). The plaintiff appealed the first instance court's decision. However, the Regional Court justified the first instance court's decision and refused the plaintiff's appeal.

Following that, the plaintiff appealed the Regional Court's decision, and the file was examined by the Court of Cassation. In its subject decision, the 11<sup>th</sup> Civil Chamber stated that the mediation has become mandatory for lawsuits related to a payment of a certain amount of money and compensation claims, with TCC article 5/A's entry into force, and that the subject case was initiated after the mentioned regulation.

Subsequently, considering the claims made within the scope of the lawsuit, the Court of Cassation decided that the dispute at hand includes title cancellation based on the trademark right, determination of trademark infringement, pecuniary and non-pecuniary damages due to the prohibition and infringement, and this leads to the "backlog of lawsuits" which allows more than one claim to be brought forward in the same case under certain conditions.

As a result, the court stated:

- Even though the cases demanding compensation are subject to mediation if a collection action is filed together with a case that is not subject to mediation, as title cancellation and trademark infringement within the scope of the present case, mediation will not be mandatory for the cases.
- For the present case, it has been decided that applying for mediation before filing a lawsuit is no longer a requirement,
- Therefore, the Regional Court's decision is reversed and abolished.

The full text of the decision of the 11<sup>th</sup> Civil Chamber of the Court of Cassation dated 10 June 2020 and numbered E.2019 / 4851, K.2020 / 2732 is available at this [link](#). (only available in Turkish).

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