

## The Court of Cassation Ruled that Mediation is not Mandatory for Compensation Cases Initiated with Non-Monetary Claims Arising from Law on Intellectual and Artistic Works

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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 alongside the determination of the ownership of the work on the books which are subject to unauthorized modification, reproduction and distribution, and the prohibition of the infringement.

The first instance court dismissed the case on the procedural ground due to the fact that the mediation is a mandatory step for commercial lawsuits with monetary claims in accordance with article 5/A/1 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 Appeal. 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. Afterward, it indicated that considering there is not any explicit provision on how to solve the dispute when both monetary and non-monetary claims to be brought forward in the same case, the essentiality of solving the dispute is the court's judgment. The Civil Chamber stated that when the monetary and non-monetary claims are linked to each other, the lawsuits are not subject to mandatory mediation proceedings in parallel with the earlier Court of Cassation's decisions.

Subsequently, taking into consideration the claims within the scope of the lawsuit, the Court of Cassation decided that the dispute at hand includes the determination of the ownership of the work, the prohibition of the infringement, and pecuniary and non-pecuniary damages due to the prohibition and infringement, these claims are linked to each other and should be solved as a whole and examined together.

As a result, the court ruled that:

- 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, mediation will not be mandatory anymore.
- For the present case considering the claims of the determination of the ownership and the prohibition of the infringement, applying for mediation before filing a lawsuit is no longer a requirement for the subject lawsuit,

- Therefore, 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 4 November 2020 and numbered E.2019 / 3611, K.2020 / 4734 is available at this [link](#). (only available in Turkish).

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