

Turkey Introduced Significant Amendments to the Code of Civil Procedure

18 Aug 2020

The Law numbered 7251 on the Amendments to the Code of Civil Procedure and Certain Laws ("**Amendment Law**") was published in the Official Gazette dated 28 July 2020 and numbered 31199 and entered into effect on the same day.

In addition to the amendments that would propose solutions to the issues faced in application of the Code of Civil Procedure number 6100 ("**CCP**"), some significant reforms were also introduced through the Law. Some remarkable amendments are summarized below:

- The amendment made to article 20 of the CCP clarifies that non-appealable judgments on lack of jurisdiction will be served upon the parties and the term for the request for the referral of the case to the competent court will commence as from the date of the service.
- The amendment made to article 28 of the CCP, adds "*situations which are indisputably necessitated by a superior interest worth preserving, of the persons related to the proceedings*" among the exceptions of the principle of publicity which enables the hearings to be held in private partially or wholly.
- The amendment made to article 36 of the CCP adds "*having acted as a mediator or conciliator in the dispute*" among the causes for the recusal of the judge. On the other hand, article 38(9), which regulated that the decisions of the authorities which assessed the request for recusal can only be appealed along with the final judgment, was abolished. Thus, the contradiction with the article 43(2), which regulated that the authority decisions regarding the recusal request can be appealed within two weeks from the date of pronouncement or service in the cases where final judgement is appealable, was eliminated.
- A restriction was introduced in article 107 of the CCP concerning the term in which the conclusion and request can be altered without being subject to the prohibition of the expansion of the claim in the unquantified debt action. Accordingly, when it became possible to quantify the claim wholly and certainly as a result of the information provided by the other party or investigation, the plaintiff will be allowed to quantify its claim without being subject to the prohibition "*within the 2 weeks of the peremptory term granted by the judge before the completion of the investigation stage.*"
- The amendment made to article 125 of the CCP stipulates that in the event that the subject of the case is transferred by the plaintiff after the filing of the case and the action is concluded against the plaintiff, the ones who transfer and receive the subject of the case shall be severally liable for litigation expenses.
- The amendments made to articles 127 and 317 of the CCP which regulate the term for submitting the statement of defense clarify that the time extension to be granted by the court to the defendant shall begin "*from the end of the term for the statement of defense*".
- The amendment made to article 140(2) of the CCP burdens the judges with an obligation to enlighten the parties regarding "*the rules, process and legal consequences of the conciliation and mediation*". In addition, it stipulates that the party who did not submit the documents shown in their brief and make the required explanation for summoning of the documents despite the notification made in the

invitation for the preliminary hearing, shall be deemed to renounce from relying on this evidence.

- The amendment made to article 141 of the CCP abolishes the freedom to extend the claim and defense in the preliminary review phase, with the clear approval of the opposing party or in the event of non-attendance of one of the parties at the preliminary hearing. Accordingly, the prohibition of amendment/expansion of the claim and defense shall commence with the termination of the exchange of petitions.
- As per the amendments made to articles 147(1) and 186 of the CCP, a separate invitation for oral proceedings in addition to the invitation for investigation will no longer be served on the parties.
- The amendment made to article 149 of the CCP removes the requirement of the parties' approval for conducting hearings via video and audio transfer. Accordingly, the court will decide upon one of the parties' requests or *ex officio* to hold hearings through those means.
- According to the addition made to the article 177 of the CCP, in the event that the case is referred to the court of the first instance after the reversal decision of the Court of Cassation or decision of annulment of the Circuit Courts of Appeal, and the court of the first instance carries out an action regarding the inquiry; amendment of pleading will be possible until the investigation stage is concluded.
- Pursuant to the amendment made in article 222 of the CCP, the conditions for using the commercial books as evidence in support of its owner, are aggravated.
- In accordance with the amendment made to article 281 of the CCP, an additional term up to 2 weeks for filing an objection to expert report as from the end of the legal term may be granted by the court.
- New article 305/A of the CCP introduces a procedure named "Completion of the Judgement". Accordingly, the parties are entitled to request within one month following the service of the final judgment an additional judgment regarding the issues that were not concluded partially or wholly despite being asserted during the proceedings or being necessary to be included in the judgment *de facto* and to seek legal remedies against this additional judgment.
- Through an amendment made in article 341 of the CCP, interim injunctions and interim attachments which are granted in the opposing party's presence are included among the first instance decisions which can be appealed.
- The amendment made to article 359 of the CCP stipulates that in the event that the Circuit Court of Appeal dismissed the case on substantial grounds, provided that the asserted appeal reasons are summarized and dismissal reasons are explained, it can justify the decision solely by citing the compliance of the judgment with the provisions of law reason.
- Several amendments were made to articles 391 and 393 of the CCP, concerning the interim injunctions. In particular, the new regulation stipulates that implementation of the interim injunction shall be requested within one week after the pronouncement or service of the injunction to the requesting party.

The full text of the Law published in the Official Gazette dated 28 July 2020 and numbered 31199 is available at this [link](#) (only available in Turkish).

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