

## Turkish Court of Appeal Rejects Evidence Supplied During Preliminary Examination Phase Due to Expired Time

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The highest body within the Turkish Court of Appeal system recently considered time limits for submitting evidence at the preliminary examination stage. Accordingly, it upheld the Court of First Instance's decision to reject the defendant's evidence request because the period to make such a request had expired.

In the case at hand, one party initiated execution proceedings against the other regarding an alleged debt. The alleged debtor (as plaintiff) sought a separate court declaration that no debt existed and also claimed compensation for bad faith.

The defendant sought dismissal of the action and attempted to submit evidence during the preliminary examination stage. However, the First Instance Court rejected the evidence on the basis that the defendant failed to submit it within the permitted time.

The defendant appealed to the Court of Appeal, claiming the First Instance Court's decision was based on deficient evidence because the lower court had refused the defendant's witness examination request. The Court of Appeal reversed the First Instance Court's judgment and sent the matter back to the First Instance Court. However, the First Instance Court insisted that its previous judgment should stand, so the matter was referred to the highest body within the Court of Appeals (the Assembly of Civil Chambers).

The Assembly of Civil Chambers confirmed the First Instance Court's initial decision to reject the defendant's evidence, noting that:

- For negative declaratory judgments like this, the burden of proof rests with the defendant.
- Despite receiving notifications, the defendant's witness examination requests during the preliminary examination stage were made after the period to do so had expired.
- The First Instance Court cannot grant time extensions to submit evidence which has not already been referred to at the preliminary examination hearing.

The Assembly of Civil Chambers based its decision on:

- Article 6 of the European Convention of Human Rights - Right to a fair trial.
- Article 90 of the Turkish Constitution.
- Article 141 of the Civil Procedure Law.

*Case reference: Yarg. HGK. 23/01/2014, 2014/13-856 E. 2016/523K)*