

Turkish Court Upholds Decision that Parties Cannot Amend Pleadings After a First-Degree Court's Decision is Reversed

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The Turkish Court of Cassation recently upheld a 1948 decision to the effect that parties cannot amend their pleadings after the first-degree court's decision is reversed by a higher court. The General Assembly on the Unification of Judgements of the Court of Cassation ("**General Assembly**"), the highest body within the Court of Cassation, made the decision in the context of a lawyer's application to resolve conflicting judgments by different Chambers of the court.

The General Assembly discussed the legal grounds to change a 1948 decision (Decision on Unification of Decisions number 10/3, dated 4 February 1948; "**1948 Precedent**").

The 1948 Precedent was rendered under the (now abrogated) Civil Procedure Code numbered 1086, which prohibited pleading amendments after a reversal decision. However, the legislation allowed pleading amendments until the end of court's inquiry. The 1948 Precedent stated that once a court's decision is reversed by a higher court, the parties could no longer amend their pleadings.

In the case at hand, the General Assembly ultimately decided by majority that the 1948 Precedent should not be changed and parties cannot amend their pleadings after a reversal decision. It noted that the European Court of Human Rights does not deem prohibitions on amending pleadings after a reversal decision as violating rights.

It also noted that unification decisions (such as the 1948 Precedent) have the force of law and the 2011 Civil Procedure Code did not explicitly abrogate the 1948 Precedent. Therefore, there is no reason for the 1948 decision to not to be in force.

Dissenting members of the General Assembly argued the 1948 Precedent should be changed on the basis that:

- A series of subsequent legislative changes, including notably:
 - 1961 Constitution.
 - 1982 Constitution.
 - Civil Procedure Code numbered 6100 ("**2011 Civil Procedure Code**").
- Preventing pleading amendments causes major inequalities, particularly for reversals based on procedural grounds. Procedural reversals which do not consider a case's merits (i.e. lack of court's authority), mean the parties lose their right to amend their pleas, even though the first instance court has not begun the inquiry phase.
- =The 2011 Civil Procedure Code states that pleadings can be amended until legal inquiries are concluded.

The General Assembly's decision (Number 2015/1 E., 2016/1 K.) from 6 March 2016 was published in Official Gazette number 30016 on 23 March 2017 and can be accessed at this [link](#) (only available in Turkish).

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