An Overview of Appeal and Cassation Procedures in Turkish Civil Procedure

The Former Civil Procedure Law (the **"Former CPL"**), which governed legal procedures in civil claims, had been enacted in 1927, roughly four years after the establishment of the Turkish Republic. The Former CPL stipulated a dual legal remedy mechanism for ordinary legal remedies[1]. The Former CPL was amended many times throughout the years. However, the most substantial amendment was made with Law No. 5236 in the year 2004. Law No. 5236 entered into force as a reflection of then newly adopted Law on Establishment, Competence and Jurisdiction of Civil Courts of First Instance and District Civil Courts (**"Law No. 5235"**).

Law No. 5235 entered into force with the aim of fulfilling a certain set of criteria, set forth in the European Union's (the **"EU"**) Accession Partnership Document for Turkey. These criteria were designated for Turkey's possible accession to the EU as a member state. Along with the EU Accession Partnership Documents, the EU Commission also drafted several reports between 2003 and 2005 regarding the judiciary system in Turkey, in which it emphasized that the establishment of a secondary court mechanism to the courts of first instance would decrease the Court of Appeals' workload. The reports further put forth that establishment of regional courts would let the Court of Appeals operate as an institution issuing precedent, rather than merely acting as a secondary court.

In contrast to the dual legal remedy mechanism stipulated in the Former CPL, Law No. 5235 introduced a ternary system, by establishing superior courts to courts of first instance that are already functioning. The mentioned legal remedy system will be briefly examined below. However, it is worth emphasizing that the new legal remedy system introduced by Law No. 5235 is not yet operating. The Former CPL was amended in line with Law No. 5235 and the ternary legal remedy system was incorporated into the Former CPL, but the law-makers added a temporary article stipulating that the amendments regarding the legal remedy system will not be implemented until a separate law on the application of Law No. 5235 enters into force. As of December 2014, this law has not yet entered into force.

In addition to the pending state of the new legal remedy system in Turkish civil procedure, on 1 October 2011, the New Civil Procedure Law[2] (the **"CPL"**) entered into force. The CPL's provisions on the legal remedy system are substantially the same with the amendments made on the Former CPL, which were made in line with Law No. 5235. The same ternary system is preserved in the CPL. However, just like the Former CPL had, the CPL has a temporary article, which stipulates that the ternary legal remedy system will not be implemented until a separate law on application of Law No. 5235 enters into force. Therefore, the secondary legal remedy system is still applicable in the Turkish civil procedure system, just like it had been drafted in the Former CPL's original version. As a result, the ternary legal remedy system is not yet physically functioning.

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[1] "Ordinary legal remedies" are legal actions that can be taken against final decisions, which are not yet deemed definite. Once the lapse of time stipulated in the Civil Procedure Law expires, the claimant or the defendant cannot purse a further action against the definite decision within scope of ordinary legal remedies. Further legal actions against definite decisions can be pursued by "extraordinary legal remedies", which are outside the scope of this article.

[2] The CPL was published in the Official Gazette of 4 February 2011.

Novelties of the New Legal Remedy System

The CPL provides a ternary legal remedy system, by establishing a secondary instance called "*istinaf*". The *istinaf* process is in-between the first instance (i.e. the court, the local court or the trial court) and cassation. In the former system, in which the civil legal remedy system was comprised of a first and a second instance, *Yargıtay* (the Turkish Court of Appeals for the highest instance) was just regarded as "the Court of Appeals". However, with the introduction of a ternary legal remedy mechanism, *Yargıtay* will function as a "court of cassation", and *istinaf* courts will act as the primary appeal authority. Yet, in this article, we will refer to *Yargıtay* as Court of Appeals from now on, for ease of reference.

First, the local court will examine the dispute, as the first competent authority. After this examination, if there are no procedural grounds to dismiss the dispute, the court will render a final decision on the merits. After the court renders its final decision, a party or both of the parties, if not pleased with the final decision, may appeal the decision (in line with the *istinaf* procedure). The Regional Court of Justice[3] (the **"Regional Court"**) has the authority to examine the decision on both procedural grounds and the merits of the case. After the Regional Court renders its decision, if a party or both of the parties is/are still not pleased with the Regional Court's decision, this decision may be appealed at the Court of Appeals (i.e. *Yargıtay*), which is the third and final judicial authority in the new ternary system of civil procedure.

The Appeal Procedure

The CPL stipulates the decisions which the parties may apply against before the Regional Court. Accordingly, (i) court's final decisions; (ii) rejection of a preliminary injunction or a preliminary attachment; or (iii) (if a preliminary injunction or a preliminary attachment is accepted by the court) decisions rendered as a result of objections made against the acceptance of the injunction/attachment, are subject to appeal. However, in any case, there is a threshold for a decision to be appealed before the Regional Court. If the subject matter of dispute is pecuniary and the claim amount does not exceed TRY 1,500, the decision rendered by the court cannot be appealed.

If a party decides to appeal a decision rendered by the court, it should submit its appeal petition to the same court that rendered the final decision, within two weeks (unless regulated by a special provision otherwise), as of the service of the court's final decision on the relevant party. If the application period of two weeks passes and the decision becomes definite, the court should dismiss the appeal application.

Application to appeal procedure does not automatically stay the execution of the decision, except for several circumstances stipulated in the CPL, such as decisions related to family law, law of persons or real estate. Moreover, according to the Execution and Bankruptcy Law, an appellant that secures the amount subject to the court's decision before the relevant execution office, may be provided a time extension certificate. Upon issuance of this certificate, the appellant should apply to the Regional Court for a stay of execution decision. After completion of this process, the court's decision can no longer be executed before the Regional Court renders a decision.

The Regional Court reviews the lawsuit with two processes, i.e. preliminary examination and inquiry. In the preliminary examination, the Regional Court examines procedural issues and

[3] The Regional Courts of Justice are the authorized courts in the newly introduced appeal procedure, established under Law No. 5235.

either dismisses the lawsuit due to lack of procedural requirements or passes to the inquiry phase. During the inquiry phase, the Regional Court is bound by the appeal reasons stated in the petition while examining the file. As an exception, if the lawsuit is of public order, then the Regional Court may go beyond these reasons. The Regional Court conducts the inquiry phase by holding hearings (unless stipulated by special provisions otherwise).

At the end of the inquiry phase, the Regional Court may:

- reject the appeal and uphold the court's final decision;
- uphold the decision by amending it, if the decision bears an inadvertent minor mistake;
- accept the appeal application and decide to send the lawsuit file to:
  - the court which the decision is rendered,
  - a new court of first instance, or
  - a new Regional Court (all three scenarios are applicable in case there is a procedural appeal reason);
- decide to partially or fully accept the appeal, overrule the court's decision, retry and render a new decision.

The Cassation Procedure

Parties may appeal the Regional Court's decision within one month following the decision's service on the parties, before the Court of Appeals. In order for the parties to appeal the decision before the Court of Appeals, (i) the decision must be rendered by the Regional Court and should be deemed final or must have been rendered upon a request to cancel an arbitral award; and (ii) must not be included in the decisions listed in the CPL as unappealable. The Court of Appeals, like the Regional Court, will examine the lawsuit file on a preliminary basis and then proceed to the inquiry phase. Unlike the Regional Court, the Court of Appeals is not bound by the appeal reasons stated in the appeal petition.

At the end of the inquiry process Court of Appeals may:

- reject the appeal and uphold the Regional Court's decision;
- uphold the Regional Court's decision by making amendments on it;
- accept the appeal application, overrule the decision and decide to:
  - send the lawsuit file to the court or to another relevant court of first instance, or
  - send the lawsuit file to the Regional Court or to another relevant Regional court.

Both the court and the Regional Court may adhere to the relevant decision or insist on their initial decisions. If they insist on their initial decisions, the decision would be taken to the Court of Appeals Assembly of Civil Chambers (the **"Chamber"**). The court and the Regional Court must adhere to the Chamber's decision.

As stated above, the CPL stipulates a ternary appeal procedure compared to the Former CPL, without the amendments made in line with Law No. 5235. It has been roughly nine years since the ternary system has been introduced. However, due to various reasons such as lack of infrastructure and lack of trained judges and prosecutors, the newly introduced system has not yet been implemented. For now, the dual legal remedy system set out in the Former CPL is still in force.

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