

MAJOR CHANGES INTRODUCED WITH THE LAW NO. 7445 ON AMENDMENTS TO THE ENFORCEMENT AND BANKRUPTCY LAW AND OTHER CERTAIN LAWS

Also known as the 7th Judicial Package, the Law No. 7445 On Amendments to The Enforcement and Bankruptcy Law and Other Certain Laws ("**Law**") entered into force after being published in the Official Gazette dated 05.04.2023 and numbered 32154. With this amendment, various modifications were made in several laws, particularly the Enforcement and Bankruptcy Law No. 2004 ("**Enforcement and Bankruptcy Law**") and the Law on Mediation in Civil Disputes No. 6325 ("**Mediation Law**").

The significant amendments introduced under the Law are briefly summarized below.

1. Amendments to Enforcement and Bankruptcy Law

The law provides for the addition of a new article to the Enforcement and Bankruptcy Law with the heading "*attachment on residence*" and stipulates that the enforcement office director's decision on the attachment of the residence will be implemented with the approval of the enforcement court in order to strengthen the privacy of the residences during the attachment proceedings. Accordingly, with the new regulation;

- After conducting the examination of whether the place where the attachment is requested is a residence or not, if it is determined that the place requested is a residence, the enforcement office director shall order the attachment pertaining to the residence and shall immediately submit this order to the approval of the enforcement court.
- If the court determines that the place where the attachment is requested is a residence after examining the file **within three days at the latest** from the submission date of the file, it will peremptorily approve the attachment order. Upon notification of the approval order to the enforcement office, attachment proceedings can be carried out. If the court determines that the place where the attachment is requested is not a residence, it will peremptorily revoke the order of attachment on the residence. Upon notification of this decision to the enforcement office, the director of enforcement office will be able to give a new order on the existing attachment request and implement it directly.
- If it is determined that the place of attachment is not a residence upon the approval decision of the court, the attachment proceedings will be continued. On the other hand, during the attachment process carried out on a attachment order given on a place that is considered not to be a residence, if it is decided that the place is a residence and the debtor does not consent to the attachment, the enforcement office director will end the attachment process and obtain the approval of the enforcement court for the attachment on the residence, as explained above.
- Considering that the precautionary attachment is applied upon a court decision, the precautionary attachment was excluded from the scope of the article.
- This regulation shall not apply to orders on the attachment of residence issued before the effective date of the article.

With the law, the **personal belongings of the debtor and family members** living together and **all household items** serving the common use of the family are included among the items that may not be attached. In this way, it is aimed to protect the ability of people to maintain their lives in a manner befitting human dignity by maintaining a minimum standard of living. Within the scope of the Law, the procedures and principles regarding the liquidation of the goods in the depository with the release of the attachment on which the retention is based is regulated in detail.

2. Amendments to Mediation Law

One of the most important amendments made by the law is in the field of mediation. The scope of mediation that is a prerequisite for litigation has been expanded by amending the Mediation Law, the Turkish Commercial Code No. 6102 and the Code of Labor Courts No. 7036. In particular, **disputes arising from the rental agreements** have also been included in the mediation as the disputes between the lessor and the tenant have increased due to the recently increased rent prices.

In addition, it is regulated that disputes concerning the transfer of the immovable property or the establishment of real rights on immovable property are eligible for mediation, and that if the parties in disputes agree in writing and the mediator records this decision, **at the request of the mediator, an annotation shall be given to the land registry that the power of disposition is restricted** which is limited to the mediation process and **not exceeding three months** from the date of its imposition. If the parties in the disputes agree in writing and the mediator records this decision. If the parties cannot agree or if the parties agree on the removal of the annotation, it will be removed at the request of the mediator; otherwise, it will be removed by itself at the end of the three-month period.

As a result, in terms of the following types of disputes, it has become a case condition that the mediator is consulted before the case is filed:

- Disputes arising from the rental agreements, except for the provisions regarding the eviction of the leased immovable properties by way of enforcement proceeding without judgment under the Enforcement and Bankruptcy Law
- Disputes concerning allocation movable and immovable properties and the dissolution of the partnership
- Disputes pertaining to Condominium Law No. 634
- Disputes pertaining to neighbors' right

In addition, actions for annulment of objections, negative declaratory actions and restitution actions related to some commercial and labor disputes are also explicitly included in the scope of mediation that is a prerequisite for litigation in the relevant laws and it is aimed to eliminate the hesitations in the practice.

The provisions on mediation, which are accepted as a condition of the case added to the Mediation Law, will enter into force on 01.09.2023 and will not be applied to the cases that are being heard in the courts of first instance and regional courts of justice and the Court of Cassation as of the date of entry.

3. Amendments to Criminal Law

With the amendments made in the relevant laws in terms of criminal law within the scope of the Law, in order to make criminal sanctions for synthetic drugs and stimulants with high addictive properties more deterrent, it is envisaged that the penalty for the crime of manufacturing and trafficking these substances will be increased by half; that is aimed to reintegrate those convicted of drug and stimulant use into the society by making it compulsory to participate in treatment and rehabilitation programs; that the lower penalty limit for the crime of migrant smuggling has been increased from three to five years for enabling a more effective fight against this crime.

4. Amendment to Other Laws

- a. **With the amendment made in the Law No. 5235 on the Establishment, Duties and Powers of the Courts of First Instance and the Regional Courts of Justice**, the monetary limit for disputes heard by a single judge at the commercial courts of first instance has been increased from **500,000 (five hundred thousand) Turkish Liras to 1,000,000 (one million) Turkish**

Liras and it has been arranged that the monetary limit will be increased by the revaluation rate every year.

- b. With the provision introduced to the Legal Profession Act No. 1136**, it is envisaged that financing support will be provided on favorable terms by credit and financial institutions and lending public institutions and organizations in order to cover the expenses of lawyers to establish offices. In addition, in order to financially support lawyers who are new to the profession, it is regulated that bar fees will not be taken in the first five years of the profession, and the proportion of fees and fines included in the revenues of the legal aid office was increased from **2% (two percent) to 3% (three percent)** to strengthen the legal aid system.
- c. With the regulation introduced to the Notary Law No. 1512, recording of evidence is added to the scope of the determination procedures to be carried out by notaries.** Accordingly, notaries will be able to **inspect** in or out of the notary office **upon request** in order to determine a fact to be asserted in a future case, and they will be able to have both an expert examination and a witness testimony by taking an oath. The notaries shall prepare a minute containing all the transactions and statements made during the determination process and shall attach the expert report and other documents, if any, to the minutes. Due to the importance of the recording of evidence, the procedure of conducting it **by the notaries themselves or by the law school graduate officer or notary intern authorized to sign by the notary office** will also be accepted.
- d. With the regulation introduced to the Turkish Commercial Code No. 6102;** the simple trial procedure will be applied in commercial cases where the amount and value of the case does not exceed **1,000,000 (one million) Turkish Liras** and it is stipulated that the monetary limit in question will be increased at the rate of revaluation every year in accordance with the Annex 1 Article titled "*Increasing the monetary limits*" of the Code of Civil Procedure No. 6100.

5. Effective Dates

Articles 31, 34, 36, 37, 38, and 41 of the Law will enter into force on 01.09.2023, and other provisions entered into force as of 05.04.2023, the date of its publication in the Official Gazette.

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Should you have any queries on the above, please do not hesitate to contact us.

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