

20 August 2020

**INFORMATION NOTE ON THE AMENDMENTS TO THE CODE OF CIVIL
PROCEDURE**

Within the scope of Judicial Reform Strategy Document, the Law No. 7251 on the Amendments to the Code of Civil Procedure and Certain Laws ("**Law No. 7251**"), which introduces significant amendments regarding the civil procedure, has entered into force upon its publication in the Official Gazette dated 28 July 2020.

The Law No. 7251 introduces amendments to various laws, especially to Code of Civil Procedure No. 6100 ("**CCP**"), Enforcement and Bankruptcy Law No. 2004, Code of Administrative Procedure No. 2577, Cadaster Law No. 3402, Law No. 5235 on the Establishment, Duties and Jurisdiction of Courts of First Instance and Regional Courts of Appeal, Insurance Law No. 5684, Turkish Commercial Code No. 6102, Law on the Protection of the Consumer No. 6502 and Industrial Property Law No. 6769.

In this note, we focus on the significant amendments to CCP.

1. Amendments regarding the preliminary examination phase

Before the amendments introduced by the Law No. 7251, a two-week definite period was being granted to the parties at the preliminary examination hearing to present the evidence that is set forth under their petitions, but not presented yet (Article 140/5). With the amendment, such two-week period granted to parties shall start to run as of the notification date of the invitation indicating the date of the hearing (Article 139). It is explicitly stated under Article 140/5 of the CCP that in case the evidence is not submitted in a timely manner, the relevant party shall be deemed as waiving such evidence. **Therefore, the evidence must be fully presented before the preliminary examination phase.** The aim of such amendment is to speed up the proceedings by preventing the loss of time at the evidence collection stage.

Another amendment is the removal of the provision enabling the counter party to extend its claims and defenses in case the other party does not attend the preliminary examination hearing without an excuse (Article 141). **Accordingly, upon the exchange of petitions, the parties will not be able to extend their claims and defenses.** On the other hand, rectification right, which is the exception of the prohibition of extending claims and defenses, is preserved (Article 141/2).

2. Amendments regarding the oral proceedings phase

The obligation to set a separate hearing for the oral proceedings has been abolished (Article 186). **Accordingly, a separate hearing for the oral proceedings will be set upon the request of one of the parties.** The aim behind such amendment is to speed up the proceedings by completing the oral proceedings at the hearing where the investigation is completed.

3. Amendments regarding the actions for uncertain debt

The action for uncertain debt is filed when the amount or value of the receivable cannot be determined exactly or precisely on the date of action and the plaintiff becomes entitled to increase the amount of demand without being subject to the prohibition of extending claims and defense when the amount of receivable becomes determinable. In practice, it was an issue to decide on the moment when the amount becomes determinable. In order to eliminate this problem, it is introduced with the Law No. 7251 that **when a receivable becomes determinable,**

the judge will grant a definite period of two-weeks to the plaintiff in order to inform the exact claim amount (Article 107/2).

4. Amendments regarding the change of pleadings

A significant change introduced by the Law No. 7251 relates to the right of the parties' to change their pleadings following a reversal judgment by the appellate court (Article 177/2).

Pursuant to the principle established by the Unification Decisions of the Court of Cassation numbered 10/3, dated 04.02.1948 and numbered 1/1, dated 06.05.2016, during the re-trial before the first instance court following a judgment of reversal by the appellate court, the parties were not entitled to change their pleadings, neither on substance nor on procedure. In contrary to this case-law principle, the amendment on law sets forth that to the extent that the legal circumstance which appears upon the first instance court's compliance with the appellate decision is not prejudiced, the pleadings of the parties could be changed upon the re-trial of the case following a decision of revocation by the Regional Courts of Appeal or a decision of reversal by the Court of Cassation.

5. Amendments regarding the objections to expert opinions

In relation to the objection period in case of expert reports, it is stated that in cases it is extremely difficult or impossible to provide objections or it requires a special or technical research, the relevant party may be provided with a period of additional two-weeks only once upon the end of the objection period (Article 281). Indeed, the two week period granted before the amendment is not sufficient in case of detailed and comprehensive files. Also, in practice a long time passes between the hearings due to the heavy workload of the courts; therefore, such extension of two weeks will probably not cause the proceedings to be extended.

6. Amendments regarding the hearings to be conducted by image and sound transmission

While the consents of both parties were required in order to conduct the hearings by way of image and sound transmission before the amendment introduced with the Law No. 7251, with the amendment, it will be possible to conduct the hearings in such manner upon the request of only one of the parties (Article 149).

7. Introduction of the supplemental judgment procedure

As per the provision added to the CCP under the amendments, the parties may request issuance of a supplemental judgment within 1 (one) month as of the notification date of the final judgement in case the issues asserted by the parties during the proceedings or the issues that must be decided by the court *ex officio* were not included in the final judgment (Article 305/A). Such judgments are also subject to appeal.

8. Amendments in relation to the penalty foreseen as a result of opposition to interim injunction decisions

The relevant provision of CCP regulating the preventive detention as a penalty resulting from opposition to interim injunction decisions was found unconstitutional by the Constitutional Court and abolished on the ground that the provision does not include any explanation regarding the proceedings and there was no clarity in regards to the appeal procedure of such decisions. With the amendment, the provision has been redrafted in light of the Constitutional Court decision by bringing the objection option. Accordingly, the parties can object to the relevant decision within one week from the pronouncement or notification of such decision and the relevant authority receiving the objection needs to decide thereon within one week (Article 398).

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If you have any questions regarding our note above, please do not hesitate to contact us.

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