

Court of Cassation's latest approach to actions for unquantified amounts of receivables

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Introduction

When the new Code of Civil Procedure was enacted in 2011, it introduced a new case type to Turkish litigation, enabling plaintiffs to file actions for unquantified amounts of receivables, the determination of which is left to the courts. When filing such actions, plaintiffs must:

- state the amount of determinable receivables as the minimum amount subject to the dispute;
- pay a case fee based on this amount;
- extend their claim to the amount calculated by the court; and
- pay the outstanding court fees once the exact amount of receivables has been determined.

However, the code does not set out how the courts should react when such cases fall short of the legal prerequisites – namely, in cases where the amount of receivables claimed is in fact determinable. Over time, scholars and the Court of Cassation have developed different opinions on this matter due to its controversial nature.

In a 16 May 2019 decision, the General Assembly of the Civil Chambers of the Court of Cassation (2016/22-1166 E, 2019/576 K) ruled that if an action for an unquantified amount of receivables is initiated despite the amount being determinable, the courts should not immediately reject the case but should instead proceed with the trial by deeming the action a partial action.

Facts

The dispute emerged from an employee's claims for severance and notice payments on the grounds of an allegedly invalid termination of employment. The first-instance court accepted the severance payment but rejected the notice payment. The 22nd Civil Chamber of the Court of Cassation reversed the first-instance court's decision (19 October 2015, E 2014/16510, K 2015/28942), stating that the plaintiff had no legal interest in filing the action for an unquantified amount of receivables as – given that the employee had been aware of their last salary and term of employment – the amount of the receivables was determinable. The first-instance court maintained its decision on the grounds that it would be unfair to expect the employee to determine the requested amount due to uncertainties and a lack of documentation. Therefore, the decision was brought before the General Assembly.

General Assembly decision

The General Assembly approved the first-instance court's decision. It held that the lower court should not have immediately rejected the case due to the employee's lack of legal interest as a cause of action. Instead, it should have proceeded with the trial by deeming the case a partial action and granting the plaintiff time to pay the outstanding court fees if the prerequisites for partial action were fulfilled.

The General Assembly further suggested that the plaintiff had had no other option but to initiate an action to collect its receivables; therefore, it was incorrect to assume that the plaintiff had no legal interest in filing the action. In other words, the General Assembly ruled that the determinability of the receivables at the beginning of the trial had no impact on whether the plaintiff had legal interest. The decision also set out that such an assumption would comply with the procedural economy principle, as well as the right to legal remedies and the right to access the courts.

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Based on the annulment of Article 109/2 of the code, which suggested that no partial actions could be initiated if the requested amount was determinable definitely, the General Assembly further concluded that it is now possible to deem an action for an unquantified amount of receivables which lacks the required legal prerequisites a partial action.

In addition, the decision included a dissenting vote, which asserted that a legal interest cannot be fulfilled later as a cause of action if the plaintiff initiated the action as an unquantified claims action despite the receivables being determinable.

Comment

The Court of Cassation has shown different approaches towards actions for unquantified amounts of receivables since they were introduced into Turkish law in 2011. Some chambers of the court have opined that where the amount in dispute is determinable, the plaintiff should be granted time to declare the requested amount and pay the relevant court fees accordingly, while others have ruled that such cases must be immediately rejected due to a lack of legal interest.

A 4 July 2018 decision of the General Assembly (E 2016/2633, K 2018/1300) suggested that a lack of legal interest is not a prerequisite that the parties can fulfil afterwards, and that granting time to clarify the requested amount would enable the plaintiff to create a non-existing interest. Accordingly, the General Assembly concluded that such practice would violate the existing procedural rules and the equality-of-arms principle.

However, with this decision, the General Assembly has departed from its former approach. The Court of Cassation is expected to grant a unification decision regarding the conflicting judgments to provide a binding conclusion.

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