

THE LAW WHICH AMENDED CERTAIN ARTICLES OF THE CODE OF CIVIL PROCEDURE, NUMBERED 1086¹

Translated by Tayfun AKGÜNER, M. Comp. L.

Teaching Assistant

Institute of Administrative Law and Administrative Sciences
Istanbul University Law School

Law No. 1711

Acceptance Date : April 30, 1973

Article 1 : Articles 8, 9, 176, 288, 289, 290, 409, 427, 438; 440 and 507 of the Code Of Civil Procedure numbered 1086 have amended in the following way :

Article 8 : The Justice of the Peace² is authorized to hear the following cases :

I. All cases not exceeding 5.000 Turkish Liras in sum or value arising from patrimonial law except for bankruptcy and trust cases,

II. Cases in which value is not considered :

1. Excluding matters covered by Articles 269, 272 and subsequent articles of 10 th title of the Code of Execution and Bankruptcy, all kind of eviction cases arising out of rental contract or cancellation of contracts or declaratory judgment cases, along with related cases of rent or damages due and cases arising out of counter claims.

2. Cases involving division of joint right or property, wether movable or immovable, or the sale of such.

1) Taken from the Official Gazette, May 8, 1973 numbered 14529.

2) This is the lowest civil court in Turkey. It has on'y a single judge. There is at least one in every district (kaza).

3. Cases involving protection of sole possession of movable or immovable property.

4. If there is no separation or divorce suit, petitions enforcing, amending or lifting the provisions written in Articles 161 and 162 of the Turkish Civil Code.

5. Petitions for enforcing, amending or lifting the provisions written in Article 163 of the Turkish Civil Code and petitions based on Article 315; and matters assigned to the judge or the court by Articles 95, 159, 173, 261, 271, 311 and 314 of the same Code and by Articles 91 and 92 of the Turkish Code of Obligations.

6. Petitions for marriage and adoption.

7. Petitions on inheritance rights or cases to change or annul an inheritance document.

III. Cases and matters which are authorized in this and other laws relating to the Office of Justice of the Peace and its judges.

Articles 9 : All cases, if there are no other provisions in effect shall be brought before the courts wherein the defendant has his residence according to the Turkish Civil Code. If the defendant's residence is not certain, the case shall be brought before the Court in the area wherein the defendant has last been known to live.

If there is more than one defendant, the case shall be brought before the Court in the area wherein one of the defendants has his residence. If a court is authorized over all the defendants by the law according to the reason of the case, then that court shall hear the case. If a case is brought against the defendant in a court, other than the proper one, and this is proved, then the Court will relinquish its jurisdiction.

In the case of divorce or separation cases, the authorized court will be where the plaintiff has his residence or where the couple last lived together for six months before the case.

Article 176 : The following cases and matters shall be handled during the annual judicial recess³ :

3) In Turkey this recess is between (July 20 - September 5).

1. Decisions on precautionary measures, on seizure of goods of contested ownership and establishment of evidence, on gathering maritime reports and on petitions of appointment of an average adjustment and on claims against these petitions,
2. Judicial investigation to be conducted during the judicial recess,
3. All kinds of alimony cases,
4. Cases involving natural guardianship and other types of guardianship,
5. Cases involving birth,
6. Cases arising from service contracts,
7. Annulment cases arising from the loss of commercial papers,
8. Matters and disagreements which fall within the jurisdiction of the Court under the provisions covered by the arbitration section of the Code,
9. Cases involving bankruptcy and concordats,
10. Matters and cases which by law fall under the jurisdiction of Justice of the Peace or its judges,
11. Other matters and cases which are specified by law to be urgent or to be reviewed during the judicial recess or to be decided by the simple court procedure, and
12. Cases and matters which the Court deems urgent upon a petition from one of the parties,

If the parties agree or; if one party is absent and the other party wishes, the above mentioned matters and cases can be postponed until after the judicial recess.

During the judicial recess, the courts shall receive the filing of cases not covered in the above paragraphs, counter law suits and appeals and replies to these matters, and renewal petitions concerning law cases which have been set aside, shall give certified copies of court decisions, and shall receive and send all types of notifications and files to the other courts or the Court of Cassation⁴.

4) The Court of Cassation (Yargıtay) is the highest appellate court in Turkey.

The provisions of the Notification Act numbered 7201 are in effect.

The provisions of this article shall be applicable to procedures of the Court of Cassation.

Articles 288 : Legal instruments which aim at creating, withdrawing, transferring, amending, renewing, postponing, avowing, or redeeming a right must be verified by the signatures of the parties if their sum or value exceeds 500 Turkish Liras at the time they are drawn up. Even if the sum or value of these legal instruments becomes less than 500 Turkish Liras because of payment or discharge, they still must be verified by the parties' signatures.

Article 289 : A witness can be heard with the permission of the other party who has been advised of the above provisions concerning both parties' signatures on legal instruments as stipulated in Article 288.

Article 290: Legal motions which are made in defense against all types of claims arising from legal instruments and which reduce or abrogate the force and provisions of legal instruments shall not be verified by witnesses even when the amount is less than 500 Turkish Liras.

Article 409 : If both parties who have been called to the hearing do not appear or if they come and state they will not proceed with the case, the dossier shall be set aside until the case should be renewed.

In cases where the parties have not appeared to determine the hearing date and where this step is necessary, the provisions of the first paragraph shall apply one month after the date of the last proceeding.

A case where the dossier has been set aside in accordance with the above provisions can be renewed by either of the parties within one year from the date that the dossier was set aside. A party which has been absent for the hearings also has this right. The parties shall be notified of the renewal petition and the day, time and place of the hearing on the summons.

If a case is renewed three months or more after the date that it was set aside, the registration fee shall again be charged. This fee shall be paid by the party which renews the case and can not be charged to the opposite side. A case which is renewed by paying the registration fee in this way, shall not be considered as a new case.

If a case, within a year of being set aside, is not renewed, it shall be assumed not to have been opened and the Court shall of itself remove the case from the docket.

When a case which has been set aside in accordance with the first and second paragraphs, and then has been renewed is not pursued more than three times after the first renewal, the provisions of the fifth paragraph shall apply.

Article 427 : The decisions given by the courts may be appealed. A party which has been awarded the judgment in a case may also appeal a decision providing that there is some legal benefit to him.

Decisions concerning movable property or personal actions⁵ which do not exceed 2000 Turkish Liras in sum and value shall be final.

Decisions which are final and which became final without examination by the Court of Cassation and which are determined to be opposed to the present laws shall be appealed for the sake of the law by the Chief State Prosecutor after the Ministry of Justice has seen it necessary.

If the Court of Cassation finds the appeal justified, it shall reverse the decision for the sake of the law. This reversal shall not alter the legal results of the decision.

One copy of the reversal decision shall be sent to the Ministry of Justice and shall be published in the Official Gazette by the Ministry.

5) In civil law, an action in personam. It seeks to enforce an obligation imposed on the defendant by his contract or delict. In common law, an action brought for recovery of some debt or for damages for some personal injury (See, Black's Law Dictionary, Minn., 1968, p. 50).

Article 438 : The Court of Cassation's appellate examination shall be conducted through the dossiers. However, in cases involving dissolution of a corporate body or cancellation of a corporate body's resolutions made by its general assembly, annulment or dissolution of marriage, divorce or separation, natural guardianship, legitimacy, interdiction or personal property actions which exceed 10.000 Turkish Liras in sum and value, one of the parties to the suit may request a hearing in his appellate, supplementary or answering petitions. In such cases the Court of Cassation shall notify the parties of the date of the hearing in accordance with the procedures. There shall be at least fifteen days between the dates of notification and of the hearing. If both parties appear within this fifteen day period, the hearing shall proceed.

There can be no hearing for appellate reviews of decisions involving subject-matter competence and territorial jurisdiction⁶.

The Court of Cassation can itself decide to hold a hearing to obtain information even when the provisions of the first paragraph of this Article do not prevail.

In cases where a hearing date has been set, the Court of Cassation will pronounce its decision that day after hearing both parties or the party present or, if neither party appears, after examining the dossier.

Cases which could not be decided on the hearing date must be decided within twenty days .

Cases and matters specified by law as urgent shall have priority in the Court of Cassation.

The Court of Cassation may affirm a decision by changing and correcting it in a case where the decision was appealed because the law was inaccurately applied and where the Court of Cassation feels there is no need for a re-trial.

6) "Subject-matter competence" is used for the Turkish term "görev" and "territorial jurisdiction" for "yetki".

The above paragraph will apply where there is error in the minutes, accounts and other statements or where the parties are mistakenly identified.

If the merits and procedure of a decision are in accordance with the law but the accompanying argument is seen to be in error, that decision can be affirmed by changing and correcting the argument.

Article 440 : I. For the following reasons, a party may request the Court of Cassation reconsider its decision within 15 days of its pronouncement or notification:

1. Cases wherein objection raised in the appeal petition or in the supplementary petition which was given within the legal time limitation or in the answering petition, were left unanswered, partially or wholly, and where these objections substantially affect the decision.

2. A Court of Cassation decision wherein certain paragraphs are opposed to each other,

3. Cases where documents which substantially affected the Court of Cassation decision appear to be false and fraudulent,

4. Cases where the Court of Cassation decision is found to be contrary to law and procedure.

II. In reconsidering its decisions wherein certain objections raised in the original appeal were left unanswered, because it did not consider these objections to substantially affect the judgment, the Court of Cassation must offer reasons for denying each objection.

III. The following decisions of the Court of Cassation shall not be reconsidered :

1. Cases covered by Article 8 (excluding cases covered by paragraph II and subparagraph 7) and decisions involving the affirmation or reversal of a judgement where the sum and value in question is less than ten thousand Turkish Liras.

2. Decisions involving subject-matter competence and territorial jurisdiction or involving rejection of a judge or decisions involving a suit or counter-suit which was assumed not to have been filed or decisions naming the authorized Court.

3. An arbitrator's decisions and decisions to affirm or to reverse lower court decisions made in accordance with the arbitration provisions of this Act.

Article 507 : The simple court procedure shall apply in the following instance as well as in those specified by other laws :

1. The matters and cases covered by Article 176, subparagraphs three, four, five, six, seven, eight, nine and ten.

2. As long as no other procedure is specified by law, instances wherein the Court has the discretion either to hear both parties or to examine the dossier and decides to hear the case.

Article 2: The following Article 113/A shall be added to the Code of Civil Procedure numbered 1086 after Article 113 :

Article 113/A : A person who does not comply with provisions of the precautionary measure decisions or who acts contrary to measures taken in that way, shall be sentenced by the appropriate criminal court from one to six months imprisonment provided that the Turkish Criminal Code does not specify a stiffer penalty.

Article 3 : Article 10 of law numbered 6570 concerning rents on immovable property is hereby repealed.

Temporary Article : The provisions of the Code of Civil Procedure numbered 1086 which are hereby amended shall apply only to cases filed after this Act goes into effect; However, Article 113/A and the provisions which hereby amend Articles 176, 289, and 507 shall apply to suits and matters already before the courts at the time this Act takes effect.

For cases already before the courts at the time this Law takes effect, the time periods specified in Article 409 of this Act shall apply three months after this Act takes effect.

Article 4 : This Act shall take effect 30 days after the day of its publication.

Article 5 : The Council of Ministers shall enforce the provisions of this Act.

ASSOCIATIONS ACT



Enacted by the Council of Ministers on the 15th day of May, 1952

Enacted by the Council of Ministers on the 15th day of May, 1952

Enacted by the Council of Ministers on the 15th day of May, 1952

Enacted by the Council of Ministers on the 15th day of May, 1952

PART I

PRELIMINARY

Enacted by the Council of Ministers on the 15th day of May, 1952

Enacted by the Council of Ministers on the 15th day of May, 1952

Enacted by the Council of Ministers on the 15th day of May, 1952

Enacted by the Council of Ministers on the 15th day of May, 1952

Enacted by the Council of Ministers on the 15th day of May, 1952

Enacted by the Council of Ministers on the 15th day of May, 1952

Enacted by the Council of Ministers on the 15th day of May, 1952