MAKALE (Araştırma Makalesi)

THE SITUATIONS TO BE DECIDED WITHOUT A HEARING ON PROCEDURAL MATTERS IN THE APPEAL IN TURKISH CIVIL PROCEDURE LAW

Derya BULUTTEKİN*

ABSTRACT

In Turkish civil procedure law, with the commencement of the regional courts of justice, a three-tier judicial system was introduced. Accordingly, inconclusive final decisions given by the first instance courts will first be subject to appeal legal review, if there are conditions. The Appeal, like appeal, is an ordinary remedy. Unlike the appeal review, the appeal review provides both procedural and legal compliance review. It is not necessary to hold a hearing in the appeal remedy, but a hearing will be held if necessary. However, the article 353/1-a of Turkish Code of Civil Procedure, it is regulated that the regional court of justice will decide on some of the files that have passed the preliminary examination stage in the appeal without a hearing. When the judge who is prohibited from hearing the case has made a decision, if the judge who was rejected despite the justified recusal request has heard the case, if the competent court has improperly ruled in a manner unauthorized or on lack of jurisdiction or has heard the case despite not having jurisdiction or competence, if there is a violation of other litigation conditions, if the court has deemed the lawsuit or

* Arş. Gör. Dr., Dicle Üniversitesi Hukuk Fakültesi Medeni Usul ve İcra İflas Hukuku Anabilim Dalı, E-Mail: bulutteki nd@gmail.com, ORCID ID: 0000-0002-4913-7118.
Makalenin Gönderim Tarihi : 07.01.2024.
Makalenin Kabul Tarihi : 10.05.2024.

counterclaim not filed in violation of the procedure, in case of a decision to consolidate or separate the cases, the failure of the court to collect or evaluate evidence that is important enough to be effective in the resolution of the dispute, or the failure to decide on a significant part of what is requested from the court, the all foregoing are serious procedural matters and the regional courts of justice will decide on these issues without a hearing.

Keywords: Ordinary legal remedies, the appeal, the hearing in the appeal, the absolute reasons for the appeal.

TÜRK MEDENİ USUL HUKUKUNDA İSTİNAF KANUN YOLUNDA USULE İLİŞKİN HUSUSLARDA DURUŞMA YAPILMADAN KARAR VERİLECEK HALLER

ÖZ

Türk medeni usul hukukunda bölge adliye mahkemelerinin faaliyete başlamasıyla üç dereceli yargılama sistemine geçilmiştir. Buna göre ilk derece mahkemelerinden verilen kesin olmayan nihai kararlar, şartları varsa öncelikle istinaf kanun yolu denetimine tabi tutulacaktır. İstinaf da temyiz gibi, olağan bir kanun yoludur. İstinaf incelemesi, temyiz incelemesinden farklı olarak hem usule uygunluk hem de hukuka uygunluk denetimini sağlamaktadır. İstinaf kanun yolunda duruşma yapmak şart olmayıp ihtiyaç duyulması halinde duruşma yapılacaktır. Bununla beraber Hukuk Muhakemeleri Kanunu m. 353/1-a'da, istinafta ön inceleme aşamasından geçmiş dosyaların bazıları hakkında bölge adliye mahkemesinin duruşma yapmadan vereceği düzenlenmiştir. Davaya bakması yasak olan hâkimin karar vermiş olması, haklı ret talebine rağmen reddedilen hâkimin davaya bakmış olması, görevli ve yetkili mahkemenin usulsüz olarak görevsizlik veya yetkisizlik kararı vermiş olması veya görevli ya da yetkili olmamasına rağmen davaya bakmış olması, başka dava şartlarına aykırılık bulunması, mahkemece usule aykırı olarak davanın veya karşı davanın açılmamış sayılmasına, davaların birleştirilmesi veya ayrılmasına karar verilmesi, mahkemece uyuşmazlığın çözümünde etkili olabilecek derecede önemli delillerin toplanmamış veya değerlendirilmemiş olması ya da mahkemeden talep edilen şeyin önemli bir kısmı hakkında karar verilmemiş olması halleri usule ilişkin ağır yargılama hatalarıdır ve bu konular hakkında bölge adliye mahkemesi duruşma yapmadan karar verecektir.

Anahtar Kelimeler: Olağan kanun yolları, istinaf, istinafta duruşma, mutlak istinaf sebepleri.

I. INTRODUCTION

In Turkish law, it is possible to apply to *the legal remedy of appeal*[1] for *the final decisions* of *the courts of first instance* that are not finalized. The decisions rendered by the court of first instance may be erroneous or incomplete. One of the aims of the law remedy is to compensate for these errors and omissions by having them reviewed by a higher court. With the decision published in the *Official Gazette (No: 31862) on June 10, 2022, regional courts of justice (regional court of appeal)* operate in *eighteen*[2] *different cities across the country*.

---

1 The *appeal* (*intermediate appeal, first-degree appeal*) is a legal remedy that is applied against the final decisions of the court of first instance that are not finalized, and that allows for a combination of substantive and legal review (Tolga Akkaya, Medenî Usûl Hukukunda İstinaf, Yetkin Printing Publishing Distribution, Ankara, 2009, p. 62). On the appeal, the dispute is fully reexamined and decided independently of the proceedings before the court of first instance, taking into account the newly emerging changes and new evidence and facts that can be put forward without limitation (Ejder Yılmaz, İstinaf, Yetkin Publications, Ankara, 2005, p. 21). There are two main types of appeal in the doctrine (Nevhis Deren-Yıldırım, "Teksif İlkesi Açısından İstinaf", İstinaf Mahkemeleri Uluslararası Toplantısı, 07-08 March 2003, Türkiye Barolar Birliği Publications, pp. 267-284, Ankara, 2004, p. 268; H. Yavuz Alangoya, M. Kâmil Yıldırım and Nevhis Deren-Yıldırım, Medenî Usul Hukuku Esasları, Beta Printing Publishing Distribution Inc., 8th Edition, İstanbul, September 2011, p. 508). In the system that accepts "*full appeal*", the second degree trial is a completely new section of procedure, the judge of the court of appeal redirects the trial independently of the first instance court (Deren-Yıldırım, p. 268; Alangoya, Yıldırım and Deren-Yıldırım, p. 508). Secondly "*limited appeal*", on the other hand, consists of the review of the judgment rendered by the first instance court by a more qualified court (Deren-Yıldırım, p. 269; Alangoya, Yıldırım and Deren-Yıldırım, p. 509). Accordingly, the degree of appeal is bound by the findings of the first instance court and bases its decision on the case material collected by the first instance court (Deren-Yıldırım, p. 269; Alangoya, Yıldırım and Deren-Yıldırım, p. 509). In Turkish law, limited appeal is adopted (Deren-Yıldırım, p. 269-270; Alangoya, Yıldırım and Deren-Yıldırım, p. 509).

2 However, *as of June 2024*, the Malatya Regional Court of Justice has not yet been established and as a result, *seventeen regional courts of justice* are actively operating (Türkiye Cumhuriyeti Adalet Bakanlığı, Bölge Adliye

As *an ordinary legal remedy*, the appeal operates through the regional courts of appeal, which act as both a court of review and a court of judgment between the courts of first instance and *the Court of Cassation*[3]. The purpose of the appeal *in Turkish law* is to review the first instance proceedings and *the inconclusive (non-final) court decisions* of the first instance court and to remedy the deficiencies and errors identified[4]. The narrow-sense appeal system has been adopted as regulated in the *Turkish Code of Civil Procedure (CCP)*[5], and in this system, the regional court of justice will be bound by the findings of fact of the first instance court and the case material collected therein[6]. Accordingly, the regional courts of justice will conduct a limited review based on *the reasons (grounds) of appeal* raised by the parties in their petitions.

In the appeal remedy, the inconclusive court decisions rendered by the courts of first instance are examined in terms of *compliance with the law* and *proof*. The appeal review has *two stages*. A file that comes to

---

Mahkemeleri, https://www.adalet.gov.tr/Birimler/BAM, Access Date: 01.06.2024).

3 Murat Atalı, "Hâkimin Hukuku Re'sen Uygulaması İlkesi ve İstinaf İncelemesinin Sebebe Bağlılığı", Yıldırım Beyazıt Hukuk Dergisi, Vol: Prof. Dr. M. Fatih Uşan'a Dekanlıkta 10. Yıl Anısına Teşekkür Armağanı, No: 2002/2, pp. 733-752, 2022, p. 736; Melis Taşpolat Tuğsavul, "İstinaf İncelemesi Sonucunda Verilebilecek Kararlar", Türkiye Barolar Birliği Dergisi, Vol: 30, No: 134, January 2018, p. 315.

4 Muhammet Özekes, Sorularla Medenî Usûl Hukukunda Yeni Kanun Yolu Sistemi, İstinaf ve Temyiz, Türkiye Barolar Birliği Publications, Ankara, 2008, p. 30; Akkaya, p. 59.

5 Code of Civil Procedure No. 6100 (CCP), O.G. Date: 04/02/2011, Number: 27836 (It will be used shortly as *CCP* in this article).

6 Akkaya, s. 88; Kamil Yıldırım, "İstinaf Sebepleri ve İlk Derece Mahkemesinde Hatalı Vakıa Tespitleri", Medenî Usûl Hukukunda Kanun Yolları ve Arabuluculuk Kanun Tasarısı, Medenî Usûl ve İcra-İflâs Hukukçuları Toplantısı VI, 19-20 October 2007, İzmir/Çeşme, Türkiye Barolar Birliği Publications, pp. 89-131, Ankara, 2008, p. 110; Deniz Meraklı Yayla, Medenî Usûl Hukukunda İstinaf Kanun Yolunda Yeniden Tahkikat Yapılması, Yetkin Publications, Ankara, 2014, p. 21; Çağatay Serdar Şahin, "Hukuk Muhakemeleri Kanunu Uyarınca İstinaf Yargılamasında Ön İnceleme Aşaması", Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, Prof. Dr. Durmuş Tezcan'a Armağan, Vol: 21, pp. 2659-2701, 2019, p. 2666.

the regional court of justice will be subjected to *a preliminary examination* and afterwards *the actual examination* will begin. At the preliminary examination stage, the regional court of justice must decide whether to hold a hearing. However, the article 353 of the CCP titled "*Decisions to be rendered without a hearing*" stipulates that a decision will be rendered *without a hearing* in cases regulated in the law, regardless of the decision of the district court of appeal in the preliminary examination.

These grave procedural errors listed in the article 353/1-a of CCP, which will be decided without a hearing, should be considered as absolute grounds of appeal regarding procedural law[7]. In the event that the first instance court's decision contains the grave procedural errors mentioned in the article 353/1-a of CCP, the regional court of justice will send the file to the first instance court without going into the merits and will decide on it without a hearing.

In terms of German law, the main principle is that *the court of appeal* must collect the necessary evidence and decide on the file. It is *an exception* when the court of justice does not render a decision and sends the file back to the court of first instance and it has been accepted in the presence of *significant errors of judgement*. The significant errors of judgement are determined by evaluating *the articles 538/2 and 547/1 of ZPO together*. If one of the significant errors of judgement specified in the aforementioned articles is found *while the case is at the appeal stage*, the court of justice *will annul the decision given in this file* and *send the file back to the first instance court*.

In this context, *the purpose of this article* is to reveal the general characteristics of the legal remedy of appeal *in Turkish civil procedure law* and to examine the situations to be decided without a hearing on procedural matters in the appeal, also referring to *German law*. The article consists of *two parts*. *In the first part*, the legal remedy of appeal will be evaluated in general. *In the second part*, the cases where the decisions will be made without a hearing on procedural issues in the appeal will be analyzed within the framework of the article 353/1-a of CCP.

---

7 Akkaya, p. 244; Murat Atalı, İbrahim Ermenek and Ersin Erdoğan, Medenî Usûl Hukuku, Yetkin Publications, 4th Edition, Ankara, October 2021, p. 613.

II. THE APPEAL AND GENERAL CHARACTERISTICS OF THE APPEAL PROOCEEDINGS

In this section, which aims to explain the general characteristics of the appeal and appeal proceedings, "*decisions subject to the appeal*", "*reasons for the appeal*", "*persons who can apply for the appeal*", "*the authorized appeal court*", "*request of the appeal*", and "*review of the appeal's admissibility*" will be examined respectively.

A. Decisions Subject to the Appeal

The article 341 of the CCP lists *the decisions* that may be appealed. Accordingly, it is stated that the *unascertained final decisions* of *the courts of first instance* may be appealed. Since no distinction has been made in terms of the courts of first instance, final decisions of *the general and special courts* in *the judicial jurisdiction* regarding procedure and substance may be appealed, provided that they also meet the other conditions specified in the law[8]. An appeal can only be made against *the interim decisions* of the courts together with *the final decision on the merits*, and cannot be applied this legal remedies alone[9]. The legal

---

8 Hakan Pekcanıtez, Oğuz Atalay and Muhammet Özekes, Medenî Usûl Hukuku Ders Kitabı, On İki Levha Publishing, 9th Edition, İstanbul, September 2021, p. 482; Akkaya, p. 92; Thomas Rauscher and Wolfgang Krüger, Münchener Kommentar zur Zivilprozessordnung, ZPO: mit Gerichtsverfassungsgesetz und Nebengesetzen, Band 2, 6. Auflage, §§355-945b, Verlag C.H.Beck, München, 2020 (MüKoZPO/… ZPO § … Rn. …), ZPO § 511 Rn. 6-9; Hans-Joachim Musielak and Wolfgang Voit, ZPO Zivilprozessordnung: mit Gerichtsverfassungsgesetz, Kommentar, 21. Auflage, Verlag Franz Vahlen, München, 2024 (Musielak/Voit/Ball ZPO §… Rn. …), ZPO § 511 Rn. 3; Ingo Saenger (Hrsg.), Zivilprozessordnung: Familienverfahren, Gerichtsverfassung, Europäisches Verfahrensrecht, NomosHandkommentar, 10. Auflage, Nomos Verlagsgesellschaft, Baden-Baden, 2023 (Hk-ZPO/... §… Rn. …), Wöstmann, § 511 Rn. 2.

9 Akkaya, p. 111. As a rule in German law, *interlocutory (interm) decisions* cannot be appealed. Some interlocutory decisions have been accepted as *final decisions*. For example, *the interlocutory decisions on the admissibility of the case* are such. For evaluations on interlocutory decisions, see MüKoZPO/Rimmelspacher ZPO § 511 Rn. 10; Musielak/Voit/Ball ZPO § 511 Rn. 5; Hk-ZP0/Wöstmann § 511 Rn. 4.

remedy of appeal may be applied not only for the decisions rendered in *contentious judicial proceedings*, but also for the decisions rendered in *non-contentious judicial proceedings* (CCP, art. 387)[10].

The legal remedy of appeal may also be filed against the decisions of rejection of the requests for *injunctive relief* and *provisional attachment*, the injunctive relief and provisional attachment decisions rendered in *the face of the opposing party*, and the injunctive relief decisions rendered in *the absence of the opposing party*.

The remedy of appeal is *limited* in terms of amount or value and the remedy of appeal is left open for decisions *above 28,250 Turkish liras* (2024)[11]. In other words, decisions below 28,250 Turkish liras are considered *final* in cases related to assets whose amount or value can be determined. In cases of *moral damages*, the legal remedy of appeal can be applied against the judgments regardless of the amount or value (CCP, art. 341/2). Since there is no limitation in the CCP with regard to cases that are not related to assets, an appeal may also be filed against the decisions in this regard[12]. In terms of cases consolidated during the proceedings, the limit of finality for the appeal is determined based on *the independent value of each case*, not on the total value of these cases[13].

There is no clear regulation on whether *interest*, *execution denial compensation* and *costs* will be taken into account when determining the limit for appeal, and how the monetary limit will be determined in case of consolidation or separation of cases[14]. Within the scope of *the freedom to seek rights*; interest, execution denial compensation, and costs should also

10 Baki Kuru, Nizasız Kaza, Ankara Üniversitesi Hukuk Fakültesi Publications, Ankara, 1961, p. 199; Akkaya, p. 127.

11 Nedim Meriç, HMK ve İİK'da Yer Alan Parasal Sınırlar, Legalbank Elektronik Hukuk Bankası (https://legalbank.net, Access Date: 03.04.2024).

12 Muhammet Özekes, "Hukuk Usûlü Muhakemeleri Kanunu'nda Yapılan Değişiklikler Çerçevesinde Kanun Yolu İncelemesi Özellikle İstinaf", Legal Hukuk Dergisi, No: 23, pp. 3103-3116, November 2004, p. 3104; Pekcanıtez, Atalay and Özekes, p. 484.

13 Pekcanıtez, Atalay and Özekes, p. 484.

14 Ali Cem Budak and Varol Karaaslan, Medenî Usul Hukuku, Filiz Bookstore, 5th Edition, İstanbul, September 2021, p. 404.

be taken into account when determining the limit of appeal by interpreting in favor of the party who wants to apply for legal remedies[15].

If *a part of the receivable* has been sued, the finality limit of 28,250 liras in terms of the appeal legal remedy is determined according to the entire receivable. If *the entire receivable* has been sued, the party whose main receivable is not accepted in the decision does not exceed 28,250 liras cannot appeal.

Appeals can be made to the regional courts of appeal against the final decisions of the courts of first instance regarding the cases and works of the first instance courts that can be appealed, or the final decisions of the regional courts of appeal, for which *the Court of Cassation* is specified in other laws (CCP, art. 341/5).

B. Reasons for the Appeal

Pursuant to the article 342/2-e of CCP, *the applicant for appeal* must clearly state *the reasons and grounds for appeal* in his/her petition. However, pursuant to the article 342/3 of CCP, if the petition for appeal bears the identity and signature of the applicant and sufficient records to identify the decision appealed, the petition shall not be rejected even if the other issues are not present, and the necessary examination shall be made within the framework of Article 355. Accordingly, pursuant to the article 355 of CCP, if there is *a violation of public order*[16], this situation shall be taken into consideration *ex officio* by the regional court of justice (CCP, art. 355). Since *civil procedures law* is a formal branch of law that generally consists of mandatory rules, it will not be possible to leave the jurisdiction and procedure to the choice of the parties[17]. The rules regarding the organization of the judiciary and the conduct of the

15 Varol Karaaslan, "Kanun Yolları Sistemine Eleştirel Bir Bakış", Medenî Usûl ve İcra - İflâs Hukuku Dergisi, Vol: 15, No: 43, pp. 441-466, 2019, 450 et al.; Budak and Karaaslan, p. 404.

16 For the concept of *public order* in *appeal*, see Sezin Aktepe Artık, "İstinaf Kanun Yolunda Kamu Düzeni Kavramı", Türkiye Barolar Birliği Dergisi, Vol: 30, No: 134, pp. 257-292, January 2018, p. 260 et al.

17 Aktepe Artık, p. 262.

proceedings can generally be considered within the scope of *public order*[18].

It is possible to categorize the grounds of appeal into three groups: *violation of the rules of substantive law*, *violation of the rules of procedural law*, and *wrong conclusion on the substantive issue*[19].

It would not be appropriate to examine the application of appeal made *without showing the grounds* in terms of violation of public order by examining it *on the merits*[20]. Considering an application that contains only the *identity* and *signature* of the applicant and information that will identify the decision appealed, will cause unnecessary applications and workload in the judiciary[21].

The examination in the legal remedy of appeal shall be limited to the reasons stated in *the petition* (CCP, art. 355). One of the most important differences between the appellate remedy (appeal) and the appeal remedy is that the Court of Cassation, while examining the appeal, is not bound by the grounds of appeal put forward by the parties, but may also examine other issues that it deems contrary to the express provision of the law (CCP, art. 369/1).

The reason why there is no limitation on the reasons of appeal in the law is that the regional court of justice may sometimes hold a hearing during the examination and decide on the merits of the matter again. From this point of view, issues affecting the proceedings in terms of both *procedural* and *substantive* aspects constitute grounds for appeal[22].

---

18 Haluk Konuralp, "İstinafta Kamu Düzeni Kavramı", Medenî Usûl Hukukunda Kanun Yolları ve Arabuluculuk Kanun Tasarısı, Medenî Usûl ve İcra-İflâs Hukukçuları Toplantısı VI, 19-20 October 2007, İzmir/Çeşme, Türkiye Barolar Birliği Publications, pp. 133-150, Ankara, 2008, p. 145.

19 Atalı, Ermenek and Erdoğan, p. 612. For *various classifications of reasons for the appeal*, see Yıldırım, p. 99 et al.

20 Hilal Ünal Kaya, "Medeni Yargıda İstinaf Sebepleriyle Bağlılık Kuralı", İstanbul Hukuk Mecmuası (İstanbul Law Review), Vol: 78, No: 4, pp. 1899-1919, 2020, p. 1905-1906.

21 Muhammet Özekes, Pekcanıtez Usûl Medenî Usûl Hukuku Cilt III, Ed: Hakan Pekcanıtez, Muhammet Özekes, Mine Akkan and Hülya Taş Korkmaz, On İki Levha Publishing, 15th Edition, İstanbul, 2017, p. 2237-2238; Akkaya, p. 250 et al.; Budak and Karaaslan, p. 406; Ünal Kaya, p. 1906.

22 Pekcanıtez, Atalay and Özekes, p. 484; Budak and Karaaslan, p. 406.

C. Persons Who Can Apply for the Appeal

Those who can apply for the appeal remedy are primarily *the parties of the lawsuit*, who *have legal interest in filing a lawsuit* and *making a procedural request*[23]. The article 361/2 of CCP stipulates that the party who has been vindicated in the lawsuit may also apply for appeal, provided that it has *legal interest*. By analogy to this provision, the party in whose *favor the judgment* was rendered may also apply to the legal remedy of appeal, provided that s/he has legal interest[24].

In the application to the legal remedy of appeal in terms of *litigation friends*; each of *the voluntary litigation friends* may apply to the legal remedy of appeal separately from the others, and *the compulsory litigation friends* may apply to the legal remedy of appeal together[25].

An accessory intervener (secondary intervener, sub-intervenor) is an *auxiliary party* and it is controversial *whether he/she can apply for legal remedy independently from the party he/she is joining the case with*. Some opinions hold that the accessory intervener cannot apply to the legal remedy of *appeal* or *cassation alone*[26], while some opinions accept that the accessory intervener can apply to the legal remedy alongside *the main party or alone*[27]. According to the view that we agree with, if the main party *has not waived the right to appeal*, the accessory intervener

---

23 Baki Kuru and Burak Aydın, İstinaf Sistemine Göre Yazılmış Medenî Usul Hukuku, Yetkin Publications, 5th Edition, January 2021, p. 487; Pekcanıtez, Atalay and Özekes, p. 485; Budak and Karaaslan, p. 403; Akkaya, p. 125; MüKoZPO/Rimmelspacher ZPO § 511 Rn. 20; Musielak/Voit/Ball ZPO § 511 Rn. 10a; Hk-ZP0/Wöstmann § 511 Rn. 9; Volkert Vorwerk and Christian Wolf, BeckOK ZPO, 53. Edition, Verlag C. H. Beck, München, 2024 (BeckOK ZPO/… ZPO § … Rn. …), Wulf ZPO § 511 Rn. 26.

24 Budak and Karaaslan, p. 403.

25 Pekcanıtez, Atalay and Özekes, p. 485; Atalı, Ermenek and Erdoğan, p. 611; Şanal Görgün, Levent Börü and Mehmet Kodakoğlu, Medenî Usûl Hukuku, Yetkin Publications, 10th Edition, Ankara, October 2021, p. 653.

26 Kuru and Aydın, p. 391.

27 Pekcanıtez, Atalay and Özekes, p. 485; Hakan Pekcanıtez and Nedim Meriç, Medenî Usûl Hukukunda Fer'i Müdahale, On İki Levha Publishing, İstanbul, 2020, p. 310; BeckOK ZPO/Wulf ZPO § 511 Rn. 28; MüKoZPO/Schultes ZPO § 61 Rn. 6.

may appeal with the main party or alone[28]. *The primary intervener* (*principal intervener, main intervener*) may apply to the legal remedy of appeal in relation to *the primary intervention case* to which s/he is also a party[29].

The cases requiring *special authorization* in *the power of attorney* are explicitly listed in the article 74 of CCP. According to this article, *the attorneys* of the parties may also apply to the legal remedy of appeal without a special authorization in their power of attorney. According to this article, *the parties' attorneys may not waive the application for legal remedies without a special authorization in their power of attorney*.

The party who does not have *the right to apply* or who has missed *the deadline for application* may apply to *the legal remedy of appeal by participation*[30] with *the reply petition* to the petition of appeal notified to him. At this point, the subject of discussion is whether *legal benefit* is sought in the appeal by the way of participation. Based on both the wording of the law and the opinions in practice, *it is not deemed necessary* to seek legal interest in the appeal by the participating party[31]. If the main applicant to the legal remedy of appeal waives his/her request or his/her request is rejected by the regional court of justice without going into the merits, the request of the applicant by way of participation shall also be rejected (CCP, art. 348/2).

The waiver of the appeal remedy is subject to different consequences in terms of timing. Parties who have the right to file an appeal cannot waive their right to file an appeal before *the notification* of the judgment to them. If the right of appeal is waived after the application is filed, the file shall not be sent to the regional court of justice and the

---

28 Hakan Pekcanıtez, "İdari Yargıda Fer'i Müdahil Hükmü Tek Başına Temyiz Edebilir Mi? (Karar Tahlili)", Prof. Dr. Turhan Tûfan Yüce'ye Armağan, Dokuz Eylül Üniversitesi Publications, pp. 591-601, İzmir, 2001, p. 593; Pekcanıtez, Atalay and Özekes, p. 485.

29 Pekcanıtez, Atalay and Özekes, p. 181; Akkaya, p. 141; Muhammet Özekes, Medeni Usul Hukukunda Asli Müdahale, Alfa Printing Publishing Distribution, İstanbul, 1995, p. 80; Görgün, Börü and Kodakoğlu, p. 654; Atalı, Ermenek and Erdoğan, p. 612.

30 For detailed information on *the appeal by participation*, see Cenk Akil, "Katılma Yoluyla İstinaf (HMK m. 348) Üzerine Kısa Bir Not", Yargıtay Dergisi, Vol: 44, No: 1, pp. 61-86, January 2018, p. 64 et al.

31 Akil, Katılma Yoluyla İstinaf, p. 68; Akkaya, p. 177.

court that rendered the decision shall decide to reject the application. If the file has been sent to the regional court of justice and has not yet been decided, and if the right of appeal is waived at this stage, the application shall be rejected due to waiver (CCP, art. 349/1). Waiver of the appeal is not subject to any *formal requirements* or *acceptance by the court or the opposing party*[32].

D. The Authorized Reginal Court of Justice

The Law No. 5235[33] on the regulates the establishment, duties and powers of the courts *of first instance* and *regional courts of justice (regional court of appeal).* According to the article 3 of this Law, the courts of *second degree of judicial juristiction* are *the regional courts of justice.*

The regional courts of justice are established by *the Ministry of Justice*, after obtaining the positive opinion of *the Council of Judges and Prosecutors*, in places determined by taking into account the geographical situation and workload of the regions. The Council of Judges and Prosecutors, upon the proposal of the Ministry of Justice, decides on the determination, change or abolition of the judicial districts of the regional courts of justice (Law No. 5235, art. 25). There are seventeen regional courts of justice throughout the country, namely *Ankara, Antalya, Erzurum, Gaziantep, Istanbul, Izmir, Samsun, Adana, Bursa, Konya, Sakarya, Diyarbakır, Kayseri, Trabzon, Van, Tekirdağ* and *Denizli* Regional Courts of Justice. The Council of Judges and Prosecutors determines *the jurisdictions* of these regional courts of appeal.

Inconclusive judgments and decisions of the courts of first instance may be appealed to the relevant regional court of justice within the jurisdiction of the court of first instance. The jurisdiction of the courts of first instance is defined in the CCP as *final* and *inconclusive (non-*

---

32 Akkaya, p. 146. Also, for discussions on *whether the waiver of the appeal remedy can be made by contract* in both Turkish and German law, see Özekes, Kanun Yolu İncelemesi Özellikle İstinaf, p. 3016; MüKoZPO/Rimmelspacher ZPO § 515 Rn. 4 et al.; Musielak/Voit/Ball ZPO § 515 Rn. 1 et al.; Hk-ZP0/Wöstmann § 515 Rn. 2 et al.

33 Establishment, Duties and Powers of Courts of First Instance and Regional Courts of Justice Law No. 5235, O.G. Date: 07/10/2004, Number: 25606.

final) jurisdiction. If the jurisdiction of the courts is definitive, *a jurisdiction agreement* cannot be concluded. *The mandatory* (*compulsory) jurisdiction (mandatory territorial jurisdiction)* is considered a matter of *public order* and this situation is *automatically taken into consideration by the court*. If the jurisdiction of the courts is not regulated as mandatory jurisdiction, if the conditions are present, the parties may agree on the jurisdiction of the court of first instance by concluding a jurisdiction agreement between them. If the jurisdiction of the court of first instance is determined by the jurisdiction agreement, the jurisdiction of the regional court of justice is indirectly determined, but this does not change the fact that the jurisdiction of the regional courts of appeal is conclusive[34]. As it is clearly stated in the law, a jurisdiction agreement cannot be concluded for the regional courts of appeal (CCP, art. 357/2).

In addition, if the regional court of justice determines at the end of *the preliminary examination* that *the file* should be examined by another regional court of justice in terms of jurisdiction, it shall decide *without a hearing* to send the file to the relevant regional court of justice (CCP, art. 352/1).

In the event that the jurisdictional circle of the regional courts of jurisdiction changes, in the appeal examination of the decisions rendered by the courts of first instance before the date set in the *Official Gazette* for the implementation of this change, the competent regional courts of justice as of *the date of the decision* cannot issue a decision of lack of jurisdiction on the grounds that the jurisdictional circle has changed. If the files that have been subject to appeal examination before the change of the jurisdictional circle are subject to appeal examination again, they shall be finalized by the regional courts of jurisdiction that has done the first examination (Law No. 5235, annex art. 1).

E. Request of the Appeal

The application to the legal remedy of appeal shall be made by *petition*. The petition shall be accompanied by as many copies as the

[34] Kuru and Aydın, p. 497; Pekcanıtez, Atalay and Özekes, p. 486; Ramazan Arslan, Ejder Yılmaz, Sema Taşpınar Ayvaz and Emel Hanağası, Medenî Usul Hukuku, Yetkin Publications, 7th Edition, Ankara, October 2021, p. 634.

number of opposing parties. The petition of appeal shall contain *the names, surnames, Turkish Republic identification numbers and addresses of the applicant and the opposing party*, the *names, surnames* and *addresses of their legal representatives and attorneys*, if any, *the court from which the decision was rendered, the date and number of the decision, the date of notification of the decision to the applicant, the summary of the decision, the reasons and grounds for the application, the result of the request, and the signature of the applicant or the legal representative or attorney*, if any. If the petition of appeal bears *the identity and signature of the applicant* and t*he records that sufficiently indicate the decision for which the petition is filed*, it shall not be rejected even if the other issues are not present, and the necessary examination shall be made within the scope of the main examination in the appeal (CCP, art. 342).

The petition of appeal may be submitted to the court that rendered the decision or to another court. Whichever court the petition for appeal is submitted to, it shall be registered in the regional court of justice *application book* and the applicant shall be given *a receipt* free of charge (CCP, art. 343/1). If the petition of appeal is submitted to a court other than the court that rendered the decision, after the necessary action is taken by this court, it is sent to the court that rendered the decision together with its copies, and this situation is notified to the court (CCP, art. 343/2). The file shall be sent to the relevant regional court of justice by the court that rendered the decision, regardless of *the chamber* indicated in the petition of appeal (CCP, art. 343/4).

When filing a petition for appeal, all expenses, including *the necessary fees and notification expenses*, shall be paid (CCP, art. 344). If it is subsequently understood that the fees and expenses have not been paid or have been paid incompletely, the applicant shall be notified in writing by the court that rendered the decision that they must be completed within *a one-week definite period*, otherwise *the application will be deemed abandoned* (CCP, art. 344). If the fees and expenses are not completed within the definite period of one week, the court shall deem the application as not filed (CCP, art. 344).

The period for filing an appeal is *two weeks* (CCP, art. 345). The two-week period procedurally begins with *the notification of the judgment* to each party. (CCP, art. 345). Therefore, the appeal period may start on different dates for each party.

The petition of appeal is notified to the opposing party by the court that made the decision (CCP, art. 347/1). The opposing party may file its reply petition to the court that rendered the decision or to another court of another place to be sent to this court within two weeks following the notification (CCP, art. 347/2). The court that rendered the decision shall, after the petitions have been filed or certain periods of time have elapsed, send the file to the relevant regional court of justice, attached to the index list (CCP, art. 347/3).

F. Review of the Appeal's Admissibility

1. The Preliminary Review

After the application to the legal remedy of appeal, *the review made by the legal department of the regional court of justice over the file* is *the preliminary review (preliminary examination, preliminary investigation)* and is *the first stage of the review* to be made in the legal remedy of appeal. The preliminary review to be conducted in the regional courts of appeal is different from the preliminary review to be conducted in the courts of first instance and is more similar to the preliminary examination conducted in the Court of Cassation[35]. *At the preliminary review stage*; the necessity of the review to be conducted by another chamber or the regional court of justice, the finality of the decision rendered by the court of first instance, whether the application for appeal was filed within the time limit, whether the conditions for the application for appeal have not been fulfilled, and whether the reasons or grounds for the application have not been shown at all will be examined (CCP, art. 352). The requirements of the preliminary review are listed in a limited manner and the examination must be conducted in the order specified in the CCP[36].

If, at the end of the preliminary review, it is determined that there are *no deficiencies in the file*, the file is taken under the review and thus the proceedings may *commence* (CCP, art. 352/3).

---

35 Kuru and Aydın, p. 502; Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, p. 638; Budak and Karaaslan, p. 413.

36 Akkaya, p. 245.

The procedures to be carried out in the preliminary examination shall be carried out by *the committee* or *a member to be assigned*, but the decision to be made at the end of the preliminary examination shall be made by *the committee* (CCP, art. 352/2).

2. The Review

Depending on *the nature of the case*, the examination to be conducted by *the civil chamber of the regional court of justice* shall be carried out by the panel or by a member to be assigned (CCP, art. 354/1). If necessary, another regional court of justice or court of first instance may be cited (*rogatory*) during the examination (CCP, art. 354/2). The jurisdictional circle of the regional courts o has been established to cover more than one province, therefore, when conducting *investigations* such as *hearing witnesses* or *conducting discovery* (*inspection by Judge*) outside the province where the court of first instance is located, it will be necessary to refer to the court of first instance in that province. If it is necessary to conduct an investigation outside the jurisdiction of the regional court of first instance where the case is heard, the regional court of first instance in that place shall be cited[37].

The proceedings in the regional courts of justice consist of preliminary examination, *investigation*, *oral proceedings*, and *decision* if no deficiency is detected in the file in the preliminary examination. In cases where a decision will be rendered *without a hearing* in the appeal proceedings (CCP, art. 353), the decision should be rendered on *the file* without the need for oral proceedings. In cases where *a hearing is required*, paying attention to the stages of the proceedings and not skipping the oral proceedings will ensure a more accurate conclusion of the appeal proceedings[38].

In the regional courts of justice, the examination is *limited to the reasons stated in the petition of appeal* (CCP, art. 355/1). However, if the regional court of justice sees *a violation of public order*, it shall consider this *ex officio* (CCP, art. 355/1).

During the examination in the civil departments of the regional courts of justice, no *counterclaim* may be filed, no *request for*

37 Pekcanıtez, Atalay and Özekes, p. 491; Budak and Karaaslan, p. 416.
38 Pekcanıtez, Atalay and Özekes, p. 492.

intervention in the case may be made (CCP, art. 357/1). *Amendment* (*rectification*) *of the case* cannot be requested (CCP, art. 357/1). *As stated in the article 166 of CCP*, lawsuits filed in civil courts of *the same level* and *title in the same jurisdiction* may be consolidated at any stage of the case, upon request or automatically, in the court where the first case was filed, if there is *a connection between them*, but otherwise, consolidation of the cases cannot be requested (CCP, art. 357/1). Except for those to be taken into consideration ex officio by the regional court of justice, *claims and defenses not raised in the first instance court* cannot be heard (CCP, art. 357/1). *New evidence* may not be relied upon (CCP, art. 357/1); however, evidence that was duly presented at the court of first instance but rejected without examination, or evidence that cannot be presented due to *force majeure* may be examined by the regional court of justice (CCP, art. 357/3). No *jurisdiction agreement* may be concluded for the regional courts of appeal (CCP, art. 357/2).

III. PROCEDURAL MATTERS TO BE DECIDED WITHOUT A HEARING ON THE APPEAL

In this section, which aims to explain the procedural situations in which a decision will be given without a hearing in the appeal, "*the situation in the German Code of Civil Procedure (Zivilprozessordnung, ZPO)*" and "*the situation in the Turkish Code of Civil Procedure (CCP)*" will be examined respectively. In terms of examining the situation under the CCP, the following situations will be evaluated: "*Where the Judge Who Is Prohibited From Hearing the Case Has Made a Decision*", "*Where Despite a Justified Request for Recusal, the Recused Judge Has Heard the Case*", "*Where the Court Has Given a Decision of Lack of Jurisdiction or Incompetence Despite Having Jurisdiction and Competence or the Court Has Heard the Case Despite Not Having Jurisdiction or Competence*", "*Existence of Violation of Other Litigation Conditions*", "*The Court Has Decided to Regard the Case or Counterclaim Unfiled or Has Decided the Consolidation or the Separation of Cases in Violation of Procedure*", and "*Failure of the Court to Collect or Evaluate Evidence Significant Enough to Be Effective in the Resolution of the Dispute or Failure to Decide on a Significant Part of the Request*."

A. The Situation in the German Code of Civil Procedure (Zivilprozessordnung, ZPO)

The article 538 of ZPO are arranged under the title "*Zurückverweisung*", that is, "*Referral to a court of lower instance*" (*repatriation, referral*). *The title of the article* was criticized because it referred to *the exceptions in the second paragraph*, not the basic regulation in the first paragraph[39]. According to ZPO art. 538/1, as a rule, the court of appeal must decide on the issue itself by collecting the necessary *evidence*[40]. Although this is the rule, *the repatriation* is *an exception* and is strictly regulated, limited to those *listed in this article*[41].

It has been accepted that in case of one of the exceptional circumstances in the article 538/2 of ZPO, the file should be sent to the first instance court by the court of appeal. *Contrary to the general regulation in the first paragraph*, the second paragraph makes the sending of the file to the first instance court dependent on the application of at least one party, *except for the seventh subparagraph* and thus the repatriation has been made more difficult[42]. The purpose of limiting repatriation to the request of the party and to certain situations listed in the article is to *speed up the judgement process* and *reduce its cost*[43]. In addition, the court of appeal was not given any discretion in *sending it*

---

39 MüKoZPO/Rimmelspacher ZPO § 538 Rn. 1; Bernhard Wieczorek and Rolf A. Schütze, Zivilprozessordnung und Nebengesetze (ZPO) Großkommentar: Band 7 §§ 511-591, 5. Auflage, Walter de Gruyter, Berlin, 2021 (Wieczorek/Schütze/… § … ZPO Rn. …), Gerken § 538 ZPO Rn. 1.

40 MüKoZPO/Rimmelspacher ZPO § 538 Rn. 9; BeckOK ZPO/Wulf ZPO § 538 Rn. 1.

41 BeckOK ZPO/Wulf ZPO § 538 Rn. 1-3; Hk-ZP0/Wöstmann § 538 Rn. 2; Musielak/Voit/Ball ZPO § 538 Rn. 2; Leo Rosenberg, Karl Heinz Schwab and Peter Gottwald, Zivilprozessrecht, 17. Auflage, Verlag C.H. Beck, München, 2010 (Rosenberg/Schwab/Gottwald § … Rn. …), § 139 Rn. 19.

42 MüKoZPO/Rimmelspacher ZPO § 538 Rn. 26; Musielak/Voit/Ball ZPO § 538 Rn. 1; Hk-ZPO/Wöstmann § 538 Rn. 5; BeckOK ZPO/Wulf ZPO § 538 Rn. 4.

43 Musielak/Voit/Ball ZPO § 538 Rn. 5; BeckOK ZPO/Wulf ZPO § 538 Rn. 2; MüKoZPO/Rimmelspacher ZPO § 538 Rn. 1.

back[44]. If there is one of *the grounds listed in the article* and one of the parties *requests the repatriation*, the court of appeal *must fulfill it*.

In order for the file to be sent to the court of first instance, *a significant error in judgment* must have been made[45]. In order to detect the significant errors of judgment, it will be necessary to look at *the absolute reasons for appeal listed in the article 547/1 of ZPO*[46]. Determining what the significant errors of judgment are is related to the absolute reasons for appeal listed in the article 547/1 of ZPO. Accordingly, the absolute reasons for appeal are; *failure to establish the court properly, the judge who is prohibited from hearing the case has made a decision although the request for rejection of the judge is accepted the same judge hears the case, one of the parties was not lawfully represented in the proceedings, the violation of the provisions regarding the principle of publicity in judgment*, and *the judgment without justification*. Along with these absolute reasons for appeal, *the relative procedural errors* that affect the decision in the judgment should also be considered as significant errors of judgment that lead to repatriation[47]. The judicial errors such as violation of "*the right to be heard*" and violation of "*the assignment of the judge's clarification of the lawsuit*" are also important procedural errors that lead to repatriation[48]. If the first instance court incorrectly evaluates *the essence of the parties' statements* to a level that may violate "*the right to fair trial*" and therefore it misses an issue that will affect the decision or *an important part of the*

---

44 Musielak/Voit/Ball ZPO § 538 Rn. 2.

45 Varol Karaaslan, "HMK m. 353/1-a Üzerine Bir İnceleme", Dicle Üniversitesi Hukuk Fakültesi Dergisi, Vol: 22, No: 37, pp. 219-239, 2017, p. 223.

46 Musielak/Voit/Ball ZPO § 538 Rn. 9, 11; MüKoZPO/Rimmelspacher ZPO § 538 Rn. 35; BeckOK ZPO/Wulf ZPO § 538 Rn. 10; Wieczorek/Schütze/Gerken § 538 ZPO Rn. 12; Heinz Thomas and Hans Putzo, Zivilprozessordnung: FamFG, Verfahren in Familiensachen, GVG, Einf'tihrungsgesetze, EU-Zivilverfahrensrecht, Kommentar, 33. Auflage, Verlag C.H. Beck, München, 2012 (… in Thomas/Putzo § … Rn. …), Reichold in Thomas/Putzo § 538 Rn. 9; Rosenberg/Schwab/Gottwald § 139 Rn. 23.

47 Reichold in Thomas/Putzo § 538 Rn. 9; Karaaslan, HMK m. 353/1-a Üzerine Bir İnceleme, p. 223.

48 MüKoZPO/Rimmelspacher ZPO § 538 Rn. 41, Reichold in Thomas/Putzo § 538 Rn. 10-11; Karaaslan, HMK m. 353/1-a Üzerine Bir İnceleme, p. 223.

request, the file will have to be sent back to the first instance court in terms of the article 538/2 of ZPO[49].

According to all these explanations, in case of the existence of the absolute resons for appeal listed in the article 547/1 of ZPO which are considered as significant errors of judgment or one of the situations in the article 538/2 of ZPO, in German law, the court of *appeal will revoke the judgment given in the file before it* and *send the file back to the court of first instance*.

B. The Situation in the Turkish Code of Civil Procedure (CCP)

In the preliminary examination stage of the appeal proceedings, attention will be paid to issues such as whether the file should be examined by another department or regional court of justice, whether the application for appeal was filed within the time limit, and whether the application conditions are fulfilled (CCP, art. 352/1). The preliminary examination stage is a stage related to *the internal functioning of the legal remedy of appeal*[50]. On the other hand, the procedural errors and deficiencies listed in the article 353/1-a of CCP are *serious (grave) errors of judgment* that occurred during the first instance proceedings and significantly affect the proceedings[51]. These cases will be examined after the preliminary examination stage and a decision will be made without a hearing.

During the appeal examination, the regional court of justice, in the presence of these serious errors of judgment, decides definitively[52], *without holding a hearing*, to *annul the decision without examining the*

---

49 MüKoZPO/Rimmelspacher ZPO § 538 Rn. 42.

50 Akaya, p. 244.

51 Atalı, Ermenek and Erdoğan, p. 629; Akkaya, p. 244.

52 "*As for the review of the appellate objections of the parties; 1-) In the review of the defendant's appeal petition regarding the the claim for jewelry and dowry receivable; the decision of the regional court of justice to refer the case to the first instance court regarding the claim for jewelry and dowry receivable is not subject to appeal and is final (CCP, art. 353/1-a-6). For this reason, it was necessary to decide to reject the defendant's appeal petition regarding the the receivable for jewelry and dowry*." The decision of the 2nd Civil Chambers of the Court Of Cassation, T. 12.12.2022, E. 2022/8422, K. 2022/10293 (https://kazanci.com.tr, Access Date: 03.12.2023).

merits and to *send the file to the court that rendered the decision* or to *another court in its jurisdiction* or to the competent and authorized court for the retrial of the case[53]. The court of first instance *cannot resist* against the referral decision[54]. Despite the provision of the article 362/1-g of CCP stating that these decisions *are not subject to appeal*, it is observed that there are decisions[55] that have been reviewed by *the Court of Cassation*[56].

1. Where the Judge Who Is Prohibited From Hearing the Case Has Made a Decision

The situations in which it is considered that the judge cannot be impartial in the case, or where it is highly probable that the judge cannot be impartial[57], are listed in the article 34 of CCP as *reasons for prohibition.* Accordingly, a judge may not act as a judge in a case that *belongs to* or is *related to* him/her. In addition, the judge is prohibited from acting as a judge in the case of his/her *spouse*, even if *the marriage*

---

53 Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, p. 642; Atalı, p. 739. For detailed information on *the issue of finality of judgements*, see. Onur Tabak, "HMK m. 353/1-a Uyarınca Verilen Kararların Kesinliği Meselesi", Anadolu Üniversitesi Hukuk Fakültesi Dergisi, Vol: 9, No: 1, pp. 155-168, January 2023, p. 158 et al.

54 See the decision of the Constitutional Court, T. 28.03.2018, E. 2017/120, K. 2018/33 (Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, p. 641, footnote 16).

55 "*In the article 353/1-a of the Code of Civil Procedure, it is regulated that in cases of…, the regional court of justice will definitely decide to annul the decision without examining the merits and to send the file back to the first instance court for the case to be heard again. As for the specific case; although the first instance court decided on both divorce cases of the plaintiff-counter-defendant man, it was not right to decide to send the file back to the first instance court on the grounds that no judgement was made. In that case, while the regional court of justice should have examined the merits of the mutual divorce cases, it was not right to make a judgment in writing and it required a reversal*." The decision of the 2nd Civil Chambers of the Court Of Cassation, T. 04.07.2019, E. 2019/3648, K. 2019/8310 (https://www.lexpera.com.tr, Access Date: 03.12.2023). Again see the decision of the 2nd Civil Chambers of the Court Of Cassation, T. 10.04.2019, E. 2017/2514, K. 2019/4461 (Tabak, p. 156, footnote 2).

56 Tabak, p. 156.

57 Pekcanıtez, Atalay and Özekes, p. 104.

is dissolved, in the case of his/her *fiancé*, in the case of his/her or his/her s*pouse's descendants* or *lineal descendants*. He or she may not act as a judge in the case of his or her *adopted child*, in the case of his or her relatives by blood up to and including *the third degree*, or in the case of his or her *relatives in-law*, even if *the marriage is dissolved*, or in the case in which he or she acts as *an attorney*, *guardian* or *legal advisor* of one of the parties.

The cases in which a judge is prohibited are listed in *a limited manner* in the CCP. In case of any of these cases, the judge cannot hear the case. The parties to the case may *always claim* that *the judge is prohibited from hearing the case*. Even if the parties do not request it, the prohibited judge must recuse himself/herself from hearing the case. Nevertheless, if the judge of the first instance court, who is prohibited from hearing the case, *has heard the case and rendered a decision*, this is one of the situations listed in the article 353/1-a of CCP, which will be examined and decided without a hearing in the legal remedy of appeal.

The fact that the judge who is prohibited from hearing the case has made a decision requires the regional court of justice to *annule the decision without going into the merits* and to decide definitively, *without holding a hearing*, that if there is a judge *in the same jurisdiction*, the file should first be sent to him/her, *if not*, the file should be sent to another court that it deems appropriate in its own jurisdiction[58].

2. Where Despite a Justified Request for Recusal, the Recused Judge Has Heard the Case

The article 36 of CCP lists the reasons for *recusal of a judge*. These situations are considered to be cases where there is *a suspicion* that the judge *cannot be impartial* and are not *limited to the situations listed in the CCP*[59]. According to the relevant article, the fact that the judge has *given advice* or *guidance* to one of the two parties in the case, or *has explained his/her opinion* to one of the two parties or to a third party, even though he/she is not required to do so by law, are among the situations that may require the recusal of the judge. In addition, the fact that the judge was heard as *a witness* or *expert-witness*, or acted in the capacity of *a judge* or *arbitrator*, or acted as *a mediator* or *conciliator*

58 Budak and Karaaslan, p. 424; Taşpolat Tuğsavul, p. 334.
59 Pekcanıtez, Atalay and Özekes, p. 104.

will also be grounds for the recusal of the judge. And also, the fact that the case belongs to *the judge's relatives by consanguinity*, *including the fourth degree*, and the existence of a lawsuit or *enmity* between one of the two parties are regulated as grounds for recusal.

Since it is accepted that there is an important reason to *doubt the impartiality of the judge*, especially in the cases listed in the Law, one of the parties may recuse the judge or the judge may recuse himself/herself.

3. Where the Court Has Given a Decision of Lack of Jurisdiction or Incompetence Despite Having Jurisdiction and Competence or the Court Has Heard the Case Despite Not Having Jurisdiction or Competence

In the remedy of appeal, another situation that requires the regional court of justice to decide without holding a hearing is that the court of first instance gives a decision of *lack of jurisdiction* or *lack of competence* even though *the existence of jurisdiction* and *competence*. In this case, the regional court of justice shall *annule the decision of the court of first instance* and decide to *send the file to the court of first instance* that rendered the decision.

The duty of courts is regulated *by law* and *the rules of duty* are of *public order* (CCP, art. 1). Due to the fact that the rules of jurisdiction are of public order, both t*he parties may assert them at every stage of the proceedings* and *the court may examine the issue of jurisdiction itself at any time*. Furthermore, the duty of court is *a condition of the lawsuit* (CCP, art. 114). Therefore, the court shall investigate *the existence of the conditions of the lawsuit at every stage of the proceedings*. The parties may also assert *the lack of a condition of action at any time* (CCP, art. 115). Despite all these, if the court of first instance *has heard a case when it has no jurisdiction* and this situation *is realized at the stage of the legal remedy of appeal*, it is an issue to be examined *without a hearing* in the appeal. In other words, the court tried the case *despite being out of jurisdiction* and there is *a serious procedural error*, as in all other matters to be examined on appeal without a hearing[60]. Upon the decision rendered by *the court without jurisdiction* and subject to review of appeal, the regional court of justice shall an*nul the decision of the court of first instance* and decide to *send the file to the court of first instance*.

[60] Akkaya, p. 316.

In Turkish law, in general, *the jurisdiction (territorial jurisdiction, authority) of the courts* is not considered within *the scope of public order*, as in *the duty of court*. In some cases, *rules of conclusive jurisdiction* are *exceptionally* regulated and the rules of conclusive jurisdiction *are considered to be related to public order*[61]. The article 353/1-a-3 of CCP *does not specify* whether or not the jurisdiction referred to in this article is strict jurisdiction. It is necessary to consider that the jurisdiction referred to in the relevant article is not *mandatory jurisdiction*, because if it were mandatory jurisdiction, it should be clearly stated[62]. In *the absence of mandatory jurisdiction*, *the objection of jurisdiction* shall be made as *a first objection* (CCP, art. 116). The fact that *a preliminary (first) objection to jurisdiction* has been filed in accordance with the procedure and that the court has rejected this objection and continued to hear the case is *an absolute reason for appeal*[63]. In this case, the regional court of justice shall annul the decision of the court of first instance and decide to send the file to the court of first instance.

In the event that the court of first instance has heard the case *despite not having jurisdiction* or *competence*, it is controversial whether *the file* should be sent to *the court of first instance* that rendered the decision or to *the court that has jurisdiction* or *competence*. Some opinions in the doctrine argue that pursuant to the article 353/1-a of CCP, the regional court of first instance should annul the decision of the court of first instance and the file should be sent to the court that rendered the decision, *i.e. the court without jurisdiction or competence*[64]. Thus, the provisions of *the article 20 of CCP* will be applicable. According to another opinion in the doctrine, which we also agree with, the regional court of first instance should annul the decision of the court of first instance and send the file to *the competent or authorized court*, because the provision of the article 353/1-a of CCP also states this[65]. If the regional court of justice acts according to this opinion, it will both fulfill *the letter of the law* and comply with *the principle of procedural economy*.

---

61 Pekcanıtez, Atalay and Özekes, p. 72.
62 Karaaslan, HMK m. 353/1-a Üzerine Bir İnceleme, p. 227.
63 Karaaslan, HMK m. 353/1-a Üzerine Bir İnceleme, p. 228.
64 Budak and Karaaslan, p. 426, Özekes, Pekcanıtez Usûl, p. 2272.
65 Taşpolat Tuğsavul, p. 335.

4. Existence of Violation of Other Litigation Conditions

The article 353/1-a-4 of CCP uses the expression "*existence of violation of other litigation conditions (the conditions of the lawsuit)*" as one of the situations in which the regional court of justice will decide *without a hearing*. Compared to *the previous regulation*[66], this expression is *general* and *ambiguous*[67]. *The conditions of action* are listed in the article 114 of CCP, and while some of these conditions of action can be fulfilled *later*, others must be present *from the beginning*. In other words, it is not possible to complete some of the conditions of action later. It is considered that *the legal interest* must exist at the time the lawsuit is filed and cannot be completed later. This situation will cause the regional court of justice to send the file to the court of first instance and the court of first instance to *dismiss the case on procedural grounds*[68].

Since *some of the conditions of the lawsuit* can be completed later, it is necessary to address *how the regional court of justice should act*. In the event that *the conditions of action* such as *the capacity to sue*, *security*, *advance payment of expenses* are missing during the proceedings at the first instance court and this situation *is subsequently completed*, the regional court of justice should annul the decision and send the file to the first instance court[69]. According to this opinion, which we also agree with, *what the regional court of justice should do* is to examine and decide on *the merits of the file*[70].

5. The Court Has Decided to Regard the Case or Counterclaim Unfiled or Has Decided the Consolidation or the Separation of Cases in Violation of Procedure

If the court of first instance has decided to *deem the lawsuit or counterclaim as not filed* in violation of procedure, it will have made this decision *without going into the merits of the file*. In this case, the regional

66 Code of Civil Procedure No. 1086 (*Repealed*), O.G. Date: 02, 03, 04/07/1927, Number: 622, 623, 624.

67 Karaaslan, HMK m. 353/1-a Üzerine Bir İnceleme, p. 237.

68 For *the condition of existence of legal benefit* in terms of *the indefinite receivable lawsuit*, see Arslan, Yılmaz, Taşpınar Ayvaz and Hanağası, p. 299.

69 Karaaslan, HMK m. 353/1-a Üzerine Bir İnceleme, p. 233.

70 Karaaslan, HMK m. 353/1-a Üzerine Bir İnceleme, p. 233.

court of justice should decide to send the file back to the court of first instance *for retrial*[71].

The court of first instance may decide on *the consolidation or separation of the cases* within *the conditions in the law*, but if it makes this decision *in violation of the procedure*, this situation *should be taken into consideration* by the court of first instance. The decision of the court of first instance, which has decided to consolidate or separate the cases in violation of the procedure, should be annulled the decision and the file should be sent to the court of first instance.

6. Failure of the Court to Collect or Evaluate Evidence Significant Enough to Be Effective in the Resolution of the Dispute or Failure to Decide on a Significant Part of the Request

The right to be heard, which is *one of the principles* governing *civil procedure law*, requires *the right to be informed about the proceedings, the right to explanation and proof, and the court's decision to be concrete and reasoned*[72]. If the court of first instance *has not collected or evaluated important evidence* that may be effective in the resolution of the dispute, it means that *the right to explanation and proof*, which is one of the elements of the right to be heard, has been violated[73]. In the event that the file comes to the regional court of justice after such a trial, it is controversial *how to proceed in the appeal examination*. According to one opinion, if the court of first instance has not acted properly in the collection or evaluation of evidence, the regional court of justice should decide on the merits of the matter, *that is*, it should not send the file back to the court of first instance[74]. In *some decisions of the*

71 Akkaya, p. 199.

72 Pekcanıtez, Atalay and Özekes, p. 196.

73 Hakan Pekcanıtez, "Hukukî Dinlenilme Hakkı", Prof. Dr. Seyfullah Edis'e Armağan, Dokuz Eylül Üniversitesi Publications, pp. 753-791, İzmir, 2000, p. 777; Muhammet Özekes, Medeni Usûl Hukukunda Hukukî Dinlenilme Hakkı, Yetkin Publications, Ankara, 2003, p. 324; Akkaya, p. 202.

74 Haluk Konuralp, "Bölge Adliye Mahkemelerinde Uygulanacak Usûl", İstinaf Mahkemeleri Uluslararası Toplantısı, 07-08 March 2003, Türkiye Barolar Birliği Publications, pp. 247-265, Ankara, 2004, p. 259 et al.; Taşpolat Tuğsavul, p. 336.

Court of Cassation[75], it has been stated that if the evidence has been collected, even if it is incomplete, the deficiencies should be eliminated by the regional court of justice without sending the file to the court of first instance[76]. It is thought that sending the file to the court of first instance; where the evidence has been collected and examined although *incompletely*; will cause *expenses* and *waste of time*[77]. We cannot agree with this opinion; because *the narrow appeal system* has been accepted in Turkish law and it would be appropriate to carry out *the collection or evaluation of evidence* by the court of first instance[78]. For this reason, in our opinion, it would be more appropriate for the regional court of justice to annul the decision of the court of first instance and decide to send the file to the court of first instance if important evidence that may be

---

75 "*'Incomplete collection of evidence' is not among the reasons for repatriation listed in the Law. There is 'not collecting any of the evidence and not evaluating the evidence shown'. In the decision given by the regional court of justice, it was also indicated that the child of cognitive age should be heard in person, however, it was decided to send the file to the first instance court for the collection of missing evidence. As explained above, since the evidence presented by the parties was collected by the first instance court, it is not right to decide to send the file to the first instance court for the completion of missing issues in accordance with Article 353/1-a-6 of the Code of Civil Procedure, and when Articles 353, 354 and 373 of the Code of Civil Procedure are considered, it is understood that the decision given by the regional court of justice is not appropriate in the light of the regulation in the law. When the above-mentioned provisions are evaluated, it is understood that the missing evidence should be collected by the regional court of justice. In that case, while the regional court of justice should have taken the opinion of the child of cognitive age and evaluated it together with all the evidence and made a decision according to the result, giving the decision in written form was not correct and it required a reversal*." The decision of the 2nd Civil Chambers of the Court Of Cassation, T. 06.03.2019, E. 2017/5065, K. 2019/2249 (https://www.lexpera.com.tr, Access Date: 03.12.2023). Again see the decision of the 2nd Civil Chambers of the Court Of Cassation, T. 4.12.2017, E. 2017/5594, K. 2017/13799 (Görgün, Börü and Kodakoğlu, p. 673, footnote 39).

76 Cenk Akil, "Bir İstinaf Sebebi Olarak HMK m. 353/1-a-6 Üzerine Değerlendirme", Türkiye Adalet Akademisi Dergisi, No: 38, pp. 1-18, April 2019, p. 7; Görgün, Börü and Kodakoğlu, p. 673.

77 Akkaya, p. 203.

78 Karaaslan, HMK m. 353/1-a Üzerine Bir İnceleme, p. 235.

effective in the resolution of the dispute *has not been collected or evaluated*[79].

The fact that the court of first instance *has not decided on a significant part of what is requested by filing a lawsuit* is also one of the cases to be decided by the regional court of justice *without a hearing*. In this case, the court of first instance will annul the decision of the court of first instance and send the file to the court of first instance.

IV. CONCLUSION

In the appeal remedy, both *legal* and *substantive review* is carried out. The fact that there is not a regional court of justice in every province obliges to resort to *rogatory system*. Again, due to the lack of a regional court of justice in every province and the workload that may occur in the regional courts of appeal, the decision to refer to the court of first instance, which is actually exceptional, may be frequently applied. This may cause the appeal remedy not to function properly.

The appeal examination will be carried out in a manner that will adhere to the grounds of appeal and requests stated by the parties in *their petitions*. For this reason, the parties should prepare their petitions of appeal carefully. Only in matters of public order, the appeal examination will be conducted *ex officio*, i.e. independently of the reasons and requests put forward by the parties.

---

79 "*The case was filed based on Articles 166/end and 166/1 of the Turkish Civil Code, and none of the evidence was evaluated in terms of the plaintiff's lawsuit based on the legal reason of the shaking of the marriage union from its foundations. Article 353/1-a-6 of the Code of Civil Procedure stipulates that in cases where the court has made a decision without collecting any of the evidence presented by the parties regarding the merits of the case or without evaluating the evidence presented at all, the regional court of justice will definitely decide to overturn the decision without examining the merits and to send the file to the first instance court for a the case to be retried. According to Article 353/1-a-6 of the Code of Civil Procedure, the decisions given by the regional court of justice are final. For this reason, it was necessary to decide to reject the defendant woman's appeal petition*." The decision of the 2nd Civil Chambers of the Court Of Cassation, T. 16.01.2020, E. 2019/6654, K. 2020/305, (https://kazanci.com.tr, Access Date: 03.12.2023).

The appeal review is conducted in *two stages*. There will be a preliminary examination stage and at this stage, it will be decided whether the regional court of justice will conduct the actual examination with or without a hearing. However, the cases where the appeal examination will be conducted *without a hearing* as required by law are listed in *six subparagraphs in the article 353/1-a of CCP*. This article has been amended over time, but it still contains *some problems* in its final form.

The regional court of justice will *annul the decision of the court of first instance* in the cases as specified in the article 353/1-a of CCP and which will be decided without a hearing. Thereupon, the file will be sent either *to the court of first instance that rendered the decision* or *to another court of first instance within the jurisdictional circle of the regional court of justice*. Although this is the regulation of the law, the regional court of justice's decision to *send the case to another court of first instance* should be *an exceptional remedy, just like in German law*. In this way, the appeal review, which is an ordinary remedy, *will become more meaningful* because it is a system where both legal and substantive review can be carried out.

In particular, the *general* and *ambiguous* expression of "*violation of other conditions of action*" in the article 353/1-a-4 of CCP *complicates the work of the regional court of justice*. It would be more appropriate to *clearly specify which litigation conditions are meant in the article*.

Again, based on the discussions *on how the court of first instance will proceed in the event* that "*the court has not collected or evaluated important evidence that may be effective in the resolution of the dispute or has not ruled on a significant part of the claim*" as stated in the article 353/1-a-6 of CCP, our conclusion is that the regional court of justice *should not act like the court of first instance*. Although the regional courts of appeal conduct both legal and substantive review, in our opinion, it should be *the job of the court of first instance* to *collect* or *evaluate evidence*.

REFERENCES

AKİL Cenk, "Bir İstinaf Sebebi Olarak HMK m. 353/1-A-6 Üzerine Değerlendirme", Türkiye Adalet Akademisi Dergisi, No: 38, pp. 1-18, April 2019.

AKİL Cenk, "Katılma Yoluyla İstinaf (HMK m. 348) Üzerine Kısa Bir Not", Yargıtay Dergisi, Vol: 44, No: 1, pp. 61-86, January 2018 (Katılma Yoluyla İstinaf).

AKKAYA Tolga, Medenî Usûl Hukukunda İstinaf, Yetkin Printing Publishing Distribution, Ankara, 2009.

AKTEPE ARTIK Sezin, "İstinaf Kanun Yolunda Kamu Düzeni Kavramı", Türkiye Barolar Birliği Dergisi, Vol: 30, No: 134, pp. 257-292, January 2018.

ALANGOYA H. Yavuz, M. Kâmil YILDIRIM and Nevhis DEREN-YILDIRIM, Medenî Usul Hukuku Esasları, Beta Printing Publishing Distribution Inc., 8th Edition, İstanbul, September 2011.

ARSLAN Ramazan, Ejder YILMAZ, Sema TAŞPINAR AYVAZ and Emel HANAĞASI, Medenî Usul Hukuku, Yetkin Publications, 7th Edition, Ankara, October 2021.

ATALI Murat, "Hâkimin Hukuku Re'sen Uygulaması İlkesi ve İstinaf İncelemesinin Sebebe Bağlılığı", Yıldırım Beyazıt Hukuk Dergisi, Vol: Prof. Dr. M. Fatih Uşan'a Dekanlıkta 10. Yıl Anısına Teşekkür Armağanı, No: 2002/2, pp. 733-752, 2022.

ATALI Murat, İbrahim Ermenek and Ersin Erdoğan, Medenî Usûl Hukuku, Yetkin Publications, 4th Edition, Ankara, October 2021.

BUDAK Ali Cem and Varol KARAASLAN, Medenî Usul Hukuku, Filiz Bookstore, 5th Edition, İstanbul, September 2021.

DEREN-YILDIRIM Nevhis, "Teksif İlkesi Açısından İstinaf", İstinaf Mahkemeleri Uluslararası Toplantısı, 07-08 March 2003, Türkiye Barolar Birliği Publications, pp. 267-284, Ankara, 2004.

GÖRGÜN Şanal, Levent BÖRÜ and Mehmet KODAKOĞLU, Medenî Usûl Hukuku, Yetkin Publications, 10th Edition, Ankara, October 2021.

KARAASLAN Varol, "HMK m. 353/1-a Üzerine Bir İnceleme", Dicle Üniversitesi Hukuk Fakültesi Dergisi, Vol: 22, No: 37, pp. 219-239, 2017.

KARAASLAN Varol, "Kanun Yolları Sistemine Eleştirel Bir Bakış", Medenî Usûl ve İcra - İflâs Hukuku Dergisi, Vol: 15, No: 43, pp. 441-466, 2019.

KAZANCI Hukuk, Kazancı İçtihat Bilgi Bankası, https://www.kazanci.com.tr.

KONURALP Haluk, "Bölge Adliye Mahkemelerinde Uygulanacak Usûl", İstinaf Mahkemeleri Uluslararası Toplantısı, 07-08 March 2003, Türkiye Barolar Birliği Publications, pp. 247-265, Ankara, 2004.

KONURALP Haluk, "İstinafta Kamu Düzeni Kavramı", Medenî Usûl Hukukunda Kanun Yolları ve Arabuluculuk Kanun Tasarısı, Medenî Usûl ve İcra-İflâs Hukukçuları Toplantısı VI, 19-20 October 2007, İzmir/Çeşme, Türkiye Barolar Birliği Publications, pp. 133-150, Ankara, 2008.

KURU Baki and Burak AYDIN, İstinaf Sistemine Göre Yazılmış Medenî Usul Hukuku, Yetkin Publications, 5th Edition, January 2021.

KURU Baki, Nizasız Kaza, Ankara Üniversitesi Hukuk Fakültesi Publications, Ankara, 1961.

LEXPERA Hukuk Bilgi Sistemi: Mevzuat, İçtihat, Literatür & Örnekler, https://www.lexpera.com.tr.

MERAKLI YAYLA Deniz, Medenî Usûl Hukukunda İstinaf Kanun Yolunda Yeniden Tahkikat Yapılması, Yetkin Publications, Ankara, 2014.

MERİÇ Nedim, HMK ve İİK'da Yer Alan Parasal Sınırlar, Legalbank Elektronik Hukuk Bankası (https://legalbank.net, Access Date: 03.04.2024).

MUSIELAK Hans-Joachim and Wolfgang VOIT, ZPO Zivilprozessordnung: mit Gerichtsverfassungsgesetz, Kommentar, 21. Auflage, Verlag Franz Vahlen, München, 2024 (Musielak/Voit/Ball ZPO §…, Rn. …).

ÖZEKES Muhammet, "Hukuk Usûlü Muhakemeleri Kanunu'nda Yapılan Değişiklikler Çerçevesinde Kanun Yolu İncelemesi

Özellikle İstinaf", Legal Hukuk Dergisi, No: 23, pp. 3103-3116, November 2004 (Kanun Yolu İncelemesi Özellikle İstinaf).

ÖZEKES Muhammet, Medeni Usul Hukukunda Asli Müdahale, Alfa Printing Publishing Distribution, İstanbul, 1995.

ÖZEKES Muhammet, Medeni Usûl Hukukunda Hukukî Dinlenilme Hakkı, Yetkin Publications, Ankara, 2003 (Hukukî Dinlenilme Hakkı).

ÖZEKES Muhammet, Pekcanıtez Usûl Medenî Usûl Hukuku Cilt III, Ed: Hakan Pekcanıtez, Muhammet Özekes, Mine Akkan and Hülya Taş Korkmaz, On İki Levha Publishing, 15th Edition, İstanbul, 2017 (Pekcanıtez Usûl).

ÖZEKES Muhammet, Sorularla Medenî Usûl Hukukunda Yeni Kanun Yolu Sistemi, İstinaf ve Temyiz, Türkiye Barolar Birliği Publications, Ankara, 2008.

PEKCANITEZ Hakan and Nedim MERİÇ, Medenî Usûl Hukukunda Fer'i Müdahale, On İki Levha Publishing, İstanbul, 2020.

PEKCANITEZ Hakan, "Hukukî Dinlenilme Hakkı", Prof. Dr. Seyfullah Edis'e Armağan, Dokuz Eylül Üniversitesi Publications, pp. 753-791, İzmir, 2000.

PEKCANITEZ Hakan, "İdari Yargıda Fer'i Müdahil Hükmü Tek Başına Temyiz Edebilir Mi? (Karar Tahlili)", Prof. Dr. Turhan Tûfan Yüce'ye Armağan, Dokuz Eylül Üniversitesi Publications, pp. 591-601, İzmir, 2001 (İdari Yargıda Fer'i Müdahil).

PEKCANITEZ Hakan, Oğuz ATALAY and Muhammet ÖZEKES, Medenî Usûl Hukuku Ders Kitabı, On İki Levha Publishing, 9th Edition, İstanbul, September 2021.

RAUSCHER Thomas and Wolfgang KRÜGER, Münchener Kommentar zur Zivilprozessordnung, ZPO: mit Gerichtsverfassungsgesetz und Nebengesetzen, Band 2, 6. Auflage, §§355-945b, Verlag C.H.Beck, München, 2020 (MüKoZPO/… ZPO § … Rn. …).

ROSENBERG Leo, Karl Heinz SCHWAB and Peter GOTTWALD, Zivilprozessrecht, 17. Auflage, Verlag C.H. Beck, München, 2010 (Rosenberg/Schwab/Gottwald § … Rn. …).

SAENGER Ingo (Hrsg.), Zivilprozessordnung: Familienverfahren, Gerichtsverfassung, Europäisches Verfahrensrecht, NomosHandkommentar, 10. Auflage, Nomos Verlagsgesellschaft, Baden-Baden, 2023 (Hk-ZPO/... §… Rn. …).

ŞAHİN Çağatay Serdar, "Hukuk Muhakemeleri Kanunu Uyarınca İstinaf Yargılamasında Ön İnceleme Aşaması", Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, Prof. Dr. Durmuş Tezcan'a Armağan, Vol: 21, pp. 2659-2701, 2019.

TABAK Onur, "HMK m. 353/1-a Uyarınca Verilen Kararların Kesinliği Meselesi", Anadolu Üniversitesi Hukuk Fakültesi Dergisi, Vol: 9, No: 1, pp. 155-168, January 2023.

TAŞPOLAT TUĞSAVUL Melis , "İstinaf İncelemesi Sonucunda Verilebilecek Kararlar", Türkiye Barolar Birliği Dergisi, Vol: 30, No: 134, pp. 313-354, January 2018.

THOMAS Heinz and Hans PUTZO, Zivilprozessordnung: FamFG, Verfahren in Familiensachen, GVG, Einf'tihrungsgesetze, EU-Zivilverfahrensrecht, Kommentar, 33. Auflage, Verlag C.H. Beck, München, 2012 (… in Thomas/Putzo § … Rn. …).

TÜRKİYE CUMHURİYETİ ADALET BAKANLIĞI, Bölge Adliye Mahkemeleri, https://www.adalet.gov.tr/Birimler/BAM, Access Date: 01.06.2024).

ÜNAL KAYA Hilal, "Medeni Yargıda İstinaf Sebepleriyle Bağlılık Kuralı", İstanbul Hukuk Mecmuası (İstanbul Law Review), Vol: 78, No: 4, pp. 1899-1919, 2020

VORWERK Volkert and Christian WOLF, BeckOK ZPO, 53. Edition, Verlag C. H. Beck, München, 2024 (BeckOK ZPO/… ZPO § … Rn. …).

WIECZOREK Bernhard and Rolf A. SCHÜTZE, Zivilprozessordnung und Nebengesetze (ZPO) Großkommentar: Band 7 §§ 511-591, 5. Auflage, Walter de Gruyter, Berlin, 2021 (Wieczorek/Schütze/… § … ZPO Rn. …).

YILDIRIM Kamil, "İstinaf Sebepleri ve İlk Derece Mahkemesinde Hatalı Vakıa Tespitleri", Medenî Usûl Hukukunda Kanun Yolları ve Arabuluculuk Kanun Tasarısı, Medenî Usûl ve İcra-İflâs

Hukukçuları Toplantısı VI, 19-20 October 2007, İzmir/Çeşme, Türkiye Barolar Birliği Publications, pp. 89-131, Ankara, 2008.

YILMAZ Ejder, İstinaf, Yetkin Publications, Ankara, 2005.