



The Assembly of Civil Chambers of the High Court of Appeals rules that a Second Petition for an Increase in Claim is Admissible

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1. Introduction

This article concerns a case wherein plaintiffs filed a lawsuit against the defendants with the claim for compensation of pecuniary and non-pecuniary damages, as an unquantified debt lawsuit in terms of pecuniary compensation claims. During the proceedings, plaintiffs increased their pecuniary compensation claim after the first expert report dated September 22, 2018 (“**2018 Report**”). After that, plaintiffs increased their pecuniary compensation claim for the second time after the additional expert report dated April 7, 2019 (“**2019 Report**”).

The legal dispute arising from the admissibility of multiple increases of the claim in case of an unquantified debt lawsuit is resolved by the Assembly of Civil Chambers of the High Court of Appeals (“**Assembly**”). The Assembly ruled in its decision numbered E. 2022/795 K. 2023/641 dated June 21, 2023 (“**Decision**”) that, if the claim amount has not become fully and definitively determinable when the first increase in the claim is submitted, the submission of the second increase is admissible.

2. Common Practice and Case Law

Article 107 of Turkish Code of Civil Procedure (“**CCP**”), regulating the concept of “unquantified debt lawsuit”, states that in cases where it is impossible or unlikely for the creditor to determine the exact amount or value of the claim at the time of filing the lawsuit, the creditor may file an unquantified claim by specifying the legal relationship and a minimum amount or value, which is a procedural tool available for cases where the exact amount is impossible to determine for the creditor at the time of filing the lawsuit. Once the claim amount becomes full and determinable the creditor is entitled to increase the claim. The creditor can

increase the claim only once in an unquantified debt lawsuit after the determination of the full and definite claim amount, as per Article 107 of CCP ¹.

The original letter of the Article 107/2 of CCP was as follows:

“The plaintiff is entitled to increase the claim amount without being subject to the prohibition of extension of the claim when it is possible to determine the claim amount or value fully and definitively by the information provided by the opposing party or as a result of the investigation.”

In this version, the creditor was not bound by any time limitations for increasing the claim amount. However, Article 107/2 was amended to be effective as of July 28, 2020 as such: *“The plaintiff is entitled to determine the claim fully and definitively within a definite period of 2 weeks granted by the judge before the completion of the examination phase, when it is possible to determine the claim amount or value fully and definitively by the information provided by the opposing party or as a result of the investigation. Otherwise, the lawsuit shall be decided based on the amount or value specified in the initial claim.”*

Prior to the amendment, the plaintiff of an unquantified debt lawsuit faced no statutory time limitations for increasing the claim amount. However, pursuant to the amendment introduced under Article 107/2, the plaintiff became obliged to specify its claim within the 2-week period given by the judge when it is possible to determine the claim fully and definitively.

However, as the claim has already been increased and based on the prohibition of retrospective implementation of laws, the previous version of Article 107 of CCP is found to be applicable in this case by the Assembly.

3. Summary of the Court Decisions

The first instance court accepted the first request for an increase in the claim amount, since the procedural framework governing the unquantified debt lawsuits permits submission of just one request for an increase in the claim amount during the course of litigation. However, the first

¹ The decision of the 4th Civil Chamber of the High Court of Appeals numbered 2021/2137 E. , 2021/3747 K., 28.06.2021 T.

instance court considered the second request for an increase in the claim amount as “amendment of the lawsuit” and decided accordingly.

The Regional Court of Appeals dismissed the objection of the defendant on the grounds that the first instance court’s decision is in accordance with the law, without providing any further explanations.

The High Court of Appeals ruled that the first request for an increase in the claim amount should be taken into consideration; so, the decision of the first instance court ruling based on the second request for an increase in the claim amount (*although it was considered as “amendment of the lawsuit” instead of an increase in the claim amount*) is not in compliance with the law. So, the High Court of Appeals quashed the first instance court decision and sent the case file back to the first instance court for re-evaluation.

After the case file was sent back to the first instance court, the first instance court rendered a decision of persistence on the grounds that; (i) additional evidence has been introduced and formally submitted to the case file after the first request for increase in the claim amount, (ii) therefore at the date of first request for increase in the claim amount, it was not possible for the plaintiff to fully and definitively determine the amount of debt, (iii) so, it is the second request for increase in the claim amount that should be taken into account in the decision.

The first instance court also noted that even though the second request for increase in the claim amount is not procedurally acceptable as a “request for increase in the claim amount”, the plaintiff is still entitled to amend the lawsuit. So, the second request for increase in the claim amount should be considered in terms of the amount of the claim.

This divergence of opinion among the courts has been brought before the Assembly.

4. Analysis of the Decision

As the Assembly ruled that the applicable version of the Article 107 of CCP is the non-amended version (i.e., *the version before the amendment in 2020*), plaintiffs are entitled to increase their unqualified debt amount once the amount becomes determinable, without any time limitation. Based on this determination, the Assembly found the 2018 Report to be insufficient to fully and

definitively determine the amount of the debt as it is prepared without collecting all evidence. Indeed, the amount of pecuniary compensation claim was higher in the 2019 Report, which is prepared in consideration of the objections made against the 2018 Report and also after all documents collected.

Consequently, it was ruled that the full and definitive amount of pecuniary compensation should be deemed as “determined” after the 2019 Report and the decision should be made in consideration of the claim increased after the 2019 Report.

5. Conclusion

Regardless of the amendments in the letter of the provision, Article 107 of CCP regulates the unquantified debt lawsuit, granting the plaintiff the right to increase the claim amount once it becomes fully and definitively determinable.

In the Decision, the Assembly clarified the timing of a binding increase in the claim amount in unquantified debt lawsuits, which is the point wherein the amount of the debt becomes fully and definitively determinable. The Decision emphasizes that a second request for an increase in the claim amount is admissible if the previous one was submitted before the amount of debt becomes fully and definitively determinable. In that sense, the plaintiff is safeguarded from being bound by incomplete or inaccurate amounts derived from insufficient expert report(s).

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