

Law 7251: significant amendments to preliminary examination mechanism

27 April 2021 | Contributed by [Gün + Partners](#)

Introduction

Background

Law 7251

Introduction

Civil Procedure Code (CPC) 6100 entered into force on 1 October 2011, replacing the former CPC 1086. One of the most significant mechanisms introduced by the CPC was preliminary examination.

Under Turkish law, the first stage of a trial is the initiation of the lawsuit and exchange of petitions, which is followed by the preliminary examination. During the preliminary examination, the court:

- examines the causes of action;
- examines the initial objections;
- examines the points of dispute;
- gathers evidence; and
- allows the parties to submit evidence.

At this stage, the court also undertakes preparatory work and encourages the parties to settle or attend mediation.

On 28 July 2020 Law 7251 on the Amendment of the Civil Procedure Code and Certain Laws entered into force, upon publication in the *Official Gazette* (31199). This law introduced, among other things, significant amendments to the preliminary examination mechanism.

Background

Article 141 of the CPC enabled parties to change or expand their claims or defences freely through their rebuttal or rejoinder petitions. However, before Law 7251 entered into force, a party could do so only with the counterparty's explicit consent during the preliminary examination hearing. If any of the parties failed to appear at the preliminary examination hearing without an excuse, the present party could change or expand its claims or defences without the absent party's consent. Once the preliminary hearing was complete, claims or defences could not be changed or expanded.

Article 139 of the CPC, which set out all other matters concerning preliminary hearings and the consequences thereof, provided that an invitation to a preliminary hearing had to notify the parties that:

- they should prepare for settlement;
- if only one of the parties appeared in the hearing and wished to pursue the trial, the other party would not be entitled to object to the present party's proceedings performed in its absence; and
- in such a case, the present party would be entitled to change or expand its claims or defences without the absent party's consent.

Also, Article 150/4 of the CPC, which concerned the submission of evidence, stated that:

during the preliminary examination hearing, parties shall be granted with two weeks of definite time to submit the documents that are addressed in their petitions and not filed yet, or make the necessary explanations as to the documents that need to be brought from elsewhere.

Law 7251

Pursuant to Law 7251, Article 141 of the CPC now provides that:

AUTHORS

[Beril Yayla Sapan](#)



[Kardelen Özden](#)



*Parties can change or expand their claims or defenses freely with their rejoinder or rebuttal petitions.
Parties cannot change or expand their claims or defenses once the exchange of petition is completed.*

In parallel to this amendment, Law 7251 also removed the last part of Article 139 of the CPC, which stated that "the present party shall be entitled to expand or change their claims without the absent party's consent during the preliminary hearing".

In light of the above, in the event that a party fails to appear at a preliminary hearing, the present party will not be entitled to expand or change its claims without the absent party's consent. Having said that, as per Article 141/2 of the CPC, the exceptions as to the amendment of the case and the counterparty's explicit consent concerning the expansion or change of the claims and defences remain in force.

Law 2751 has also added a new sentence to Article 139 of the CPC. Accordingly, an invitation to a preliminary hearing must notify the parties that they have to:

- submit all documents which are specified in their petitions but have yet to be filed; and
- make the necessary explanations concerning the documents that must be brought from elsewhere.

This must be done within two weeks of receipt of the invitation to the preliminary examination hearing. Otherwise, parties will be deemed to have waived their right to rely on such evidence.

Under Law 7251, this two weeks begins as of the receipt of the invitation to the preliminary examination hearing. Therefore, parties should pay the utmost attention to their timing with regard to the submission of evidence and should file their evidence in due course.

For further information on this topic please contact [Beril Yayla Sapan](#) or [Kardelen Özden](#) at Gün & Partners by telephone (+90 212 354 00 00) or email (beril.yayla@gun.av.tr or kardelen.ozden@gun.av.tr). The Gün & Partners website can be accessed at www.gun.av.tr.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).