

Preliminary injunction procedure

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Introduction

The Code of Civil Procedure (6100) regulates preliminary injunctions in Turkey. According to Article 389 of the code, courts may grant a preliminary injunction if:

- serious damage might occur to the applicant because of a delay; or
- it would be impossible or difficult to obtain rights due to changes in the current situation.

In its April 27 2012 decision (E. 2012/5543, K. 2014/4817), the First Civil Chamber of the Court of Cassation defined a 'preliminary injunction' as:

"a temporary legal protection which may be broad or limited which is provided against the damages which might occur in legal situations of both the claimant and the defendant during the proceedings going on until the final judgment. As can be understood from this definition, preliminary injunction, other than its other functions, is a temporary legal protection preventing any new conflicts to arise on the subject matter of the case during the case and in the time period until the judgment to be rendered is finalized."

Request and proof

A preliminary injunction can be requested from:

- the competent court that has jurisdiction over a case prior to filing; or
- the court before which a case is filed.

Applicants must:

- determine the grounds for making such a request in addition to the nature of the preliminary injunction being sought; and
- prove their claim to convince the court that the merits of the case are legitimate.

The burden of proof, therefore, is met once the applicant forms an opinion before the court regarding the legitimacy of the case.

Under Article 390/3 of the Code of Civil Procedure, the courts can lower the degree of proof required when ordering a preliminary injunction. Therefore, an approximate conviction is deemed sufficient regarding a lowered degree of proof and no exact conviction is needed.

Deposit for preliminary injunction

Applicants must also submit an appropriate deposit for the loss which the counterparty or third

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parties may incur due to the preliminary injunction. There is no specific provision in the Code of Civil Procedure regarding deposits. Instead, the amount and form of security is at the court's discretion. However, the average deposit is generally 10% to 15% of the claimed amount. Further, where there is sufficient evidence (eg, an official document proving the applicant's rights), the court may decide that a deposit is not required.

Decision and execution

In principle, the court should allow the parties to present their arguments regarding a preliminary injunction request; if not, the party against whom the injunction is to be applied may object to the decision. Conversely, where the rights of the party requesting a preliminary injunction need to be immediately protected, the court may grant an injunction without hearing the other party.

In order for an injunction to be executed, the applicant must apply to the relevant execution office within one week from the date of the court order. Any party that fails to comply with an order or acts contrary to a preliminary injunction faces up to six months in prison.

If a preliminary injunction is granted before a case has been filed, the requesting party must file the case within two weeks from the date of the execution request and notify the execution office accordingly. If the requesting party fails to do so, the injunction will *ex officio* be deemed to have been revoked.

Objections and compensation

If the court dismisses a preliminary injunction request, the applicant may file an appeal. If a preliminary injunction request is accepted, the counterparty may, following execution, file an objection against:

- the order's conditions;
- the court's jurisdiction; or
- the deposit ordered by the court.

Decisions rendered on objection can be appealed. The counterparty or the third party against which the preliminary injunction is imposed may submit a deposit accepted by the court to have the injunction amended or lifted. On request, the court may amend or lift the injunction without a deposit if it finds that the circumstances under which the injunction was ordered have changed.

The party against which a preliminary injunction is ordered can file for damages where the injunction is deemed to be unjust or is revoked *ex officio* or on request. The action must be filed before the court in which the case was filed. The statute of limitation for such action is one year from the finalisation of the judgment and the lifting of the injunction.

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