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Court provides guidance on how to conclude actions for undue receivables

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Introduction

The potential conclusion of actions initiated for undue receivables has been a controversial issue under Turkish law. There have been several different opinions on how the courts should conclude these cases. Certain courts have dismissed them on procedural grounds, while others have examined the merits.

Recently, the Grand General Assembly on the Unification of Judgments of the Court of Cassation rendered a unification decision on how to conclude actions initiated for undue receivables.⁽¹⁾

Decision

In brief, the unification decision ruled that such actions shall be dismissed on procedural grounds. It was stated that, in order to examine the merits of a case, there must be an interest which is worth legal protection. Where there is no interest that is worth legal protection, the merits shall not be examined due to the lack of cause of action. In the context of undue receivables, the plaintiffs would have no current and due interest as the debt cannot be claimed before its due date. An action initiated for an undue receivable is immature. Therefore, such actions must be dismissed on procedural grounds due to lack of legal interest as a cause of action.

Comment

A unification of judgments regarding the matter was crucial as the result also affects whether pro-rated or fixed attorney fees should apply. Before the unification decision, the chambers relying on procedural grounds imposed a fixed attorney fee, whereas the chambers relying on substantial grounds imposed a pro-rated attorney fee, which created an unfair practice.

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Endnotes

(1) Unification of judgments dated 18 February 2022, No. 2019/5 E, 2022/1 K, published in the *Official Gazette* (32003) on 4 November 2022.



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