

What happens when an unquantified claim is quantifiable?

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Introduction

When the new Code of Civil Procedure (CCP) was enacted in 2011, it introduced a new case type to Turkish litigation where plaintiffs file an action for receivables for an unquantified amount that is left to the courts to determine subject to dispute. When filing such actions, plaintiffs:

- state the amount of determinable receivables as the minimum amount subject to dispute;
- pay a case fee based on this amount; and
- extend their claim to the amount calculated by the court and pay the outstanding court fees once the exact amount of receivables has been determined.

This type of case has two main advantages when compared with cases for a partial claim amount:

- the limitation period does not run for the unqualified part of the claim; and
- the plaintiff can amend the size of its claim without being subject to the prohibition thereof.

The first condition under the CCP for a case to be filed for an unquantified claim amount is that the plaintiff cannot calculate the amount of receivables.

This innovation in the litigation procedure has raised two questions:

- In what instances should plaintiffs be deemed unable to calculate the size of their claims?
- What should the courts do when the receivables or damages are quantifiable? In other words, should the court directly reject the case or grant time to the plaintiff to calculate the amount in dispute and the missing court fees accordingly?

According to the Supreme Court, the first question cannot be answered by clarifying the subject matter of the case. In a recent decision, the General Assembly of Civil Chambers of the Supreme Court stated that it is impossible for a particular type of legal dispute or a dispute filed by specific persons (ie, employees, distributors or consumers) to be classified as an action for an undetermined amount of receivables.⁽¹⁾ Instead, it should be assessed in each case whether:

- the amount of receivables is objectively impossible to calculate; or
- the plaintiff could be expected to determine the amount with due care.

While the answer to the first question concerns the merits of a dispute, the second question mainly concerns the interpretation of general procedural principles and the rules of Turkish law.

There are legal prerequisites determined by the CCP for a court to be able to hear a case (ie, jurisdiction, capacity of the parties and legal interest). These prerequisites are divided into two main groups:

- prerequisites that lead to a direct rejection of a case; and
- those for which the claimant is granted time to fulfil any legal deficiencies.

The legal interest of a party to file a case falls into the first group.

Practice

Although filing an action for an unquantified claim that is quantifiable is categorised as lacking legal

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interest, the Supreme Court's approach in this regard has changed since the introduction of this new case type. Where the amount in dispute is determinable, some chambers have opined that the claimant should be granted time to declare said amount and pay the relevant court fee accordingly, while others have ruled that such cases must be rejected directly due to a lack of legal interest.

These different approaches have their own supporters among legal scholars. One group of scholars argue that granting time to the claimant to determine the amount of its receivables is a requirement of the court's duty to clarify the matter in dispute. On the other hand, the majority of legal scholars argue that this court duty cannot be used in a way that enables claimants to change the legal definition of the case and that such cases must be rejected accordingly.

Recent Supreme Court precedents

Recent Supreme Court precedents suggest that the chambers consistently ruling to reject cases concerning unquantified claims has affected the opinions of the other chambers. Further, in the presence of the recent General Assembly decision, this issue has lost its significance and that the dominant practice has now become settled.

The General Assembly's decision clearly states that the law does not entitle claimants to file actions for unquantified amounts of receivables where the amount is quantifiable. It also ruled that in such cases, the claim does not need to be clarified. As such, the court opined that there was no ground to grant time for clarification of such a claim as the action had already been filed for an unquantified amount of receivables even though the claimant was not entitled to do so. The lack of legal interest was not a prerequisite which could be fulfilled by a party and providing the claimant with this opportunity would mean giving an opportunity to create a non-existing interest. On this basis, the General Assembly concluded that this course of action was impossible under the existing procedural rules and contrary to the equality-of-arms principle.

Comment

Claimants and their attorneys prefer filing actions for unquantified amounts of receivables with the aim of paying reduced court fees, assuming that the court grants time to increase the amount of the claim to the actual amount owed. Given the Supreme Court's settled practice, it is advisable to duly assess whether the amount of receivables in dispute can be determined. If so, the action would be rejected by the courts. Although the ground for rejection is procedural and therefore refiling would be possible, adopting this strategy in order to pay lower court fees would result in the unnecessary lengthening of legal proceedings for claimants, which are generally eager to collect their receivables as quickly as possible.

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Endnotes

(1) Decision 2016/22-2633 E 2018/1300 K, 4 July 2018.

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