

What if your unquantified amount of monetary claim is in fact quantifiable?

General Overview

When the new Code of Civil Procedure (CCP) was enacted in 2011, it introduced a brand new case type to Turkish litigation where the claimant files the action for receivables for an unquantified amount and leaves the determination of the amount subject to dispute to the court. When filing the action, plaintiff shows the amount of the determinable receivables as the minimum amount subject to the dispute, pays the case fee over this amount and once the exact amount of receivables is determined by the court, extends its claim to the amount calculated by paying the missing amount of the court fees. This type of case has two main advantages when compared to the cases for partial amount of claims: i) period of limitation ceases running for the unquantified amount of receivables and the plaintiff can amend the amount of its claims without being subject to the prohibition thereof. The first and foremost condition the CCP sets forth for a case to be filed for an unquantified amount is the calculation of the amount of receivables being impossible or unexpected for the plaintiff.

This novelty in the procedure of litigation raised mainly two highly debated questions: In which cases it should be deemed impossible or cannot be expected from the claimant to calculate the amount of its monetary claims? And what shall the courts do when the amount of receivables or damages are in fact quantifiable? In other words, should the court directly reject the case or grant time to the plaintiff to complete the missing part of the amount in dispute and the missing court fees accordingly?

As per the opinion of the Supreme Court, one cannot basically answer the first question by classifying subject matter of the case. Indeed in a very recent decision¹, the General Assembly of Civil Chambers of the Supreme Court stated that it is not possible for a particular type of legal dispute or a dispute filed by specific persons (employees, distributors, consumers etc.) to be classified as an action for undetermined amount of receivables; instead it should be assessed for each concrete case whether determination of the amount of the receivables is objectively impossible or the plaintiff cannot be expected to determine it even with due care. While the answer of the first question is highly nested in the merits of the dispute, answer of the second question is mainly about the interpretation of general procedural principles and rules of Turkish Law.

There are legal prerequisites determined by the CCP in order for a court to be able to hear a case, i.e. jurisdiction, capacity of the parties, legal interest etc. These prerequisites are evaluated basically under two main groups: prerequisites that in its deficiency lead to direct rejection of the case and those for which the claimant is granted time to fulfil the legal deficiency. Actual legal interest of a party to file a case falls under the category which results in direct rejection of the case.

The practice

Although filing an action for unquantified amount of monetary claim despite this amount being quantifiable is categorized as lack of legal interest, the approach of the chambers of the Supreme Court differed since the introduction of this new case type. Where the amount in dispute was in fact determinable, some chambers opined that the claimant should be granted time to declare this amount and pay the missing court fee accordingly, while the others ruled that the case must be rejected directly due to lack of legal interest.

¹ Decision no. 2016/22-2633 E. 2018/1300 K. dated 04.07.2018.

These different approaches have had their own supporters among the 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 the scholars opine that this duty of the court cannot be used in a way enabling the claimant to change the legal definition of the case, and accordingly they argue that the case must be rejected directly.

Recent precedents of the Supreme Court

When the recent precedents of the Supreme Court is observed, it seems like the consistent decisions of the chambers ruling for the direct rejection of the case have affected the opinions of the other chambers. Besides, the very recent decision of the General Assembly of Civil Chambers shows that this discussion has lost its significance and the outweighing practise has now become settled.

Likewise the previous decisions in the past, the General Assembly clearly states in this decision that the law does not entitle the claimant to file an action for unquantified amount of receivables where in fact the amount is quantifiable. It also rules that in such case, there is not a claim to be clarified as it is already clear. That is why it opines that there is not any ground for granting time for clarification of such claim because the action has already been filed as an action for unquantified amount of receivables although the claimant was not entitled to do so. The lack of legal interest here is not a prerequisite which may later be fulfilled by a party and giving the claimant this opportunity would in fact mean giving an opportunity for creation of the non-existing interest. On this basis, the General Assembly concludes that this is not only impossible in the presence of procedural rules, but also contrary to the equality of arms principle.

Comment

It is experienced in practice that claimants or their attorneys prefer filing the actions as actions for unquantified amount of receivables with an aim to pay less court fees, assuming that the court would grant time for increasing the amount of the claim to the actual amount. Now, in the presence of the settled practice of the Supreme Court, it is advisable to duly assess whether the amount of receivables in dispute can be determined or not as in the contrary case, the action would directly be rejected. Although the ground for rejection will be a procedural one and therefore, re-filing of the action would be possible, following such strategy only to pay less court fees would result in unnecessary lengthening of legal proceedings for the claimant who is eager to collect its receivables as quick as possible.