

Litigation - Turkey

Harmonisation of conflicting judgments on appeals of preliminary injunction decisions

Contributed by **Cerrahoğlu Law Firm**

September 09 2014

[Background](#)
[Relevant legislation](#)
[Decision](#)
[Comment](#)

Background

Civil Procedure Law 6100 came into force on October 1 2011, abolishing the former Civil Procedure Law 1086.

Under the former law, an appeal was a single-phase proceeding in which a civil court decision was reviewed by the Court of Appeals.

Under the new law, an appeal now consists of two phases:

- the first appeal, in which civil court decisions are reviewed by the regional courts; and
- the second appeal, in which regional court decisions are reviewed by the Court of Appeals.

Although the new law has come into force, the regional courts have not yet started to function. Therefore, provisional Article 3 of the new law has been adopted. Article 3 states that until the regional courts start to function, the provisions of the former law on appeal proceedings will continue to apply. It also states that in cases where the regional courts have jurisdiction under the new law, the provisions of the former law will apply – as long as they are not contrary to the provisions of the new law – until the regional courts start to function.

Under the former law, preliminary injunction decisions were not subject to appeal. However, a first appeal (but not a second appeal) is now foreseen for preliminary injunction decisions before the regional courts under Article 341 of the new law.

This has created uncertainty as to whether preliminary injunction decisions can be appealed before the Court of Appeals until the regional courts start to function under the provisional Article 3.

Different chambers of the Court of Appeals have issued contradictory verdicts on this matter. The chambers rejecting claims for review of preliminary injunction decisions have argued that since the regional courts have not yet started to function, the former law is still in force and preliminary injunction decisions cannot be appealed under the former law. The chambers accepting claims for review of preliminary injunction decisions have argued that under the provisional Article 3 of the new law, the provisions of the former law will apply insofar as the regional courts have jurisdiction, as long as they are not contrary to the provisions of the new law. Thus, since regional courts have jurisdiction over decisions related to preliminary injunction requests, the Court of Appeals should review them until the regional courts start to function under Article 3.

Consequently, upon the application of several lawyers, the First Council of Presidency of the Court of Appeals has concluded that this issue should be resolved by the General Assembly of the Court of Appeals

Relevant legislation

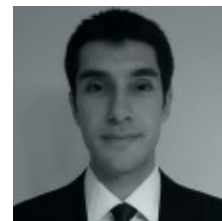
Under Article 341 of the new law, preliminary injunction decisions may be subject to a first appeal.

According to Provisional Article 3 of the new law:

- the provisions of the former law relating to appeals will remain in force until the regional courts start to function; and

Author

Korhan Kocali



- insofar as the regional courts have jurisdiction under the new law, the provisions of the former law will apply, as long as they are not contrary to the provisions of the new law.

Decision

Decisions of the General Assembly of the Court of Appeals that harmonise conflicting judgments of assemblies and chambers of the Court of Appeals aim to ensure the unity of law and promote legal certainty. Such decisions are binding on the General Assembly and chambers of the Court of Appeals and civil courts under Article 45(5) of Court of Appeal Law 2797.

The General Assembly recently ruled that preliminary injunction decisions of the civil courts should not be reviewed by the Court of Appeals. Its reasoning is as follows:

- The former law's provisions relating to appeal are still in force since the regional courts have not yet started to function and preliminary injunction decisions are not subject to appeal under the former law.
- In principle, only final decisions of the civil courts are subject to appeal under the former law. Therefore, since preliminary injunction decisions cannot be characterised as 'final', they cannot be appealed before the Court of Appeals.
- Although the new law states that preliminary injunction decisions may be subject to a first appeal, the first appeal proceeding under the new law is different from the appeal proceeding under the former law. Thus, it is not possible to extend the authority of the courts by way of comparison or interpretation. In other words, the Court of Appeals cannot deal with appeal applications for preliminary injunction decisions as if it were a regional court.
- If the General Assembly held otherwise, this could lead to inconsistent legal interpretation and practice where matters subject to appeal were determined according to the new law, while the procedure to be implemented was determined according to the former law.

Comment

The decision has resolved the uncertainty regarding appeals of preliminary injunction decisions and brought uniformity to this issue, since the decision is binding on all civil courts, chambers and the General Assembly. Therefore it will not be possible to appeal civil courts preliminary injunction decisions until the regional courts start to function. (for further details please see "[Uncertainty remains regarding appeals of preliminary injunction decisions](#)").

For further information on this topic please contact [Korhan Koçali](#) at Cerrahoğlu Law Firm by telephone (+90 212 355 3000), fax (+90 212 266 3900) or email (korhan.kocali@cerrahoglu.com.tr). The Cerrahoğlu Law Firm website can be accessed at www.cerrahoglu.av.tr.

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

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Online Media Partners



© Copyright 1997-2014
Globe Business Publishing Ltd