

## Litigation - Turkey

### Statute of limitations and amendment of claim

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#### Introduction

As one of the essential rules of law, a statute of limitations<sup>(1)</sup> commences once a receivable becomes due (Article 149 of the Code of Obligations) and is interrupted by:

- filing of an action or objection before a court or an arbitration tribunal;
- initiation of execution proceedings; or
- an application to the bankruptcy administration (Article 154 of the Code of Obligations).

When a lawsuit is filed for a part of the receivable, the statute of limitations will be interrupted only with respect to such portion of the receivable and will continue to run for the remainder of the receivable (ie, that part which is not covered by the lawsuit).

Therefore, a plaintiff wishing to amend a claim at a later stage of a lawsuit (Article 176 of the Code of Civil Procedure) is entitled to amend the claim totally (Article 180) or partially (Article 181) only once. However, the plaintiff must do this within the statute of limitations. Thus, where a plaintiff fails to amend its claim within the statute of limitations, the defendant will be entitled to object to such amendment.

However, after a recent decision of the Fourth Chamber of the Court of Appeals, the established practice of the Turkish courts might be likely to change.

#### Recent case

The Fourth Chamber of the Court of Appeals recently reversed a first instance decision, which was based on the established practice of a statute of limitations objection against an amendment of a claim made after the expiry of the statute of limitations.

This recent reversal is contrary to the established Court of Appeals practice, under which amendments of claims can be filed only within the applicable statute of limitations, even where a plaintiff has reserved its rights at the commencement of the lawsuit.

The Fourth Chamber of the Court of Appeals ruled that the plaintiffs were entitled to amend their claim regardless of the expiry of the statute of limitations, based on the ground that the statute of limitations objection can be raised only against a separate and new lawsuit to be filed with respect to the same claim, but not against the amendment of a claim (this was interpreted by the court as only an amendment in the statement of claim of the plaintiff).

Therefore, the appellate court rejected the first instance decision on the ground that a plaintiff may amend his claim during the lawsuit which shall not be rejected despite the fact that such amendment was not made within the statute of limitations.

#### Facts

The lawsuit was filed for material and moral indemnities by individuals against the Prime Ministry Undersecretariat of Customs, due to the alleged illegal seizure of a vehicle owned by the plaintiffs.

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The plaintiffs claimed that the decision of the undersecretariat to seize their vehicle was wrongful and that they incurred damages due to not being able to operate the vehicle.

The plaintiffs claimed only TRY10,000, in order to reduce the court fees and expenses, but their material damages allegedly consisted of:

- loss of profit of TRY239,588.38;
- damages of TRY2,469.00 on the vehicle;
- diesel oil for an amount of TRY28,800; and
- moral damages of TRY20,000.

This corresponded to a total of TRY290,557.38.

On receiving the expert report in their favour, the plaintiffs submitted a petition for amendment of their claim and increased their claim to TRY284,408.98. However, this petition was submitted after the one-year statute of limitations for torts had expired, pursuant to Article 60 of the old Code of Obligations (818).

### **First instance decision**

The first instance court ruled that the plaintiffs were not entitled to amend and increase their claim, due to the fact that the one-year statute of limitations had expired, starting from the commencement of the lawsuit. Thus, the court ruled in favour of the plaintiffs, but limited the claim to the initial amount.

### **Appellate decision**

The Fourth Chamber of the Court of Appeals reversed the decision of the first instance court on the ground that the plaintiffs were entitled to amend their claim during the lawsuit, since it was only a correction of the claimed amount within the same case and not a new case. The court further stated that a statute of limitations objection can be raised only where a plaintiff files a separate, new lawsuit, despite the expiry of the statute of limitations.

However, the chief judge of the Fourth Chamber of the Court of Appeals submitted her dissenting opinion, in which she entirely disagreed with the above-mentioned reversal decision of her chamber. In her dissenting opinion, which was in line with the established practice and doctrine, it was clearly stated that a plaintiff is entitled to amend his or her claim during a pending lawsuit only within the statute of limitations and not after its expiry, even if the plaintiff reserves his or her rights at the commencement of the lawsuit. This is based on the rule that initiation of a lawsuit interrupts the statute of limitations only limited to the amount claimed in such lawsuit, and not with respect to the amount reserved but not claimed at that time.

### **Comment**

Arguably, a respondent should be entitled to raise a statute of limitations objection against an amendment of claim by a plaintiff that has not been filed within the applicable statute of limitations. This would best serve the purpose of the statute of limitations institution and prevent unintended and abusive use of the right to amend a claim during a pending lawsuit. Such right should remain an exceptional procedural right to be exercised in due time according to certain rules.

In the light of the foregoing, opening a door to amending claims without any statute of limitations may lead to crucial consequences in either pending or future litigation procedures.

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### **Endnotes**

(1) Every receivable is subject to a 10-year statute of limitations as a rule, unless the contrary is regulated by law. A number of specific types of receivable have a statute of limitations of five years (Article 147 of the Code of Obligations). The statute of limitations for torts is two years from the time the plaintiff becomes aware of the damage or, in any case, 10 years from the date of the tort (Article 72 of the Code of Obligations). This update focuses not on the specific terms of statute of limitations, but rather on the applicability of a statute of limitations objection against amendment of a claim by the plaintiff.

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