

## Litigation - Turkey

### Uncertainty remains regarding appeals of preliminary injunction decisions

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#### Introduction

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#### Introduction

When the new Civil Procedure Law (6100) came into force on January 10 2011, the former Civil Procedure Law (1086) was abolished. However, due to the delay in establishing regional courts of justice, the change in the law has led to some confusion in relation to appeals of preliminary injunction decisions.

Under the former law, the appeal proceeding was a one-phase procedure in which a civil court's decision was reviewed by the Court of Appeals. Only the final decisions of the civil courts were subject to appeal (*temyiz*). Therefore, since preliminary injunction decisions were not final, they could not be appealed before the Court of Appeals. According to the new law, the appeal proceeding now consists of two phases:

- the so-called 'first appeal' (*istinaf*), in which civil court decisions are reviewed by the regional courts of justice; and
- the main appeal (*temyiz*), in which civil court decisions are reviewed by the Court of Appeals.

Contrary to the former law, a first appeal can be implemented for review of preliminary injunction decisions before the regional courts of justice.

However, the new law states that until the establishment of the regional courts of justice, the provisions of the former law on appeal procedures will continue to apply. This therefore raises the following question: can a preliminary injunction decision be appealed before the Court of Appeals at present?

#### Recent case law

In recent cases the First, 16th and 17th Chambers of the Court of Appeals rejected requests for appeals regarding preliminary injunction decisions. However, despite the dissenting opinion of one of its members, the Second Chamber of the Court of Appeals ruled that an appeal request for a preliminary injunction decision can be reviewed by the Court of Appeals.

#### Facts

The civil court decisions regarding preliminary injunction claims, which were appealed before the Court of Appeals, were given in lawsuits related to:

- nullity of land registration;
- compensation claims due to traffic accidents; and
- divorce.

#### First-instance decisions

In a lawsuit for nullity of land registration, the first-instance court ruled that a preliminary injunction should be implemented on the Land Registry records. The defendant requested rescission of this preliminary

regarding rejection of rescission of the preliminary injunction before the Court of Appeals.

In another lawsuit for nullity of land registration, the first-instance court rejected the plaintiff's claim for implementation of a preliminary injunction on Land Registry records. The plaintiff appealed this decision before the Court of Appeals.

In a lawsuit for compensation due to a traffic accident, the court rejected the plaintiff's claim for implementation of a preliminary injunction on the Traffic Registry records of the vehicle, since it was understood that lawsuit was initiated for the wrong vehicle. The plaintiff appealed the decision before the Court of Appeals.

In a divorce case, it was ruled that a preliminary injunction should be implemented on the Land Registry records of the defendant's immovable property. The defendant requested the rescission of the preliminary injunction decision. However, the civil court rejected this request. The defendant appealed the decision regarding rejection of rescission of the preliminary injunction before the Court of Appeals.

### **Appellate decision**

The different chambers of the Court of Appeals have issued contradictory verdicts as to whether preliminary injunction decisions can be appealed before the Court of Appeals. The common reasoning of the Court of Appeals in rejecting claims for review of preliminary injunction decisions is summarised below.

Article 341 of the new law enables parties to pursue a first appeal for final decisions or decisions related to the rejection or acceptance of preliminary injunction requests and those that are given on any objection to a preliminary injunction. According to provisional Article 3 of the new law:

- the articles regarding the civil courts' appeal decisions as stipulated under the former law will continue in force until the commencement of duty of the regional courts of justice (as published in the *Official Gazette* in line with Article 2 of Law 5235);
- if an appeal is brought before the Court of Appeals after the new law has been issued, but before the regional courts of justice commence operations, the provisions of the former law on appeal proceedings will apply until such decisions have been finalised by the Court of Appeals, even if the regional courts of justice are established while the appeal procedure is pending; and
- insofar as the regional courts of justice have been assigned to hear the case, the former law will apply, provided that the relevant provision is not contrary to that of the new law.

Since the regional courts of justice have not yet been established, the former law is still in force (ie, only final decisions can be appealed). Even though the new law states that a first appeal can also be pursued for preliminary injunction decisions, the first appeal proceeding mentioned in Article 341 of the law cannot be interpreted as the appeal stipulated under the former law.

Thus, the First, 16th and 17th Chambers of the Court of Appeals have concluded that there is no legal basis for appeal requests regarding such decisions and will not review such requests.

In contrast, the Second Chamber, which is in charge of family law disputes, is of the opinion that such appeal requests may be reviewed by the Court of Appeals. It has argued that the provisional Article 3 of the new law states that the former law will apply insofar as the regional courts of justice have been assigned to hear a case, provided that the relevant provision is not contrary to those of the new law, and such appeal request may be reviewed by the Court of Appeals. A member judge of the Second Chamber gave a dissenting vote, stating that the main appeal and first appeal are not the same, and thus preliminary injunction decisions cannot be subject to appellate review.

### **Comment**

No uniform understanding of Article 341 of the new law has yet been formed and different chambers have adopted different approaches to appeals of preliminary injunction decisions. However, the chambers of the Court of Appeals that have rejected appeal requests appear to be in the right – since the regional courts of justice have not yet been established, decisions regarding preliminary injunctions should arguably not be reviewed by the Court of Appeals based on an article stipulating the rules applicable to first appeals.

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