



Court of Cassation Said the Final Word: Courts May Decide on an Interim Rent Reduction in Adaptation Lawsuits

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From the outset, the Covid-19 Pandemic has significantly affected the usual rules of conduct and, as a natural consequence, commercial activities of businesses. How this "extraordinary" situation, which no one could foresee or could be expected to predict, would impact legal relationships has been the subject of numerous debates that are yet to be concluded.

One of these debates focuses on the balance of interests between the tenant and the lessor within a lease agreement during the Pandemic. While some liberal views argue that this disruption is solely the tenant's problem, the more interventionist ideas argue that the courts should terminate the existing contractual relationship and create a new legal regime protecting the tenant. The debate is also focused on the timing of this intervention. As a matter of fact, while the Ministry of Justice designates a projected time of around 300 days for the courts of first instance to decide on a lawsuit on the adaptation of rent, this period may sometimes double in practice.

Considering the Pandemic conditions, is it possible for the businesses affected by this situation to endure this period of awaiting a decision? If not, can the court decide to reduce the rent as an interim injunction during the initial phases of the case? Following different and contradicting decisions by Regional Courts of Justice ["RCJ"] regarding these questions, the matter was brought to the Court of Cassation for a definitive and final judgment, which answered the question positively and ruled that the rent could be reduced as an interim injunction in cases regarding workplace leases.

At first, Ankara RCJ decided that it could not decide to reduce the rent through an interim injunction stating that the nature of the dispute required trial. In other words, according to Ankara RCJ, courts could intervene in workplace lease agreements affected by the Pandemic and reduce the rent, yet not as an interim injunction during the initial phases of the case. In order for the tenant to obtain the right to a rent reduction, they must wait for the judgment, which could be rendered approximately in 1.5-2 years. On the other hand, Bursa RCJ decided that if interim injunction is not ordered in adaptation cases, irreparable damages may occur till the end of the case, and accordingly, the interim injunction request should be accepted and be reviewed by the court every 6 months due to the volatility of the Pandemic. In order to eliminate this difference of opinion between RCJs and for a uniform application, the issue was brought before the Court of Cassation, and in its decision dated June 4, 2021, the Court of Cassation put an end

to the discussion by ruling that an interim injunction could be granted in lawsuits for the adaptation of the rent due to the Pandemic.

The Court of Cassation first examined the philosophy behind the adaptation of a contract. In Turkish law, the principles of commitment to the contract and freedom of contract were underlined, and it was stated that the exact performance of the obligations in the contract was essential. On the other hand, it was noted that there are exceptions to the aforementioned principles, and that in the event the relationship is fundamentally damaged, the contract can be adapted in accordance with Art.138 of the Turkish Code of Obligations in light of the good faith principle.

As regards the acceptance of an interim injunction, the Court of Cassation stressed that in the adaptation cases filed during the Pandemic period, if the litigation process is prolonged, the effects could be aggravated, the tenant who could not pay the rent due to economic difficulties, thus could go into default, and as a result, the lease agreement could be terminated, but since the ultimate purpose of adaptation is to uphold the contract, a decision by the Court of Cassation for the adaptation could eventually prove to be ineffective. Accordingly, the Court of Cassation ruled that in adaptation cases, in order to provide temporary protection by eliminating the grievances caused by the prolongation of the case, an interim injunction can be issued, to be valid until the final judgment on the merits of the case.

With this decision of the Court of Cassation, there is no longer an obstacle for the acceptance of the interim injunction requests in the adaptation cases of the workplace tenants affected by the Pandemic. Thus, with the filing of the lawsuit, the courts will be able to decide to reduce the rental price as a precaution, depending on the characteristics of the present case, until the judgment. In our opinion, this decision of the Court of Cassation is very accurate both in terms of legal technique and sense of justice and in terms of ensuring social justice, that is, the fair distribution of benefits and burdens in the society.

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