



# Law Proposal Including New Regulations on the Monetary Limits for the First and Second Appeals

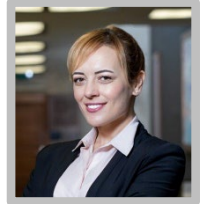
**17 JULY 2024**

On 3 July 2024, the Law Proposal on the Amendment of Certain Laws ("Proposal"), also referred to as the 9<sup>th</sup> Judicial Package, was submitted to the Grand National Assembly of Türkiye. The Proposal was approved by the Justice Commission on 12 July 2024. We analyzed the provisions of the Proposal regarding the monetary limits in the first and second appeals:

The Proposal aims to eliminate uncertainties arising from increases in the monetary limits set for the first and second appeals as a result of the revaluation with regard to the judicial decisions made before such increases.

## Monetary Limits Regarding the First and Second Appeals in Administrative Judiciary

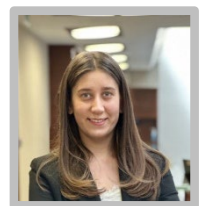
As known, the monetary limits for the first and second appeals are increased in accordance with the revaluation rates published annually. However, the relevant regulations do not stipulate which year's monetary limit shall be applied. This situation was especially causing unavailability of the appeal and confusion in practice due to the increase in the monetary limits on the date of the second decision given upon the decision of removal or reversal on the second appeal, especially in cases where an appeal was available on the date of the first decision given before the first and second appeal examinations. Therefore, in some cases, the regional administrative courts or the Council of State were not able to review whether their own reversal or removal decision is complied with in accordance with the law.



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The Constitutional Court ("CC"), with its decision numbered 2023/36 E. - 2023/142 K. and dated 26 July 2023, first annulled the provision determining the amount of the monetary limit for the second appeal stating that the date of the monetary limits applicable in determining which decisions are subject to appeal should be regulated by law, and annulled the relevant provision to be in force as of 13 July 2024 [*The aforementioned CC decision annulled Article 46/1(b) of the Administrative Procedure Law No. 2577 ("APL")*]. Subsequently, with its decision numbered 2023/81 E. - 2023/184 K. and dated 26 October 2023, the CC annulled on similar grounds the provision on the monetary limit for the first appeal and the provisions stipulating that the monetary limits are re-determined annually according to the revaluation rates to be in force as of 21 September 2024 [*The aforementioned CC decision annulled the 2nd sentence of the Article 45/1 and the Additional Article 1 of the APL*]. Therefore, the Proposal aims to fill the legal gap caused by aforementioned annulment decisions.

According to the regulations envisaged by the Proposal, the monetary limits **at the date of the filing of the lawsuit** will be taken into consideration in determining the lawsuits where a hearing is mandatory, and the monetary limits **at the date of the final decision** of the court of first instance or the regional administrative court will be taken into consideration in determining the decisions subject to first and/or second appeals. Furthermore, it is stipulated that the increases in the monetary limits after the date of the final decision will not affect the lawsuits that are re-examined upon the removal decision of the regional administrative court and/or the reversal decision of the Council of State. In other words, the decisions rendered following the reversal and/or removal decision will be subject to appeal review even if they become below the monetary limits according to the current regulations at the date of appeal application.

The Proposal preserves the first appeal monetary limit of thirty-one thousand Turkish liras and the second appeal monetary limit of nine hundred and twenty thousand Turkish liras for the year 2024 under the current regulations.

## **Regional Administrative Court Decisions Subjected to Second Appeal**

According to the current regulations, in the event that the regional administrative courts remove the decision of the court of first instance and render a new decision, the decisions of the regional administrative courts are final and cannot be applied for second appeal if the subject matter of the lawsuit does not exceed the monetary limit for second appeal. However, in one of its decisions, the CC ruled that *the inability of appeal against the decision of the regional administrative court in the event that (...) the regional administrative court renders a decision against the claimant for the first time in a tax lawsuit or a full remedy or annulment lawsuit, which cannot be considered insignificant in terms of its amount, imposes a disproportionate limitation on the right to request judicial review of the decision in terms of decisions that fall below the second appeal limit but exceed the first appeal limit* [1]. Accordingly, it is stipulated in the Proposal to enable the second appeal against the decisions rendered by the regional administrative courts upon the removal of the decision of the court of first instance in cases where the amount of the subject matter of the lawsuit falls between the monetary limits of first appeal and second appeal. Thus, the decisions rendered by the regional administrative courts for the first time upon the removal decision will also be subject to second appeal.

However, in the event that the proposed provisions enter into force, the appeal will continue to be unavailable against the rejection of appeal request decisions of the regional administrative courts in lawsuits that are below the second appeal threshold and in lawsuits where the amount of the subject matter does not exceed the first appeal threshold.

Furthermore, in its other decision [2], the CC evaluated the provision that the decision of the regional administrative court rejecting the first appeal request shall be final if the first appeal is filed after the statutory deadline [*With the aforementioned CC decision, the 1st sentence of Article 45/2 and the phrase "...and the 6th..." in Article 48/7 of the APL were annulled in terms of "in case the first appeal is filed after the legal period has expired"*]. The CC found the provision unconstitutional and annulled it, stating that *the finality of such decision may constitute a disproportionate limitation on the right to access to the court where an authority that is not the highest court in the administrative judiciary makes the assessment for the first time that the appeal application was not filed within the legal time limit*. Based on this decision, it is considered that the finality of the decisions of the regional administrative courts to reject the first appeal request where the necessary fees and expenses are not paid, the petition is not prepared in accordance with the principles of Article 3 of the APL, or it is understood that subject of the lawsuit is related to a final decision is also unconstitutional. For this reason, it is envisaged to pave the way of second appeal against such decisions and against the decisions that the first appeal application was not filed within the legal time limit, in line with the aforementioned decision of the CC, within seven days from the day following the date of notification.

## **Monetary Limits for Lawsuits to be Heard by Sole Judge in Administrative and Tax Courts**

Pursuant to Law No. 2576 on the Establishment and Duties of Regional Administrative Courts, Administrative Courts and Tax Courts, the lawsuits in administrative and tax courts that do not exceed the amount re-calculated according to the annual revaluation rate are resolved by one of the judges serving in these courts.

Although the CC has not issued an annulment decision regarding the monetary limit applied in the determination of the lawsuits to be heard by sole judge, taking into account the rationales of the aforementioned decisions, a provision has been added to the Proposal to take into consideration the monetary limit at the date of the lawsuit in determining the lawsuits to be resolved by sole judge. In this way, it is aimed to prevent the confusion caused by the fact that although amount of subject matter of a lawsuit was above the monetary limit to be dealt by a committee at the time of its filing, since the monetary limit was increased in the new calendar year, the lawsuit become among the lawsuits to be dealt by sole judge, while the trial was in progress. In addition, it is planned to add a provision stating that if the amount of the subject matter of the lawsuit is increased during the trial, the monetary limit determined for the lawsuits to be heard by sole judge at the date of the increase will be taken into consideration.

## **Monetary Limits for First and Second Appeals in Civil Judiciary**

Within the scope of the Proposal, in parallel with the amendments planned to be made regarding the administrative judiciary, it is envisaged to make amendments to the Civil Procedure Law No. 6100 ("CPL") and the Enforcement and Bankruptcy Law No. 2004 ("EBL") regarding the date on which the monetary limits will be taken into consideration for the application for first and second appeals. Accordingly, in the event that the Proposal enters into force, the revaluation-related increase in the monetary limits for the first and/or second appeal of court decisions under the CPL and the EBL will not be applied to the decisions re-rendered upon the removal of the decisions of the regional court of justice and/or the reversal decision of the Court of Cassation, and the monetary limits on the date of the first decision will be taken into consideration.

In addition, according to the current regulations, the parts of the monetary limits determined according to the revaluation rates annually within the scope of the CPL and the EBL that do not exceed ten Turkish liras are not taken into account. In the Proposal, in parallel with the current regulations in the administrative judiciary, it is planned to make amendments in the EBL and CPL that the parts that do not exceed one thousand Turkish liras as a result of the calculation made due to revaluation shall not be taken into account in the calculation of the monetary limits.

The Proposal was approved by the Justice Commission of the Grand National Assembly of Türkiye on 12 July 2024 and is expected to be adopted, published and enter into force in the recent future.