

Dead Ends and U-Turns: Rethinking Excess Damages (Munzam Zarar) under Turkish Law

*“Rule creation cannot be linear, and that the road is necessarily bumpy,
with dead-ends and U-turns.”¹*

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For years, the jurisprudence of the Turkish Court of Cassation on excess damages (*excess damages*) – compensatory loss exceeding statutory default interest – followed a rigid line: mere inflation or depreciation of currency could not, in itself, justify such a claim. The creditor, they held, must prove a specific and quantifiable loss beyond interest.

Even after the Turkish Constitutional Court ruled that this narrow interpretation infringed upon the right to property, Court of Cassation continued to adhere to its earlier approach. The law, it seemed, was fixed on a particular trajectory – unmoved by economic changes or constitutional guidance.

But with the resurgence of soaring inflation in 2025, a notable court decision has taken a different turn. Acknowledging the earlier precedent, the court held that, in the face of severe depreciation, inflation alone may now suffice to claim excess damages. As the court reasoned, it would be unrealistic to assume that individuals should passively absorb economic shocks without taking measures to protect their capital.

Is this a long-overdue course correction? Or a pragmatic response to a specific situation? This is yet to be seen. What is certain, however, is that the legal road – as ever – continues to twist.

The Concept of Excess Damages under Turkish Law

Under Article 122/1 of the Turkish Code of Obligations, a creditor may claim damages exceeding statutory default interest – known as excess damages – if the debtor fails to pay a monetary debt on time and is at fault. The burden shifts to the debtor to prove that the delay occurred without fault in order to avoid liability. Additionally,

¹ Mads Andenas and Duncan Fairgrieve (eds), *The Public Functions of Courts and the Case-Law of the European Court of Human Rights* (Edward Elgar Publishing 2016) ch 6

the creditor must demonstrate actual loss arising from the delay and a causal link between the default and the alleged harm.²

As per Article 122/2, if the amount of loss beyond default interest can be calculated within the same proceedings, and the creditor expressly requests it, the court may award such compensation. However, the court cannot grant excess damages *ex officio*; a clear and express claim is required.

In both doctrine and case law, the burden of proof for excess damages rests with the creditor. Over time, two approaches to establishing such loss have emerged: the concrete method and the abstract method. Under the concrete method, the creditor must provide fact-specific evidence showing how the delay caused them to incur damages beyond default interest – such as lost investment opportunities, foreign exchange losses, or forced borrowing.³ By contrast, the abstract method allows for reliance on broader economic indicators – such as inflation, CPI, PPI, or comparative investment returns – to demonstrate that the default interest does not reflect the true cost of delay.⁴

Although both methods are discussed among scholars, the Turkish Court of Cassation has historically rejected the abstract method. Its precedents repeatedly insisted that creditors must substantiate their claims through the concrete method, rejecting claims based solely on inflationary erosion or general economic trends.

The Constitutional Court's Intervention – and Court of Cassation's Resistance

This rigid jurisprudence eventually reached the Turkish Constitutional Court. In 2017, the Court reviewed a case in which the lower courts had dismissed an excess damages claim despite the creditor having presented inflation data and other macroeconomic indicators. The lower courts insisted on concrete proof of individualized loss.

The Constitutional Court, however, took a different view. It found that in situations where a creditor's receivable had lost substantial value due to inflation – and where further proof of specific damage was impractical – the courts' insistence on strict, concrete evidence imposed a disproportionate burden. As a result, the Court held that the creditor's right to property had been violated. The decision implied a more flexible evidentiary standard might be required, at least in times of high inflation.⁵

Yet this decision had limited impact on the prevailing case law. Although a few appellate chambers showed signs of softening their approach,⁶ the General Assembly of Civil Chambers of the Court of Cassation reaffirmed its preference for the concrete

² Yıldız, M. G. (2020). Türk Borçlar Kanunu'nun Genel Hükümlerine Göre Borçlu Temerrüdünün Şartları ve Sonuçları. On İki Levha Yayıncılık.

³ Nebioğlu Öner, Ş. (2023). Güncel Yargı Kararları Bağlamında Aşkın Zarar. *TBB Dergisi*, (165), 106-135.

⁴ Keser, Y. (2020). Aşkın Zararın İspatı. *Inonu University Law Review* InULR 11(2), 484-495.

⁵ Constitutional Court, General Assembly, Application No: 2014/2267 Date: 21.12.2017

⁶ Akçaal, M. (2022). Güncel İçtihatlar Işığında Munzam Zarar. *Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi*, C. XII (S. 2), 1069-1099.

method even after the Constitutional Court's ruling.⁷ Thus, for years, the gap between constitutional principles and civil court practice persisted.

The 2025 Decision: A Cautious Shift Toward Flexibility?

This article focuses on a January 2025 judgment by the 6th Civil Chamber of the Court of Cassation ("Court"), which appears to break from earlier precedent.⁸

The case involved a cooperative member whose allocated apartment was sold due to cooperative debt. The member received a promissory note as compensation, but the note was not paid on time. By the time the creditor recovered the amount, inflation had severely eroded its purchasing power. The creditor argued that the late payment prevented him from purchasing a replacement apartment and that the sum received could now only cover rent for a year or two. He sought excess damages.

Both the trial court and the regional appellate court dismissed the claim. They acknowledged the inflationary context but insisted that the alleged loss had not been proved with concrete evidence. The trial court specifically found that no clear causal link was established between the default and the alleged loss of housing opportunity.

On appeal, however, the Court reversed. In its reasoning, the Court discussed the differences between the concrete and abstract methods, and drew attention to the distinction between periods of "normal" inflation and periods of sustained or hyper-inflation. Citing Article 6 of the Turkish Civil Code, the Court emphasized that facts known to all do not require proof – and that the loss of purchasing power in high inflation environments falls into that category.

Importantly, the Court acknowledged that in times of high inflation, it would be unreasonable to expect an average person to leave their money idle. It emphasized that a prudent individual would naturally seek to preserve the value of money through time deposits, foreign currency, gold, or government bonds. Where inflation is significant and continuous, the Court reasoned, delay in performance by the debtor will almost inevitably result in real economic loss for the creditor – and the courts should take judicial notice of this reality. The Court further referred to the Constitutional Court's earlier ruling, reinforcing its stance through reference to both domestic and international human rights principles.

Notably, the Court warned that insisting on strict proof in such cases not only risks violating property rights, but also enables debtors to benefit from low statutory interest while creditors bear the economic burden. Left unchecked, this dynamic could incentivize non-performance and flood the courts with similar disputes. In light of these concerns, the Court held that in times of high inflation, abstract economic indicators may suffice to prove excess damages – and that doing so is necessary to preserve the integrity of obligations.

⁷ Court of Cassation, General Assembly, Case No: 2021/938, Decision No: 2022/401, Datge: 29.03.2022. See also Court of Cassation 11th Civil Division, Case No: 2023/2256 Decision No: 2024/4683 Date: 5.6.2024; Court of Cassation 3rd Civil Division, Case No: 2023/4805 Decision No: 2024/3768 Date: 21.11.2024.

⁸ Court of Cassation 6th Civil Chamber, Case No: 2024/3534 Decision No: 2025/15 Date: 13.1.2025

Still, the Court drew a line: where inflation is moderate or stable, it reaffirmed that the traditional, concrete method would continue to apply.

Conclusion: Detour or New Direction?

The Court of Cassation's 2025 decision marks a notable departure from its long-standing insistence on concrete evidence in claims for excess damages. For the first time, the Court openly embraced the idea that abstract indicators – such as inflation rates and economic conditions – may suffice to establish damages exceeding default interest, at least in times of sustained economic instability.

Yet it remains uncertain whether this judgment signals a broader change in doctrine or merely reflects a context-specific exception. While the reasoning is robust, the decision has not yet been echoed widely in other chambers or confirmed by the Court's General Assembly. It may remain an isolated response to a specific event, rather than the beginning of a new jurisprudential era.

Still, its significance should not be understated. The judgment acknowledges, with clarity and candour, the economic realities facing creditors in a high-inflation environment. It signals a willingness – however cautious – to adapt evidentiary standards to protect the integrity of financial obligations and avoid unjust enrichment. In doing so, it reopens a long-standing conversation about the balance between legal certainty and economic fairness.

Whether this is a turning point or a detour remains to be seen. But it reminds us, as the opening quote suggests, that the evolution of legal rules is rarely linear – and that even the most settled doctrines may eventually yield to changing conditions and persistent questions of justice.

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