

THE COMPETENT COURT FOR GRANTING INTERIM RELIEF FOLLOWING AN ENFORCEMENT DECISION

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A. Introduction

The enforcement of foreign court judgments and arbitral awards in Turkey is contingent upon an enforcement decision to be rendered pursuant to Articles 50 *et seq.* of Law No. 5718 on International Private and Procedural Law (“PIPL”). While finality is generally not a prerequisite for the enforcement of foreign judgments, a distinct legal framework applies to enforcement decisions themselves. Specifically, the mere acceptance of an enforcement request by the court of first instance does not suffice; under Article 57(2) of PIPL, the enforcement decision must attain finality before the foreign judgment can be executed.

Until the enforcement decision regarding a foreign court judgment or arbitral award becomes final, applications for interim measures and provisional attachments play a critical role in preserving the creditor’s rights. Turkish law imposes no temporal limitation on when such protective measures may be requested; they may be sought at any stage of the proceedings, including during appellate review. Nonetheless, in practice, ambiguity persists as to which court holds jurisdiction over such requests at the appellate stage - whether it is the court of first instance, which issued the enforcement decision but no longer retains the case file, or the regional court of appeal, which continues to hear the matter on appeal.

This article explores the issue of judicial competence in reviewing a creditor’s application for interim provisional attachment submitted after the court of first instance has granted the enforcement request, but prior to the finalization of that decision.

B. The Legal Gap and the Basis of the Debate

Interim relief - specifically, interim measures and provisional attachments - may be sought both prior to and following the initiation of legal proceedings. According to Article 390 of the Code of Civil Procedure Law No. 6100 (“CCP”), such requests must be submitted, before the filing of the principal action, to the court that holds subject-matter and territorial jurisdiction over the merits of the case. Once the

action has been filed, however, jurisdiction shifts exclusively to the court before which the main proceedings are pending.

However, in cases where enforceability hinges on the finalization of a decision - *such as with enforcement judgments* - a different legal framework applies. Once the court of first instance grants the enforcement request and delivers its reasoned judgment, the proceedings before that court are deemed concluded, and the court becomes *functus officio*. In other words, the enforcement action ceases to be active before the trial court, and the judgment becomes subject to appellate review.¹ This transitional phase - *after the judgment is issued but before an appeal is filed* - gives rise to a legal ambiguity. At this stage, there is no explicit statutory provision as to which court holds the authority to examine and decide a request for interim measure or provisional attachment: the court of first instance, which has rendered the enforcement decision and no longer retains jurisdiction, or the regional appellate court, which is expected to take over the case.

The underlying cause of this legal lacuna lies in the procedural gap that emerges following the issuance of an enforcement decision and before the case file is either transmitted to the regional appellate court or, in the absence of an appeal, the statutory time limits expire. During this interim period, there is no court practically seized of the matter. This ambiguity arises from the inconsistency between Article 294 of CCP, which stipulates that “*a final judgment brings the proceedings to a close*”, and Article 390 of CCP, which provides that “*interim relief may only be requested from the court before which the principal action is pending*”. In practice, this uncertainty leads to inconsistent decisions among courts.

The following sections explore the perspectives presented in scholarly literature and analyse the approaches adopted by Turkish courts in addressing this issue.

C. Scholarly Perspectives and Judicial Assessments

Following the issuance of an enforcement judgment (of a foreign court decision/arbitral award) by the court of first instance, a party may seek interim relief, such as an interim measure or provisional attachment - based on that decision. However, legal scholarship presents divergent views regarding which court such a request should be submitted to. These perspectives differ depending on whether the case is at the appellate or court of cassation stage, and on whether the case file has already been transmitted to the regional appellate court or to the Turkish Court of Cassation.

i. Applications for Interim Measures and Provisional Attachment Prior to the Lodging of an Appeal Against the Enforcement Decision

Once the court of first instance has rendered its judgment and become *functus officio*, a debate has arisen as to which court is competent to hear and determine applications for interim measures or for provisional attachment submitted prior to the formal lodging of an appeal. The literature presents two principal views, reflecting divergent interpretations of procedural competence during this transitional phase.

¹ Pekcanitez, H., Özokes, M., Akkan, M., & Korkmaz, E. Pekcanitez Civil Procedure Law, Vol. III, 15th ed., p. 1971.

Under the prevailing view in the legal doctrine, even in the absence of a formally lodged appeal following the judgment of the court of first instance, applications for provisional attachment and interim measure must be submitted to - and adjudicated by - the regional appellate court.² This position is grounded in the principle that, once proceedings have commenced, authority to grant interim relief lies exclusively with the *court seized of the matter*. Following the issuance of the judgment by the court of first instance, the status of “*court seized of the case*” is deemed to have transferred to the regional appellate court; accordingly, the competence to examine such requests is considered to rest with that higher court.

In our view, even where both the application for appeal and the response have been duly submitted, the regional appellate court cannot be regarded as the “*court seized of the case*” until the case file has been formally transmitted. At that juncture, the appellate court has neither assumed control over the file nor initiated its review. Put simply, for the regional appellate court to be competent to examine requests for interim measures or provisional attachment, the file must first be received by the appropriate chamber and assigned a docket number. Furthermore, in the absence of an actively seized appellate chamber, it is practically impossible for the claimant to identify the correct division and direct an application for interim relief accordingly.

According to an alternative view in the literature, although the court of first instance becomes *functus officio* upon rendering its judgment, it should nonetheless retain competence at this stage to adjudicate requests for interim measures and provisional attachment.³ This position is based on the premise that the regional appellate court does not acquire jurisdiction over interim measures until the case file has been formally transmitted. Consequently, it is argued that there must exist a judicial authority to which a party seeking interim relief may apply, and that such authority should be the court of first instance, which has already ruled on the merits of the case.

Under this view, an additional ambiguity arises regarding whether applications for interim relief should be submitted to the same court of first instance that issued the enforcement decision and has since become *functus officio*, or instead to a different court of first instance designated through a new filing and allocation. In practice, it is frequently observed that provisional attachment orders are issued not by the court that granted enforcement, but by another first-instance court identified through a fresh application and recorded under a miscellaneous docket. Notably, regional

² Cengiz Serhat Konuralp, “Interim Injunctions under the Code of Civil Procedure No. 6100,” Istanbul University Law Faculty Review, Vol. 71, No. 2, 2013, p. 238; Bilge Umar, Commentary on the Code of Civil Procedure, Yetkin Publishing, 2014, p. 1138; Selçuk Öztek, Appeal and Cassation in Turkish Civil Procedure Law (Commentary on Articles 341–371 of the Code of Civil Procedure No. 6100), Yetkin Publishing, 2021, p. 152; Tahsin Hatipoğlu, Proceedings for Interim Injunctions, On İki Levha Publishing, 2025, p. 492; Tolga Akkaya, Appeal in Civil Procedure Law, Yetkin Publishing, 2009, p. 344. (This view has been criticized in the literature by Pekcanitez, on the grounds that until an appeal petition is filed, it remains uncertain whether appellate review will be pursued. See: H. Pekcanitez, M. Özkes, M. Akkan, E. Korkmaz, Pekcanitez Civil Procedure Law, Vol. III, 15th ed., p. 2470.)

³ Pekcanitez, M. Özkes, M. Akkan, E. Korkmaz, Pekcanitez Civil Procedure Law, Vol. III, 15th ed., p. 2470; Ejder Yılmaz, “Authority of a Court That Has Relinquished the Case File to Issue Interim Injunctions During the Appellate Phase,” Legal Journal of Civil Procedure and Enforcement-Bankruptcy Law, No. 13, 01 August 2009.

appellate courts often uphold the validity of such orders, even when rendered by a court other than the one that originally granted enforcement.⁴

In our view, at the stage where the enforcement decision has not yet been transmitted to the regional appellate court, the court competent to examine and rule on requests for interim measures and provisional attachment should be the court of first instance, not the appellate court. This is because, at that point, the regional appellate court has not yet assumed control of the case file and therefore cannot be considered the competent judicial body.

The primary objection to this approach stems from the procedural rule that a judge becomes *functus officio* upon issuing a judgment.⁵ Nevertheless, despite the judge having relinquished the file, the enforcement action remains formally pending. In fact, pendency begins with the initiation of the action and continues until the judgment acquires finality in the strict sense - i.e., formal *res judicata*.⁶ During this transitional phase, the case is still considered to be pending before the court. Within this framework, even though the court that granted enforcement is *functus officio*, the most coherent solution is to regard the court of first instance as still seized of the matter until the case file is transmitted to the regional appellate court. Accordingly, it should retain competence to evaluate requests for interim legal protection.

That said, in light of the practical challenges arising from the *functus officio* rule—and the fact that, at this stage, no court is practically seized of the case - a pragmatic approach in practice is to initiate a new application and submit the request to a different court of first instance through fresh allocation.

ii. Applications for Interim Measures and Provisional Attachment Following an Appeal Against the Enforcement Decision

It is well established that appellate review before the regional appellate court constitutes a remedial phase; nonetheless, where appropriate, these courts may undertake a renewed factual assessment and render decisions in their capacity as courts of first instance. Accordingly, once an appeal has been lodged against the enforcement decision and the proceedings are pending before the regional appellate court, any requests for interim measures or provisional attachment should be adjudicated by that court. Indeed, under the prevailing view, applications for

⁴ Decision of the 14th Civil Chamber of the Istanbul Regional Appellate Court, Case No. 2023/1005, Decision No. 2023/1015, dated 8 June 2023; Decision of the 13th Civil Chamber of the I Regional Appellate Court, Case No. 2020/353, Decision No. 2020/328, dated 5 March 2020; Decision of the 15th Civil Chamber of the Istanbul Regional Appellate Court, Case No. 2023/269, Decision No. 2023/252, dated 28 February 2023. (In the latter decision, although the court of first instance that issued both the exequatur and the provisional attachment orders was the same, the provisional attachment was granted not on the principal case file but through a separate miscellaneous docket opened upon a fresh application.)

⁵ Ejder Yılmaz, “Authority of a Court That Has Relinquished the Case File to Issue Interim Injunctions During the Appellate Phase,” *Legal Journal of Civil Procedure and Enforcement-Bankruptcy Law*, No. 13, 01 August 2009.

⁶ Pekcanitez, M. Özkes, M. Akkan, E. Korkmaz, *Pekcanitez Civil Procedure Law*, Vol. II, 15th ed., p. 1182; Süha Tanrıver, *Objection of Lis Pendens in Civil Procedure Law*, 1998, p. 4.

provisional attachment submitted at this stage must be directed to the regional appellate court.⁷

In recent decisions, regional appellate courts have actively examined and ruled on applications for interim relief⁸, a practice we consider to be sound. However, it is important to note that the mere filing of an appeal does not immediately result in the transmission of the case file to the regional appellate court. Pursuant to Article 347(3) of CCP, the file - along with its inventory - is forwarded to the competent appellate court only after the submission of the application for appeal and response petition, and the expiration of the relevant time limits. Until this transmission occurs, the regional appellate court cannot be deemed seized of the case. This procedural gap gives rise to practical uncertainty regarding which judicial authority is competent to assess requests for interim relief. In our view, the reasoning previously set forth remains applicable: once an appeal is lodged, the action continues to be pending until a final judgment is rendered. Within this framework, the case is still considered to be under review. Since interim relief must be issued by the “court seized of the case,” and the regional court has not yet commenced its review, the court of first instance - despite being *functus officio* - should be regarded as retaining procedural competence, and applications for interim measures and provisional attachment should be directed to the court that rendered the enforcement decision.

That said, given the practical challenges encountered in implementation, a pragmatic solution often adopted is to initiate a new application and seek interim measures or provisional attachment under a miscellaneous docket before a different court of first instance.

However, once the case file is transmitted to the regional appellate court, the authority to examine and decide such requests shifts to that court. Indeed, pursuant to Article 360 of CCP, and in the absence of any provision to the contrary, the procedural rules governing first-instance proceedings continue to apply at the appellate level.

iii. Applications for Interim Measures and Provisional Attachment Following a Court of Cassation Appeal Against the Regional Court’s Decision

⁷ Pekcanitez, M. Özekes, M. Akkan, E. Korkmaz, Pekcanitez Civil Procedure Law, Vol. III, 15th ed., p. 2470.

⁸ Decision of the 46th Civil Chamber of the Istanbul Regional Court of Appeal, Case No. 2025/1137, Decision No. 2025/1029, dated 17 July 2025; Decision of the 16th Civil Chamber of the Ankara Regional Appellate Court, Case No. 2025/1682, Decision No. 2025/2093, dated 10 July 2025; Decision of the 3rd Civil Chamber of the Adana Regional Appellate Court, Case No. 2023/2611, Decision No. 2023/2568, dated 29 December 2023. There are divergent views among different chambers of the regional courts of appeal on this issue. Particularly in the early years following their establishment, regional courts of appeal often refrained from examining requests for interim relief during the appellate phase, citing the absence of a clear statutory basis for granting interim measures or provisional attachments at that stage. For example: “*Although the claimant’s counsel requested the imposition of an interim injunction through a petition submitted during the appellate phase, Article 341(1) of the Code of Civil Procedure stipulates that only decisions rendered by the court of first instance concerning the acceptance or rejection of interim injunctions may be appealed. As there is no explicit legal provision authorizing regional appellate courts to directly issue interim injunctions, this request must be evaluated by the court of first instance.*” (See: Decision of the 15th Civil Chamber of the Istanbul Regional Appellate Court, Case No. 2021/1508, Decision No. 2021/1200, dated 16 June 2021.)

Pursuant to Article 362(1)(f) of CCP, decisions concerning interim relief are subject only to appellate review; no cassation remedy is available. Accordingly, a decision rendered by the regional appellate court upon reviewing an appeal against an interim relief order issued by the court of first instance is considered final. Similarly, where the regional appellate court itself issues an interim relief order, that order is not subject to further review through cassation proceedings.

On the other hand, as the Court of Cassation does not function as a court of facts, it lacks the legal authority to issue interim measures or provisional attachment orders under Articles 389 et seq. of the CCP.⁹ Nonetheless, when a party seeks interim relief during the pendency of cassation review of an enforcement decision, doctrinal and practical uncertainty emerges regarding the appropriate judicial authority to which such applications should be submitted.

According to one view in the doctrine, once the case file has been transmitted to the Court of Cassation for review, applications for interim legal protection should be directed to the court of first instance that rendered the original decision. Under this approach, if the file remains with the first-instance court, the request should be examined on the existing record; if the file has already been sent to the Court of Cassation, the first-instance court should assess and decide the application based on a “shadow docket.”¹⁰

According to another view advanced in the literature, the court competent to examine requests for interim relief during cassation review should, depending on the specific circumstances, be either the court of first instance that rendered the judgment or the regional appellate court.¹¹ This view, however, does not offer a detailed analysis as to whether the competent authority should be the first-instance court or the appellate court.

Nevertheless, in a decision identified from a regional appellate court - albeit not in the context of an enforcement proceeding - it was held that the refusal of the first-instance court to examine a request for interim relief on the ground that it had “relinquished the file” during the cassation stage was unlawful. The court concluded that even during the appellate phase, interim measures should be issued by the court of first instance.¹²

⁹ Ejder Yılmaz, “Authority of a Court That Has Relinquished the Case File to Issue Interim Injunctions During the Appellate Phase,” Legal Journal of Civil Procedure and Enforcement-Bankruptcy Law, No. 13, 01 August 2009, see also fn. 7.

¹⁰ Ejder Yılmaz, “Authority of a Court That Has Relinquished the Case File to Issue Interim Injunctions During the Appellate Phase,” Legal Journal of Civil Procedure and Enforcement-Bankruptcy Law, No. 13, 01 August 2009.

¹¹ Pekcanitez, M. Özekes, M. Akkan, E. Korkmaz, Pekcanitez Civil Procedure Law, Vol. III, 15th ed., pp. 2470–2471.

¹² Decision of the 1st Civil Chamber of the Antalya Regional Appellate Court, Case No. 2017/303, Decision No. 2017/247, dated 25 April 2017: “Although the request for a right of passage by way of interim injunction concerning the same route was rejected by the court of first instance on the grounds that it had relinquished the case file and therefore lacked legal authority to assess the request – without collecting any of the evidence submitted – the court held that, pursuant to Article 390 of the Code of Civil Procedure, since the dispute over the right of passage between the parties had not yet been finalized, the request for interim relief could still be examined and decided by the court hearing the principal case. The fact that the court of first instance had rendered a final judgment did not preclude it from ruling on a request for interim legal protection until the

In our view, since the Court of Cassation - as the “court seized of the case” at the cassation stage - lacks the authority to issue interim relief orders, it is more appropriate, particularly in light of efficiency and caseload considerations, to direct such applications to the court of first instance. To prevent the risk of rights being compromised and to uphold the principle of access to justice, it should be recognized that, while the case remains under cassation review and until the judgment attains finality, the court of first instance may continue to examine requests for interim relief, notwithstanding its *functus officio* status.

D. Court Competent to Modify or Lift an Interim Measure or Attachment

Interim measures and provisional attachments are not limited to their initial imposition; they may also be subject to modification or removal. Pursuant to Articles 395 and 396 of CCP, a court may alter or lift an existing measure or attachment if the debtor provides adequate security or if there is a material change in circumstances. Orders concerning such modifications or removals are likewise classified as decisions pertaining to interim legal protection.

Pursuant to Article 394(2) of CCP, objections to interim measures or provisional attachments issued prior to the filing of the principal action must be submitted to the court that originally granted the measure. Once the action has been filed, such objections are to be directed to the court hearing the main case. This procedural rule is likewise applied by analogy in instances where the interim measure is sought to be modified or lifted - either due to a change in circumstances or upon the debtor’s provision of security.

Accordingly, the statute refers to the “court seized of the case” not only for the grant of interim measures or attachments, but also - once the action has been filed - for their modification or lifting. In our view, the analysis set out above regarding how to identify the “court seized of the case” likewise governs the determination of competence under Articles 395 and 396 of CCP for applications to modify or lift interim measures.

E. Conclusion

In the context of enforcing foreign court judgments and arbitral awards in Turkey, the requirement that the enforcement decision attain finality before execution creates a pressing need for creditors to seek interim relief to preserve their rights. However, the lack of an explicit statutory provision identifying the competent court to adjudicate applications for interim measures or provisional attachment - filed after the enforcement decision but prior to its finalization - results in a notable procedural gap. This ambiguity has led to divergent practices and doctrinal debate regarding the appropriate judicial authority during this transitional phase.

Various approaches have emerged in both doctrine and practice to address this procedural uncertainty. One view maintains that, following the issuance of a judgment, the status of “court seized of the case” transfers to the regional appellate

judgment became final. Accepting the contrary would amount to a restriction of the right to seek legal remedies and a violation of the right to be heard as guaranteed under Article 27 of the Code of Civil Procedure. Accordingly, the decision was overturned and the file was remitted to the court of first instance.”

court; accordingly, from that point forward, applications for interim measures and provisional attachment should be submitted to the appellate court. A contrasting view argues that, unless and until the case file is physically transmitted to the regional appellate court, the court of first instance retains competence to hear requests for interim relief. In practice, it is not uncommon for such applications to be examined by courts of first instance other than the one that granted enforcement, identified through fresh filings and allocation procedures. Regional appellate courts frequently uphold the validity of these orders. Nevertheless, once the appellate court formally begins its review of the case, the prevailing view is that any subsequent applications for interim measures must be directed exclusively to that court.

In our view, at the stage where the regional appellate court has not yet formally assumed control of the case file and commenced its review, it cannot be regarded as the competent authority to adjudicate applications for provisional attachment or interim measures. Accordingly, following the enforcement decision but prior to the transmission of the file to the regional court, requests for interim relief should be directed to the court of first instance that rendered the enforcement decision. That said, once the case has been transferred for appellate review, recognizing the regional court of appeal as the competent authority for such matters becomes more suitable - both to safeguard procedural rights and to prevent potential loss of legal remedies.

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