

## Unifying Decision on Mandatory Mediation in Actions for Annulment of Objection

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### Background

The Turkish legislator introduced pre-court mandatory mediation in labour law related disputes in 2017. Following the success of this process, as explained in a previous [newsletter](#), a mandatory mediation requirement was also introduced for commercial disputes in 2018. Although this latest development has provided significant benefits on commercial dispute resolution, it has also led to different interpretations in practice.

### Overview

An action for annulment of objection, which is a special type of lawsuit regulated under the Enforcement and Bankruptcy Law (the **EBL**), is relevant when the addressee of an enforced debt collection proceeding objects to an official payment notice sent by the claimant via the enforcement office. It is highly debated whether these actions can be subject to mandatory mediation as a prerequisite for commercial disputes prior to filing lawsuits before Turkish courts. While some of the regional courts have considered the mediation method as mandatory, some of them argued that these disputes are not subject to mandatory mediation procedures by citing the specific nature of the actions for annulment.

The 23rd Chamber of the Court of Appeal (the **Court of Appeal**) eliminated confusions about whether actions for annulment of objection in commercial cases are subject to mandatory mediation with its recent unifying decision dated 4 December 2020<sup>1</sup>. In the decision, the Court of Appeal addressed the conflicting issues by evaluating both the scholarly opinions and regional court decisions in detail.

### Conflicting Decisions of Regional Courts

The Regional Courts' decisions mainly fall into two separate categories. Most of the Regional Courts agree that the enforcement proceedings arising from disputes having commercial nature are covered by the mandatory mediation rule. On the other hand, some of the Regional Courts assess the elements that characterise the action of annulment of objection as the cancellation of the debtor's objections, continuity of the enforcement proceedings and the compensation for denial of execution. In this respect, they assert that the action for annulment of objection is a lawsuit directed towards the enforcement proceedings and it is a positive declaratory action in nature – not an action of performance. For these reasons, they reject the view that the mandatory mediation is required for the annulment of objection in the nature of commercial disputes.

### Court of Appeal's Evaluation

The Court of Appeal examined the conflicting decisions of Regional Courts and decided to render a unified decision to bring the above-mentioned different opinions to an end. In its decision, the Court of Appeal has, first, examined the varying doctrinal opinions concerning the action for annulment of objection and pointed out that the action for annulment of objection is a *sui generis* collection lawsuit determining the amount of the receivable and enabling the plaintiff to obtain his/her receivables. In this respect, parties of the commercial disputes always

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<sup>1</sup> The Court of Appeal's decision dated 4 December 2020, with file number 2020/1943 and decision number 2020/4052.

aim to freely decide on the amount of their receivables and spend less time and expense while solving the payment issues.

Considering that the main purpose of a mandatory mediation process in commercial disputes is to resolve these disputes on the collection of receivables in a fastest and effortless way, it has been finally concluded that the actions for annulment of objection must be subject to mandatory mediation. For these reasons, mandatory mediation is considered as a cause of action, based on which the court needs to dismiss the lawsuit if the parties have not applied to mediation before filing the case.

### Conclusion

With the Court of appeal's unifying decision, the discussions on whether applying to mediation is mandatory in actions for annulment of objection will disappear in future decisions. However, it is likely that we will continue to see similar debates during the process of expanding the practice of mandatory mediation.

## Contacts



### Hakkı Gedik

Turkey – Istanbul  
Tel +90 212 371 29 53  
Mobile +90 549 480 15 35  
[hakki.gedik@gedikeraksoy.com](mailto:hakki.gedik@gedikeraksoy.com)



### Umut Gürgey

Turkey – Istanbul  
Tel +90 212 371 29 66  
Mobile +90 549 480 15 37  
[umut.gurgey@gedikeraksoy.com](mailto:umut.gurgey@gedikeraksoy.com)



### Emre Önal

Turkey – Istanbul  
Tel +90 212 371 29 65  
Mobile +90 549 480 15 33  
[emre.onal@gedikeraksoy.com](mailto:emre.onal@gedikeraksoy.com)