

# Cassation Court Precedent Unification Case Law Dated 03.06.2022 on to Whom the Statement of Claim Should Be Served in "Annulment of Objection" Cases

## I. Introduction

Differences in precedent have arisen among the various Civil Chambers of the Turkish Court of Cassation regarding the matter of serving the statement of claim in annulment of objection cases initiated by the creditor against objections lodged by the debtor through their legal representative in scope of the relevant enforcement proceedings. A request for the unification of these conflicting precedents was brought forward within this framework and reviewed by the Grand General Assembly for the Unification of Case Law of the Court of Cassation, resulting in the Unification of Case Law Decision dated 03.06.2022 and numbered 2021/1 E. – 2022/3.

## II. Legal Issue Subject to the Decision

In annulment of objection cases, the question of to whom (or to which parties) the statement of claim should be served has been a significant point of debate in judicial practice for many years. This issue centers on whether, when the debtor objects to the enforcement proceeding through an attorney, the statement of claim initiating the annulment of objection case by the creditor should be served upon the debtor's legal representative or directly upon the debtor.

In this context, the applicable statutory regulations, practices, and case law concerning the service of the statement of claim have been examined based on the relevant provisions of the Enforcement and Bankruptcy Law numbered 2004, the Code of Civil Procedure numbered 6100, and the Notification Law numbered 7201.

The decision analyzed the interpretation and application of existing provisions on the service of statements of claim, considering that the annulment of objection case aims to ensure the continuation of enforcement proceedings and is subject to general provisions from a procedural law perspective. The Grand General Assembly took into account Articles 122 and 317 of the Code of Civil Procedure, which regulate written and simplified procedures and specify that the statement of claim should be served upon the “defendant” (debtor) themselves. It was also noted that Article 119 of the same Code requires that the details of the plaintiff’s (creditor) attorney, if present, must be included in the statement of claim; however, no similar obligation exists in the article text regarding the defendant’s attorney. Based on an evaluation of these general provisions, it was concluded that serving the petition upon the defendant’s attorney in an annulment of objection case, which is subject to these provisions, would clearly contradict the mandatory provisions of the law.

### **III. Conclusion**

Following its assessments, the Grand General Assembly for the Unification of Case Law of the Court of Cassation concluded that, even in cases where the debtor has lodged an objection to enforcement through an attorney, the statement of claim in the annulment of objection case must be served upon the debtor and not upon their attorney.

In accordance with Article 45 of Law No. 2797 on the Court of Cassation, this unification of case law decision is binding on the General Assemblies, chambers of the Court of Cassation, and lower courts in similar legal matters.

**Dr. iur. Onur Ergöner, Managing Partner**  
**Can Kaleli, Legal Intern**