

EXTENDED SUMMARY

This study addresses several issues concerning actions rendered moot due to settlements. The concepts of settlement and the mootness of an action are distinct. A settlement is a contract whereby the parties make mutual concessions, whereas the mootness of an action does not constitute a contractual arrangement; rather, it is a procedural act performed by a party that effectively terminates the action. An in-court settlement, as a procedural act ending the action, terminates the proceedings. Conversely, an out-of-court settlement does not automatically terminate the action unless it is transformed into an in-court settlement. A unilateral or bilateral declaration by the parties that the action has become moot does not directly end the action; such declarations can only provide a rationale for the court's decision. If the court determines, based on the parties' declaration, that the action is indeed moot, it concludes the proceedings by issuing a decision of "no need to adjudicate on the merits."

The mootness of an action can occur only due to a circumstance arising outside the proceedings after the initiation of the lawsuit. In particular, the action becomes moot if the subject matter of the claim or the parties' legal interest ceases to exist. Once such a circumstance arises, the court may not disregard it and continue with the proceedings or issue a judgment on the merits. The circumstance rendering the action moot may include an out-of-court settlement agreement concluded by the parties and submitted to the court. At this point, the interplay between the concepts of settlement and mootness becomes evident. If an out-of-court settlement is submitted to the court and converted into an in-court settlement, the court terminates the action based on the settlement rather than mootness. If the parties do not convert an out-of-court settlement into an in-court settlement, the court concludes the proceedings on the basis of mootness. An in-court settlement, occurring during the proceedings, cannot serve as a basis for mootness or a decision of no need to adjudicate.

The analysis of Article 315(1) of the Code of Civil Procedure (CCP) is crucial at this stage. According to this provision: "A settlement terminates the action to which it relates and produces legal effects equivalent to res judicata. If the parties request a decision in accordance with the settlement, the court shall render judgment accordingly; if they do not request such a decision, the court shall rule that there is no need to adjudicate." Under this provision, if the

parties request a judgment based on an in-court settlement or an out-of-court settlement converted into an in-court settlement, the court adjudicates the case on the merits in accordance with the settlement, thereby terminating the action. If the parties do not request a judgment in accordance with the settlement, the court concludes the proceedings by issuing a decision of no need to adjudicate. In our view, the settlement underlying such a decision can only be an out-of-court settlement. An in-court settlement, not arising outside the proceedings, cannot justify mootness or a decision of no need to adjudicate. In this case, the court should record the in-court settlement in the minutes and issue a declaratory judgment confirming that the action has been terminated due to the settlement.

Unlike German law, Turkish law does not allow the unilateral or mutual declaration of the parties that the action has become moot to terminate the action by itself, as there is no positive legal provision to this effect. Such declarations cannot be characterized as a settlement agreement and do not terminate the proceedings alone. If one or both parties declare to the court that the action has become moot, the court must first ascertain whether the action is indeed moot. Only after such a determination can the court conclude the proceedings by issuing a decision of no need to adjudicate. If the parties do not wish for a judgment based on mootness, they may transform their out-of-court settlement into an in-court settlement, allowing the court to adjudicate based on the settlement and thereby terminate the action.

Determining whether the action was terminated due to settlement or mootness is particularly significant in terms of litigation costs. If the parties have concluded an in-court settlement and have agreed on litigation costs therein, the court shall rule on costs in accordance with the parties' agreement. Similarly, if the parties have concluded an out-of-court settlement, agreed on litigation costs, and converted it into an in-court settlement, the court shall rule on costs according to the settlement. However, if the parties have only declared the existence of an out-of-court settlement without converting it into an in-court settlement, the court can only conclude the action on the basis of mootness. In this scenario, whether litigation costs are determined according to the settlement or mootness becomes relevant. If the out-of-court settlement submitted to the court contains an agreement on costs, the court should follow the parties' agreement even though the case is concluded due to mootness. If the

settlement does not address litigation costs, the court should provide the parties with an opportunity to reach an agreement; if no agreement is reached, the court shall determine costs pursuant to Article 331(1) of the CCP, which stipulates that “in cases where no judgment on the merits is necessary due to mootness, the judge shall assess and adjudicate litigation costs based on the parties’ respective positions at the time the action was filed.” Similarly, if the parties have concluded an out-of-court settlement but submit only a request to terminate the action without presenting the settlement to the court, the proceedings shall be concluded on the basis of mootness, with costs determined in accordance with Article 331(1) CCP.