

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**INSTITUTIONAL AND PROCEDURAL ASPECTS OF THE RELATIONSHIP BETWEEN  
COMPETITION AUTHORITIES AND COURTS, AND UPDATE ON DEVELOPMENTS IN  
PROCEDURAL FAIRNESS AND TRANSPARENCY**

-- Turkey --

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1. This contribution tackles the following issues with respect to the practices of the Turkish Competition Authority (TCA):

- Relationship between courts and the TCA,
- Procedures that private law and public law competition cases are faced with before courts,
- Latest developments concerning fair procedural rules and transparency - within the context of courts.

2. To this end, it starts with an overview of the Turkish judiciary system. Then it touches upon the relationship between the decisions of the Competition Board, the decision making body of the TCA, and the judiciary system. Last but not least, it explains the appeal against the TCA's proceedings.

### **1. Overview of Turkish Judiciary System**

3. Judiciary in the Turkish legal system is generally examined under three main headings, i.e. administrative, ordinary, and military. While the subject/scope of duty of the administrative judiciary system are those cases relating to the acts and proceedings of the administration (public entities); the subject of ordinary judiciary are the disputes between persons that are subject to private law along with those acts and proceedings of public entities that are subject to private law. Military judiciary system deals wholly with the trial of offenses related to military personnel<sup>1</sup>. Ordinary judiciary system is also divided in itself as civil and criminal courts. While criminal courts deal with criminal judgments, civil courts deal with judgments in all areas other than criminal sanctions. As sanction, criminal courts adjudicate imprisonment and criminal fines (Turkish Penal Code, Art. 45). Imprisonment is divided into three categories as aggravated life imprisonment, life imprisonment and periodical imprisonment (Turkish Penal Code, Art. 46). Civil courts, on the other hand, adjudicate that a transaction is invalid or compensation shall be paid.

4. All courts are established based on a statute under Turkish law. Courts of First Instance in administrative judiciary system have been defined as regional administrative courts, administrative courts and tax courts<sup>2</sup>. Regional administrative courts function as courts of first instance in certain cases, while also having the nature of a high court where decisions of administrative courts and tax courts are appealed. The court of appeal for administrative judiciary system is the Council of State, operation of which is regulated with a special statute<sup>3</sup>. Trial procedure in the administrative judiciary system is regulated with a special statute<sup>4</sup>.

5. Ordinary judiciary system is made up of courts of first instance<sup>5</sup> and appeal courts. Ordinary courts of first instance are also divided into two categories according to their scope of duty as general and special courts. Special courts are generally those that have been established based on special statutes and are charged with hearing those cases that are specified in those statutes. Examples for special courts are Civil/Criminal Court for Intellectual and Industrial Rights which serves in disputes arising from intellectual

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<sup>1</sup> Military judiciary system is not discussed here because it is not related to the TCA.

<sup>2</sup> Act No. 2576 on the Establishment and Duties of Regional Administrative Courts, Administrative Courts and Tax Courts, Official Gazette No. RG. 20.01.1982, p. 17580

<sup>3</sup> Act No. 2575 on the Council of State, Official Gazette No. RG. 20.1.1982, p. 17580

<sup>4</sup> Act No. 2577 on Administrative Trial Procedure, Official Gazette No. RG. 20.1.1982, p. 17580

<sup>5</sup> Act No. 5235 on the Establishment and Powers of Ordinary Courts of First Instance and Regional Ordinary Courts, Official Gazette No. RG 07.10.2004; p. 25606)

property rights, Labor Court which hears disputes arising from labor contracts, Trade Court which hears disputes arising from trade relations, Family Court which hears disputes arising from family life. All other cases that do not fall in the scope of duty of special courts are heard by general courts.

6. Courts of first instance are also divided into two categories as criminal and civil courts. While civil courts are divided into two as civil courts of peace and civil courts of first instance; criminal courts are divided into three as criminal courts of peace, criminal courts of first instance and criminal assize courts. Appeal courts are Regional Ordinary Courts and the Supreme Court of Appeals. The operation of the Supreme Court of Appeals is regulated with a special statute<sup>6</sup>.

7. Duties and operation of general courts of first instance are regulated under the Code of Civil Procedure<sup>7</sup>.

8. In the ordinary judiciary system, the area in which general and special courts may exercise their jurisdiction is the administrative boundaries of the provincial centers and districts where they are located as well as other districts that are judicially affiliated therewith. In provinces having a metropolitan municipality, the jurisdiction of courts is determined by the Supreme Board of Judges and Prosecutors upon the proposal of Ministry of Justice (Act No. 5235, Art. 7). Judges to serve at courts are also appointed or assigned by this Board.

9. While civil courts generally operate with one judge only, criminal courts of peace and first instance operate with one judge, criminal assize courts operate in the form of a committee (made up of a total of three judges as one chairman and two members).

## 2. Relationship between the Competition Board and Judiciary Systems

10. Due to the position of the TCA in the Turkish administrative organization and the powers employed during the decision making process of the Competition Board, it has close relations with different judicial bodies.

11. Firstly, the TCA is a public legal entity having administrative and financial autonomy pursuant to the Act No. 4054 on the Protection of Competition (Act No. 4054) (Art. 20). It is therefore an administrative body. According to the Turkish Constitution, all acts and proceedings of the administration can be appealed (Art. 125/1). Thus it is possible to appeal all the decisions made by the TCA to

<sup>6</sup> Act No. 2797 on the Supreme Court of Appeals, Official Gazette No. RG 08.02.1983, p. 17953.

<sup>7</sup> Code No. 1086 on Civil Procedure, Official Gazette No. RG 02.07.1927, p. 622. Code No. 1086 on Civil Procedure was abolished by the Code of Civil Procedure No. 6100, which was adopted on 12.01.2011 (RG 04.02.2011, p. 27836.) The new Act No. 6100 will enter into force on 01/10/2011. The new Act No. 6100 enumerates the duties of civil courts of first instance and civil courts of peace. Accordingly, "(1) For lawsuits concerning asset rights and lawsuits concerning personal assets, regardless of the value and amount of the subject of the lawsuit, the court of jurisdiction is the civil court of first instance unless otherwise stipulated. (2) Unless otherwise stipulated in this Act or other statutes, the civil court of first instance also has jurisdiction over other lawsuits and transactions." On the other hand, "Civil courts of peace shall hear, regardless of the value or amount of the subject of the lawsuit;

a) with the exception of the provisions concerning the evacuation of rental immovables via seizure without court order in accordance with the Act on Seizure and Bankruptcy dated 9/6/1932 and numbered 2004, lawsuits concerning all disputes - also including actions of debts - arising from a rental relationship, and appeals of such lawsuits, b) lawsuits concerning the sharing of movable and immovable property or right and elimination of joint ownership, c) For movable and immovable properties, those lawsuits that concern only the protection of possession, ç) lawsuits for which a civil court of peace or civil judge of peace is assigned by this Act or other statutes."

administrative judicial bodies. In other words, all acts and proceedings of the TCA are reviewable by administrative judiciary. This established the relationship between the TCA and the administrative judiciary system.

12. On the other hand, decisions made by the TCA generally concern natural or legal personalities that are subject to private law, and deal with the actions thereof. In other words, decisions by the Competition Board bring about consequences for private law persons. Particularly, determination by the Competition Board that an infringement of competition took place leads to compensation claims and lawsuits. As a matter of fact, special provisions were made under the Act No. 4054 section five (Art. 56 et. seq.) relating to the private law consequences of competition infringements. Courts of jurisdiction in actions for damages arising from competition law are ordinary courts of first instance. Therefore, there is also a direct relationship between the TCA and ordinary courts of first instance.

13. There is also a relative relationship between the TCA and ordinary criminal courts. This is because the Competition Board has the power to carry out on-the-spot inspections while performing its duties under Act No. 4054 (Art. 15/1). According to the Act No. 4054, in case on-the-spot inspection is prevented or is likely to be prevented, on-the-spot inspection is carried out with a criminal court of peace decision (Art. 15/3).

14. The relationship between the TCA and judicial bodies begins as soon as the TCA starts to inquire an action or transaction that is restrictive of competition, and continues after the TCA makes a decision about the action or transaction, with increasing intensity. That is because the review of such decision is carried out by administrative judicial bodies; whereas the private law consequences of the decision are pursued at ordinary courts.

### **3. Appeal against the TCA's Proceedings**

#### ***3.1. Against the On-the-spot Inspection Decision by a Criminal Court of Peace***

15. As mentioned above, in case on-the-spot inspection is prevented or is likely to be prevented, Competition Board may carry out on-the-spot inspection with a criminal court of peace decision. Appealing against the decision of a criminal court of peace is not regulated under the Act No. 4054. Working procedures and principles of criminal courts are regulated with a special statute<sup>8</sup>. According to this Act, the concerned may apply to the decision-making authority within seven days of the date on which they learned about the decision and appeal against it (Art. 268/1). Likewise, according to this article, the authority to review the appeal against the decision by the criminal judge of peace rests with the judge of the criminal court of first instance that has jurisdiction over them (Art. 268/3). It must be straight away stated that, because on-the-spot inspection takes place immediately following the judge's decision, appealing against such decision is not a practical way to attain an outcome.

#### ***3.2. Against the Administrative Proceedings of the TCA***

16. Two different administrative procedures may be applied against the proceedings of the TCA. The concerned may apply to the TCA and request that the decision be revised or go to court directly and request that the decision be canceled.

17. Appealing against the decisions of the Competition Board is clearly regulated in the Act No. 4054. According to Article 55 of the Act No. 4054, nullity suits against final decisions, injunction decisions and administrative fine decisions of the Competition Board are heard at the Council of State as

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<sup>8</sup> Code No. 5271 on Criminal Procedure, Official Gazette No. RG 17.12.2004, p. 25673.

the court of first instance. Appealing against decisions of the Competition Board does not cease the implementation of decisions, and the follow up and collection of administrative fines.

18. The importance and consequence of this specific provision is that the resorts for appeal against the decisions of the Competition Board are different from usual administrative judiciary authorities. The usual practice in the administrative judiciary system is that actions against the acts and proceedings of the administration are brought in the court of first instance where the administration in question is located. According to Article 20 of the Act No. 4054, the headquarters of the TCA is based in Ankara. Thus, if there were not a specific provision in the Act No. 4054, actions against the proceedings of the TCA would be brought in the administrative court in Ankara. However, due to the specific provision in the Act No. 4054, the court of first instance is changed and the Council of State, which is primarily a high judicial body, is assigned as the court of first instance.

19. Moreover, the Council of State is not assigned for every decision of the Competition Board. Only appeals against the decisions listed in the act - final decisions, injunction decisions and administrative fine decisions - can be made at the Council of State. For other decisions, for instance, assignment of the personnel, taking leaves, disciplinary proceedings and proceedings related to salary and financial rights, appeals can be made to usual administrative judiciary bodies.

20. On the other hand, the rights of those concerned to apply to the administration for reevaluation of the decision are not covered by the Act No. 4054. This right is regulated in the Administrative Trial Procedure Act (Art. 11). According to the said provision, those concerned may request from the higher authority, if there is not a higher authority, from the authority that has realized the proceeding, that the administrative proceeding be abolished, withdrawn, amended or a new proceeding be made before filing an administrative action. This request suspends the term of litigation for an administrative case.

21. According to the practices of the TCA and the Council of State, this provision had been regarded as inapplicable with respect to the TCA for a long time. According to the TCA, appealing against the decision of the Competition Board was regulated in the Act No. 4054 and reevaluation of a decision was not possible. Therefore, the TCA was rejecting the requests for reevaluation of a decision. The Council of State rejected the actions brought against those decisions of rejection by the Competition Board on the same grounds. However, the Council of State has changed its decisions recently and accepted that the provision in the Act No. 4054 does not prevent the application of Article 11 of Administrative Trial Procedure Act (ATPA)<sup>9</sup>. Currently, according to the recent decisions of the Council of State, the Competition Board accepts the requests for reevaluation of decisions and takes new decisions after making an examination.

22. Those concerned have right to bring an action before administrative judiciary bodies directly without applying to the administration. As stated above, every action and proceeding of the administration is subject to appeal. Two types of administrative actions can be filed against an administrative proceeding.

23. First, those whose interest is injured due to an act or proceeding can bring an action to abolish the act or proceeding claiming that the act or proceeding is contrary to law with respect to certain reasons - power, form, cause, subject and aim (ATPA, Art. 2/1-a).

24. Secondly, those who are directly injured by the act or proceeding can file an action for damages for the compensation of their damage by the administration (ATPA, Art. 2/1-b). While both types of actions can be filed, an action for damages may be filed after the nullity suit is concluded.

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<sup>9</sup> The Council of State, the Board of Administrative Cases E. 2006/2169, K. 2010/562.

25. According to the ATPA, a request can be made for determination of evidence; besides, the parties may benefit from expert witnesses and viewing.

26. The term of litigation in administrative judiciary is 60 days in the Council of State and administrative courts and 30 days in tax courts unless the term is specified in particular acts (ATPA, Art. 7). As a rule, the term of litigation commences as of the date when the proceeding is notified to the concerned in writing.

27. According to article one, paragraph two of the ATPA, written trial procedure is applied in administrative judiciary bodies and the examination is made on documents. Moreover, according to Article 17 of the same Act, in case one of the parties requests, the administrative judiciary body has to hold a hearing in nullity suits before the administrative judiciary bodies as well as in actions for damages and tax suits exceeding TL 8,380. Where the decision of the court of first instance is appealed or objected, hearing is subject to the request of the parties and the decision of the higher court (the Council of State or regional administrative court). On the other hand, administrative judiciary bodies may decide to hold a hearing *ex officio*. Practical consequence of a case with a hearing is that the court has to take a decision within 15 days as of the hearing (ATPA, Art. 19).

28. Filing an action before administrative judiciary bodies does not automatically suspend the execution of the administrative proceeding that is the subject of the action (ATPA, Art. 27/1). In addition, administrative judiciary bodies may decide for stay of execution by giving justifications in case the requirements that injuries, which are hard or impossible to be compensated, will occur as a result of the administrative proceeding and the administrative proceeding is obviously illegal are fulfilled together (ATPA, Art. 27/2). The decision for a stay of execution may be taken with or without a request for guarantee (ATPA, Art. 27/5). The files, in which a decision for stay of execution is taken, are examined and concluded primarily (ATPA, Art. 27/7).

29. Where the administrative judiciary body takes a decision for stay of execution, the administration concerned has to start a proceeding or take action as required by the decision within 30 days as of the date when the court decision is notified (ATPA, Art. 28). An action for pecuniary and non-pecuniary damages can be filed against the administration or public servant who fails to fulfill the requirements of the decision intentionally (ATPA, Art. 28/3-4) within this period. Besides, with respect to criminal law, the acts of public servants who fail to fulfill the requirements of a ruling are defined as arbitrary act and deemed as an offense according to Article 257 of the Turkish Penal Code No. 5237 (Official Gazette date: 12.10.2004 and No. 25611) as they injure personal rights. While assessing the existence of a crime, the Supreme Court of Appeals considers whether personal injury has occurred<sup>10</sup>.

### **3.3. *Appealing against a Decision in Administrative Judiciary System***

30. In administrative judiciary system, there are four types of legal remedies against the decisions of courts of first instance: exception, appeal, new trial and correction. A request for exception can be made to a higher court (regional administrative court) against certain decisions by administrative courts within 30 days as of the notification of the decision (ATPA, Art. 45). The decisions of regional administrative courts are final, they cannot be appealed (ATPA, Art. 45/5). Other decisions of the chambers of cases of the Council of State and of administrative courts that are not subject to exception - final decisions - can be appealed before the Council of State within 30 days as of the notification of the decision (ATPA, Art. 46)<sup>11</sup>. As a rule, the parties of the decision may appeal. However, decisions of administrative judiciary bodies that are finalized without being appealed may be appealed upon the request of the related ministries

<sup>10</sup> See Criminal General Council of the Supreme Court of Appeals 2003/4-63E. and 2003/37K.

<sup>11</sup> Decisions subject to exception cannot be appealed.

or by the attorney general of the Council of State for the sake of law (ATPA, Art. 51). Request for a new trial can be made for the decisions taken by administrative judiciary bodies depending on the reasons prescribed by the law<sup>12</sup>. The request for a new trial is assessed by the court that has taken the decision (ATPA, Art. 53/2)<sup>13</sup>. Parties may request for correction depending on the reasons listed in the Act with respect to the decisions taken by the Chambers of Administrative Cases and the Board of the Chambers of Administrative Cases of the Council of State upon appeal and decisions taken by regional administrative courts upon a request of exception within 15 days as of the notification of the decision. The request for the correction of a decision is assessed by the chamber, the board and the regional administrative court that has taken the decision (ATPA, Art. 54).

### 3.3.1. *The issue of Capacity to Sue:*

31. One of the most contentious issues between the TCA and administrative judiciary bodies is the relation between the TCA and the regulations of professional associations. The TCA found in preliminary inquiries and investigations on several dates that professional associations made price regulations or carried out practices for ensuring solidarity among members such as bulk purchase, mass distribution and serial distribution. It was seen that while some of those regulations obviously depended on legal power, others depended on bylaws according to the power to issue bylaws given by the law. Referring to the fact that bylaws cannot be contrary to imperative provisions of the Act No. 4054, the Competition Board imposed sanctions to professional associations on the grounds that those practices restricted competition. When those decisions were sued, the Council of State annulled the Competition Board decisions by ruling that the Competition Board did not have power to make examination on those fields because there were regulations (bylaws) and whether the bylaw was contrary to the law could be assessed in an action to be filed. Thus, the TCA filed cases for the annulment of the bylaws that constitute the basis of the activities of professional associations. However, those cases were rejected by the Council of State on the ground that the TCA does not have capacity to sue with respect to the regulations of professional associations.

32. The Act No. 4054 has specific regulations concerning the private law consequences of competition infringements. The first of these consequences is that all agreements and decisions infringing competition are deemed invalid (Art. 56). In other words, legal transactions which limit competition are invalid. The execution of any particular act may not be requested based on these invalid legal transactions, and moreover any acts so executed must be reversed.

33. The second consequence is that individuals injured by the infringement of competition are given a right to compensation. According to Article 57 of the Act No. 4054, anyone who infringes competition through illegal practices must compensate all damages to those who are injured by these practices. In case the injury occurs as a result of the practices of more than one person, they are jointly responsible for the damages.

34. The third consequence is that it is explained in the Act No. 4054 how to determine the damages to be compensated (Art. 58/1). Accordingly, those injured by the infringement of competition may demand as damages the difference between the amount they paid and the amount they would have paid in case competition had not been restricted. Competing undertakings affected by the restriction of competition may request compensation for all of their losses from the undertaking or undertakings which restricted

<sup>12</sup> For the reasons, see ATPA Art. 53.

<sup>13</sup> The request for a new trial must be made within 10 years in case a decision is taken contrary to the decision taken in an action whose parties, subject and reason are the same, unless a new reason exists; within one year as of the date when the decision is finalized in case the provision is found to be contrary to law by a finalized decision of the European Court of Human Rights and within 60 days for other cases (ATPA Art. 53/3).

competition. When determining damages, all profits expected by the undertaking injured (lost profits) are taken into consideration. Balance sheets for the previous years are taken into account in the calculation of the damages.

35. The fourth consequence is that it is possible to increase the amount of the damages to be granted. If the resulting damage arises from an agreement or decision or from gross negligence of those committing the infringement of competition, the judge may, upon the request of the injured, award compensation by three fold of the material damage incurred, or of the profits gained or likely to be gained by those who caused the damage (Art. 58/2).

36. The fifth consequence is that the burden of proof has been simplified for the actions brought by those injured. First of all, Article 4 of the Act No. 4054 introduces the presumption of concerted practice. Accordingly, in cases where the existence of an agreement cannot be proved, any similarity that the price changes in the market, or the balance of demand and supply, or the operational areas of undertakings are similar to those markets where competition is prevented, distorted or restricted, constitutes a presumption that the undertakings are engaged in concerted practice (Art. 4/3). Therefore, Article 59 of the Act No. 4054 regulates that in case the injured submit to the jurisdictional bodies proofs such as, particularly, the actual partitioning of markets, stability observed in the market price for quite a long time, the price increase within close intervals by the undertakings operating in the market, which give the impression of the existence of an agreement, or the distortion of competition in the market, then the burden of proof is for the defendants (those undertakings engaging in concerted practices) that the undertakings are not engaged in concerted practice. Secondly, it is specified that the existence of agreements, decisions and practices limiting competition may be proven through all types of evidence.

37. Tort liability forms the basis for actions for damages. However, unlike conventional tort liability, it is not necessary for those who infringe competition to be at fault in order for them to be liable.

### *3.3.2. Court of Jurisdiction and Competent Courts:*

38. In terms of actions for damages, the Act No. 4054 does not specify competent courts or courts of jurisdiction. Therefore, competent courts and courts of jurisdiction in actions for damages are determined in accordance with general provisions – under the Code of Civil Procedure (CCP). Accordingly, actions for damages are those actions whose subjects may be measured in pecuniary terms, in other words those actions related to assets. Courts of jurisdiction for such actions are civil courts of first instance (CCP, Art. 2). Competent courts must be determined after various probabilities are taken into account. First of all, the competent court, according to the general authorization rules, is the court of place of domicile of the defendant (CCP, Art. 5). In case there is more than one defendant, the action may be filed at the court of place of domicile for any defendant (CCP, Art. 7/1). Secondly, since infringements of competition are regarded as torts, competent court may be the court at the district where the tort is committed (CCP, Art. 16). Thirdly, where infringements of competition also violate personal rights, as in cases of limiting competition through boycotts or discriminatory practices, those whose personal rights are violated may also file actions before the court of their own place of domicile (Civil Code, Art. 25). The plaintiff holds the right to choose at which competent court the action should be filed.

### *3.3.3. Dilatory Question*

39. The Competition Board is granted the power and duty of determining whether an act constitutes a restriction of competition by the Act No. 4054. On the other hand, the same Act establishes ordinary courts as competent courts and courts of jurisdiction for the private law consequences of restrictions of competition. This situation may lead to compliance problems between the decisions of the Competition Board and ordinary courts. This is because consumers or competing undertakings who claim to have



suffered damages due to the restriction of competition may file for damages before ordinary courts directly. In this case, ordinary judicial authorities have to first establish whether a restriction of competition took place in order to be able to rule on the claim for damages. A court facing a claim for damages may act in two ways. First, the court may itself evaluate the subject matter of the conflict and come to a decision. Secondly, the court may apply to the Competition Board, or it may grant an extension to the relevant party for application to the Competition Board, in order to establish whether the act on which the claim for damages is based constitutes a restriction of competition. It is accepted both in the doctrine and by the Supreme Court of Appeals that, in order to prevent conflicts between Competition Board decisions and court decisions as well as to ensure legal security, ordinary courts should seek the Competition Board's decision on the subject. In the Turkish practice, the Supreme Court of Appeals annuls the decisions of the courts of first instance if they are taken without an application to the Competition Board. According to the Supreme Court of Appeals, if there are no applications to the Competition Board, the court of first instance should grant an extension to the party concerned and await the decision of the Competition Board<sup>14</sup>.

40. It is possible to apply to the ordinary courts following the Competition Board decision. In this case, the doctrine accepts that the ordinary judicial authorities should take the Competition Board decision into account and should not disagree with it unless there is new evidence justifying a new decision by the court in opposition to the Competition Board decision. Even though there are no legal regulations stating that Competition Board decisions are binding for ordinary judicial authorities, it is emphasized that the Competition Board's holding exclusive jurisdiction on subjects such as exemption and negative clearance as well as its status as the specialized authority in other areas makes it necessary for ordinary courts to take the Competition Board decisions into account.

### ***3.3. Appealing against the Decision in the Judicial Jurisdiction System***

41. Ordinary judicial system provides three types of appeal for the decisions of the first instance courts: appeal before the intermediate courts of appeals, appeal before the last-instance appeals court and new trials. For the decisions of the courts of first instance concerning an amount above TL 1,500, an appeal may be made before the intermediate court of appeals. In such cases, the period for appeal to the Regional Courts of Justice (Act No. 6100, Art. 341) is two weeks (Art. 345) after the decision is duly notified to each of the parties, without prejudice to the provisions of any special laws. Decisions of the Regional Courts of Justice may be appealed within one month following the notification of the decision. In this case the appeal is made before the Supreme Court of Appeals. As a rule, appeal does not interrupt the execution of the decision (Art. 367/1). Decisions concerning the law of persons, family law and real rights over immovable properties may not be implemented before they are finalized. Lastly, in the existence of certain reasons listed in the Act, a new trial may be possible. The petition including the request for a new trial is evaluated by the court that took the decision (Art. 378).

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<sup>14</sup> The Supreme Court of Appeals 19. HD. E. 99/3350, K.99/ 6364.