

September 6 2023

# Court of Cassation examines impact of bankruptcy on collection of employee receivables

Gün + Partners | Employment & Immigration - Turkey



BERIL YAYLA  
SAPAN



EZGI KUT



KARDELEN  
ÖZDEN

## > Definition of urgent matters

## > Bankruptcy administration

## > Review of receivables

## > Court of Cassation decision

In practice, bankruptcy of a defendant employer during court proceedings related to employee receivables may be confusing for both the parties of a dispute and the courts handling the proceedings. The Court of Cassation recently examined a case where the defendant employer became bankrupt during court proceedings initiated for employment receivables in the decision dated 8 February 2022.<sup>(1)</sup>

### Definition of urgent matters

According to article 194 of the Enforcement and Bankruptcy Law No. 2004 (EBL), bankruptcy shall suspend the civil court proceedings initiated by or against a bankrupt except for urgent matters, and such proceedings shall continue 10 days after the second meeting of creditors.

The Court of Cassation takes the view that "urgent matters" include cases where the court proceedings are handled promptly or else the judgment would be useless. In this regard, an employee receivables case must be considered as an urgent matter due to the employee's social status, and it should be heard without interruption by awaiting the second meeting of creditors.

### Bankruptcy administration

On the other hand, even if a plaintiff appears to be able to continue its court proceedings against the bankrupt based on the law, it may not be able to sustain such proceedings practically, as the bankrupt may become disempowered over the assets and rights included in the bankruptcy estate and this may prevent the bankrupt to continue being a party to such proceedings. In this case, urgent cases shall be followed against the bankruptcy administration without waiting for the second meeting of creditors. If the first meeting of creditors is not held yet, but the matter bears an urgency that cannot even wait until the choice of bankruptcy administration, the bankruptcy administration substitutes the bankrupt and the case continues in the labour court where the case was heard before the opening of bankruptcy.

### Review of receivables

After the employer becomes bankrupt, an employee shall notify the grounds and sum of their receivables to the bankruptcy administration within one month as of the announcement on opening of the bankruptcy. Once the prescribed time of one month expires, the bankruptcy administration shall begin to examine whether the receivables are correct or not. Each receivable accepted upon substantial examination shall be recorded to the order table based on the determined order. Any rejected receivable shall also be specified on the order table with the reasons for rejection. The bankruptcy administration shall file the order table to the bankruptcy office and notify the creditors by publication. The order table shall also be served to the creditors which show an address for service and deposit an advance for the service expenses during the application before the bankruptcy administration. Creditors are entitled to object to the order table within 15 days as of the publication or the service, whichever is applicable, before any of the commercial court in the place where the commercial court issued the bankruptcy decision is located.

### Court of Cassation decision

In light of the above, according to the Court of Cassation, it must be heard as a registration and admission case before the commercial court if:

- the employer becomes bankrupt during the court proceedings of an employee receivables case, the case must continue to be heard before the labour court, and
- the employer becomes bankrupt before the commencement of the court proceedings and the employee's receivables cannot be recorded to the order table for this reason.

In this regard, the Court of Cassation recently revoked a first instance court's decision on grounds that it was erroneous to not sustain the court proceedings as a registration and admission case where the defendant employer clearly became bankrupt during the employment receivables case.

For further information on this topic please contact [Beril Yayla Sapan](#), [Ezgi Kut](#) or [Kardelen Özden](#) at Gün + Partners by telephone (+90 212 354 00 00) or email ([beril.yayla@gun.av.tr](mailto:beril.yayla@gun.av.tr), [ezgi.kut@gun.av.tr](mailto:ezgi.kut@gun.av.tr) or [kardelen.ozden@gun.av.tr](mailto:kardelen.ozden@gun.av.tr)). The Gün + Partners website can be accessed at [www.gun.av.tr](http://www.gun.av.tr).

### Endnotes

(1) Numbered 2022/64 E, 2022/1438 K.

