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Thoughts Regarding Amendment in Non-Pecuniary Damages on Turkish Administrative Judicial Procedure Law

Türk İdari Yargılama Hukukunda Manevi Tazminatta Islaha İlişkin Düşünceler

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Abstract: There are two types of lawsuits in Turkish Administrative Procedural Law, namely annulment lawsuit and full remedy lawsuit. In full remedy lawsuits, the compensation requested is both pecuniary and non-pecuniary. The amendment of pleadings in full remedy lawsuits can be used by increasing the requested amount once until the final decision. This possibility to increase the amount of the claim has been introduced later in the Turkish Administrative Judicial Procedure Law. After the introduction of this regulation, it has been discussed whether it can be applied to non-pecuniary damages claims. In order to express these, we will first examine the concept of amendment in civil procedure law in general and its application by substantiating with the Court of Cassation rulings. Then the Council of State will be set forth. Subsequently, we will express our views on this area of debate, where the judicial and administrative judiciary have different decisions, that amendment in non-pecuniary damages should be possible in terms of administrative judiciary, that although it is made once as a rule, it can be made again in case new events arise, that this right should sometimes be recognized at the appeal stage too, and that this request can be asserted later, even if it is not included in the first petition.

Keywords: Turkish Administrative Judicial Procedure Law, Non-Pecuniary Damages, Mental Harm, Amendment, Increasing the Value of the Case

Öz: *Türk İdari yargılama hukukunda iki tip dava bulunmakta olup bunlar iptal davası ve tam yargı davasıdır. Tam yargı davalarında talep edilen tazminat hem maddi hem manevi yönden olmaktadır. Tam yargı davalarında ıslah imkanı da kural olarak yargılama aşaması devam ederken meydana gelen gelişmelere göre, nihai karar verilinceye kadar talep edilen miktarın bir kez artırılabilmesi suretiyle kullanılabilmektedir. Bu artırma imkanı Türk İdari Yargılama Hukuku'nda sonradan getirilmiş bir düzenlemedir. Bu düzenleme getirildikten sonra manevi tazminat talepleri bakımından da bunun*

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uygulanıp uygulanamayacağı tartışılmıştır. Bunları ifade edebilmek için önce genel olarak medeni usul hukukundaki ıslah müessesesini ve uygulamasını da Yargıtay kararlarından örnekler vererek inceleyeceğiz. Sonra Danıştay yaklaşımından söz edeceğiz. Akabinde, adli yargı ve idari yargının farklı yönde kararlarının bulunduğu bu tartışma alanında idari yargı bakımından manevi tazminatta ıslahın mümkün olması gerektiği, kural olarak bir kez yapılsa da yeni olayların ortaya çıkması durumunda yeniden yapılabileceği, istinaf aşamasında da bu hakkın bazen tanınması gerektiği, ilk dilekçede yer almasa dahi bu talebin sonradan ileri sürülebileceğine dair görüşlerimizi ifade edeceğiz.

Anahtar kelimeler: *Türk İdari Yargılama Hukuku, Manevi Zarar, Manevi Tazminat, Islah, Dava Değerinin Artırılması*

1. Introduction

Amendment is defined as "to make something better, to correct, to improve, to partially or completely correct a procedural action taken by one of the parties in the case" in the Ministry of Justice's legal dictionary[1]. The concept of amendment is basically regulated in Articles 176 and following of the Code of Civil Procedure No. 6100. The phrase "Each party may partially or completely amend the procedural actions it has taken" appears in paragraph 1 of Article 176. Thus, the meaning of amendment is expressed. In the Administrative Judicial Procedure Law No. 2577, amendment of pleadings was added to Article 16 of the Law with the alteration made in 2013. Accordingly, "*However, the amount stated in the petition for full judgement may be increased for one time only by paying the fee until the final decision is made, regardless of the time limit or other procedural rules, and the petition for increasing the amount shall be notified to the other party to respond within thirty days*." Thus, while previously there was no possibility to increase the value of the case in the administrative judiciary, with this regulation, the right to amend pleadings has been granted in administrative judiciary. The amendment of pleading allows the plaintiff to bring before the court with a new petition any matter that was not raised, forgotten, miscalculated or unknown to the plaintiff at the time of filing the lawsuit.

There are also distinctions regarding at which stage of the lawsuit and on which subject the amendment can be made. In other words, whether or not amendment can be made comes to the agenda in both pecuniary and non-pecuniary damages claims. Therefore, in this study, we will examine the legal status of the concept of amendment in both the judicial and administrative judiciary. Subsequently, we will explain the meaning of non-pecuniary damages and the conditions for claiming them. Then, we will explain whether

[1] (online) https://sozluk.adalet.gov.tr/ISLAH, Accessed by 20 November 2024

the non-pecuniary damages can be increased by amendment in cases claiming non-pecuniary damages. We will discuss the decisions of the Council of State's and the Court of Cassation's on this subject. By pointing out the different approaches, we will finally explain our views and opinions on the subject.

2. Non-Pecuniary Damages and Amendment (of Pleadings) in Civil Procedure Law

Although an amendment is defined as "improving or correcting something, it should be noted that judicial law gives it more specific and technical meanings. For instance, revising the calculation or fixing an error in a judgment's drafting are not qualified as amendment of pleadings. Amendment, on the other hand, is the modification and reformation of the content of the claims and defences put forward by the parties (Pekcanıtez, Özekes, Akkan and Taş Korkmaz, 2017). In other words, amendment of pleading is the submission of a claim that has not been mentioned before, or the alteration of the content and amount of a claim that has been mentioned.

After the reply and second pleadings are mutually filed, the parties are not permitted to change or expand their claims and defences, according to Article 141 of Law No. 6100. The second paragraph lists two possible exceptions to this rule: The other party's consent and the amendment. From this point, we understand that if other party does not expressly consent, the only way to remove an issue from being subject to the prohibition on the extension and alteration of claims and defences and to make it subject to the trial, is amendment. However, partial or full amendment of pleadings are only taken into account in relation to "procedural" transactions that are carried out by the parties, as stated in Article 176 of Law No. 6100 (Tulumlu, 2013). But according to other views, this is untrue, and any matter falling under the prohibition's purview can be amended to bring it before the court, not just procedural transactions (Atalı, Ermenek and Erdoğan, 2024). As it is understood, the corrections that occur during the process prior to the prohibition starting or that have the other party's consent do not require an amendment of pleading. Reaching the material reality (justice) at the conclusion of the judgment is the aim of the amendment (Arslan, Yılmaz, Taşpınar Ayvaz, Hanağası and 2022). Because the proceedings will be continued and concluded based on an incorrect procedural procedure or clause if there is no chance for amendment. This evaluation is contrary to law and justice.

Amendment is a one-time remedy. Therefore, regardless of whether it is partial or complete, the plaintiff or the defendant may use this possibility only once within the

period stipulated in the legislation (Çınarlı and Ağar, 2017). Regardless of the type of lawsuit, the amount of the lawsuit can be increased or decreased, according to the civil procedure doctrine (Kara, 2017) and the opposite opinion states that the amount of the lawsuit cannot be decreased through amendment, instead, partial waiver or partial withdrawal of the lawsuit will be used (Arslan et al., 2022). According to civil procedure law, the allotted time frame is the amount of time until the fact finding stage is concluded. The amendment request may be submitted up until this point. When does the inquiry conclude, then? There are five fundamental steps in the process, as stated in Law No. 6100. These include the following: petition exchange (Articles 118-136), preliminary examination (Articles 143-293), termination of the investigation and oral proceedings (Articles 184-186), and judgment (Article 294 et seq.). Regulations 184 and 185 of the Law govern the process for ending the investigation. Accordingly, at the end of the investigation, the court asks for explanations from the parties for the entire investigation, and after these explanations, if it concludes that there is no situation that requires further investigation, it terminates the fact finding stage and notifies (announces) this to the parties. Naturally, the precise time of investigation termination becomes problematic when the court panel fails to fulfil the duties outlined in this provision, even though the law clearly regulates the time of investigation termination. For this reason, the obligations in these provisions regarding the termination of the investigation must be fully satisfied to clearly establish the timeframe. Article 357 of Law No. 6100 states that there is no chance of amendment during the appeal stage; however, since there is a re-investigation, it is also stated that the possibility of amendment should be permitted during the appeal stage (Pekcanıtez et al., 2017). In cases where re-investigation is conducted, it is stated that amendment should be permitted under specific conditions, but at the Court of Cassation stage, amendment is not possible because only legal control is exercised at that stage (Atalı et al., 2024).

Amendment can be requested orally or in writing because it is a legal right. The court's or the other party's acceptance is not a prerequisite for using this option. That is to say, if the party requesting the pleading amendment does so in compliance with the law and meets the requirements, the request cannot be denied. However, this, of course, does not mean that the amendment request will not undergo any preliminary inspection. Because this right, which can be used only once, must be used in accordance with the law (Pekcanıtez et al., 2017). If the court finds that the amendment application was made in bad faith, Article 182 of Law No. 6100 states that the applicant will be subject to both a disciplinary fine and compensation. Nonetheless, the Court of Cassation

acknowledges the option to amend later if the amendment application is found to be null and void; this is not regarded as a second amendment[2].

Whether the amendment can be used to recover non-pecuniary damages in addition to pecuniary damages is one of the main questions of our research. Unlike pecuniary damages, non-pecuniary damages, which is an institution of the law of liability with its own specific characteristics, is the amount assessed by the court to compensate for the mental harms (emotional distresses). The suffering, grief, and other negative emotions experienced by the party whose personal rights have been infringed upon constitute mental harm (Arıdemir, 2008). It is a fact that mental harm cannot be measured in monetary terms. However, this is anticipated in order to guarantee that, using the court's discretion, a fair amount of money is paid to the harmed party in order to partially ease their pain and suffering without leading to enrichment. The question of whether it is possible to increase the non-pecuniary damages resulting from this pain and sorrow either before the lawsuit is filed or after it is filed needs to be examined because the judicial and administrative judiciary have reached differing conclusions on the matter.

3. Approach of the Court of Cassation

It should be noted that the Court of Cassation has three distinct stances on the question of whether non-pecuniary damages are amendable. In its first approach, the Court of Cassation has decided for many years that the non-pecuniary damages are a single and indivisible whole, and therefore cannot be amended[3]. According to the Court of Cassation's second approach, the requested non-pecuniary damage may be increased in light of new information discovered after the lawsuit process began. It also occasionally emphasized that the case should be accepted and decided as an additional lawsuit, which means that the non-pecuniary damage may also be amended[4]. According to the third approach, non-pecuniary damages are a distinct claim that must be pursued

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2 21st Civil Chamber of the Court of Cassation, E. (File number): 2014/10685, K. (Decision Number): 2014/25208, K.T. (Decision Date): 25.11.2014, Lexpera.

3 2nd Civil Chamber of the Court of Cassation, E. 2012/1678, K. 2020/21498, K.T. 17.09.2012, Kazancı Bilgi Bankası.

4 "*In the light of these explanations, when the concrete case is examined, there is no legal obstacle for the plaintiffs to request non-pecuniary damages by amendment in the case duly filed by the plaintiffs. The court's assessment that a right that was not initially claimed cannot be claimed by amendment at the trial stage is incorrect. While the court should examine the merits of the claim for non-pecuniary damages and make a decision according to the result... thus, decision had to be reversed*." 4th Civil Chamber of the Court of Cassation, E. 2012/5120, K. 2013/4672, K.T. 14.03.2013, Kazancı Bilgi Bankası.

in a different lawsuit; as such, they cannot be added to the lawsuit through amendment if they were not requested at the outset[5].

3.1. The First Approach Regarding the Inability to Increase the Non-Pecuniary Damages by Amendment

In the dispute subject to the decision of the Court of Cassation dated 25.06.2024, the plaintiff party in the divorce case increased the amount of both pecuniary and non-pecuniary damages by amendment and the court of first instance accepted this amendment request. However, the Regional Court of Appeal overturned the local court's ruling, declaring that "it is erroneous to award 40.000,00 TL non-pecuniary damages by exceeding the woman's initial request because it is not possible to increase the amount of non-pecuniary damages by amendment in accordance with the principle of indivisibility of non-pecuniary damages.". Upon appeal, the Court of Cassation upheld the decision of the Regional Court of Appeal and therefore accepted that the non-pecuniary damages are a whole and that the amount initially demanded cannot be increased later[6]. Reiterating that a properly filed lawsuit is required for an amendment, the Court of Cassation has determined that neither the non-pecuniary damages not claimed in the lawsuit petition, nor the amount of non-pecuniary damages stated in the lawsuit petition can be increased by amendment[7]. The Court of Cassation states that the grief and sorrow suffered due to an unlawful act is the feeling that should be felt at the time of that act. In other words, by spreading the sorrow and pain over time, it states that it is not possible to divide the non-pecuniary damages, to make some of them the subject of the lawsuit and to reserve the rest. Therefore, the court decides that non-pecuniary damages cannot be divided and must be claimed at once[8].

3.2. The Second Approach Regarding the Possibility of Increasing the Non-Pecuniary Damages by Amendment

According to the Court of Cassation's approach, a claim for non-pecuniary damages may be included in the petition regarding the amendment of a claim regardless of whether it was asked for in the initial petition. For example, in a dispute, the plaintiff requested the

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5 22nd Civil Chamber of the Court of Cassation, E. 2020/190, K. 2020/1382, K.T. 03.02.2020, Kazancı Bilgi Bankası.

6 2nd Civil Chamber of the Court of Cassation, E. 2023/6771, K. 2024/4833, K.T. 25.06.2024, Lexpera.

7 17th Civil Chamber of the Court of Cassation, E. 2016/10831, K. 2017/1213, K.T. 09.02.2017, Kazancı Bilgi Bankası.

8 21st Civil Chamber of the Court of Cassation, E. 2014/10685, K. 2014/25208, K.T. 25.11.2014, Lexpera, For a similar decision, see 11th Civil Chamber of the Court of Cassation, E. 2009/912, K. 2009/6146, K.T. 21.05.2009, Lexpera.

collection of 1000 TL pecuniary damages in its lawsuit petition and wanted to secure their rights by stating in petition for amendment that without prejudice to the rights regarding the excess, and the collection of non-pecuniary damages from the defendant jointly and severally, together with legal interest from the date of the incident. The Regional Court of Appeal overturned the local court's ruling that a petition of amendment could not be used to request an issue that was not covered in the initial petition. It has also been acknowledged by the Court of Cassation that a petition for amendment may be used to assert non-pecuniary damages. The Court of Cassation stated that the Regional Court of Appeal should appreciate the amount of non-pecuniary damages at a rate that guarantees deterrence as well as a sense of satisfaction when determining the amount of compensation and decided that the Regional Court of Appeal' judgement did not reach up to that level in terms of compensation. When exercising this discretionary power, the judge should consider the nation's economic situation, the social and economic circumstances of the parties, the money's purchasing power, the parties' ratio of fault, the seriousness of the incident, and, in line with the evolving legal framework, the rate at which it should be valued in order to elicit both deterrence and satisfaction. As can be seen, the Court of Cassation continued to take a different stance in this case as opposed to the General Assembly of Civil Chambers' 2016 decision.

In a different case, the Court of Cassation determined that even though the amendment petition for non-pecuniary damages was not requested at the outset of the lawsuit, it was filed by paying the application fee and the proportionate fee. As a result, the petition should be accepted as an additional lawsuit, and the request for non-pecuniary damages should be decided upon. The amendment can then be made and accepted as an additional lawsuit[9]. In other words, in the second approach, the Court of Cassation has accepted the amendment, but in the third approach below, it has determined that it will not be accepted because the non-pecuniary damages that were claimed later are the focus of another lawsuit[10].

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9 21st Civil Chamber of the Court of Cassation, E. 2018/3449, K. 2019/2821, K.T. 11.04.2019, Lexpera.

10 For the decision of the Court of Cassation upholding the decision of the Regional Court of Appeal in a similar direction, see 10th Civil Chamber of the Court of Cassation, E. 2023/6068, K. 2013/13459, K.T. 26.12.2013, Lexpera; In another decision, the Court of Cassation rejected the claim for non-pecuniary damages made by way of amendment petition due to the fact that the required application fee was not paid. In other words, the Court of Cassation stated that if the fees had been paid, a decision should be made on the claim for non-pecuniary damages through amendment. See 10th Civil Chamber of the Court of Cassation, E. 2022/12381, K. 2024/2365, K.T. 06.03.2024, Kazancı Bilgi Bankası.

3.3. The Third Approach Regarding the Request for Amelioration of Non-Pecuniary Damages as Other Claims

In the case brought before the Court of Cassation, General Assembly of Civil Chambers on June 15, 2016, where the plaintiff was hurt when the defendant's compressor exploded during the slaughter of an animal. The plaintiff demanded monetary damages and in the ensuing amendment request, he sought non-pecuniary damages in addition to increasing the amount claimed as pecuniary damages. The plaintiff included non-pecuniary damages in the amendment request even though it was not included in the initial lawsuit petition. The Court of Cassation, in its decision[11], stated that:

"An amendment is a modification or extension of a transaction that is the subject of the lawsuit, meaning that the transaction is one that has been included in the lawsuit petition. *What has never been included in the statement of claim cannot be expanded upon or changed, i.e., partially amended. (...) It is legally impossible to add something that is not the focus of the case into it and use amendment to make it the focus of the lawsuit. Only monetary damages is at stake in the lawsuit seeking damages based on the tort's cause, for the reasons previously mentioned. Non-pecuniary damages shall be a separate claim that is not the focus of the lawsuit. They cannot be the subject of the amendment for this reason; in other words, the majority of votes supports that the non-pecuniary damages, which were not originally sued in the case in question and are being added to the case with the amendment constitutes a separate claim and will be the focus of a different case. In fact, similar principles were also accepted in the General Assembly of Civil Chambers' decision dated June 29, 2011, which was numbered 2011/1-364-453 E. / K. The decision states that the amendment petition in a lawsuit filed for pecuniary damages cannot include a claim for non-pecuniary damages.* It is unlawful to file a lawsuit through amendment for a matter that was not the focus of the original lawsuit, according to the Court of Cassation, which upheld this stance in a number of rulings over the following years[12]. However, in its decision dated 2021, the General

[11] Court of Cassation General Assembly of Civil Chambers, E. 2014/4-1193, K. 2016/800, K.T. 15.06.2016, Kazancı Bilgi Bankası.

[12] See 22nd Civil Chamber of the Court of Cassation, E. 2017/18756, K. 2018/26345, K.T. 05.12.2018; 15th Civil Chamber of the Court of Cassation, E. 2019/3022, K. 2019/5107, K.T. 11.12.2019, Kazancı Bilgi Bankası; 17th Civil Chamber of the Court of Cassation, E. 2019/2082, K. 2020/7164, K.T. 17.11.2020, Kazancı Bilgi Bankası; 8th Civil Chamber of the Court of Cassation, E. 2020/1172, K. 2020/7490, K.T. 24.11.2020, Kazancı Bilgi Bankası; 3rd Civil Chamber of the Court of Cassation, E. 2020/5139, K. 2021/4821, K.T. 28.04.2021, Kazancı Bilgi Bankası; 3rd Civil Chamber of the Court of Cassation, E. 2020/5021, K. 2021/7476, K.T. 28.06.2021, Kazancı Bilgi Bankası; 11th Civil Chamber of the Court of Cassation, E. 2022/4227, K. 2023/6388, K.T. 02.11.2023, Kazancı Bilgi Bankası; Court of Cassation 1st Civil Chamber, E. 2023/1004, K. 2024/4007, K.T. 30.05.2024, Kazancı Bilgi Bankası.

Assembly of Civil Chambers adopted an approach similar to the second approach that was explained under the heading (3.2.) above. The court considered and granted the amendment request as a correction of the amount claimed, rather than as a new lawsuit[13].

As is evident, there is no agreement within the Court of Cassation regarding the treatment of the concept of amendment. Because even though the Court of Cassation essentially uses the three methods listed above, the Court is also able to make decision that are similar to or different from these methods. According to our analysis, there are more rulings that state that non-pecuniary damages cannot be raised through an amendment request, but there are also a lot of rulings that go the other way. Since we will discuss our thoughts on the acceptance or rejection of the request for a change in non-pecuniary damages at the end, it will be sufficient to include them under this heading.

4. Non-Pecuniary Damages and Amendment in Administrative Judicial Procedure Law

Although the judicial judiciary upholds the same position which was previously described, the administrative judicial procedural law opts a slightly different position. Since the amendment procedure was introduced in 2013 with the addition of the phrase to paragraph 4 of Article 16, the Administrative Procedure Law No. 2577 did not mention the amendment provisions in Article 31. Before the addition of this paragraph, there were different opinions in the legal doctrine regarding the applicability of amendment in administrative judiciary and likewise the Council of State did not accept amendment as an institution (Çınarlı and Ağar, 2017). However, according to the Constitutional Court, the legislator had the right to decide whether or not to amend Article 31 of Law No. 2577[14]. Nevertheless, the institution of amendment was first used in the administrative judiciary in 2013, following the amendment of Law No. 2577.

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[13] "*(...) with this decision, the increase in the amount through amendment is not considered as an additional lawsuit and is only considered as a change in the amount written in the statement of claim, in other words, as a correction of this amount. As a result of this decision, it is no longer possible to consider the amendment for an increase in the amount as an additional lawsuit, and it should be accepted as a correction of the amount in the statement of claim.(...)*" See Court of Cassation General Assembly of Civil Chambers, E. 2020/21-196, K. 2021/195, K.T. 04.03.2021, Kazancı Bilgi Bankası.

[14] "*...Despite the principle of ex officio examination in the administrative proceedings, the fact that the Law No. 2577 does not include the institution of amendment, which aims to fully or partially correct the procedural party actions within the context of the review authority based on the request of the parties in the civil proceedings, falls within the discretionary power of the legislator in determining the procedural*

The judgements against Turkey by the European Court of Human Rights serve as the rationale for this legal change. Due to the fact that the amount of compensation sought is decided in the petitions for full judgment and cannot be amended later, the administrative judiciary has introduced the possibility of amendment as an institution. The fact that a plaintiff was not granted the right to increase the amount demanded in a case where it was later understood that the damage was actually higher while in a pending case was found in violation with ECHR with respect to right to a fair trial (Akyılmaz, Sezginer and Kaya, 2019). This possibility is only valid in full remedy lawsuits and is related to the increase of the amount in a pending case. As a result, an action for annulment cannot add a new issue to an existing claim or amend or expand the claims in the statement of claim (Aslan, 2023).

Individuals may suffer pecuniary or non-pecuniary harm as a result of any administration action. Non-pecuniary damage can be divided into two as non-pecuniary damages with material effects and purely non-pecuniary damages without material effects. For example, sorrow and pain arising from a damage to the physical integrity of a person, which prevents them from working, have moral and material aspects. Purely mental harm, however, is the anguish and suffering that a person experiences when compelled to participate in an activity or conversation that goes against their values. Furthermore, one can demand non-pecuniary damages without also asking for material compensation, and monetary damages does not always equate to mental harm (Tan, 2018). In order to express the nature and severity of the administration's fault in the incident, it is also necessary to determine the amount of non-pecuniary damages that should be assessed against the non-pecuniary damages suffered by the person in question in terms of the development and outcome of the concrete event and the person's peculiar situation. This amount should not lead to enrichment of the person because it is meant to be solely moral satisfaction (Koçak, 2021/2).

A pleading amendment in a full remedy action, like in civil proceedings, can only be made once and is limited to the amount increase. This request may be made up until the final judgment is issued, as stipulated by the law. If the amount of compensation

laws. When it is considered that the administrative procedure, which does not include institutions such as witnesses, oaths, and the reconsideration of previous judgements, although it is included in the civil procedure, is a system determined according to the characteristics of the jurisdiction to which it is related and the developing judicial conditions, like other procedural laws regulated by law according to the Constitution, it is understood that the plaintiffs and defendants in both judicial systems are not in the same situation and therefore do not need to be subjected to the same legal rules..." Constitutional Court, E. 2004/106, K. 2008/121, K.T. 12.06.2008, Official Gazette (Resmi Gazete), 23.12.2008, no. 27089.

changes at the appeal stage, where the case's merits are retried, the amendment can be made, according to a doctrinaire opinion that states the final judgment also includes the appeal stage (Aslan, 2023). The other view in the legal doctrine states that since the appeal is a legal remedy, it is a step after the final judgment. As a result, the amendment request can only be made up until the stage of the first instance proceedings prior to the final judgment (Çınarlı and Ağar, 2017). However, when certain requirements are met, the Council of State has determined that pleading amendments can also be made during the appeal stage[15]. The Council of State views the request for the second amendment as illegal[16]. However, if it is understood that the damage is more than it was claimed by the plaintiff as a result of a new expert examination after the plaintiff has benefited from the institution of amendment, the Council of State decided that the plaintiff can be given another amendment for the second time[17]. Similarly, the Council of State[18], has decided that if the amount claimed in the lawsuit petition turns out to be higher as a result of the research conducted by the court, this issue should be notified to the plaintiff (Akyılmaz et al., 2019). The Council of State has determined that, in compensation cases, individuals should be reminded of the possibility of amendment with an interim decision before deciding on the merits, even though Law No. 2577 does not specifically regulate this in this regard[19]. Stated differently, the local court's interpretation of amendment as a right that the parties may freely exercise was not accepted by the Council of State.

5. Approach of the Council of State

Following these general Council of State decisions, we should now specifically address the Council of State's approach towards disputes involving requests for reform in non-pecuniary damages.

In a decision of the Council of State dated 2014[20] , the Court stated that "... as can be observed, the law does not distinguish between a compensation amount intended to

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15 General Assembly of the Administrative Case Chambers of the Council of State, E. 2019/2001, K. 2020/854, K.T. 09.06.2020, Kazancı Bilgi Bankası.

16 2nd Chamber of the Council of State, E. 2016/5431, K. 2017/5042, K.T. 14.06.2017, Journal of the Council of State, no. 146, pg. 86; 10th Chamber of the Council of State, E. 2020/5287, K. 2021/339, K.T. 09.02.2021.

17 General Assembly of the Administrative Case Chambers of the Council of State, E.2019/2428, K. 2020/388, K.T. 19.02.2020; 10th Chamber of the Council of State, E. 2019/3537, K. 2022/1928, K.T. 07.04.2022; For the decisions, see ASLAN, Z., (2023), pp. 233-244.

18 5th Chamber of the Council of State, E. 2015/4089, K. 2015/8104, K.T. 20.10.2015.

19 8th Chamber of the Council of State, E.2022/6182, K. 2023/243, K.T. 01.02.2023, Kazancı Bilgi Bankası.

20 10th Chamber of the Council of State, E. 2009/9938, K. 2014/1117, K.T. 25.02.2014, Kazancı Bilgi Bankası.

compensate material or non-pecuniary damages, but rather states that 'in full remedy actions, the amount specified in the petition may be increased.' *In this regard, it is determined that the possibility of an increase as mentioned above applies to both the magnitude of pecuniary damages and non-pecuniary damages. In other words, by paying the fee that corresponds to the increased amount, the plaintiffs can increase the amount of pecuniary and non-pecuniary damages listed in the lawsuit petition for a single instance. They will then submit the petition to the court making the decision.* In this decision, the Council of State stated that amendment is also possible in non-pecuniary damages. The Council of State did not mention any subsequent event in any way and made this decision only on the grounds that there is no difference between the law regarding pecuniary damages and of non-pecuniary damages in terms of amendment.

The Council of State declared in a different 2021[21] decision that non-pecuniary damages could also be amended. Nonetheless, it claimed that novel information and conclusions about the incident that caused the harm—which has a far more detrimental effect on people's morals—should have surfaced. The court emphasized that mental harm occurs at the moment of the incident and that it cannot be claimed that this harm has grown unless new information has emerged or been discovered since then. The amendment of non-pecuniary damages is therefore illegal in this dispute since no new information was discovered during the judicial process.

The General Assembly of Administrative Case Chambers of the Council of State issued a decision twenty days after the one mentioned in the previous paragraph, which only stated that there is no distinction in the law regarding amendment and that amendment is possible in non-pecuniary damages. It made no mention of the necessity of an event that occurred later which increased the pain and sorrow[22].

The Council of State obviously acknowledges that non-pecuniary damages may be amended in both situations. In other words, it does not mention the indivisible nature of non-pecuniary damage as in the judicial judiciary. It is generally accepted in the legal system that non-pecuniary damages are only admissible once and cannot be changed. However, in line with the regulation established by Law No. 2577, the Council of State determines that amendments are possible without making a distinction between pecuniary and non-pecuniary damages. Additionally, it specifies that amendment may be made during the appeal process. While it has been decided that amendment cannot

[21] 10th Chamber of the Council of State, E. 2019/10269, K. 2021/530, K.T. 16.02.2021, Lexpera.

[22] General Assembly of the Administrative Case Chambers of the Council of State, E.2020/1621, K. 2021/394, K.T. 04.03.2021, Kazancı Bilgi Bankası.

be made after the appellate authority in the judicial judiciary reverses the decision[23], we can say that the Council of State accepts the possibility of amendment at this point as well because the Council of State's perspective is formed based on the criteria of a new trial and emerging facts.

6. Conclusion

It should be highlighted that the Council of State's rulings are more accurate than that of the Court of Cassation after reviewing both judicial and administrative judicial decisions pertaining to the reform of non-pecuniary damages.

First and foremost, it should be emphasized that non-pecuniary damages can and should lead to amendment. This is because non-pecuniary damage may worsen over time, even though it begins to happen as soon as the person experiences it. The person's sadness and pain may worsen as he discovers new information or as he grows more aware of how serious and severe the incident that caused the current harm was. Because of the rise in the person's grief, the claim for non-pecuniary damages should be amended in the later phases of the case. Therefore, the Court of Cassation's approach is incorrect because it rejects the possibility of amendment on the grounds that non-pecuniary damages are indivisible, and they constitute a whole.

Law No. 2577's Article 16 paragraph 4 does not actually make a distinction between the claims. This statement only makes use of "the amount specified in the statement of claim." Thus, we may conclude that non-pecuniary damages are amendable. It can be argued that a claim that is not part of the statement of claim cannot be added to it through amendment because this phrase was clearly stated in text of the abovementioned article. In fact, we have already discussed the Court of Cassation's rulings in this regard. Put differently, only a damage that is specified in the statement of claim may be changed. However, the doctrine states that amending a petition is necessary because people might forget what they were going to claim in the first place. In this regard, it is also possible that people who have endured mental harm—for instance, significant destruction—may forget to include these damages in the petition at that time because of their anguish and grief. If they are unable to pay for legal representation, they might not know what to assert within the petition. Therefore, even if non-pecuniary damage claim is not placed in the original statement of claim, the present author thinks that it should be added by amendment. Because the desire to claim

[23] Court of Cassation General Assembly of Civil Chambers, E. 2022/15-950, K. 2022/1442, K.T. 08.1.2022, Kazancı Bilgi Bankası.

this damage may come to the person's mind much later, after this sadness has somewhat subsided. It would be more accurate to describe this as a later phenomenon. With rare exceptions, however, this claim should not be changed if the non-pecuniary damage was originally stated in the petition and no new information, documents, or developments occurred that would have increased this sadness throughout the judicial process. As the case develops, though, the claim for non-pecuniary damages should undoubtedly be modified if, for instance, the event that caused the damage turns out to be more catastrophic or if a new event is discovered that worsens the distress.

Only one amendment may be made. However the Council of State has allowed this remedy on multiple occasions when the court's *ex officio* examinations result in an extraordinary difference or new damage. In my view, submitting this amendment request after the completion of full expert examination would align the intent of the law. Thus, this request will not be added to the agenda due to ongoing expert reviews. The amendment request should be submitted at every stage where the merits of the case are re-examined. When the requirements are met, the amendment request ought to be submitted during the appeal phase as well. This ensures justice is served, and the institution's goal is to keep the judiciary from making a mistaken decision. Naturally, a certain sum of money does not make the harmed party's suffering go away, but at least the administration is subject to a sanction. This is also a requirement of justice. Under the *ex officio* examination principle, administrative judicial bodies should, in my opinion, resort to expert to examination in every single case, and inform the relevant party that this is the final outcome, and remind them that there is always room for a possibility of amendment. This approach would likely reduce disputes on this matter.

As the primary aim of the proceedings is to guarantee justice, the possibility of amendment should be acknowledged with a flexible interpretation, provided that the legal requirements are fulfilled, and damages should be awarded.

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