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Research Article

Fiduciary transactions and statute of limitations in fiduciary transactions

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Abstract

There is no comprehensive regulation addressing fiduciary transactions in Turkish law. Fiduciary transactions, which have been the subject of numerous decisions of the Court of Cassation, do not have a definitive definition accepted in legal doctrine. In Turkish law, a fiduciary transaction is a type of contract whereby the trustor transfers a right to the trustee for a definite purpose or period, and the trustee undertakes to use this right in accordance with the instructions and directives of the trustor and to re-transfer the right once the purpose is fulfilled or the period expires. Two main problems generally arise in fiduciary transactions: the problem of proof and the problem of limitation periods. However, academic works addressing the issue of limitation periods are quite limited, and this deficiency constitutes the subject of this study. Due to the absence of a special regulation, the recovery of the entrusted subject matter from the trustee is resolved within the framework of the general provisions of the Turkish Code of Obligations. Nevertheless, the main issue lies in determining the starting point of the limitation period. The practice of first-instance courts, which apply the ten-year limitation period pursuant to Article 146 of the Turkish Code of Obligations and take the date of the fiduciary transaction as the starting point, leads to significant legal injustices. In this article, the structure of fiduciary transactions is examined, and the issue of limitation periods is analyzed.

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Introduction

According to prevailing views, a fiduciary transaction may briefly be defined as contracts in which the trustor transfers a right or an asset within their property to the trustee, either for the purpose of creating security or for disposition, and the trustee returns the subject of the trust to the trustor once the intended purpose is fulfilled. As a result of this transaction, the trustor transfers ownership or a claim right over which they have the power of disposition to the trustee through a dispositive act, thereby imposing certain obligations on the trustee by means of an obligating contract.

From a procedural perspective, since no specific limitation period has been prescribed for this type of contract, Article 146 of the Turkish Code of Obligations No. 6098 is applied, and the limitation period is accepted as ten years. The main legal issue that forms the basis of this article arises precisely at this point. The question that must be asked is: From which moment does the limitation period begin to run?

Pursuant to Article 149/1 of the Turkish Code of Obligations, the commencement of the limitation period is regulated. According to this provision, the limitation period begins to run from the date on which the debt becomes due. The calculation of limitation periods for all claims is based on this principle.

In the initial sections, a decision of the Court of Cassation that constitutes an example for the issue under discussion is presented in detail.

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In the second section, the rights and obligations of the parties arising from the fiduciary transaction are examined. The conclusions drawn from this examination will facilitate an understanding of the basis of the applicable legal rules and reveal why the trustor should be protected.

In the third section, in light of the decisions of the Court of Cassation, the moment at which the subject of the trust becomes recoverable, its enforceability, the significance of the moment when the trustor loses the expectation of retransfer, and the place of these issues in judicial proceedings are analyzed.

FIRST SECTION

I. RELEVANT DECISION:

Court of Cassation, 14th Civil Chamber, File No: 2016/10116, Decision No: 2018/9215, Decision Date: 19.12.2018 (https://karararama.yargitay.gov.tr/# Access Date: 01.01.2026)

A. SUMMARY OF THE DECISION

Facts: The claimant father registered a real property in the name of his defendant daughter in 1996 through a sale transaction paid for by himself, by way of a fiduciary transaction. At a later stage, due to necessity, the claimant requested the sale or transfer of the property; however, his daughter did not respond positively to this request. Consequently, the father filed a lawsuit seeking cancellation and registration of the title deed, or, if this was not possible, the recovery of the amount paid.

Dispute: The main point of dispute in the case concerns the provability of claims based on a fiduciary transaction by written evidence and the date on which the limitation period begins to run with respect to the claim for receivables. Is it the date of the contract, or the date on which the request for retransfer was rejected?

Reasoning (Regarding the Commencement of the Limitation Period): The limitation period does not begin at the moment the contract is concluded, but at the date when the claim becomes due. In fiduciary transactions, as long as the claimant has not lost hope that the defendant will carry out the retransfer, it cannot be said that the limitation period has begun to run. Therefore, the limitation period will commence only from the date on which the request for restitution of ownership is rejected or the possibility of performance ceases.

Conclusion: The Court of Cassation found it erroneous that the local court rejected the title deed claim on an incorrect procedural ground instead of rejecting it due to lack of proof, and dismissed the claim for receivables on the ground that the limitation period had expired. The decision was REVERSED, holding that the court should have examined the payment documents submitted by the claimant and ruled on the merits with respect to the amount of the claim.

B. References of Similar Decisions:

Court of Cassation, 14th Civil Chamber, File No: 2011/5200, Decision No: 2011/6522, Decision Date: 18.05.2011 (https://karararama.yargitay.gov.tr/# Access Date: 01.01.2026)

Court of Cassation, 14th Civil Chamber, File No: 2021/1296, Decision No: 2021/3089, Decision Date: 27.04.2021 (https://www.lexpera.com.tr/ictihat/yargitay/14-hukuk-dairesi-e-2021-1296-k-2021-3089-t-27-4-2021 Access Date: 01.01.2026)

C. Relevant Provisions

Turkish Code of Obligations, Article 1

Turkish Code of Obligations, Article 90

Turkish Code of Obligations, Article 146

Turkish Code of Obligations, Article 149

SECOND SECTION

STATUTE OF LIMITATIONS IN FIDUCIARY TRANSACTIONS

I. RIGHTS AND OBLIGATIONS OF THE PARTIES ARISING FROM THE FIDUCIARY TRANSACTION

Fiduciary transactions, which occupy a significant place in the recent decisions of the Court of Cassation, not only determine the rights and obligations of the parties but also, by their very nature, encompass the conditions for the use and restitution of the transferred right [2]. The purpose of concluding these contracts is generally for security purposes. [3]. Of course, they may also be concluded for other purposes.

Although, by its nature, a fiduciary transaction appears to have a structure that imposes obligations on both parties, it does not constitute such a structure, since the moments at which the reciprocal obligations arise differ and the obligations do not fully correspond to one another.[4]. The fiduciary agreement has a distinctive structure of its own, and its legal basis is grounded in the fiduciary transaction[5].

In terms of the parties, a fiduciary transaction is expressed as involving the trustor and the trustee. Essentially, it refers to a person transferring a property or a right by placing trust in another. As a result of this fiduciary transaction, the transferring party is referred to as the "trustor," while the person in whom trust is placed and to whom the property or right is transferred is referred to as the "trustee."

The right or property transferred by the party defined as the trustor to the party defined as the trustee under a fiduciary arrangement is referred to as the "subject matter of the fiduciary transaction." Within the framework of a fiduciary transaction, the parties to the obligation-creating contract and the parties to the dispositive transaction are the same.

In transactions carried out with a fiduciary nature, the principal obligation of the trustee is to transfer the subject right back to the trustor. The source of this principal obligation arises from the nature and purpose of the fiduciary transaction. The management of the subject matter of the fiduciary transaction may give rise to certain expenses. In such a case, it is the obligation of the trustor to reimburse these expenses together with interest. Examples of such expenses include storage costs, insurance premiums, maintenance expenses, and similar costs.

Turkish Code of Obligations[6] When Article 501/1 is applied by analogy, the trustor is obliged to release the trustee from the obligations undertaken due to the subject matter of the fiduciary transaction. If the trustor is at fault in this respect, the trustor shall also be liable, pursuant to Article 510/2 of the Turkish Code of Obligations, for the damages suffered by the trustee during the period of management.

After the transfer of the subject matter of the fiduciary transaction, the trustor may request information from the trustee as to whether the subject matter is being used in accordance with the purpose of the fiduciary transaction. If the subject matter is not used in compliance with the agreement, the trustor may demand that the trustee remedy this situation, request an accounting, and ask for information regarding the management activities. This is because the trustor may demand that the benefits obtained through the subject matter of the fiduciary transaction be transferred to them, and that, when the fiduciary relationship is established for a specific purpose and that purpose is achieved, the substitute value obtained in place of the subject matter be returned.

The trustee undertakes to act in accordance with the purpose of management arising from the responsibilities imposed by the transferred subject matter of the fiduciary transaction and to preserve it within the necessary scope. In other words, the trustee assumes an obligation to perform services. The performance obligation consists of carrying out the necessary management activities in line with the determined purpose. Since fiduciary transactions are regarded in our legal system as transactions in which the interest of the trustor is afforded a superior position, the trustee is obliged to act in accordance with the orders and instructions of the trustor during the execution of management activities. Upon attainment of the specified purpose, completion of the required management activities, or termination of the fiduciary

[2] 1st Civil Chamber, 03.06.2014, E. 2013/9411, K. 2014/10780 (Judicial Decisions Journal 2015/1, p. 64); 14th Civil Chamber, 17.06.2008, E. 2008/2555, K. 2008/7947 (Judicial Decisions Journal 2010/2, p. 271); 14th Civil Chamber, 06.02.2007, E. 2006/14101, K. 2007/914 (Judicial Decisions Journal 2008/4, p. 681), (Lexpera Case Law Database, online: 01.01.2026).

[3] Haluk Nami Nomer, Fiduciary Sales for Security Purposes, Fiduciary Agreements, and the Prohibition of Lex Commissoria, in Honor of Prof. Dr. Cevdet Yavuz, Volume II, Marmara University Faculty of Law Journal of Legal Research, Special Issue, Volume 22, Issue 3, 2016, p. 2009.

[4] Elif Berktaş Yüksel, Pure Fiduciary Transactions in Turkish Law, Unpublished Doctoral Dissertation, Ankara, 2020, p. 220.

[5] Halûk Tandoğan, The Problem of Protecting the Trustor in Fiduciary Transactions and the Possibility of Benefiting from Article 393 of the Code of Obligations in Solving This Problem, Symposium on Issues Related to Representation and Mandate, Istanbul University Institute of Comparative Law Publications, Istanbul, 1977, p. 78.

[6] Turkish Code of Obligations No. 6098 (Official Gazette dated 04/02/

relationship for another reason, the obligation of the trustee to return the subject matter of the fiduciary transaction shall arise. Given the nature of fiduciary transactions, this result is inherent.

In fiduciary transactions, the element of trust is of great importance. The provisions of Article 506 of the Turkish Code of Obligations[7] may be applied by analogy to fiduciary transactions. When applied by analogy, the trustee is, as a rule, required to perform the duty of management personally and is responsible for carrying out the undertaken work and services with loyalty and due care, taking legitimate interests into account.

Article 508 of the Turkish Code of Obligations is also suitable for application by analogy to fiduciary transactions [8]. Based on this situation, it can be stated that, upon the request of the trustor, the trustee is under an obligation to render an account of the work carried out.

In terms of their field of application, fiduciary transactions are essentially divided into two categories. Fiduciary transactions are generally allocated either for "security purposes" or for "management purposes." This distinction plays a decisive role functionally in determining when the immovable property is to be returned and, in the event of non-return, when the right to compensation arises, and accordingly when the ten-year statute of limitations stipulated under Article 146 of the Turkish Code of Obligations begins to run.

In fiduciary transactions established for security purposes, an immovable property is transferred to the trustee as security for a debt. In this context, the commencement of the limitation period is directly linked to the termination of the debt. The limitation period begins when the secured debt is performed or otherwise extinguished. As long as the debt is not paid, the trustee's right to retain the immovable property continues, and therefore the statute of limitations does not commence. If the immovable property is not returned despite the payment of the debt, the "expectation of release" is deemed to be broken and the limitation period begins. If, despite the payment of the debt, the immovable property is transferred to a third party, the limitation period for compensation will begin from the occurrence of this impossibility or from the rejection of the restitution claim [9].

In management-oriented transactions, the trustor transfers ownership to the trustee for the purpose of managing, leasing the immovable property, or developing a project. Here, rather than a debt relationship, the elements of purpose and duration come to the forefront. The statute of limitations will begin upon the expiration of the determined management period or upon the fulfillment of the purpose specified in the fiduciary transaction. However, as long as the trustee's management duty continues, the statute of limitations cannot run. If, during the management period, the trustee disposes of the immovable contrary to its intended purpose, the statute of limitations shall be calculated from the date on which this breach is learned or from the date on which the request for registration is rejected by the court.

In transactions carried out for security purposes, the statute of limitations depends on the performance of the debt; in management-oriented transactions, it depends on the termination of the management purpose. In claims for compensation, in both cases, the statute of limitations shall be calculated from the moment when the restitution of ownership becomes impossible, that is, when such impossibility becomes definitive.

II. PROVISIONS APPLICABLE TO FIDUCIARY TRANSACTIONS

By its nature, a fiduciary transaction has a unique structure. Its most distinctive feature is the existence of contractual content based on trust and mutually approved by the parties. Therefore, in determining the provisions applicable to fiduciary transactions, the principle of trust should be taken as a basis, and the content of the declarations of intent underlying the contract should be interpreted accordingly in order to determine a solution. The declaration of intent

[7]Article 506 of the Turkish Code of Obligations: "The agent is obliged to perform the mandate personally. However, where the agent is authorized, or where the circumstances make it necessary or customary, the agent may have the work performed by another. (2) The agent is obliged to carry out the undertaken work and services with loyalty and due care, taking into account the legitimate interests of the principal. (3) In determining the agent's liability arising from the duty of care, the conduct expected from a prudent agent undertaking work and services in a similar field shall be taken as the basis."

[8]Article 508 of the Turkish Code of Obligations: "Upon the request of the principal, the agent is obliged to render an account of the work carried out and to transfer to the principal whatever has been received in connection with the mandate. The agent is also obliged to pay interest on any money that has been delayed in being delivered to the principal."

[9] Court of Cassation, 14th Civil Chamber, Case No. 2016/5824, Decision No. 2016/9699, Decision Date: 22.11.2016 (Lexpera Case Law Database, online access: 05.01.2026).

must be at a reasonable level. Likewise, the response given to such a declaration must also possess the same degree of adequacy. This requirement stems from the necessity of interpretation in accordance with the principle of trust.

If the parties to a fiduciary transaction have previously agreed upon a dispute resolution method, priority shall be given to the method previously determined. It will be sufficient for the parties to have reached an agreement on the essential elements of the contract.

Due to its distinctive nature, the direct application of the provisions governing special contractual relationships under the Turkish Code of Obligations to fiduciary transactions would not be appropriate; therefore, the Turkish Civil Code[10] Pursuant to Article 1/2, the existing legal gap shall be filled through the judge's discretion. Moreover, there is no impediment to the application of the relevant provisions of the Turkish Code of Obligations by the judge where appropriate. [11]. In cases of legal gaps, the first step is to determine whether there is any precedent or supplementary legal rule applicable to the situation. If none can be identified, the creation of law becomes necessary.

As a result of the freedom of contract, parties to a fiduciary transaction may act freely with respect to non-essential matters. In other words, the absence of regulation regarding such matters does not render the fiduciary transaction invalid. If there is a deficiency in essential elements, the fiduciary transaction cannot be deemed to have been established. Functionally, a legal gap serves the existence of the contract where no provision has yet been determined by the parties regarding non-essential matters.

In determining the provisions applicable to fiduciary transactions, the application by analogy of the rules governing agency contracts may come into consideration. The essence of an agency contract lies in the authorization granted to another person to perform a task. In fiduciary transactions, a similar declaration of intent exists, and responsibility is assumed between the trustor and the trustee with regard to carrying out management activities. The proper performance of determined or necessary management activities constitutes the performance of a task. Therefore, applying by analogy the provisions applicable to agency contracts to fiduciary transactions is reasonable. Pursuant to Article 502/2 of the Turkish Code of Obligations[12] With respect to acts of performance, the way for analogy has been opened. In one of its decisions, the Court of Cassation stated: "Such transactions may be characterized as agency contracts or as sui generis contracts similar to agency, to which the provisions governing agency are applicable."[13] It has ruled accordingly. In the doctrine, there is also a general acceptance in this direction.[14].

The trust-based transaction and the mandate (agency) contract share similarities in many respects in terms of purpose and content. In trust-based transactions concerning immovable property, the entrusted party temporarily acquires ownership and acts with the status of owner. However, this authority of action is limited to the instructions of the trusting party.[15]. In a mandate contract, the agent likewise has freedom of action, acting within the boundaries set by the principal. Both the agent and the entrusted party are responsible for the act of performance, not for guaranteeing a specific result. They cannot be held directly liable for the failure to achieve the result, unless fault is present. Moreover, if the subject matter of the trust-based transaction is a limited real right and is transferable in nature, a trust-based transaction may be established by the parties.[16].

When examined within the scope of provisions that may be applied by analogy to trust-based transactions, Articles 505 to 511 of the Turkish Code of Obligations, which regulate the obligations of the agent and the principal, may be applied by analogy.[17]. In addition, in the doctrine, it has been stated that in cases where it is determined under the

[10] Turkish Civil Code No. 4721 (Official Gazette dated 08/12/2001, No. 24607).

[11] İbrahim Kaplan, Judicial Intervention in Contracts, 3rd Edition, Ankara, Yetkin Publications, 2013, pp. 108–109.

[12] Article 502/2 of the Turkish Code of Obligations (TBK):"The provisions relating to mandate shall also apply, insofar as they are compatible with their nature, to service contracts that are not regulated in this Code."

[13] Decision of the Court of Cassation General Assembly of Civil Chambers dated 17.05.2000, File No. 2000/2-888, Decision No. 2000/885 (Lexpera Case Law Database, online: 01.01.2026).

[14] See in this regard: Ayanoğlu Moralı, p. 129; Eren, Law of Obligations, p. 367; Esener, Simulated Transactions, p. 148.

[15] Saibe Oktay Özdemir, "Contracts for the Transfer of Ownership for Security Purposes," MHB, Vol. 19–20, Istanbul, 1999–2000, p. 663.

[16] Arzu Oğuz, "A Comparison of Trust Transactions and Contracts of Mandate in Roman and Turkish Law," Ankara University Faculty of Law Review, Vol. XLI, Nos. 1–4, Ankara, 1989–1990, p. 247.

[17] Ergun Özsunay, "The Application of Provisions Relating to the Contract of Mandate in Pure Trust Transactions," Symposium on Issues Concerning Representation and Mandate, Istanbul University Institute of Comparative Law Publications, Istanbul, 1977, pp. 117–119.

provisions of a trust-based transaction that a third person will benefit, the provisions applicable to contracts in favor of a third party may come into play in addition to the provisions of the mandate contract.[18]. When applying the provisions, it is essential to act in accordance with the concrete case. Because a trust-based transaction has distinctive characteristics, it is necessary to rule in a manner consistent with the intentions of the parties without harming the nature of the contract.

In addition, due to the legal nature of the trust-based transaction, during the determination of the applicable or predetermined provisions or the procedure for termination of the contract, the aim of protecting the creditor's security must be taken into consideration.

III. PROTECTION OF THE TRUSTOR AGAINST THIRD PARTIES

One of the common problems in trust-based transactions is how legal protection should be provided when the recoverability of the trust subject transferred to the trustee by the trustor is put at risk. Legal protection should come into question in cases where the trustee transfers the trust subject to a third party in violation of the trust-based transaction or where the trustee becomes bankrupt. Because in the event of the trustee's bankruptcy, the trust subject will be endangered and included in the bankruptcy estate, and since the trustor has no right to object to this process, the trustor may suffer harm.[19]. This situation is highly significant in terms of the consequences it creates. When a trust-based transaction is regarded as a mandate agreement or a mandate-like agreement, it is possible to apply, directly or by analogy, the provisions set forth in Article 393 of the Turkish Code of Obligations in order to protect the principal in trust-based transactions.[20].

In legal doctrine, it is not accepted that the trusting party should bear the risks of the transaction merely due to the nature of the transaction itself. In order to protect the trusting party, who may be in a disadvantaged position, and to prevent the risk of being unable to recover the subject matter of the trust, various theories have been put forward. Since these theories fall outside the scope of this article, they will not be explained in detail. Some of these theories include Joint Ownership, Formal Ownership, and Conditional Transfer Subject to a Resolutory Condition.

A. Evaluation Within the Framework of Contemporary Law

When a general assessment is made within the framework of the legislation in force and the theories mentioned above, it becomes apparent that adequate protection is not provided for trust-based transactions. In particular, the inability of the trusting party to act in the event of the trustee's bankruptcy constitutes a violation of law. In this context, special protection should be afforded to the trusting party, or a legal basis should be established that allows the subject matter of the trust to be withdrawn from the bankruptcy estate. This situation is a natural consequence of the structure of trust-based transactions.

The provision of Article 188/1[21] of the Enforcement and Bankruptcy Law (İİK[22]), titled "Bills of exchange issued to order or to bearer for the collection of their consideration," constitutes an example in positive law of situations that address the protection of the trustor.

THIRD SECTION

STATUTE OF LIMITATIONS IN TRUST TRANSACTIONS

I. THE MOMENT OF TERMINATION OF THE TRUST RELATIONSHIP AND THE STATUTE OF LIMITATIONS

Pursuant to the unification of judgments decision dated 05.02.1947 and numbered 20/6, it has been ruled that written evidence is required for the proof of trust transactions. The written evidence referred to here includes any document that reflects the signatures of the parties and their mutual declarations of intent. There is, however, another regulation that constitutes an exception to the written evidence requirement stipulated. The Code of Civil Procedure No. 6100 [23]

[18] Özsunay, Trust Transactions in Turkish Law and Comparative Law, Istanbul University Faculty of Law Publications, Istanbul, 1968, p. 136.
[19] ÖZSUNAY, Trust-Based Transactions, p. 202; Hüseyin ALTAŞ / Leyla Müjde KURT, p. 19; Fikret EREN, Law of Obligations, p. 385.
[20] Necip KOCAYUSUFPAŞAOĞLU, Law of Obligations, General Part, Volume 1, 4th Edition, Filiz Publishing House, Istanbul, 2017, p. 370
[21] "Article 188/1 of the Enforcement and Bankruptcy Code (İİK): 'Bearer or order instruments transferred to the bankrupt solely for the purpose of collecting their consideration or in return for a payment to be made at a designated future date may be reclaimed by the transferors.'
[22] Enforcement and Bankruptcy Code No. 2004 (Official Gazette, 09.06.1932, No. 2128).
[23] Code of Civil Procedure No. 6100 (Official Gazette, 04.02.2011, No. 27836).

pursuant to this provision, if a document or evidence that may be regarded as a "commencement of evidence" exists, it may be stated that a trust transaction can be proven. Any type of evidence that can be considered as a commencement of evidence may serve this function. What matters is the existence of evidence indicating the existence of the trust transaction and that can be considered to have originated from the parties. For instance, a handwritten promissory note or letter, even if it does not bear a signature, or a fingerprinted document that has not been duly certified may be given as examples. This matter is regulated under Article 202[24] of the Code of Civil Procedure. If no evidence or commencement of evidence is presented, proof may of course also be established through confession or oath.

Pursuant to this provision, where a document or evidence that may be regarded as a "commencement of evidence" exists, it may be stated that a trust transaction can be proven. Any kind of evidence that can be considered a commencement of evidence may serve this function. What is important is the existence of evidence indicating the existence of the trust transaction and that can be considered to have originated from the parties. For example, a handwritten promissory note or letter, even if it does not bear a signature, or a fingerprinted document that has not been duly certified may be given as examples. This matter is regulated under Article 202[25] of the Code of Civil Procedure.

If no evidence or commencement of evidence is presented, proof may of course also be established by means of confession or oath.

The unification of judgments decision dated 05.02.1947 and numbered 20/6 constitutes the foundation of trust transactions in many respects. Within the content of the decision, the applicability of transactions conducted under a pseudonym or simulation, which were possible under previous legal rules, to immovable property under the new legal provisions was discussed.

In essence, a trust transaction involves the transfer of a specific right or property to the trustee for an agreed period, with the trustee performing acts in accordance with the instructions and orders of the trustor, who is the party to this temporary transfer. The trustee is obliged to return the transferred right or property once the agreed purpose has been fulfilled or the stipulated period has expired.[26].

In judicial decisions, a trust transaction is defined as a contract in which the trustee undertakes to transfer the property or right obtained through the legal transaction back to the trustor after the specified purpose has been achieved or the agreed period has elapsed.[27].

Trust transactions have not been regulated by the legislator within the framework of a specific statutory provision. Interpretations and evaluations regarding trust transactions can be made based on unification of judgments decisions, doctrinal opinions, and judicial rulings. The limitation periods applicable to trust transactions have also not been expressly regulated. In practice and in doctrinal views, it is accepted that the applicable limitation period is that set forth in Article 146 of the Turkish Code of Obligations, and therefore that trust transactions are subject to a ten-year limitation period.

With regard to trust transactions, the criterion for the commencement of the limitation period is determined according to the date on which the claim becomes due. Accordingly, the limitation period begins as of the date on which the entrusted property or right determined within the scope of the trust transaction must be returned. Therefore, if the time for the return of the entrusted property has not yet arrived, or if the trustee has a justified reason for retaining the entrusted property, the limitation period will not commence.[28].

[24] Article 202 of the Code of Civil Procedure (HMK): "(1) In cases where proof by written document is mandatory, witnesses may be heard if there is a commencement of proof. (2) A commencement of proof is a document which, although insufficient to fully prove the alleged legal transaction, renders the existence of such transaction probable and which has been issued or sent by the person against whom it is invoked or by that person's representative."

[25] Article 202 of the Code of Civil Procedure (HMK): "(1) In cases where proof by written document is mandatory, witnesses may be heard if there is a commencement of proof. (2) A commencement of proof is a document which, although insufficient to fully prove the alleged legal transaction, renders the existence of such transaction probable and which has been issued or sent by the person against whom it is invoked or by that person's representative."

[26] Eraslan ÖZKAYA, Fiduciary Transactions and Collusive Lawsuits, 3rd Edition, Ankara, 2004, p. 25.

[27] Court of Cassation General Assembly of Civil Chambers, dated 13.05.1992, File No. 1992/14-249, Decision No. 1992/323 (Lexpera Case Law Database, online: 01.01.2026).

[28] Court of Cassation General Assembly of Civil Chambers, dated 15.04.2011, File No. 2011/13-14, Decision No. 2011/189, and dated 29.01.2014, File No. 2013/11-376, Decision No. 2014/49 (Lexpera Case Law Database, online: 01.01.2026).

Article 386/1 of the repealed Code of Obligations No. 818[29] regulated the provisions of the mandate (agency) contract. As can be understood from the wording of the article, in this contract the agent and the principal agree on the performance of a service obligation. The service obligation essentially refers to a duty to perform work. In other words, the duty to perform work means carrying out activities or performing work on behalf of and for the benefit of another person. Within the scope of legal acts, the agent is responsible for carrying out legal acts or transactions in accordance with the interests of the principal. This responsibility may also include the acquisition, transfer, or exercise of subjective rights [30].

The agent, as a party to the mandate contract, is under an obligation to render an account; by analogy, the trustee (the entrusted party) is also subject to this obligation. Under the provisions of the contract, the agent is required to provide information on financial matters related to the duties assigned to them or to the measures or conduct for which they may be responsible on grounds of equity. The agent must submit to the principal the documents relating to the expenses incurred or the use of funds received. This obligation is a natural consequence of the duty of loyalty and is observed in almost all trust-based contracts. In other words, there is also an obligation to inform during the performance of the duty.

The obligation to provide information, for the agent or the trustee, begins from the moment the contract is established by mutual consent, continues throughout the performance of the work, and persists until the termination phase is completed. In some cases, this obligation may even continue after the termination of the contract. The obligation exists independently of whether the contract has been fully performed.

In private law, the concept of limitation (statute of limitations) refers to the period determined by law for the acquisition or loss of a certain right or claim. If the statute of limitations is not observed, the right to compel the other party by way of objection (defense) is extinguished. Although the claim continues to exist, the possibility of compelling performance disappears. Thus, the existing obligation turns into an imperfect obligation.

A time-barred claim may still be collected depending on the debtor's willingness. The legislator does not intervene in the collection of a claim that has become time-barred. It would be incorrect to state that a time-barred debt automatically becomes an imperfect obligation. For it to be considered an imperfect obligation, the debtor must raise the statute of limitations defense against the claim brought by the creditor. The statute of limitations cannot be taken into account ex officio by the judge; it must be invoked by the parties. In this regard, former Article 140 of the repealed Code of Obligations provided that "Unless the statute of limitations is pleaded, the judge may not take it into consideration of their own motion."

In proving the existence of a debt subject to limitation, it is important to determine the date on which the debt became due and whether the period determined by the legislator has elapsed from that date. If these conditions are met, the statute of limitations is realized, and the defendant who raises the defense of limitation asserts that the plaintiff's claim has arisen but that they are no longer obliged to perform due to the expiration of the limitation period. In this way, dismissal of the action may be achieved. The party alleging that the limitation period has expired bears the burden of proof.

The legislator has not regulated time-barred rights in a systematic manner. Under the general legal framework, it is concluded that all claims are subject to limitation. Pursuant to Article 125 of the repealed Code of Obligations, it was stated that "...are subject to a ten-year statute of limitations." This provision is expressed in Article 146 of the Turkish Code of Obligations as "...every claim is subject to a ten-year statute of limitations."

According to Article 149 of the Turkish Code of Obligations, "The statute of limitations begins to run when the claim becomes due. (2) In cases where the claim becoming due depends on a notice, the statute of limitations begins to run from the day on which such notice could be given." These provisions establish that the statute of limitations in claims arises upon the claim becoming due. It is also understood that the date of default is not relevant for the accrual of

[29] BK Art. 386/1: "A mandate is a contract by which the agent undertakes to manage a task entrusted to him within the scope of the agreement or to perform the service he has assumed."

[30] Türker YALÇINDURAN, Remuneration in the Contract of Mandate, Yetkin Publishing House, Ankara, 2007, p. 35.

the statute of limitations in terms of maturity. What should be understood from the concept of maturity in the wording of the article is the existence of a claim that has arisen. If the maturity of the claim is subject to a notice, the statute of limitations is deemed to begin from the earliest moment at which such notice could be given. Similar expressions were included in Article 128 [31] of the repealed Code of Obligations, and this provision has been preserved in the same manner in the Turkish Code of Obligations.

If the performance of an obligation cannot yet be legally demanded, there is no due (mature) debt. This conclusion can also be inferred from the wording of Article 90[32] of the Turkish Code of Obligations. Where the performance of a debt is stipulated in the contract as being subject to a term, the statute of limitations for the creditor begins to run from the moment the term becomes due.

In cases where an obligation cannot be made subject to a term, the statute of limitations begins to run from the moment the legal relationship ends. This is the case for obligations aimed at restitution, namely restitution obligations. The date on which the contract was concluded is not taken as the basis. This view is also predominant in legal doctrine.

As previously stated, for a claim arising within the scope of fiduciary transactions, the statute of limitations begins to run from the moment the claim becomes due. It is understood that the obligation becomes due when the time for performance arrives. From that moment onward, the statute of limitations runs for the claim, and the creditor may initiate legal proceedings. With respect to restitution claims, the date on which the obligation becomes due is determined by the date on which the contractual relationship comes to an end [33].

If the subject of the fiduciary transaction is immovable property and the contract is concluded for security purposes, the validity of the fiduciary transaction is subject to its execution in official form. This requirement is clearly regulated in Article 706/1[34] of the Turkish Civil Code. The official procedure prescribed for immovable property located in Türkiye that is transferred as security is carried out before land registry officers. This matter is regulated under Article 26/1 of the Land Registry Law[35]. For the transfer transaction, which has the nature of a dispositive act, the existence of a written form requirement must be sought on the basis of Article 184 of the Turkish Code of Obligations[36]. In a fiduciary transaction concerning the transfer of ownership, the legal ground of the transfer is the existence of the fiduciary transaction itself[37].

In practice, land registry officers generally do not accept fiduciary transactions for the transfer of immovable property ownership. However, such transactions are lawful, and therefore it may be requested that the judge approve the registration claim through an action to be filed. As a result of the lawsuit filed by the trusting party, since a constitutive legal effect will arise, the decision to be rendered will be of a constitutive nature.

If the subject of the fiduciary transaction[38] is an immovable property transferred for security purposes, a contractual provision may be included stipulating that ownership may remain with the creditor if the debt is not paid. Moreover, the immovable property may be sold and the secured amount may be collected from the sale proceeds[39]. This situation is also accepted by the Court of Cassation. In one of its decisions, it ruled as follows: "The creditor party, pursuant to the fiduciary agreement and the transaction based thereon, may, upon the due date of payment, either retain the asset transferred as security as performance in lieu of payment, or sell it by public auction or private sale and collect the receivable from the sale price." The expression "performance in lieu of payment" used in the decision refers[40], to the situation explained above. However, the transfer made here is not based on performance in lieu of payment, but rather

[31] BK Art. 128: "The statute of limitations begins when the claim becomes due. If the maturity of the claim depends on the giving of a notice, the statute of limitations begins to run from the day on which such notice may be given."

[32] TBK Art. 90: "Unless the time of performance is agreed upon by the parties or inferred from the nature of the legal relationship, every obligation becomes due at the moment it arises."

[33] Decision of the Court of Cassation General Assembly dated 2011, File No. 2011/13-161, Decision No. 2011/276 (Lexpera Case Law Database, online: 01.01.2026).

[34] TMK Art. 706/1: "The validity of contracts aiming at the transfer of ownership of immovable property depends on their being executed in an official form."

[35] Law No. 2644 on Title Deeds (Official Gazette, 29.12.1934, No. 2892).

[36] Kemal OĞUZMAN, Turgut ÖZ, Law of Obligations – General Provisions, Vol. II, 14th Edition, Filiz Bookstore, Istanbul, 2018, p. 571.

[37] ALTAŞ/KURT, p. 12.

[38] ALTAŞ/KURT, p. 18.

[39] Kemal OĞUZMAN, Özer SELİÇİ, Saibe OKTAY ÖZDEMİR, Property Law, 20th Edition, Filiz Bookstore, Istanbul, 2017, p. 407.

[40] Baki İlkay ENGİN, "Performance in Lieu of Performance", *Festschrift in Honor of Prof. Dr. Erdoğan Moroğlu on His 65th Birthday*, Istanbul, 1999, pp. 848–849.

on an obligation to transfer ownership. In short, it may be stated that the immovable property remains with the creditor and that the entrusted party no longer bears any obligation. The status of ownership, which was initially established on a temporary basis, becomes, in a sense, permanent through the agreement of performance in lieu of payment. In such transactions, the entrusted party obtains a security primarily in its own favor rather than for the trusting party[41].

II. EVALUATION OF THE DECISION

In the case at hand, the claimant signed a contract in the name of the defendant and had the apartment registered in the name of the defendant, who is his daughter. Later, when the sale of the apartment was requested from the defendant due to necessity, this situation was denied. In the statements made by the defendant's attorney, it was argued that the immovable property was registered in the name of the defendant, that the repayments and installments required to be fulfilled regarding the immovable property in dispute had been paid to the claimant, that the claimant's demand was time-barred, and therefore that the action should be dismissed. The court, on the other hand, ruled that the request for cancellation and registration of title should be dismissed on procedural grounds due to the lack of legal interest, and that the claim was barred by the statute of limitations. The decision was appealed.

At the appeal stage, since the issue of proof was not examined, it was considered incorrect to dismiss the case due to lack of legal interest, whereas the proper course should have been to dismiss the unproven claim on the merits.

At the appellate level, a ruling was established based on Article 128 of the Turkish Code of Obligations, stating that the statute of limitations begins to run at the moment the claim becomes due. It was emphasized that the limitation period would not commence from the date on which the fiduciary transaction was executed, as accepted by the court of first instance, but rather from the moment the claim became due. Since the claimant had not made a statement indicating that the request for transfer (ferağ) was rejected, meaning that as long as the hope of transfer persisted the statute of limitations could not be deemed to have commenced, and since the claimant would lose the hope of performance only at the time the lawsuit was filed, it would not be possible to accept that the statute of limitations had expired as of the filing date of the action.

Courts of first instance generally cause the trusting party to suffer by calculating the statute of limitations from the date of the fiduciary transaction. This practice creates serious grievances and undermines trust in fiduciary transactions. Contrary to the approach of the courts of first instance, the Court of Cassation adopts the opposite view. In its decisions, the Court of Cassation bases its assessment on the concept of "hope of transfer (ferağ umudu)" and thus remedies such grievances.

In the application of the Turkish Code of Obligations, particularly in disputes arising from fiduciary transactions, contracts promising the sale of immovable property, and informal sale contracts, the issue of the statute of limitations has been the subject of many debates centered on the concept of "hope of transfer." The question of when the ten-year statute of limitations prescribed under Article 146 of the Turkish Code of Obligations begins to run is directly related to the nature of the creditor's expectation regarding the transfer of ownership.

According to the prevailing view in legal doctrine, under the "hope of transfer" approach, if possession of the immovable property has been transferred to the buyer, the statute of limitations does not begin to run. This approach is based on the assumption that the creditor maintains trust and hope that the immovable property will be registered in their name, and that as long as possession has been transferred, the hope of transfer continues and the statute of limitations should be suspended until this hope is extinguished. However, if the concept of "hope" is taken as the sole basis, it becomes limited to a subjective perception. This, in turn, may lead to uncertainty in property relations and may undermine the principles of legal certainty and predictability.

In light of the case law of the Court of Cassation, objective criteria can be established. These criteria may be grouped under the following headings:

[41] AYANOĞLU MORALI, pp. 112–113.

Actual Impossibility (Transfer to a Third Party): The transfer of the immovable property to a third party outside the lawsuit is an act that may terminate the hope of transfer. As of the date of transfer, performance is deemed to have become impossible, and the commencement of the ten-year statute of limitations is calculated based on this date.

Notice and Maturity: The entrusted party must explicitly reject the request for transfer or refrain from effecting the transfer. A notice indicating that the debtor has abandoned the transfer obligation will fulfill this function. In one of its decisions, the Court of Cassation considered the dates on which responses to notices were served or received as objective starting points for the statute of limitations.[42].

Legal Finalization: The dismissal of a non-pending registration lawsuit and the finalization of this decision constitute a situation that legally terminates the "hope of transfer." In one of its decisions, the Court of Cassation identified the date on which the court's dismissal became final as the date on which the state of "hope" ended. [43].

Filing a Lawsuit: In cases where there has previously been no dispute between the parties, the very act of filing a lawsuit is accepted as an indication that the expectation has ended, thereby postponing the commencement of the limitation period until the date the lawsuit is filed.[44].

As in the decision at issue, the Court of Cassation generally takes the date on which the expectation of conveyance (ferağ umudu) ends as the basis. This approach, which protects the trustor, is appropriate, since fiduciary transactions are, by their nature, transactions that require protection. The foundation of a fiduciary transaction is the relationship of trust. The moment when the subject matter of the trust is disposed of or when it becomes clear that it cannot be recovered should be accepted as the starting point of the limitation period. Otherwise, it would be impossible to avoid the ten-year limitation period, and losses of rights could not be prevented.

The decision of the Court of Cassation is appropriate because it is based on the fundamentals of the fiduciary transaction, attaches importance to the moment when the subject matter of the trust becomes due, and employs the concept of "expectation of conveyance," which it has developed as a dispute-resolving method.

Based on the concrete cases in judicial decisions, let us practically demonstrate when the "expectation of conveyance" ends.

Case 1: Fiduciary Transaction of Indefinite Duration / Absence of a Declaration of Intent

Facts: There is a fiduciary transaction between the parties, no duration has been determined, and there is no notice or refusal [45].

Commencement of the Limitation Period: Date of Filing the Lawsuit.

Basis: Court of Cassation 7th Civil Chamber 2023/3629; Court of Cassation 14th Civil Chamber 2011/5200.

Reasoning: As long as the opposing party does not reject the request for conveyance, the expectation continues. The plea of limitation is rejected.

Case 2: Notice and Refusal

Facts: The claimant sends a notice; the defendant states "I will not transfer" or responds to the notice[46].

Commencement of the Limitation Period: The date of service of the response or the date on which the notice became known (date of awareness).

11.12.2014: The claimant sent a notice.

19.12.2014: The defendant replied.

Commencement: The date of service of the reply dated 19.12.2014.

Case 3: Transfer to a Third Party (Factual Impossibility)

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[42] Court of Cassation, 7th Civil Chamber, Case No. 2021/1725, Decision No. 2022/6474, Decision Date: 01.11.2022 (Lexpera Case Law Database, online: 04.01.2026).

[43] Court of Cassation, 14th Civil Chamber, Case No. 2016/5824, Decision No. 2016/9699, Decision Date: 22.11.2016 (Lexpera Case Law Database, online: 04.01.2026).

[44] Court of Cassation, 7th Civil Chamber, Case No. 2023/3629, Decision No. 2024/3023, Decision Date: 29.05.2024 (Lexpera Case Law Database, online: 04.01.2026).

[45] Court of Cassation, 7th Civil Chamber, Case No. 2023/3629, Decision No. 2024/3023, Decision Date: 29.05.2024 (Lexpera Case Law Database, online: 04.01.2026)

[46] Court of Cassation, 7th Civil Chamber, Case No. 2021/1725, Decision No. 2022/6474, Decision Date: 01.11.2022 (Lexpera Case Law Database, online: 05.01.2026)

Facts: The immovable property subject to the fiduciary transaction is sold to a third party without the knowledge of the trustor [47].

Commencement of the Limitation Period: The date of transfer to the third party (date of registration in the land registry).

29.05.1998: Informal sale agreement.

03.06.1998: Transfer of the immovable property to a third party (the expectation ended, the period commenced).

18.12.2007: Action filed (filed in due time as ten years had not elapsed).

Case 4: Judicial Rejection (Legal Finalization)

Facts **[48]:** First, an action for cancellation of title is filed and rejected. Subsequently, compensation is claimed.

Commencement of the Limitation Period: The date on which the rejection decision in the first action becomes final.

11.10.2012: Rejection of the first action.

30.03.2013: Finalization of the decision (the expectation ended, the period commenced).

22.05.2013: Filing of the compensation action (within the limitation period).

Conclusion

Pursuant to Article 149 of the Turkish Code of Obligations, the limitation period is assessed based on "the maturity of the claim." This means that the claim becomes due as of the date on which the claimant loses the expectation of conveyance.

Although the concept of expectation of conveyance serves as an institution that protects the creditor on grounds of equity, it must be moved beyond purely subjective interpretations. The limitation period should commence as of the date on which the debtor avoids conveyance or when conveyance becomes factually or legally impossible. Such objectification will both protect the essence of the right of ownership and prevent the limitation period from turning into a means of indefinite extension.

In line with the case law of the Court of Cassation, the general criterion applied is the state of "enforceability" or "recoverability." In other words, the limitation period begins as of the moment when the subject matter of the claim becomes physically claimable or when the expectation of conveyance is lost. This approach of the Court of Cassation is appropriate, as subjecting the trusting party, whose interest is at risk, to the limitation barrier would result in a loss of rights. This is because the person does not yet believe that the subject matter of the trust will be disposed of and continues to maintain the expectation of obtaining it.

Courts of first instance generally cause hardship to the trusting party by calculating the limitation period from the date on which the fiduciary transaction was concluded. This approach cannot always be remedied through appellate review. In particular, at higher judicial levels, the fees and expenses required for interim measures sought to prevent the disposal of the subject matter of the trust are extremely high. In cases based on fiduciary transactions, the imposition of such high fees is entirely contrary to the nature of fiduciary transactions. It is therefore essential to introduce regulations that preserve fiduciary transactions and place the trusting party under protection.

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