

# BULLETIN

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## The Lease Determination Case and The Conditions

The rental price can be freely determined by parties within the framework of the freedom to conclude a contract. However, the Turkish Code of Obligations makes it possible to re-determine the rental price by the court upon request, especially to protect non-dominant tenant.

Rent determination lawsuit is a special type of lawsuit regulated for residences and roofed workplaces in the Turkish Code of Obligations.

The rent determination lawsuit, which includes the request for re-determination of the rental price, can be filed by both lessor and lessee. However, in practice, this case is mostly opened by tenants. The lawsuit regarding the re-determination of the rental price can be filed at any time prospectively without being subject to any time limitation bylaw.

### Legal Conditions and Points Good To Know:

i. The primary condition for filing a rent re-determination lawsuit is the existence of a valid lease agreement between the parties. According to Turkish legislation, the lease agreement can be made verbally or written. However, we recommend concluding the lease agreement written for ease of proof.

ii. A lawsuit for determination of rent can only be filed if the leasehold is a residence in a house or right holder for a roofed workplace. In other words, a lawsuit cannot be filed with a request for a change or revaluation on rental fee for immovable and movable properties that are rented for a purpose other than a residence or a roofed workplace.

iii. The lawsuit for determination of the rental price can be filed at any time.

However, if this lawsuit has not been filed 1 month before the end of the lease period or if the lessor has not notified in written form mentioning the rental fee will be reevaluated upward within the same period, then the determined rent will enter into force in the next period but not in the period the lawsuit is filed.

### Things to be Considered According to the Content and Duration of the Rental Agreement:

#### a. If the lease term is less than five years;

aa. If the rental period concluded by the parties is determined to be less than five years and the rental price and the rate of increase are determined in the rental agreement, the matter that the judge will pay attention to is whether the rent increase rate is determined within the legal limits or not. If the revaluation ratio is below the Consumer Price Index (CPI), which is announced by Turkish Statistics Institution monthly, of the previous year, it will be decided that the party requesting the determination of the rental price has no legal interest in filing the lawsuit and accordingly the lawsuit will be rejected.

However, if the rental price and the rent increase determined by the parties are above the CPI rate of the previous rental year, the judge will accept the case and determine the rental price within the legal limits mostly.

Please also kindly be informed that, the court not only concludes the rental value but also CPI rate, together with the precedent rental price of the real estate and considering its current condition.

a.b. If no price has been agreed in the lease agreement for less than five years, the price will be determined by the judge. In this case, the precedent value and the current situation of the real estate will be taken into account, and a price higher than the CPI rate of the previous year will not be determined.

#### **b. If the lease term is over five years;**

According to the provisions of the Turkish Code of Obligations, the price can be determined by the judge in lease agreements that are longer than five years or renewed at the end of five years, regardless of whether the rental price is agreed upon by the parties. In this case, the rental price and the increase rate will be determined according to equity, taking into account the criteria specified in the previous article.

### **What Will Happen to the Rental Prices Determined in Foreign Currency?**

Although there is still a ban on making rental agreements in foreign currency as of December 2021, the outcome of the lawsuit for determination of rental prices determined in foreign currency, in case this situation is temporary, is also discussed in this article.

Pursuant to the provisions of the Turkish Code of Obligations, after the aforementioned ban is lifted, a lawsuit for determination of rent cannot be filed unless five years have elapsed within the lease term. In other words, five years will be expected to be able to request a determination of the rental price from the court in lease agreements concluded in foreign currency.

The exception to this situation is hardship. Accordingly, if an unforeseen or unexpected extraordinary situation arises at the time of the conclusion of the contract, if the parties cannot be demanded to fulfill their obligations in connection with the rule of good faith, and if the relevant party has not yet fulfilled its debt, a rent determination lawsuit may be filed before the expiry of five years for lease contracts determined in foreign currency.

The criteria mentioned above will be taken into account while determining the rental price in rental agreements determined in foreign currency, and in addition to these, changes in the foreign currency value will also be taken into account.

### **Which is The Competent and Authorized Court?**

In accordance with the Code of Civil Procedure, Civil Courts of Peace are responsible for all disputes arising from rental agreements. The competent court where the plaintiff will file the rent determination case is the court in the place where the immovable is located.

### **Conclusion**

The basis of the Law of Contracts is the principle of freedom of contract. According to this principle, a person can conclude any contract with any party wishes. However, this freedom of course has a limit in Turkish law. In lease agreements, the lessee or the lessor may file a lawsuit for determination of the rental price in line with the above-mentioned conditions in order to increase or decrease the rental price determined by the contract in line with its legal benefit.