

DASK PAYOUT DISPUTES PERSIST DESPITE COURT OF CASSATION RULING

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In the aftermath of the devastating February 6, 2023 earthquakes, the Natural Disasters Insurance Institution (“**DASK**”) came under intense scrutiny for its insurance payout practices. The Court of Cassation (“**CoC**”) issued its long-awaited decision in May 2024 that upheld DASK’s approach, but its reasoning was less satisfactory than expected, failing to quell the ongoing debate. As a result, many arbitrators under the Insurance Arbitration Commission (“**Commission**”), which handles a significant portion of disputes, continue to rule against DASK despite the CoC’s decision.

Background

Following the earthquakes, DASK made payouts based on the old tariff in effect at the time of policy inception, despite a new tariff doubling payout limits before the disaster. This discrepancy led thousands of policyholders to seek additional compensation through legal proceedings in state courts and the Commission. A lack of consensus among decision-makers resulted in over half the cases being decided against DASK, requiring it to apply the new, higher limits.

The pro-policyholder rulings were generally based on one or more of the following arguments:

1. In the absence of transition provisions, tariff updates should apply automatically to policies, similar to insurance general conditions.
2. DASK failed to sufficiently inform policyholders about the tariff update, leaving them unaware that higher coverage required additional premiums.

DASK, against these arguments, contested that:

1. The new tariff could not apply automatically. Without legislative authority or a transition clause, policyholders needed to request an endorsement and pay the additional premium for higher coverage limits to take effect.
2. Specific notifications were unnecessary, as the new tariff had been published in the Official Gazette and was therefore accessible to all policyholders.

The Court of Cassation’s Decision

After months of deliberation, the CoC ruled in favor of DASK (CoC 4th Civil Chamber, Case No: 2023/13410, Decision No: 2024/5473, Date: 30.05.2024).

In the underlying case, the Commission had initially ruled for the insured, asserting that the new tariff should apply automatically. The Commission also argued that if an endorsement and additional premium were required, the new tariff should have explicitly stated so, as earlier tariffs had done. DASK appealed, asserting that automatically applying the new limits without an endorsement contradicted fundamental insurance principles.

The CoC, while ultimately siding with DASK, addressed none of the arguments either from DASK or the Commission. It simply stated that the sum insured written in the policy governs the insurer's liability, not the new tariff limits, referencing Article 1461 of the Turkish Commercial Code, which merely reads "the liability of the insurer is limited to the sum insured."

This straightforward reasoning left unaddressed the critical questions of, among others, whether the updated tariffs can be regarded as general conditions, of which the regulatory authority's favorable updates apply automatically and whether and to what extent DASK's failure to inform the insured about the tariff change is material to the disputes in question.

Ongoing Controversy

The CoC's superficial reasoning may explain why the Commission continues to rule against DASK. As these disputes persist, it becomes clear that more comprehensive guidance is needed. Resolving these issues is essential not only for DASK and the insured but also for shaping future earthquake insurance practices in Turkey.

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