

Litigation and enforcement in Turkey: overview

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MAIN DISPUTE RESOLUTION METHODS

1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

The main dispute resolution method used in Turkey for large commercial disputes is litigation in the local courts. The principal legislation regulating civil litigation comprises:

- Civil Procedural Code (No 6100) (CPC) that entered into force on 1 October 2011.
- Turkish Code of Obligations (No 6098) (TCO) that entered into force on 1 July 2012.
- Turkish Commercial Code (No 6102) (TCC) that entered into force on 1 July 2012.

The Turkish legal system is broadly inquisitorial. Each claim must be proved with sufficient and convincing evidence.

COURT LITIGATION

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

The general provision on limitation periods provides a time limit of ten years for the majority of obligations, unless otherwise regulated by law. However, actions for the following matters have a shorter limitation period of five years:

- Periodic incomes (that is, rent, salary and interest).
- Accommodation and food and beverage charges.
- Debts arising from the products and the retail sales of small-sized enterprises.
- Debts arising from a partnership agreement that are based on the relationship between the partners, or between the partners and the company and its managers, directors, representatives and auditors.
- Debts arising from an attorneyship, a commission contract, an agency contract or a brokerage contract (though commercial agreements are excepted).
- Debts arising from a construction contract (except for instances where a contractor does not perform, or does not fulfil, its obligations properly due to a gross fault of its own).

The limitation period commences when the debt is due. If the date that the debt becomes due is reliant on a notification, the limitation period commences when that notification is made to the debtor. The statute of limitations is mandatory and cannot be modified (except for the provisions contained in the Turkish Code of Obligation (No 6098) (TCO) that can interrupt or suspend the limitation period). As a result, the parties cannot include provisions in any agreement that suspend or disapply the applicable limitation period.

Under tort law, the statute of limitation for an injured party seeking compensation is two years from the date the injured party becomes aware of both:

- The injury.
- The party who inflicted the injury.

However, in any event tort actions are time barred for ten years from the date the tort was committed.

Court structure

3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

Courts of first instance are subdivided into general courts and special courts. General courts consist of civil courts of first instance and courts of peace. Disputes arising from a tenancy agreement, the elimination of a joint ownership, the protection of possession rights and ex parte proceedings are heard before the courts of peace. Under Article 2 of the Civil Procedure Code (No 6100) (CPC), disputes relating to assets and immaterial rights are heard before the courts of first instance, regardless of the amounts involved or the subject of the dispute.

The civil courts of first instance comprise a number of specialised courts, including:

- Commercial Courts.
- Labour Courts.
- Courts of Intellectual and Industrial Property Rights.
- Maritime Courts.
- Land Register Courts.
- Consumer Courts.
- Courts of Enforcement.
- Bankruptcy Courts.
- Family Courts.

Under the Turkish civil court system, unlike many other civil law jurisdictions, the Court of Appeal acts as a final appeal court and court of cassation.

Under the CPC, Regional Courts of Justice will serve as first-tier courts to review any objections to judgments of the local courts. They will therefore act as appeal courts for the courts of first instance, whilst the Court of Appeal will act as the final appeal step of the litigation process for appealable decisions made by both the Regional Courts of Justice and the arbitration board. However, as the Regional Courts of Justice have not yet been established, currently the Court of Appeal remains the final appeal court and court of cassation.

The Court of Appeals decisions are not binding on the local courts, but they have a guiding effect. However, rulings of the Joint Chamber of the Court of Appeals (the highest court of appeal) are binding on the local courts.

The answers to the following questions relate to procedures that apply in first instance civil courts.

Rights of audience

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

Rights of audience/requirements

There are no different types of lawyers in Turkey.

In order to conduct cases in courts, lawyers must hold an advocacy licence (*Turkish Advocacy Code (No 1136) (TAC), dated 19 March 1969*). To obtain an advocacy licence, the following requirements must be met:

- Turkish citizenship.
- Graduation from a Turkish law school (or the equivalent, in the event of graduation from a law school in a foreign country).
- Completion of the legal internship.
- Residence in the region of the bar association being applied to.
- Absence of any obstacles (these are listed in the TAC).

Foreign lawyers

Foreign lawyers cannot conduct cases in Turkish courts.

FEES AND FUNDING

5. What legal fee structures can be used? Are fees fixed by law?

There are essentially four types of legal fee structures that can be used, namely:

- Contingency fees.
- Fixed/capped fees.
- Hourly rates.
- Blended arrangements, which comprise of different types of fee arrangements at the same time.

The Turkish Advocacy Code (No 1136) (TAC) sets a fixed legal fee structure, under which the minimum fee tariff that the Union of the Turkish Bar Associations determines annually is taken as a reference. While lawyers often charge higher fees than the level of this tariff, an unsuccessful party only needs to reimburse the successful party for its legal fees at the level of this tariff.

Currently, the maximum limit for legal fees is approximately 25% of the claim amount (*Article 164, TAC*).

6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

Funding

All fees, including court fees and the counterparty's attorney fees, are borne by the defeated party. Litigation is initially funded by the claimant. If the claim is successful, the claimant's costs are reimbursed by the defendant at the end of the proceedings (*see Question 22*). Under the CPC, the sum to be paid by each party must be indicated in the decision. Third party funding is also possible.

Insurance

Legal aid insurance is available under the Turkish legal system. However, commercial disputes are not covered by this type of insurance under the General Conditions of Legal Protection Insurance, issued by the Undersecretariat of the Treasury. Local insurance companies provide legal aid insurance for certain, non-commercial types of dispute.

COURT PROCEEDINGS

Confidentiality

7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

Under Article 28 of the Civil Procedure Code (No 6100) (CPC), court hearings are open to the public in principle. However, the court can decide to conduct hearings in a confidential manner (either *ex officio* or upon a party's request) where there are reasons to do so related to either:

- Public policy.
- Public morality.
- Protection of an individual's personal rights.

In a confidential hearing, the judge warns the people attending the hearing not to disclose the information they heard during the hearing, and records that warning in the hearing minutes.

Parties and their counsels have access to documents that are presented or readily available to the court, such as pleadings, witness statements and orders in relation to a lawsuit. However, a duly issued and notarised power of attorney will be required if the parties' counsels want to receive copies of the files.

Pre-action conduct

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

The concept of pre-action conduct does not exist in Turkey.

Main stages

9. What are the main stages of typical court proceedings?

The main stages of typical court proceedings are as follows:

- Exchange of petitions.
- Preliminary investigation.

- Investigation and hearing.
- Court decision.
- Appeal (where legally possible).
- Revision of decision (where legally possible).

Total or partial settlement of the case is also possible by mutual agreement of the parties, and can take place before or during the proceedings. A settlement agreement between the parties will be recorded in the minutes and the court terminates the litigation process. The settlement agreement is binding and enforceable as a court judgment.

Starting proceedings

Civil proceedings are initiated by the claimant submitting a petition to the court. When initiating a civil proceeding, the claimant should also pay a portion (usually less than a quarter) of the relevant court fees and litigation expenses in advance. The court then serves a copy of the petition to the defendant. As a matter of Turkish law, civil courts do not commence proceedings on behalf of the claimant *ex officio*.

The petition to initiate proceedings must contain the following information:

- The name of the competent court.
- Names and addresses of the parties.
- The claimant's Turkish ID number (passport number for foreign claimants).
- Names and addresses of the attorneys, if any.
- The subject matter of the dispute.
- Material facts that constitute the basis of the claim.
- Evidence, if any.
- Legal grounds.
- Description of the claim.
- Signature of the claimant or his attorney.

The starting date of the proceedings is the registration date of the statement of claim.

Notice to the defendant and defence

Following the submission of the statement of claim to the court, the court serves it on the defendant with a notice that a defence must be submitted within two weeks. The defendant can request an extension of the deadline for up to one month. A statement of defence must contain the same information required for a statement of claim (*see above, Starting proceedings*). Additionally, any preliminary objections must be included in the statement of defence. Preliminary objections are not taken into consideration if they are presented at a later time.

Subsequent stages

The claimant must submit a rebuttal within two weeks starting from the service of the statement of defence. The defendant, similarly, submits a rejoinder within two weeks starting from the service of the rebuttal, which concludes the exchange of petitions stage.

The next stage is the preliminary investigation, where the court:

- Determines the issues in dispute.
- Evaluates the submitted evidence (*see Question 16*).
- Requests further evidence if deemed necessary.
- Grants the parties an opportunity to settle the case.

During the investigation stage and the hearing, the court investigates whether the claims of both parties correspond to the material facts and evidence. Once the court declares that all the required evidence is in the court file, the process is finalised and the decision is rendered.

For information on appeals, see *Question 20*.

INTERIM REMEDIES

10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?

An action can be dismissed before a full trial only in the following circumstances:

- Where the claim has been time-barred, as the claimant will lose its right to initiate a lawsuit.
- Where the court lacks jurisdiction and neither party requests the court that has declared a lack of jurisdiction to transfer the file to a competent court, the case will be deemed as not filed at all.
- Certain party behaviour (for example, waiver, acknowledgement of the claim or settlement) can end the case before a full trial.

Additionally, if a party duly invited to a hearing does not attend the hearing, and the attending party declares that it will no longer follow the lawsuit, the case will be removed from the court's schedule. In these circumstances, the claimant can re-initiate the lawsuit upon payment of court fees (this action is called renovation). Unless the claimant renews its claim, the case will be deemed as not filed at all.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

A defendant can request the court to order the claimant to provide security for its litigation costs in the following circumstances:

- The claimant is a foreign national.
- The claimant is in financial difficulty.

Under the International Private and Procedural Law (No 5718) (IPPL) dated 27 November 2007, if a foreign national executes proceedings or participates in them, a guarantee must be determined by the court to cover the other party's possible damages and the expenses of the proceedings. However, the foreign national will be exempt from this requirement if:

- There is any international multilateral agreement signed by both Turkey and the foreign national's country of origin.
- There is a bilateral agreement between Turkey and the foreign national's country of origin or reciprocity.
- Turkish citizens are exempt from providing any security under the law of the foreign national's country of origin in proceedings taking place in that country.

12. What are the rules concerning interim injunctions granted before a full trial?

Availability and grounds

The court can grant a suitable interim remedy with respect to the dispute at hand, in cases where:

- There is an emergency situation that could alter the current situation and result in a party being obstructed from acquiring a right to which they are entitled.
- Where substantial damage is expected to occur if the interim remedy is not granted.

The Civil Procedure Code (No 6100) (CPC) also provides for specific interim remedies for certain situations:

- The seizure or attachment of movable or immovable properties that are the subject matter of a dispute.
- The maintenance and protection of the subject matter of a dispute.
- The payment of alimony.
- Any other interim remedy provided for by Civil Law (No 4721) dated 8 December 2001 (for divorce proceedings).

Execution of the interim relief decision must be requested within one week of the decision's date. Otherwise, the interim relief decision will not be executed at all (even if legal proceedings have been brought within the legal period). The party requesting interim relief must pay a security to cover the possible damages that the counter party or the third person subject to the interim relief may suffer (where it is found that the interim relief was actually unjust). The court can, at its discretion, waive the obligation to provide security where there is an official document or conclusive evidence that the security is not required, and it expressly provides the reason(s) why the requirement for security has been waived.

Prior notice/same-day

Where the applicant's rights must be protected without any delay, the judge can grant an interim injunction without prior notice to the defendant. An interim injunction can also be granted on the same day if urgency is proven. However, judges generally tend to examine these requests in detail, and will usually notify the defendant and hold a hearing before granting an interim injunction.

Mandatory injunctions

Mandatory injunctions are also available.

Rights of appeal

Where a party has had an interim injunction granted against them without hearing their testimony, it can object within one week of the order being served. In addition, a party can object to an interim order within one week of its implementation, on the grounds that either:

- There was an absence of pre-conditions for an interim decision.
- The court lacked competence.
- A security deposit was not provided.

Third parties can object to interim orders if their interests have been significantly jeopardised within one week from the date that they became aware of the order.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

Availability and grounds

An interim attachment order can be granted in relation to pecuniary debts (due and undue), provided that they are not secured by a pledge. A creditor must submit satisfactory evidence to prove the due debt. An interim attachment order for undue debts can only be requested when:

- The debtor has no fixed residence.
- The debtor prepares to abscond and/or conceal its assets with a view to avoiding its obligations towards the creditor.
- The debtor absconds or acts in a manner that breaches the creditor's rights.

Prior notice/same-day

Depending on the circumstances of the case, the court can order an interim attachment order with or without prior notice to the defendant. The debtor is not notified if the court considers that the notification would hinder the purpose of the interim attachment order. The urgency of the matter must be proven by sufficient evidence for same-day orders.

Main proceedings

Under the Turkish Commercial Code (No 1136) (TCC), in the event of a substantive proceeding concerning maritime debts taking place in another country, an interim attachment order can be granted prior to the definitive judgment.

Preferential right or lien

An interim attachment order does not create a lien or a preferential right.

Damages as a result

The party who makes a motion for an interim attachment order is liable for damages sustained by the other party or third parties, in cases where the interim attachment order is deemed to be unjust.

Security

If the debt is based on a court order, security is not required. However, if the debt arises from a document without the force of a court order, the court determines whether or not the claimant should provide security.

14. Are any other interim remedies commonly available and obtained?

No other interim remedy is commonly available under the Turkish legal system.

FINAL REMEDIES

15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

Under the Turkish Code of Obligations (No 6098) (TCO), different types of remedies are available at the claimant's request. Available remedies include:

- Pecuniary damages (most common).
- Non-pecuniary damages.
- Announcement of the verdict in newspapers.

- Rescission of a contract.
- Performance of a contract.
- Cancellation of a transaction.
- Invalidation of a registered right.

In principle, damages are compensatory and cannot be punitive.

EVIDENCE

Disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

The full disclosure principle is not applicable in Turkey.

A party only submits the documents that are in its possession and that it considers important to prove its claims, and notifies the court of evidence to be requested from other parties/institutions. The law does not specify the types of document that should be disclosed. As a result, the non-disclosure of documents is not penalised. Nevertheless, the court can order submission of supplementary documents for the purposes of clarification.

The parties must provide all evidence at the preliminary investigation stage, within the period prescribed by the court (see *Question 9*). In principle, submission of evidence is not permitted after the preliminary investigation stage, unless:

- It is impossible to obtain the evidence in due time.
- There is an excusable unawareness of the evidence at the preliminary investigation stage.

All petitions and documents submitted to the court are filed by the court clerk after they are referred to the judge or chief clerk. The Civil Procedure Code (No 6100) (CPC) allows for electronic disclosure of the parties' evidence, and witness and expert statements, providing that both parties consent to this, and that any video and audio evidence is transferred to the court directly.

Privileged documents

17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

Privileged documents

Client confidentiality is protected by the Turkish Advocacy Code (No 1136) (TAC). Lawyers cannot disclose the information they receive from their clients during the course of providing legal services. Lawyers can only provide witness testimony in the proceedings where they have the express consent of their client to do so, and even where consent is given, lawyers can still refuse to testify (without incurring any legal or penal responsibility for that refusal). However, the position concerning client confidentiality for in-house counsel is not explicitly covered by the TAC, and so the position here is unclear.

The without prejudice principle also applies, and therefore any information obtained during settlement negotiations cannot be used as evidence.

Other non-disclosure situations

The parties must refrain from disclosing trade secrets.

Examination of witnesses

18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

Oral evidence

Witnesses give oral evidence at the hearing, which is taken down in writing by the court's clerk in the minutes of the hearing. Unless the witness is exempt from taking oath under the Civil Procedure Code (No 6100) (CPC) (for example, employees of the parties, the parties' spouses or persons who would benefit from one of the parties winning the case), as a general rule witnesses will be required to testify under oath.

Where the parties consent, the court can allow witnesses, expert witnesses or a party to give evidence somewhere other than the court, so that their physical attendance is not required. In these circumstances, the evidence will be transferred to the court using video or audio equipment.

Right to cross-examine

Under the CPC the parties' attorneys can directly ask questions to the witnesses, expert witnesses and the third parties invited to the hearing.

However, under the CPC, there is no judicial practice of cross-examination as it is understood in other jurisdictions, and witnesses can only be interrogated by the judge.

Third party experts

19. What are the rules in relation to third party experts?

Appointment procedure

The general approach of the courts is to require experts to submit their findings and opinion in writing. Judges can seek expert opinion on issues that require specific and technical knowledge. Either at the parties' request or *ex officio*, the court can appoint a third party expert from the annual list prepared by the regional judicial commission in cases that require non-judicial, specific knowledge and technical examination.

Third party experts cannot be appointed to give opinions on legal matters. The parties are not allowed to appoint an expert, although they can submit private expert reports as supplementary evidence.

Role of experts

Expert reports are considered discretionary evidence. Appointing third party experts is not mandatory and expert reports are not binding.

The expert has the duty to:

- Assist at the court hearing of which he has been duly notified.
- Take the oath.
- Provide his professional opinion.
- Submit his report.

An expert must prepare a report within the strictly defined time frame set out by the court. The report is of an objective character and must be impartial.

Right of reply

Parties have the right to object to an expert report within two weeks of the notification of that report, and can request:

- Completion of the report, should there be any outstanding issues.

- Clarification of any ambiguous issues.
- The appointment of a new expert.

The court can:

- Ask for an additional report by presenting new questions.
- Invite the expert to a hearing for an oral explanation.
- Appoint a new expert for a new examination.

It is possible to cross-examine expert witnesses and expert witnesses must assist the court at the court hearing if they are requested to do so. Under Article 152 of the Civil Procedure Code (No 6100) (CPC), the parties' attorneys can ask questions regarding the dispute to the expert witnesses. In the case where the expert witness objects to the relevant questions, the judge decides whether the questions should be responded to, or not, by the expert witness.

Fees

The court determines, *ex officio*, the party who will pay the expert's fees. The expert's fee is based upon the annual tariff declared by the Ministry of Justice. The fees include remuneration and examination, transportation, accommodation and other costs. If that amount is not paid in due time, the Treasury pays the fees without prejudice to its right to seek recourse.

APPEALS

20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

Which courts

Any party who has a legal interest can apply to the Court of Appeal for re-investigation of a first-instance court decision. The monetary value of the subject matter underlying the dispute must be at least TRY1,890 to be subject to an appeal. The parties can make a request for a hearing while appealing the dispute, provided that the amount involved in that dispute is at least TRY19,280.

See *Question 3* in relation to the Regional Courts of Justice that are envisaged under the CPC.

Grounds for appeal

A decision can be appealed before the Court of Appeal based on the following grounds:

- Misinterpretation or inappropriate application of the applicable laws and regulations or the provisions of the agreement between the parties.
- Local courts did not have jurisdiction to hear the legal proceedings.
- Violation of the legal procedures that should have been followed in the legal proceedings.
- Inaccurate evaluation of the disputed facts.
- A party's evidence was rejected without legitimate reasons.

The Court of Appeal's decision can be appealed on the following grounds (this is called "revision of the decision"):

- The appellant's timely objections have not been taken into consideration.
- The decision is contrary to the law or contains contradictory statements.
- Evidence that forms the basis of the case has been forged.

The Court of Appeal assesses whether the lower court's decision is in compliance with the procedural rules and the law. The Court of Appeal does not reconsider the factual aspects or the merits of the case.

Following its assessment, the Court of Appeal can:

- Overrule the decision of lower court.
- Dismiss the appeal and confirm the decision of the lower court.
- Partially approve the lower court decision subject to certain changes and corrections.

After the appeal process, the possibility of further action is very limited. A party can challenge final court decisions and apply for a new trial only in exceptional circumstances that are exhaustively set out under the CPC.

Time limit

A first-instance decision must be appealed within the following period from the date of service of that decision (*CPC*):

- 15 days, for Court of First Instance decisions.
- Eight days, for Court of Peace decisions.

However, if a specific statutory time limit is set out, it will override the above. For example, the time limit to appeal labour law cases is eight days from the date of service of the decision (*Labour Courts Code*).

Until the Regional Courts of Justice are established, the current provisions of the CPC regarding the appeal process apply.

CLASS ACTIONS

21. Are there any mechanisms available for collective redress or class actions?

While multi-party litigation was previously allowed under Turkish law, the Civil Procedure Code (No 6100) (CPC) has introduced the "collective action", which is probably the closest concept to a class action in Turkey. Under the CPC, associations or all other legal entities can file a case on behalf of their members or persons that they represent in order to:

- Determine the rights of those concerned.
- Prevent a violation of future rights of those concerned.
- Remedy a status that is not in compliance with the law.

In a general sense, a collective action does not employ an opt-in mechanism. In certain circumstances (such as in consumer law disputes), the claim is brought on the opt-out basis.

There is no specific provision regarding the funding of collective actions.

COSTS

22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

The unsuccessful party will pay the successful party's costs at the end of the trial. If there is more than one unsuccessful party, the court can, *ex officio*, apportion the costs, or declare them jointly responsible.

Litigation costs include the following, among other things:

- Hearing fees.
- Notification fees.
- Expert and witnesses' fees.
- Fees, charges, taxes and expenses regarding the documents obtained from governmental authorities.
- Accommodation and transportation fees, daily allowances, and expenses determined by the court and incurred by the parties who attend the court proceedings, even if they are represented by attorneys.
- Attorney fees (*see Question 5*).
- Other expenses incurred during the court proceedings.

Litigation costs are determined every year under the Civil Procedure Code (No 6100) (CPC). Furthermore, the Law on the Fees (No 432) and the Turkish Advocacy Code (No 6098) (TAC) sets a fixed legal fee structure, under which the minimum fee tariff that the Union of the Turkish Bar Associations determines annually is taken as a reference for attorneys' fees.

23. Is interest awarded on costs? If yes, how is it calculated?

Legal interest as determined by the Central Bank of Republic of Turkey is awarded on costs.

ENFORCEMENT OF A LOCAL JUDGMENT

24. What are the procedures to enforce a local judgment in the local courts?

Under the Civil Procedure Code (No 6100) (CPC), a judgment of the civil court is enforced by the execution offices after execution proceedings are initiated in accordance with the provisions of the Execution and Bankruptcy Code (EBC) (No 2004) dated 19 June 1932. In proceedings that are initiated to enforce a monetary judgment, the holder of that judgment is entitled to receive the relevant amount from the proceeds of foreclosure (via public sale or auction) of the debtor's assets, which is carried out by the relevant execution offices.

CROSS-BORDER LITIGATION

25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

The choice of law of the parties to a dispute arising out of a contractual relationship involving a foreign element must be respected (*Article 24, International Private and Procedural Law (No 5718)* (IPPL)). The choice of law must be clear and explicit. If the court cannot determine the applicable law despite research, Turkish law may apply.

Contracts related to real estate are governed by the law of the country where property is situated. Due to the underlying objective of Turkish law to protect the weaker party, courts can disregard the choice of law in employment, consumer, insurance and lease contracts. In some cases local courts may apply Turkish law to the contract despite the choice of foreign law if the application of foreign law is explicitly incompatible with public order.

26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

Parties can freely choose jurisdiction in disputes with a foreign element that arise from a private law relationship. There are some requirements for local courts to respect the choice of jurisdiction.

In cases where Turkish courts have exclusive jurisdiction (for example, employment law, insurance law and consumer law disputes), the choice of jurisdiction is not permitted. In other words, the court can only apply Turkish law in these circumstances. The Turkish courts may also assume jurisdiction if:

- The competent foreign court decides that it is incompetent for some reason.
- The respondent fails to object to the jurisdiction of the Turkish court.

27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?

Turkey is party to the:

- HCCH Convention of Civil Procedure 1954 (1954 Convention).
- HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965 (Hague Service Convention).

The service of proceedings in Turkey is therefore regulated by these Conventions.

Under the 1954 Convention, each contracting state designates a central authority that will receive service of proceedings requests emanating from other contracting states. Turkey has designated the General Directorate of Civil Affairs of the Ministry of Justice in Ankara as its central authority.

Service from a foreign jurisdiction to a party in Turkey will be issued by the Public Prosecutor via the Post Office Department. In instances where a Turkish translation of the service of proceedings is not provided, service will be issued if the addressee explicitly accepts the service.

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

Turkey is a party to the:

- HCCH Convention of Civil Procedure 1954 (1954 Convention).
- HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 (Hague Evidence Convention).

The Hague Evidence Convention allows for the collection of evidence in Turkey by local courts and authorities to aid foreign legal proceedings, pending or future, before a court of another contracting state. In the presence of a bilateral agreement between Turkey and the foreign country in question, the provisions of that bilateral agreement take precedence. Under Article 1 of the Hague Evidence Convention, the Hague Evidence Convention will also apply to all lawsuits, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

If the request comes from a country that is not party to the Hague Evidence Convention, which has not concluded a bilateral treaty with Turkey, the principle of reciprocity applies and the procedure to take evidence from the witness is governed by the international legal assistance rules.

Enforcement of a foreign judgment

29. What are the procedures to enforce a foreign judgment in the local courts?

The International Private and Procedural Law (No 5718) (IPPL) governs the recognition and enforcement of foreign judgments in Turkish courts. The enforcement of civil court rulings of foreign courts in Turkey depends on the granting of a decision of approval by a competent Turkish court.

There are four conditions that must be fulfilled in order to enforce a foreign judgment in Turkey:

- First, there must be reciprocity between Turkey and the foreign country where the ruling took place.
- Second, the decision of the foreign court must not concern a subject that is at Turkish courts' sole discretion.
- Third, the decision of the foreign court must not be in conflict with Turkish public order law.
- Finally, the person against whom the decision of approval is sought must be represented before the relevant foreign court.

Provided these conditions are met, the Turkish court will grant the decision of approval.

Once the foreign judgment is approved and recognised by the Turkish courts, it is deemed to be ruled by Turkish courts. Accordingly, the general provisions of Turkish legislation, which are approved and recognised by Turkish courts, will apply with respect to the execution of the foreign judgment.

For the recognition and enforcement of foreign arbitral awards; the main legislation on enforcement are the IPPL and the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) (which was ratified by Turkey on 2 July 1992 and entered into force on 30 September 1992). Enforcement of a foreign award in Turkey will be subject to the provisions of the New York Convention only if that decision is rendered in a country that is a signatory to the New York Convention. Turkey made two reservations and limited the applicability of the New York Convention by declaring that it will apply the New York Convention for the recognition and enforcement of foreign awards granted in another state that is a signatory to the New York Convention on the basis of complete reciprocity, and only for conflicts arising from contractual or non-contractual relationships that are deemed to be of a commercial nature under its national law.

If the award is rendered in a state that is not a signatory to the New York Convention, then the enforcement of the award will be subject to the IPPL.

Alternative dispute resolution

30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

The main ADR method in Turkey is arbitration. All other methods of ADR (such as mediation, conciliation, mini-trial, referee and expert determination) are rare. Domestic arbitration is governed by

the Civil Procedure Code (No 6100) (CPC), while International Arbitration Law (No 4686) (IAL) (dated 21 June 2001) governs arbitrations:

- In Turkey but involving a foreign element.
- Outside of Turkey, if the parties have subjected the arbitration to the IAL under the contract.

International arbitration is predominantly chosen in construction, energy and infrastructure disputes.

Disputes with respect to rights *in rem* in immovable property and disputes that concern matters of public order (for example, tax disputes) cannot be subject to arbitration.

The Code of Mediation in Legal Disputes (No 6325) (dated 7 June 2012) introduced mediation, available for the resolution of private law conflicts, including those with a foreign element. In mediation, contracting parties voluntarily consult an impartial mediator to help them resolve their dispute, subject to certain procedures and principles accepted by both parties. The mediator's role is to encourage an amicable settlement by facilitating communication between the parties.

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

ADR does not form part of court procedures and applies only if the parties voluntarily agree to settle a dispute through ADR methods. However, the courts do encourage parties to resolve their disputes through settlement.

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

Both in local and international arbitrations, the parties are free to choose the procedural rules in relation to evidence, unless those rules are contrary to the mandatory provisions of the Civil Procedure Code (No 6100) (CPC) or the International Arbitration Law (No 4868) (IAL), respectively.

Both in local and international arbitrations, the parties can seek the assistance of the Turkish courts with the collection of evidence on the approval of the arbitral tribunal.

The CPC and the IAL do not include any specific provision about confidentiality. Therefore, the parties can freely provide for confidentiality. In civil proceedings, provisions related to confidentiality under the CPC apply.

33. How are costs dealt with in ADR?

Under the Civil Procedure Code (No 6100) (CPC), unless the parties agree otherwise, arbitrator fees will be determined by the arbitrator(s) and the parties, taking into consideration:

- The amount in dispute.
- The nature of the dispute.
- The length of the arbitration proceedings.

Unless the parties agree otherwise, arbitration expenses will be borne by the party against whom the award has been rendered. If both parties are found to be partially right, the expenses are proportionally borne by both parties.

In addition, the arbitrator or arbitral tribunal can request an advance payment of arbitration expenses to be equally paid by the parties unless the parties agree otherwise. Accordingly, if that payment is not made within one month, the arbitrator(s) can terminate the proceedings.

34. What are the main bodies that offer ADR services in your jurisdiction?

The most prominent bodies that offer arbitration services are the:

- Turkish Union of Chambers and Commodity Exchanges Court of Arbitration, which provides arbitration services in commercial disputes (*info@tobb.org.tr*).

- Istanbul Chamber of Commerce Arbitration Institution, which provides arbitration services in commercial disputes (*ito@ito.org.tr*).

PROPOSALS FOR REFORM

35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

Turkey is contributing to the UNCITRAL Online Dispute Resolution (ODR) project via the Bilgi University Institute of Technology and Information.

The Code of Mediation in Legal Disputes (No 6325) also recently came into force (*see Question 30*).

ONLINE RESOURCES

General Directorate of Legislation Development and Publication

W www.mevzuat.gov.tr

Description. Official and up-to-date website of the General Directorate of Legislation Development and Publication, which contains the International Arbitration Code of Turkey and International Private and Procedural Law of Turkey. Only Turkish versions are available.

Istanbul Bar Association

W www.istanbulbarosu.org.tr

Description. Official and up-to-date website of the Istanbul Bar Association.

Official Gazette of the Republic of Turkey

W www.resmigazete.gov.tr

Description. The *Official Gazette of the Republic of Turkey*, which contains legislation in Turkish (including the Code of Obligations and the Civil Procedural Code).

Practical Law Contributor profiles



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Languages. Turkish, English