LEXOLOGY®
Getting The Deal Through

Dispute Resolution

in Turkey

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Contributors

Turkey

Orcun Cetinkaya
orcun.cetinkaya@cetinkaya.com
CETINKAYA

Ural Özbek
ural.ozbek@cetinkaya.com
CETINKAYA

Pelin Karan
pelin.karan@cetinkaya.com
CETINKAYA

LITIGATION

Court system

What is the structure of the civil court system?

Disputes arising from relations governed by private law are resolved by civil courts. At the first instance these courts include the civil courts of peace, civil court of first instance, family courts, civil courts of intellectual and industrial property rights, civil courts of enforcement, labour courts, cadastral courts, consumer courts and commercial courts.

The hierarchy of the court system is as follows:

- first instance court;
- regional courts of appeal; and
- Court of Cassation.

According to article 5 of the Law on Establishment, Duties and Jurisdiction of First Instance Courts and Regional Courts of Appeal, the civil courts of peace and civil courts of general jurisdiction shall have a single judge. On the other hand, where commercial courts of general jurisdiction are established, there shall be one president and an adequate number of members. All proceedings regarding cases and disputes (the subject matter of which can be indicated by their cost, which must be more than 500,000 Turkish lira) and the cases explained below regardless of their subject matter shall be conducted and finalised by a delegation consisting of one president and two members.

- Cases filed as a result of bankruptcy, adjournment of bankruptcy, removal of bankruptcy, closure of bankruptcy, bankrupt's certificate and restructuring.
- Proceedings and cases that shall be finalised by the first instance court's judge.
- Cases regarding the annulment and nullity of general assembly decisions resulting from companies and cooperatives law, liability cases to be filed against executive and supervisory organs, cases related to dismissal and temporary appointment of organs and cases regarding annulment, dissolution and liquidation.
- Cases in regard to opposition to conditions of arbitration, actions for annulment, cases regarding the selection and dismissal of arbitrators as well as cases concerning the recognition and execution of foreign court decisions.

Disputes other than those cases and proceedings specified in this paragraph shall be examined and concluded by one court judge.

Judges and juries

What is the role of the judge and the jury in civil proceedings?

In Turkey, civil proceedings are conducted in a system made up of both adversarial and inquisitorial elements. While the particularities of the adversarial system are dominant in civil proceedings, two-tiered appeal reviews and the ability to interrogate the respondent are indicators of the inquisitorial system.

Limitation issues

What are the time limits for bringing civil claims?

According to Turkish law, there are two types of time limits, which are extinctive prescription and lapse of time.

Expiration of the extinctive prescription period eliminates the right itself. For this reason, the judge should take into account the extinctive prescription period ex officio without expecting one of the party's to request this.

On the other hand, the period of lapse of time means that the right to claim cannot be exercised because it has not been used within a certain period of time; however, the right to claim itself does not expire with the period of lapse of time, and the judge should not take into account the expiration of lapse of time ex officio.

Regarding lapse of time, all claims become time-barred after 10 years unless otherwise provided by law in Turkish jurisdiction as per article 146 of the Turkish Code of Obligations (TCO).

Article 147 of the TCO stipulates that the following claims become time-barred after five years:

- periodic income (rent, salary and interest);
- accommodation, and food and beverage charges;
- debts arising from products and retail sales of small enterprises;
- debts arising from a partnership agreement based on the relationship between the partners, or between the partners and the company and its managers, directors, representatives and auditors;
- a proxy contract, a commission contract, an agency contract or a brokerage contract; and
- debts arising from a construction contract.

However, according to article 72 of TCO, the statute of limitations for torts expires after two years from the date when a damaged party becomes aware of loss and damage. The time limitation period ends in any case after 10 years beginning with the date the act occurred.

Parties cannot change the statute of limitations determined by law in accordance with article 148 of the TCO. Therefore, it is not possible for parties to agree to suspend or prolong the time limits.

Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

Parties may request, or in some cases may be required, to apply for mediation before initiating proceedings. There are two forms of mediation:

- Mandatory mediation is a legal prerequisite for some disputes, such as those arising from labour law and commercial law claims. In addition, on 28 July 2020, Turkey enacted the Law Amending the Civil Procedure Law and Certain Laws, which introduced article 73/A to the Consumer Protection Law. With this new amendment, consumer disputes over 10,390 Turkish lira are included in the scope of mandatory mediation. Lawsuits filed before going to the mediator will be rejected owing to the absence of a course of action.
- Parties may apply for arbitrary mediation before filing a private lawsuit to resolve a dispute quickly and in a cost-effective way.

Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

In Turkey, applicants or their attorneys apply to the courts at courthouses, or applicants' attorneys apply online via the National Judiciary Informatics System. Files are distributed according to the courts' special areas and caseload, and are assigned a case number. However, although the files are distributed proportionally, the courts might still have challenges with a heavy workload.

Following assignment, the relevant court commences the case proceedings. First, the court determines the issue from a general perspective and sends a preliminary proceedings report to both parties notifying them of the hearing date and how much time they have (the exact period depends on the type of case) to respond to each other's petitions.

Timetable

What is the typical procedure and timetable for a civil claim?

There are two types of procedure in Turkey; the written procedure, which is the main procedure; and the simple procedure.

In the written procedure, upon a claimant's submission of a lawsuit petition, the court notifies the defendant of the petition containing the claimant's claims and gives a certain period of time for the defendant to respond and, thus, the period of 'exchanging petitions' starts. The duration for submitting petitions varies according to the type of case; however, the response petition must usually be submitted within two weeks. After the defendant submits their petition, written procedure requires the claimant to submit a second petition rebuttal within two weeks. The claimant's second petition then gives the defendant the right to present their second petition rejoinder within two weeks.

After the exchanging petitions period ends (with the above procedure), the parties attend the preliminary examination hearing where the court determines the subject of the dispute. This hearing is followed by the examination phase.

During the examination phase, upon the parties' request or the decision of judge, an exploration or expert examination may be conducted. After the experts issue their report and the court serves it to the parties, the parties may object to the report within two weeks as of the notification and may request a second expert report. Therefore, the duration of the examination phase may vary in each case depending on the parties' objections to the expert reports.

The examination phase is followed by the oral proceedings and the decision phase.

Case management

Can the parties control the procedure and the timetable?

In Turkish civil jurisdiction, the timetable and case management structure is more restricted than in countries in which common law is adopted.

In general, all submissions, including reply and response petitions, objections to expert reports and appeal requests, are made within two weeks, unless otherwise provided by the law or ordered by the judge. In addition, all evidence that the parties would like to rely on must be presented by the parties until the preliminary hearing.

Even though parties cannot have control over the legal procedure and timetable, they can ask the court for an extension to submit the response petition, provided that it does not exceed one month in accordance with article 127 of the

Turkish Code of Civil Procedure (CCP). In addition, with the recent amendments dated 28 July 2020, parties may also ask for an extension for submitting objection petitions to the expert report, provided that it does not exceed two weeks.

This strict procedure and timetable help parties to foresee the duration of the case and allows them to make commercial decisions by comparing the estimated benefit from a case with its duration.

Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

According to article 119(1)(f) of the CCP, the evidence to be provided in each case must be presented with the lawsuit petition. Likewise, the evidence to be provided for each case put forward as the basis of the defence must be indicated in the reply petition in accordance with article 129(1)(e).

In Turkey, there is no such rule as full and frank disclosure. Parties only submit what they are relying on – and what they would like to show the court – as grounds for their claims. Parties cannot be forced to submit documents or evidence unhelpful to their case.

Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The documents that lawyers obtain during their duties are deemed privileged documents. Lawyers cannot be forced into, and are in fact prohibited from, disclosing information that they obtain during their duties in accordance with article 36 of the Turkish Attorneyship Act.

There are few decisions of the Turkish Competition Board in which lawyer–client privilege has been discussed, but two that have are the Dow and Enerjisa cases. It was stated in these decisions that correspondence regarding the use of the right of defence between a client and an independent lawyer is assumed to be within the scope of professional relations and their confidentiality is protected. The Board further stated that the protection in question included correspondence with an independent lawyer for the exercise of the right to defence and documents prepared for obtaining legal advice from an independent lawyer.

Therefore, as long as the services are carried by the independent lawyer and the documents in question are related to the right of defence, such documents are deemed as privileged. In this context, advice from an in-house lawyer will not be considered privileged since there is an employee–employer relationship between the in-house lawyers and the company.

Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

There is no system in Turkey that requires exchanging evidence before the trial. Parties submit their petitions and their evidence at trial.

If a party requests its witnesses to be heard at the trial, it submits a list of witnesses along with its lawsuit and response petition, and witnesses are heard during the trial orally. Written statements of witnesses are not admissible.

Likewise, experts are appointed by the courts ex officio or upon the request of either party during the trial. However,

parties can submit expert witness reports among their evidence too even though the court shall appoint its own expert witness and rely mainly on them.

Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

The claimant must present the evidence it relies on in the lawsuit petition. Likewise, the defendant must present the reply petition with the evidence it relies on within two weeks of the notification of the lawsuit petition.

Parties are obliged to submit their response petition within two weeks, before the preliminary examination hearing. Accordingly, parties are obliged to submit their evidence before the preliminary examination hearing.

Regarding witnesses, parties must submit a list of the witnesses, with their names and addresses, along with their response petition after they are served with the lawsuit petition. Therefore, if a lawsuit petition is duly notified to a defendant and the defendant does not submit their witness list within two weeks, the witness evidence will not be relied on unless the other party gives consent.

Witnesses give oral statements during the trial as a rule in accordance with article 259 of the CCP. However, in rare circumstances, witnesses may give written statements as well, if the court requests them to do so. On the other hand, experts give their statements in written form as a rule, unless the court decides to hear the expert during the trial.

Interim remedies

What interim remedies are available?

Interim remedies can be requested before or during the court proceedings. Interim remedies are regulated between articles 388 and 399 of the CCP (Act No. 6100 of 12 January 2011). There are no provisions in the CCP that specify certain kinds of interim remedy. The judge may order any type of interim measure under the conditions according to article 389/1 of the CCP, which covers changes in existing circumstances that will result in severe difficulty or impossibility to exercise the right, or if a delay would cause an inconvenience or serious damage. A party must file a petition to request interim remedies, specifying the reason and the type of the interim measure required.

Additionally, the requesting party must demonstrate (approximately) its rightfulness in terms of the merits of the case. The other party can object to the decision on interim remedies to the court that granted them, although it can only be appealed with the decision on merits.

The party requesting an interim measure must provide security. The court will determine the amount of the collateral. Although, the court may decide not to demand any security if the request is based on the official document or any other similar strong evidence or as the conditions require.

Under article 390 of the CCP, the court may decide interim remedies ex parte if the requesting party's rights need to be immediately protected. In such circumstances, the other party may use a petition to object to the terms of the interim measure, the court's jurisdiction or the security. Third parties affected by an interim measure may also object to the terms of the measure or the security. The objecting party must specify the reason and submit any evidence relating to the objection. Following consideration, the court may decide to change or remove the interim remedies.

Remedies

What substantive remedies are available?

The most common remedy available under Turkish law is pecuniary damages. Other remedies may also apply depending on the case, such as non-pecuniary damages, announcement of the verdict in newspapers, performance of a contract, invalidation of a registered right, rescission of a contract or cancellation of a transaction.

Punitive damages are not available in Turkey.

Parties are awarded legal interest on monetary judgments. The legal interest, which is currently 9 per cent, is calculated as of the date of the court decision.

On the other hand, in accordance with the first paragraph of article 8 of the Turkish Commercial Code, parties are able to freely decide the commercial interest rate for business transactions. If parties did not agree on interest rate in the contract, legal interest of 9 per cent is applied.

Plus, the interest rate to be applied in a commercial foreign currency debt is the highest interest rate paid by the state banks to the one-year deposit account opened in that foreign currency according to article 4/a of Law No. 3095, unless the interest rate is agreed in the contract.

Enforcement

What means of enforcement are available?

The party for whom the decision is in favour may ask any bailiff's office to enforce it. If the other party does not fulfil its obligation ordered through the bailiff's office within seven days of notification, the claimant may ask the bailiff's office to seize the debtor's assets and upon such request, the bailiff's office may seize the debtor's assets by force.

Public access

Are court hearings held in public? Are court documents available to the public?

The main principle regarding hearings is that they are held in public, in accordance with the first paragraph of article 28 of the CCP. However, according to the second paragraph of this article, part of the hearing, or all of it, can be held in private upon the request of the parties or by the court itself, if general ethics and public safety so requires. With the amendments to the CCP dated 28 July 2020, if the relevant parties' superior interest requires confidentiality, the court may decide to hold the hearing in private.

Regarding court documents, the parties and their attorneys are able to examine the court file and take copies of all existing documents in the file. In addition, not only attorneys of the parties, but all lawyers and legal interns can examine the file; however, they cannot take copies of the documents.

Costs

Does the court have power to order costs?

The court fees and costs are collected in advance in the civil courts and these costs are deposited by the plaintiff before filing the case as a rule. However, with the amendments to the CCP dated 28 July 2020, the costs for evidence will not be collected in advance, but collected in case of necessity. However, if the defendant loses the case, court costs will also be collected from the defendant. The litigation costs cover expenses such as decision and judgment charges, expert and witness fees, notification fees, documentation fees and the official attorney fees.

The fees are revised every year by the circulars issued on the basis of the Turkish Act of Fees and by the Attorneyship Minimum Fee Tariff.

Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

'No win, no fee' agreements are illegal in Turkey. According to article 164 of the Turkish Attorneyship Act, attorneys' fees cannot be determined under the Attorneyship Minimum Fee Tariff.

However, attorneys and clients may agree upon a success fee, provided that the minimum wage is determined in accordance with article 164. However, attorneys' fees cannot exceed 25 per cent of the monetary value of the lawsuit.

Litigation funding is not specifically regulated in Turkey; however, the state may fund parties by its legal aid mechanism. Since there is no regulation that forbids third parties funding litigation costs in Turkey, agreements between parties and third-party funders are subject to general contract law provisions stipulated in the TCO. Therefore, it is possible to determine the conditions of third-party funders' agreements by the provisions of freedom of contract.

Insurance

Is insurance available to cover all or part of a party's legal costs?

This type of insurance is available, though it is not commonly used. Generally, employers use these policies to cover their potential liability in cases filed by their employees. In addition, manufacturers resort to product liability insurance if they are sued. There has been an increase in the number of insurance policies taken out because of claims in connection with professional negligence. These policies are used by service providers including lawyers, accountants, architects and engineers.

Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Turkey has no mechanism for class actions. However, 'mass actions', by which associations and other legal entities may file mass actions on their own behalf to protect the rights of their members or the group they represent, are permitted.

Unlike class actions, mass actions may only be initiated by legal personalities.

Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Parties can appeal the decision of first instance courts to be examined before the regional courts.

However, only decisions that exceed the amount of 5,390 Turkish lira may be appealed according to article 341/2 of the CCP (this amount may be amended every year). Regional courts may: (1) send the file to the first instance court for retrial without examining the merits of the case, if there are some procedural reasons; or (2) abolish the first instance

court's decision and render a new one.

Parties may also apply to the Court of Cassation for further appeal. However, the following issues cannot be subject to the review of the Court of Cassation in accordance with article 362 of the CCP:

- decisions of regional courts of appeal, the amounts of which do not exceed 72,000 Turkish lira;
- disputes within the jurisdiction of the courts of peace (excluding the disputes regarding real property rights);
- decisions of a regional court of appeal on the first instance court's decision regarding the place of jurisdiction (decisions on determination of competent, authorised courts);
- decisions regarding ex parte proceedings;
- decisions on the correction of the Civil Registry;
- records of persons (excluding the cases that bear consequences regarding paternity); and
- decisions on temporary legal protections.

While the decisions of regional courts may be appealed within two weeks, a decision of the Court of Cassation may be appealed within one month of the notification being served. However, different time limits may be stipulated in some legislation.

Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

According to article 54 of Turkish Private International Law, the Turkish courts render enforcement of foreign judgments according to the following conditions:

- existence of an agreement, on a reciprocal basis between the Republic of Turkey and the state where the court decision is given or a de facto practice or a provision of law enabling the authorisation of the execution of final decisions given by a Turkish court in that state;
- the judgment must have been given on matters not falling within the exclusive jurisdiction of the Turkish courts or, on condition of being contested by the defendant, the judgment must not have been given by a state court that has been accepted as competent even if there is no real relation between the court and the subject or the parties of the lawsuit;
- the court decree shall not openly be contrary to public policy;
- the person against whom enforcement is requested was not duly summoned pursuant to the laws of that foreign state or to the court that has given the judgment, or was not represented before that court, or the court decree was not pronounced in their absence or by a default judgment in a manner contrary to these laws, and the person has not objected to the exequatur based on the foregoing grounds before the Turkish court.

Turkey has concluded bilateral agreements with various countries, including Albania, Austria, Azerbaijan, Bosnia and Herzegovina, China, Egypt, Georgia, Iran, Iraq, Italy, Kazakhstan, Kyrgyzstan, Lithuania, Macedonia, Moldova, Mongolia, Oman, Poland, Turkish Republic of Northern Cyprus, Romania, Slovakia, Tajikistan, Tunisia, Turkmenistan and Ukraine.

The existence of bilateral agreements is not a prerequisite for recognition and enforcement of foreign judgments. If there is no such reciprocal agreement but there is de facto reciprocity principle between the jurisdictions, the enforcement and recognition of the decision can be applied. For example, the decisions given in Germany, the United Kingdom, the United States, the Netherlands and Switzerland may be subject to enforcement and recognition in Turkey because of de facto reciprocity between the countries.

Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Turkey is a party to the Hague Civil Procedure Convention and HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 in which the rules for obtaining evidence are regulated. The Hague Convention aims to make it easier for the parties to collect evidence and conduct other judicial proceedings in another country and ensures that the necessary evidence is brought before the court. The procedures for obtaining oral and documentary evidence are set out in the Convention.

In addition, if a state is not party to the Convention but it has de facto reciprocity with Turkey, international rules will be applied.

ARBITRATION

UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Yes, international arbitration in Turkey is governed by the International Arbitration Law (IAL) (Law No. 4686 of 21 June 2001), which is based on the UNCITRAL Model Law. Domestic Arbitration in Turkey is governed by the Turkish Code of Civil Procedure (CCP) and the new CCP enacted on 4 February 2011, with amendments for domestic arbitration legislated in line with the IAL.

Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

Under article 4 of the IAL and article 412 of the CCP, arbitration agreements are defined as 'an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not'. This means that a dispute that is subject to arbitration must be determined, otherwise the arbitration agreement will be invalid. However, parties cannot agree to arbitrate in disputes related to real rights concerning immovables and to disputes that are not within the parties' disposal.

The IAL and the CCP also foresee that an agreement needs to be in writing, whether in a separate arbitration agreement or in an arbitration clause in the contract. A party's intention to arbitrate needs to be clear. 'In writing' means parties signed a document or an agreement is documented in an exchange of letters, telex, telegrams or other means of telecommunication, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Parties are free to appoint any number of arbitrators as long as the number is odd. If the arbitration agreement and

relevant rules do not stipulate otherwise, three arbitrators will be appointed.

In an arbitration with three arbitrators, unless parties have agreed otherwise, each party will appoint one arbitrator and the two appointed arbitrators will then appoint a third arbitrator. If parties fail to appoint the arbitrator or two arbitrators fail to appoint a chairman, upon a party's request, the court will appoint the arbitrator.

Parties can freely agree on the procedure for challenging an arbitrator. Parties may challenge an arbitrator if: an arbitrator does not meet with the agreed qualifications given by the parties; there are grounds for a challenge in the agreed rules of arbitration; or if an arbitrator's impartiality and independence give rise to justifiable doubts under the circumstances.

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

Parties may freely choose their arbitrators in line with the agreed qualifications.

Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

Parties may freely choose the procedures to be followed by the arbitral tribunal and they may refer to any law or international or arbitral rules. If parties are silent on the matter, procedural rules of the IAL (or the CCP for domestic arbitration) will be conducted with the limitation of the mandatory provisions under the Law.

Court intervention

On what grounds can the court intervene during an arbitration?

The court may intervene during an arbitration for several reasons. After 20 July 2016, the court system changed from a two-tier system to a three-tier system and the regional courts of appeal were established as second instance courts. The new CCP gives jurisdiction to the regional courts of appeal for domestic arbitration; however, the IAL has not been amended in line with this new system. Consequently, the civil courts of first instance still have jurisdiction for international arbitration. As a result, regional courts of appeal will intervene in domestic arbitration proceedings and civil courts of first instance will intervene in international arbitration proceedings.

In International arbitration, parties may request that the court take interim measures at any time during or before the arbitration proceedings. In addition, if one of the parties does not comply with the interim measure or attachment ordered by the tribunal, the other party may request that the court order interim measures or an attachment, although in domestic arbitration parties may only request that the court take interim measures when the arbitral tribunal cannot take timely or effective action. Otherwise, a party needs the approval of the arbitral tribunal or the parties need to agree that one may request interim relief from the courts.

Upon a party's request, the court will appoint the arbitrators. Parties may challenge the arbitrators, and if the challenge is rejected by the arbitral tribunal, a party can apply to the court and request the decision to be lifted and the arbitrator removed. The decision of the court will be final.

The terms of the arbitration may be extended upon the parties' agreement; if the parties fail to agree, upon request, the court can extend the terms.

The arbitral tribunal may also ask the court to assist in taking evidence and in such circumstances the CCP will apply to

the procedure.

Interim relief

Do arbitrators have powers to grant interim relief?

Yes, arbitrators may grant interim relief, unless otherwise agreed by the parties. Upon a party's request, the tribunal may grant interim relief during the arbitral proceedings. The only limitations on the arbitrators' powers that prevent a tribunal granting interim relief are interim measures that affect third parties and interim measures that are required to be enforced through execution officers or the other authorities.

If one of the parties does not comply with the interim measure or attachment ordered by the tribunal, the other party may request that the court decide on interim measures or a provisional attachment. In essence, if a party does not comply, the execution offices will not enforce the arbitral tribunal decision without the court order regarding the interim measure. As a result, to avoid any delays, it may be more beneficial to directly request interim measures from the courts before or during the proceedings.

Award

When and in what form must the award be delivered?

The award must be delivered within the stipulated term of the arbitration that has been decided by the parties. An arbitral award must contain the names, titles and addresses of the parties and their representatives, reasoning for the award and the amount of compensation, the place of arbitration, the date of the award and that parties have a right to set aside the award. The arbitral tribunal can also render partial awards, unless otherwise agreed by the parties. For domestic arbitration, additionally, the award must contain the rights and obligation of the parties and the cost of the arbitral proceedings.

Appeal

On what grounds can an award be appealed to the court?

Arbitral awards are final and there is no option for appeal, although parties may request cancellation from the courts. This will not stop enforcement proceedings, however. In 2016, Turkey enacted a new appeals system and changed the two-tier court system to a three-tier court system.

For both domestic and international arbitration, the parties will request cancellation from the regional courts of appeal and the decision of the court will be appealed to the Court of Cassation.

Grounds for setting aside the award are listed in numerous principle clauses, which are: the agreement is not valid if one of the parties was incapacitated; the appointment of arbitrators was not in accordance with the parties' agreement; the arbitral award is not rendered within the term of arbitration; the decision on competency was unlawful; the arbitral tribunal rendered an award on matters beyond the parties' claims, or did not rule on one of the party's claims; the arbitral proceedings were not in line with the parties' agreement or, in the absence of such agreement, Law No. 4686, and if this situation affects the substance of the award; if the parties' equality was not respected; if the matter is non-arbitral under Turkish law; and if the award is incompatible with public policy.

Parties may waive their right to challenge the award and claim for setting aside the award.

A decision on setting aside rendered by the regional court of appeal may be appealed to the Court of Cassation based on provisions under the CCP for both international and domestic arbitration. Although grounds for appeal are limited to

the grounds for setting aside the award.

Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Turkey has been party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1991. However, like many other states, Turkey made reservations under article I(3) of the Convention to the effect that only awards that are rendered in the territory of another member state will be enforceable.

Recognition and enforcement of a foreign award is also regulated under the International Private and Civil Procedure Law (Law No. 5718). Under article 60 of this Law, enforcement of a foreign arbitral award must be requested from the civil courts of first instance in Turkey. Under article 61, parties that seek enforcement of a foreign award must submit the original or duly certified copy of the arbitration agreement or the arbitration clause; the original or duly certified copy of the final and executable award; or a translation and duly certified copies of the mentioned documents.

Unlike foreign awards, domestic awards are enforceable without further proceedings.

Costs

Can a successful party recover its costs?

Yes, parties may agree on the rules of the costs of arbitration. If parties are silent on this, the arbitral tribunal will decide on the allocation of the costs based on the provisions under the IAL or the CCP relating to: the fees of the arbitrators; the arbitrators' expenses; the fees of the experts; the witnesses' expenses that are approved by the arbitral tribunal; the successful party's attorneys' fees, which are calculated by taking into account the minimum fee schedule approved by the tribunal; applications made to the courts that are subject to the IAL or the CCP; and notification expenses. Under the IAL and the CCP, the unsuccessful party will bear the costs unless otherwise agreed by the parties.

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Mediation and arbitration are the most commonly used ADR processes. Mediation has become quite popular since the process became mandatory and a prerequisite for parties to seek redress in the court in certain labour, commercial and consumer disputes. Mandatory mediation has changed the dispute resolution culture in Turkey. Because of the fast and efficient outcomes, parties have started to settle their disputes through voluntary mediation.

Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Parties may freely agree to settle their dispute with mediation before or during the court proceedings. Mediation became mandatory in certain commercial, labour and consumer disputes. The Labour Courts Law, which was published in the Official Gazette on 25 October 2017, set forth that, as of 1 January 2018, disputes arising from compensation claims of employees or employers relating to labour agreements and re-employment lawsuits will be

subject to mandatory mediation. However, this provision will not apply to the compensation claims arising from workplace accidents or occupational diseases.

According to article 5/A of Turkish Commercial Code, mediation will be mandatory if the commercial disputes are related to monetary receivables or compensation claims.

With the amendments made in the Consumer Protection Law (Law No. 6502), mediation became mandatory for consumer disputes over the monetary limit of 10,090 Turkish lira. Compulsory mediation will be excluded for:

- consumer disputes that are within the scope of the consumer arbitral tribunal;
- objections to the decisions of the consumer arbitral tribunal;
- granting interim measures;
- suspension of production or sale or confiscation of products; and
- disputes arising from consumer transactions in relation to real rights.

If parties do not apply to mediation when it is mandatory and bring a legal action before the court, the case will be dismissed on procedural grounds. However, if there is an arbitration agreement between the parties, provisions for mandatory mediation will not apply; thus, mediation will not be a prerequisite for initiating the arbitration proceedings.

MISCELLANEOUS

Interesting features

Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

In October 2019, important amendments were made to the Turkish judicial system, known as the 'judicial reform package', which were introduced by the Justice Commission of the Grand National Assembly of Turkey.

The main promises of the judicial reform package are to: (1) improve the judiciary in terms of objective, effective judicial processes; (2) improve individual rights and freedoms, including but not limited to rights to fair trial; (3) simplify civil justice and administrative procedures; and (4) strengthen freedom of expression and protection of children.

UPDATE AND TRENDS

Recent developments

Are there any proposals for dispute resolution reform? When will any reforms take effect?

There was an amendment to the Turkish Code of Civil Procedure on 28 July 2020, which mainly aims to have legal proceedings conducted in a more effective and timely manner; and to conclude judicial processes quickly for the sake of the right to fair trial.

In addition, with the publication of its Online Hearing Rules and Procedures, the Istanbul Arbitration Centre (ISTAC) became the first arbitral institution to formalise the use of telephone and videoconferencing technology to combat the effects of the covid-19 pandemic. ISTAC has taken decisive steps to use widely available video and telephone technology to mitigate unnecessary delays to arbitration proceedings.

LAW STATED DATE

Correct on

Give the date on which the above content is accurate.

14 August 2020.