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Mediation now mandatory for monetary-related IP disputes

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- Mediation now mandatory for claims relating to commercial receivables
- As civil suits falling under IP-related codes are considered as commercial actions, mediation is now mandatory for certain types of IP disputes
- It is expected that mediation will become mandatory for other types of IP disputes

Discretionary mediation was first introduced into the Turkish legal system in 2013 by Law No 6325 on Mediation in Civil Disputes as one of the alternative dispute resolution methods. Then, in 2018, it became mandatory for labour-related disputes.

Recently, mediation became mandatory in relation to claims for commercial receivables under the Code of Commencement of Execution Proceedings in Monetary Receivables Arising from Subscription Agreements ('the code'), which was published in the *Official Gazette* on 19 December 2018. Pursuant to Article 20 of the code, Article 5/A was incorporated into the Turkish Commercial Code, which now requires mediation for claims regarding commercial receivables in which compensation for damages or payment of a certain amount is sought. In such cases, mediation is a pre-condition to bringing a lawsuit. The date of entry into force of this change was 1 January 2019.

Even though Article 5/A does not explicitly state that IP-related disputes are subject to mandatory mediation, pursuant to Article 4/d of the Commercial Code, civil suits falling within the scope of IP-related codes are considered as commercial actions. Therefore, mediation is now mandatory for IP-related disputes in which compensation or payment of a certain amount is sought - such as disputes arising from licensing agreements, the transfer of IP rights or the infringement of IP rights.

It is expected that mandatory mediation will have a significant impact on cases in which a request for preliminary injunction and a request for compensation or payment of a certain amount are filed together. In such cases, the court will have to refer the case to a mediator since it includes monetary issues; the counterparty may thus be notified of the case before a preliminary injunction decision is made. Therefore, the counterparty will be informed of the case/request for preliminary injunction during the mediation proceedings, which might impair the effectiveness of the preliminary injunction. It will thus be beneficial to file requests for preliminary injunction and other monetary requests separately.

Under the Law on Labour Courts, mediation is now mandatory for labour disputes arising from an employment contract in which compensation or re-employment is sought. Therefore, as of 1 January

2018, parties can bring such disputes only before the labour courts, if an amicable solution cannot be reached by mediation. According to the statistics released by the Ministry of Justice, 65% of the disputes were settled by mandatory mediation between 2 January 2018 and 27 May 2018. Following the introduction of mandatory mediation for actions relating to commercial receivables in 2019, a significant reduction in the workload of the commercial courts is expected.

In conclusion, the implementation of mediation in the Turkish justice system has progressed rapidly. Since mediation gives the parties a chance to reach an amicable solution by spending a reasonable amount of effort, time and money, it became an attractive solution for civil disputes. It became mandatory first for labour-related disputes and then for actions relating to commercial receivables, which cover IP-related matters in part.

It is expected that, in the future, mediation will become mandatory for other types of IP disputes. Although it is thought that mandatory mediation will decrease the workload of the IP courts, the impact of this change cannot clearly be foreseen, since mediation is a relatively new concept in Turkey, where the litigious culture is still dominant. The impact of this change on Turkish IP law remains to be seen.

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