

# Litigation and Enforcement in Turkey: Overview

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A Q&A guide to dispute resolution law in Turkey.

The country-specific Q&A gives a structured overview of the key practical issues concerning dispute resolution in this jurisdiction, including court procedures; fees and funding; interim remedies (including attachment orders); disclosure; expert evidence; appeals; class actions; enforcement; cross-border issues; the use of ADR; and any reform proposals.

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## Main Dispute Resolution Methods

1. What are the main dispute resolution methods used to resolve large commercial disputes?

The main and most commonly used method for resolving large commercial disputes in Turkey is litigation. Civil litigation is based on the principle that the parties to the dispute prepare their case. The judge is bound to hear claims, defences and evidence brought by the parties. However, the judge is entitled to make a legal assessment *ex officio*. The management of proceedings is at the court's discretion.

Use of alternative dispute resolution (ADR) mechanisms has expanded in recent years. With the foundation of the Istanbul Arbitration Centre (ISTAC), there has been a considerable increase in the number of disputes for which arbitration has been adopted. In the past four years, mediation has become mandatory first for labour law-related disputes, then for commercial monetary claims, and finally for consumer law-related disputes. Voluntary mediation is also among the preferred ADR mechanisms.

Turkish legislation does not provide for online dispute resolution within the court system. However, the National Judiciary Informatics System (*Ulusal Yargi A## Bili#im Sistemi*) (UYAP) is a crucial part of conducting proceedings before courts since 2001. The UYAP allows judicial bodies, administrative units, and parties to litigation to record case documents via electronic communication with the UYAP. Correspondence between judicial bodies, such as requests for review of a file pending before another court, consolidation of cases or transfer of a case to another court due to lack of jurisdiction, are conducted electronically via the UYAP. During the course of the proceedings, all case documents are uploaded to the UYAP. The system also allows lawyers to file cases, submit petitions and evidence, follow up case files, and deposit court expenses electronically.

In addition, at the request of one of the parties or *ex officio*, hearings can be held remotely via a video and audio platform. This practice was introduced in certain cities and courts as of 15 September 2020 and at the time of the writing, the number of the courts with the infrastructure for remote hearings had reached 2,475 throughout Turkey.

## Court Litigation

### Limitation Periods

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

The general limitation period is ten years, which applies where the law does not provide a specific limitation period (*Turkish Code of Obligations* (6098) (*sayılı Türk Borçlar Kanunu*)).

However, the statute of limitation is five years for some claims, such as claims relating to:

- Lease payments.
- Principal interest.
- Salary.
- Professional negligence.
- Agency.
- Commission and brokerage agreements (except commercial brokerage).
- Dispute between a company or its shareholders (arising out of a shareholders' agreement) and its managers.
- Personal representatives.
- Auditors.
- Accommodation fees in hotels.
- Pensions.
- Catering costs in restaurants and similar places.
- Minor artwork and small-scale retail sales.
- Works contracts, except claims that arise out of improper performance or non-performance due to a contractor's gross misconduct.

The statute of limitation for tort claims is two years from the date on which the claimant becomes aware of the tortious act, the damage and the person committing it (subject to a maximum of ten years starting from the date when the tortious act is committed). In cases where a tortious act also gives rise to a crime, the limitation period for the relevant crime will be taken into account.

## Court Structure

3. In which court are large commercial disputes usually brought? Are certain types of disputes allocated to particular divisions of this court?

Large commercial disputes are usually brought before the commercial courts. The commercial courts usually consist of a panel of three judges. Certain types of disputes (which can be considered as large commercial disputes) are handled by a panel of three judges, while other disputes are handled by a single judge.

Disputes that are heard by a panel of three judges are those relating to:

- Monetary claims exceeding TRY500,000 (about EUR27,500).
- Declaration, postponement, cancellation and closing of bankruptcy and company reorganisations.
- Cancellation of general assembly resolutions, liability actions against management and supervision boards, dismissal of corporate organs or appointment of temporary corporate organs, and dissolution and liquidation of companies.
- Arbitration, such as enforcement of foreign arbitral awards, cancellation of arbitral awards (actions to set aside), appointment of, or challenge to, arbitrators.

Disputes relating to maritime law are allocated to the specialised Maritime Court and intellectual property disputes are heard by the courts of intellectual and industrial property rights.

The enforcement courts also handle cases in connection with enforcement proceedings.

With regard to the appeals process, the *Code of Civil Procedure* (6100) (*sayılı Hukuk Muhakemeleri Kanunu*) introduced the following three-tier court system:

- First instance courts.
- Regional appellate courts.
- Court of Cassation.

The regional appellate courts were established on 20 July 2016 and started to operate in several cities, such as Istanbul, Ankara, Izmir, Antalya, Erzurum, Gaziantep and Samsun. For decisions rendered before 20 July 2016, the former two-tier system will continue to be applied until these decisions are finalised.

## 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**

Only Turkish nationals who have graduated from a law school and admitted to the Turkish Bar Association can represent clients in the Turkish courts (*Advocacy Code* (1136) (*sayılı Avukatlık Kanunu*)). In addition, a party can represent itself in court proceedings, including court hearings. An authorised representative of a legal entity can represent the legal entity.

### **Foreign Lawyers**

Foreign lawyers cannot represent their clients before the Turkish courts and execution offices (*Advocacy Code*).

### **Fees and Funding**

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

The Turkish Bar Association (TBA) determines and publishes the minimum rates every year. Currently, the maximum limit for legal fees is 25% of the claimed amount.

Legal fee structures can include hourly rates and task-based billing if agreed by the parties. Contingency fees are not permitted under Turkish Law. However, conditional fees can be agreed on if the agreed fee for the lawyer is not lower than the rates specified in the TBA's minimum fee tariff.

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

### **Funding**

Litigation is funded by the claimant. Third-party litigation funding is not common and there are no provisions regulating third-party funding in Turkey. However, a non-party can finance litigation proceedings under the freedom of contract principle and

the general provisions of the Code of Obligations. A claimant whose case is accepted by the court is reimbursed by the defendant for official costs (such as advance payment for filing the case, notification and expert fees) at the end of the proceedings. Where a defendant is successful at trial, the official costs will be borne by the claimant.

## Insurance

Legal protection insurance is available under Turkish law. However, according to the general conditions prepared by the Treasury, commercial disputes are not covered by this insurance. The Ministry of Justice has recently included legal protection insurance in the purposes set forth in the Judicial Reform Strategy, therefore further developments are expected in near future.

## Court Proceedings

### Confidentiality

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

In principle, court proceedings are open to the public. In exceptional cases, the court can decide at the request of one of the parties or *ex officio* for hearings to be held in private for public morality and/or public security reasons or in cases where the superior interest of a party makes confidentiality absolutely necessary.

Parties and their lawyers can examine the court files and make copies of the documents filed. In addition, lawyers admitted to the TBA can examine court files even if they are not representing one of the parties, in which case they cannot make copies.

### 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?

For the first time in 2018, mediation was introduced as a mandatory pre-action conduct for labour disputes, which was followed for commercial monetary claims and consumer law-related disputes in subsequent years. If the parties do not apply for mediation before filing the lawsuit regarding these types of disputes, the case will be dismissed on procedural grounds.

### Main Stages

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

The two types of procedures for civil proceedings are the:

- **Written procedure.** The written procedure is the main procedure and is used for commercial disputes of TRY500,000 (about EUR27,500) or over. Under this procedure, the usual cycle of submissions (such as claim, response, rebuttal, and rejoinder) can be filed by the parties.
- **Simplified procedure.** This is used for disputes of below TRY500,000 (about EUR27,500) and for the following types of dispute:
  - labour disputes;
  - applications for interim measures, such as preliminary injunction, provisional attachment;
  - consumer disputes.

In this procedure, only the claim and response petitions can be filed by the parties and no further exchange of petitions can be carried out.

The main stages of civil proceedings are:

- Exchange of petitions.
- Preliminary proceedings.
- Examination phase.
- Oral proceedings.
- Decision.
- Appeal (if required).

There are no prescribed time limits for the main stages. However, there are time limits for certain procedural actions such as responding to petitions (which must be done within two weeks as of service). In addition, parties must submit objections to an expert report or appeal a final decision within two weeks as of service.

## Starting Proceedings

A court claim is commenced when the claimant submits its claim petition to the competent court. It is possible to file a case online via the UYAP.

The date of the court case is deemed the date on which the claim petition is registered in the court file. The claim petition must contain certain elements, such as the:

- Name of the competent court.
- Names and addresses of the parties.
- Turkish ID number of the claimant and passport numbers of non-Turkish claimants.
- Names and addresses of the attorneys, if any.
- Subject matter of the claim and claim amount.
- Summary of the material facts.
- Explanatory notes in relation to evidence, if any.
- Legal grounds.
- Precise explanation of the claim.
- Signature of the claimant, or their attorney.

### **Notice to the Defendant and Defence**

Once the claim petition is submitted to the court, the court will issue the opening minutes and serve the petition on the defendant. Following service, the defendant has two weeks to submit its response petition to the court. The defendant can request an extension of up to one month under the written procedure and up to two weeks under the simplified procedure (see [Question 9](#)).

The response petition must comprise the same elements that are required for the claim petition. If the defendant has any preliminary objections (such as an objection to the court's competence), it must include these objections in its response petition.

### **Subsequent Stages**

After the exchange of petitions, the subsequent stages are:

- Preliminary investigation stage, where the court:
  - determines the matter in dispute;
  - evaluates the preliminary objections of the parties;
  - takes necessary actions for the collection and submission of evidence; and
  - invites the parties to settle their case.
- Examination stage, where the court investigates whether the claims raised by both parties correspond with the material facts and evidence. During this stage, the court can:
  - hear witnesses;

- conduct on-site examinations; and
  - appoint experts (if required).
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- Issuance of the decision, which is made after hearing the final statements of the parties in the oral proceedings stage.
  - Appeal, if requested by one of the parties.

## Interim Remedies

10. What steps can a party take for a case to be dismissed before a full trial? On what grounds can such applications be brought? What is the applicable procedure?

There is no concept similar to summary judgment under Turkish law. In principle, a case cannot be dismissed before a full trial under Turkish law.

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

The defendant can apply to the court for an order for the claimant to provide security for the litigation costs, provided that either:

- The claimant is a Turkish citizen who does not have their habitual residence in Turkey.
- The defendant can provide evidence of the claimant's financial difficulties (such as insolvency or restructuring proceedings).

In addition, foreign claimants must provide security for costs and damages, unless there is a contractual, *de facto* or legal reciprocity that enables Turkish claimants to file lawsuits without providing security in the foreign claimant's state.

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

## Availability and Grounds

The court can grant an interim injunction if either:

- It would be significantly difficult or impossible for the claimant to enforce its rights in the future due to any change in the present status.
- Severe damage or inconvenience is likely to occur due to the delay.

To apply for an interim injunction, the claimant must file a petition with the court, stating the type of claim and the grounds relied on. It must also provide satisfactory evidence to prove that its claim is based on just grounds. The judge can order the claimant to provide security in an amount the court considers proper to account for the damage that may be caused to the defendant.

## Standard of Proof

To be granted an interim injunction, the applicant must prove that they have a prima facie case on the merits.

## Prior Notice/Same-Day

The court can grant an interim injunction without giving prior notice to the defendant or holding a trial, if the claimant's rights must be protected without any delay.

Although rare in practice, the court can grant an interim injunction on the same day, provided that the claimant proves that its claim is based on just grounds and provides evidence of the urgency of the matter. However, for large commercial disputes, the judges generally prefer to examine the case file in detail, to notify the defendant of the request and hold a hearing to hear their defence.

## Prohibitory and Mandatory Injunctions

An interim injunction can be granted to compel a party to do something (mandatory injunction) and to stop it from doing something (prohibitory injunction).

## Right to Vary or Discharge Order and Appeals

If the injunction is ordered without hearing the defendant, the defendant can object to the decision:

- Within one week from the implementation of the injunction if the party is present during the implementation of the injunction.
- From the service of the minutes of implementation of the injunction if it the party is not present during the implementation of the injunction.

The objection can be based on the conditions of the injunction, the competence of the court or the guarantee deposited to the court. Third parties whose interests are explicitly violated can also object to the conditions of the injunction or to the guarantee deposited to the court within one week of learning of the injunction. The court can vary or discharge the injunction in response to the objection.

Decisions rendered after the examination of the objection can be appealed. The appeal does not suspend the execution of the injunction unless decided otherwise. Decisions rendered following the appeal examination are final.

On a change of circumstances, the parties can request that the injunction be varied or discharged. Further, if the defendant deposits the guarantee to be determined by the court, the court can vary or discharge the injunction.

A decision to dismiss an injunction request and an injunction decision rendered in the presence of the defendant can also be appealed.

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 for due and undue debts that are not secured by a pledge. If the debt is due and payable, the claimant must prove that there is a due debt by submitting the relevant documents (such as invoices and written statements of the debtor).

To obtain an interim attachment order for undue debts, the creditor must prove that the debtor either:

- Does not have a certain residence.
- Is preparing to conceal and transfer its assets or flee the jurisdiction.

In practice, the courts will grant an interim attachment order if the debt is evidenced by a negotiable instrument such as a cheque or promissory note.

## Standard of Proof

The standard of proof is relatively low for interim attachment orders. The creditor must prove the existence of the receivable and the reasons for the interim attachment prima facie. Therefore, the courts generally grant the interim attachment if the creditor has a commercial document proving the existence of the receivable (other documents such as invoices and delivery notes are not considered sufficient for granting an interim attachment order).

## Prior Notice/Same-Day

The court can award an interim attachment order without prior notice to the defendant. The claimant must prove the urgency of the matter and submit evidence in support. In practice, same-day orders are not very common.

## Main Proceedings

If the interim attachment order is granted before the main proceedings, the claimant must initiate a complementary procedure within seven days starting from the date when the interim attachment order is enforced or the enforcement minutes are notified

to the claimant (if the claimant is not present during the enforcement of the interim attachment order). The complementary procedure can either be an action or an enforcement proceeding against the defendant. An interim attachment order can also be granted during the main proceedings and in support of a substantive proceeding in another country.

### **Preferential Right or Lien**

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

### **Damages as a Result**

The claimant is liable for damages suffered by the defendant arising out of an interim attachment order that was applied against the defendant and found to be unjust.

### **Security**

The court must determine the security to be deposited, unless there is a court order or a document (with the same authority of a court order) ordering this. The amount and form of the security are at the court's discretion. In practice, the courts usually ask for a deposit of 15% of the amount in dispute and bank guarantee letters are accepted.

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

A determination of evidence is another interim remedy that is commonly available. The parties to a dispute can request the determination of evidence through on-site examination, expert examination or witness statements, to rely on this evidence in an ongoing or possible future action (Article 400, CPC). The applicant must have a legal interest for making an application. A party is deemed to have a legal interest in making an application if either:

- There is a risk that the evidence will be lost.
- It will be significantly difficult to rely on the evidence in the future.

### **Final Remedies**

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

The most common remedy at the full trial stage is an award of pecuniary damages. Damages cannot be punitive, they must be compensatory. Other remedies are available at the party's request, such as:

- Non-pecuniary damages.
- Declaratory judgments.
- Announcement of the verdict in newspapers.
- Rescission of a contract.
- Performance of a contract.
- Cancellation of a transaction.
- Invalidation of a registered right.

## Evidence

### Document Disclosure

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

A party must disclose all evidence that it intends to rely on. A party is not required to disclose all relevant documents in its possession but must only provide documents that it deems appropriate.

Parties must act in good faith and state the truth (Article 29, CPC). However, this duty of good faith will not ensure that parties disclose all documents in their possession, as the law does not provide for a sanction for non-compliance.

The parties must submit their evidence during the exchange of petitions stage. To ensure this is done, usually with the procedural opening minutes (preliminary examination report), the courts order the parties to submit the evidence listed in their petitions or provide information on the whereabouts of any evidence that is not in their possession within two weeks of the notification. If a party fails to comply with this order, they will be deemed to have renounced their right to rely on the relevant evidence.

The evidence can alternatively be provided electronically through UYAP.

### Privileged Documents

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

## Privileged Documents

Lawyers are prohibited from disclosing any information obtained in the performance of their duties (Advocacy Code). This can be waived with the client's consent, but the lawyer can use their right of exemption to refuse to do so.

The law and case law do not say much about the scope of attorney-client privilege. However, decisions by the Turkish Competition Board are helpful guidance on the issue. According to these decisions, attorney-client privilege covers any correspondence in relation to a client's right of defence and documents prepared within the scope of an independent attorney's legal service. Therefore, correspondence between a company and its in-house attorney does not benefit from attorney-client privilege.

In addition, without prejudice privilege is available and any admission made during settlement negotiations cannot be used as evidence.

## Other Non-Disclosure Situations

A party can refuse to disclose the requested evidence if it contains a trade secret.

## Witnesses

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

## Probatory Value of Different Types of Evidence

Witnesses of fact give oral evidence under Turkish law. The court can ask a witness for written evidence, if it considers it appropriate. Witness statements are considered discretionary evidence, which means the judge is not bound by this evidence. Since documentary evidence are in the nature of conclusive evidence that binds the judge, witness statements are of less value than documentary evidence.

## Right to Cross-Examine

The parties' lawyers can ask direct questions to witnesses of fact. However, the parties cannot directly address questions to witnesses, but can pose questions to the judge. The judge can direct questions to the witnesses if the judge deems it appropriate.

### Third party Experts

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

### Appointment Procedure

The courts can appoint experts if special and technical knowledge is required to solve the disputes. The experts can be appointed either on the parties' request or by the court *ex officio*. In both cases, the appointment is made by the court and the expert is chosen from the list published by the Judicial Commission. The parties are also allowed to instruct experts and obtain private expert reports. However, private expert reports are not a substitute for the expert examinations by court-appointed experts; they serve as additional evidence in the proceedings.

### Role of Experts

The main obligations of experts are to:

- Attend the examination hearing.
- Take oath before the judge.
- Prepare and submit their report on technical issues on time.

Experts give opinions on facts determined by the courts and must not be appointed to give opinions on legal matters.

Under the written procedure, the time limit for submission of expert reports and the extension period is three months. Under the simplified procedure, the time limit for submission of expert reports and the extension period is reduced to two months.

### Cross-Examination of Experts

The parties can submit their statements and objections against the expert report within two weeks of the notification of the report. If it is impossible to prepare the objections within this period or it requires a special or technical work, the parties may be granted one additional period of up to two weeks on request. If the court finds the report insufficient, it can:

- Ask for clarifications.
- Pose new questions.
- Order an additional expert examination.

## Fees

The Ministry of Justice publishes a tariff of expert fees every year. The judge can increase or decrease the fees published in the tariff if the judge deems it necessary. The fees include investigation, examination, transportation, accommodation, and other relevant expenses.

## Appeals

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

## Appellate Courts

Decisions rendered by first instance courts where the amount subject to reviews exceeds TRY8,000 (around EUR450) can be appealed before the regional appellate courts.

Regional appellate courts can reverse the decisions of the first instance courts and can also render a new decision regarding the dispute.

The Court of Cassation (which functions as the organ of unification and development of jurisprudence) is the final instance of the appeal process and where the decisions of the regional appellate courts are appealed. However, monetary claims amounting to less than TRY107,090 (around EUR5,900) cannot be appealed before the Court of Cassation.

After the submission of an appeal, the first instance court/regional appellate court reviews whether the decision:

- Is appealable.
- Is appealed during the required period.

If these conditions are not satisfied, the case will not be forwarded to the regional appellate court/Court of Cassation.

## Grounds for Appeal

The grounds for appeal before the regional appellate courts are:

- Incorrect application of the law or agreement between the parties.
- Absence of the preliminary conditions for trial.
- Unlawful dismissal of any evidence.
- Procedural errors affecting the decision.

## Time Limit

The time limit for filing an appeal before the regional appellate courts is two weeks following the service of the decision rendered by the courts of first instance. The time limit for filing an appeal before the Court of Cassation is one month following the service of the regional appellate court's decision.

## Class Actions

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

Although class actions are regulated by law, they are not common in Turkey and mostly encountered in disputes related to consumer law. Associations and other legal entities can file actions to protect the interests of their members or the group they represent. In particular, actions can be commenced to:

- Rectify illegal occurrences.
- Prevent future violations of their rights.
- Determine their rights.

In cases which concern consumers in general and where there is a risk of a violation of the Consumer Law, consumer organisations can file actions for:

- Obtaining an injunction to prevent or end the harm to consumers.
- Detecting, preventing or stopping the illegal situation by any other means.

## 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 official litigation costs and the official representation fees are imposed on the unsuccessful party after trial. Litigation costs are the actual expenses deposited by the claimant to the court before and during the proceedings, and include the following:

- Hearing costs.
- Decision and judgment charges.
- Notification and postage fees.
- Filing and documentation fees.
- Expert and witness fees.
- Fees and expenses relating to the documents obtained from governmental authorities.
- The official attorney fee that is determined in line with the minimum tariff of the TBA.

The court will not consider any pre-trial offers to settle when awarding costs and the court cannot manage, limit, or otherwise control costs during the proceedings. However, the court must conduct the proceedings within a reasonable time and to avoid unnecessary costs (Article 30, CPC).

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

The legal interest rate, which is currently 9%, is awarded on litigation costs. The legal interest is calculated as of the date of the court decision.

## Enforcement of a Local Judgment

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

The claimant can enforce a local judgment by making an application to the execution office. The defendant must comply with the enforcement order within seven days as of the notification of the payment order. Otherwise, the claimant can apply for the attachment of any assets that the defendant may have.

## Cross-Border Litigation

25. Do local courts respect the choice of governing law in a contract? If so, are there any national laws or rules that may modify or restrict the application of the law chosen by the parties in their contract? What are the rules for determining what law will apply in the absence of any agreement and/or to non-contractual claims?

## Contractual Choice of Law

The parties can choose the governing law that will apply to their contract for disputes containing a foreign element. However, contracts that relate to real estate or its use are governed by the law of the country where the real estate is situated. Turkish law can be applied (partly or entirely) either when the application of the foreign law is explicitly incompatible with the Turkish public order, or when directly applicable rules of Turkish law will apply, regardless of the choice of law.

The principle adopted in the *International Private and Civil Procedure Code* (5718) (*sayılı Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun*) is to prioritise the parties' choice of law, therefore the same rule applies when the parties choose Turkish law as the governing law. The law does not stipulate the application of another law on grounds that it has a closer connection to the dispute where the governing law is agreed by the parties to a contract.

Generally, the Turkish courts respect the choice of law in a contract. However, in some cases, the court can broadly interpret the Turkish public order and apply Turkish law instead of the law chosen by the parties.

## No Choice of Law and Non-Contractual Claims

The law with which the contract has the closest connection governs the contract, if there is no choice of law (Article 24, *International Private and Civil Procedure Code*). The law with the closest connection is the law of the debtor's residence or workplace (if the contract is concluded as a result of commercial and professional activities). However, if there is any other law having a closer connection, that law governs the contract.

Non-contractual claims are subject to the same general principle (that is, the law having the closest connection applies). The *International Private and Civil Procedure Code* specifies the closest law to apply for claims arising from tortious acts and unjust enrichment.

## Contractual Choice of Forum

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?

In principle, contracting parties can make a choice of jurisdiction regarding disputes arising from contractual obligations, unless the subject matter is within the exclusive jurisdiction of the Turkish courts (such as disputes relating to employment, insurance, and consumer contracts).

Turkish courts will hear the case, if the foreign court finds itself incompetent or the parties do not make a plea of jurisdiction before Turkish courts.

The Turkish courts will generally hear the case in Turkey if the jurisdiction clause in the contract is unclear.

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

Turkey is a party to the HCCH Convention on Civil Procedure 1954 (Hague Civil Procedure Convention) and the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965. Therefore, service of a foreign proceeding in Turkey can be made in accordance with these Conventions.

If a bilateral agreement has been concluded between Turkey and the foreign country in question, the provisions of that agreement will govern the service of proceedings.

### **Taking of Evidence for a Foreign Court Proceeding**

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 Hague Civil Procedure Convention and HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970. Therefore, the process of taking evidence from a witness in Turkey to be used in another jurisdiction is subject to the rules set out in these Conventions.

If a bilateral agreement has been concluded between Turkey and the foreign country, the terms of the agreement will be applicable. If there is no such agreement and the foreign country has not adopted the above Conventions, the Turkish courts will consider if there is reciprocity between the two states. If reciprocity is established, the procedure for taking evidence is governed by the international legal assistance rules.

### **Enforcement of a Foreign Judgment**

29. How are foreign judgments enforced in your jurisdiction?

The following requirements must be met to enforce a foreign judgment in the local courts:

- There must be a contractual or de facto reciprocity on enforcement of foreign judgments between Turkey and the country where the foreign judgment was rendered.
- The decision must be final, binding, and enforceable under the laws of the foreign country.
- The decision must not concern a matter that is subject to the exclusive jurisdiction of the Turkish courts.
- The decision must not breach the Turkish public order.
- The counter party's right of defence must be respected and complied with.

Turkey has concluded bilateral treaties with several countries for the enforcement of foreign judgments, such as Albania, Algeria, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, China, Croatia, Egypt, Georgia, Iran, Iraq, Italy, Kazakhstan, Kuwait, Kyrgyzstan, Lithuania, Macedonia, Moldova, Mongolia, Oman, Poland, Republic of Turkish Northern Cyprus, Romania, Slovakia, Tajikistan, Tunisia, Turkmenistan, Ukraine, and Uzbekistan.

In addition, on the basis of the *de facto* reciprocity principle, the Turkish courts can enforce judgments rendered in several countries including Germany, the UK, and the US. However, as law and practice differ in each US state, the ability to enforce a US judgment depends on the subject matter of the dispute and the state where the judgment was issued.

## 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 used in Turkey is arbitration. It is used more in certain industries such as construction, energy, and infrastructure. Voluntary mediation is another preferred ADR method. Both the use of arbitration and voluntary mediation continue to increase.

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

Arbitration does not form part of court proceedings. However, mandatory mediation is a cause of action for labour law-related disputes, commercial monetary claims, and consumer law-related disputes. Other ADR methods are subject to the parties' voluntary choice.

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?

In local arbitration, parties can choose the procedural rules in relation to evidence, provided that the rules are consistent with the mandatory provisions of the CPC. The provisions of the CPC relating to the collection and use of evidence in litigation also apply to evidence given in ADR.

In international arbitration, parties can also choose the rules in relation to evidence, provided that the rules are consistent with the mandatory provisions of the *International Arbitration Code of Turkey* (IAC) (4686) (*sayılı Milletlerarası Tahkim Kanunu*).

Parties can seek the assistance of the Turkish courts to collect evidence in both local and international arbitration. Neither the CPC nor the IAC contains specific provisions dealing with confidentiality. If confidentiality is an issue, parties can choose arbitration rules that expressly provide for confidentiality.

33. How are costs dealt with in ADR?

Unless otherwise agreed, arbitrators' fees in local arbitrations are determined by the arbitral tribunal or by the arbitrators, taking into account the amount in dispute and the nature and duration of arbitral proceedings. If there is no agreement or provision in the arbitration agreement, or reference to institutional arbitral rules, the Ministry of Justice tariff applies. Local arbitral awards specify the costs of proceedings. In principle, the unsuccessful party bears the costs. If both parties partially succeed, costs are borne by both parties accordingly.

In international arbitration, the parties can also determine the arbitrators' fees by reference to recognised international rules or institutional arbitration rules.

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

The main bodies that offer arbitration services in Turkey are the:

- Istanbul Arbitration Centre.
- Turkish Union of Chambers and Commodity Exchanges Court of Arbitration.
- Istanbul Chamber of Commerce Arbitration Institution.
- Turkish Football Federation Arbitration Board.
- Mediation Centre.

## Proposals for Reform

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

There are no proposals for dispute resolution reform.

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