

# Apples and oranges: uncontested invoices and binding contracts

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Litigation, Turkey

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## Introduction

The answer to the question of whether invoices can create legally binding contracts is generally no; an invoice does not constitute a contract by itself. However, the issue becomes tricky when the recipient has not objected to the content of an invoice or has recorded it in its accounting books. In that case, the legal presumptions that apply to the evidentiary status of invoices and accounting books can indicate that the invoice and the product or service subject to this invoice have been accepted and confirmed by the recipient. However, in order for an invoice to generate a payment obligation on the recipient, Turkish law requires that there be an obligatory relationship between the drafter and the recipient. A recent case confirms that even when the recipient of an invoice does not object to it and inadvertently records it in its accounting books, this does not result in a payment obligation unless the invoice has a legal basis.

## Rules of evidence

Under Turkish law, the means of proof are divided between conclusive evidence and circumstantial evidence, depending on the associated legal results. In disputes where the principle of preparation of the case by the parties applies, conclusive evidence is binding on the courts, whereas the validity of circumstantial evidence is left to a court's discretion. Deeds, oaths and a previous final judgment are types of conclusive evidence; while witness testimony, expert reports and onsite examinations are examples of circumstantial evidence.

Unless specified by law, the burden of proof rests with the party that benefits from the legal outcome of an allegation. However, in the case of a legal presumption arising out of specific laws, the burden of proof can be altered. The party basing its claim on the existence of a legal presumption concerning the allegation made

must prove only the facts that constitute the presumption, which will automatically indicate the existence of other surrounding facts. This renders the rebuttal of allegations supported by legal presumptions notably difficult for the counterparty.

Article 21 of the Commercial Code provides a legal presumption applicable to merchants with regard to invoices. Accordingly, unless a party objects to the content of an invoice within eight days of its receipt, it is deemed to have accepted its content.

There are also specific rules on the evidentiary nature of accounting books under Article 222 of the Code of Civil Procedure. In order for accounting books to be considered as evidence in commercial disputes, they should have been kept in due form and not conflict with the records in the counterparty's books or be able to be disproved by conclusive evidence.

### **Court of Appeals precedents**

Since the decision of the Court of Appeals General Assembly of Civil Chambers on the Unification of Judgments dated June 27 2003 (2001/1 E, 2003/1 K), the Court of Appeals has adopted a single approach on the evidentiary nature of invoices. The decision set out that:

- the issue of an invoice does not result in an obligation to pay;
- a payment claim must be based on a legal relationship between the drafter of the invoice and its recipient;
- the party that bases its claim on an invoice must prove the obligatory relationship if the counterparty denies its existence;
- if the drafter's payment claim is based on a bilateral contract, it must prove the performance of the counter-obligation (ie, prove the delivery of goods or provision of a service).

Conversely, the Court of Appeals' practice also underlines the significance of accounting books in determining the true content and legal basis of invoices. Hence, recording an invoice in accounting books can be considered to prove the existence of an obligatory relationship.

### **Facts**

The dispute arose from an invoice issued for the provision of architectural designs for a turnkey construction project. The defendant owned the construction; the plaintiff (an architectural design company) was the subcontractor of the project which, by the nature of turnkey construction agreements, did not have direct contractual relationship with the owner.

In the course of events leading to the plaintiff's claim for payment, the subcontractor issued an invoice on behalf of the owner for the architectural designs delivered to the contractor. The owner not only received the invoice without raising any objection, but also recorded it in its accounting books.

The plaintiff argued that the services had been provided to the owner and that the owner had accepted the debt by not objecting to the invoice and recording it in its accounting books.

Conversely, the owner argued that it was obliged only to pay the contractor based on the turnkey contract. Accordingly, the owner further argued that the services billed by the plaintiff were provided to the contractor and thus the contractor had sole liability.

### **Decision**

The first-instance court determined that the contract between the defendant and the third-party constructor was a turnkey construction agreement, and the designs which the plaintiff had provided were of the buildings constructed under that agreement. Based on the turnkey agreement submitted as evidence and the plaintiff's failure to submit documents proving the existence of another agreement with the defendant, the court decided that it would be incompatible with the ordinary course of business for the defendant to have contracted with the plaintiff to prepare the architectural designs and found that there was no legal basis for payment of the invoiced amount by the defendant. Therefore, the court dismissed the case.

The plaintiff appealed the first-instance decision based on the argument that, in addition to the uncontested invoice, the records in the defendant's accounting books provided proof of the agreement and the obligatory relationship between the parties which gave rise to the billed amount in the exchange for designs; therefore, the court had misinterpreted the evidence.

The Court of Appeals upheld the first-instance court's decision, briefly stating that there had been no error in the evaluation of evidence and that the evidence had been interpreted in accordance with the legal requirements.

### **Comment**

It is challenging to prove that no payment is due to the drafter of an invoice when the recipient has done nothing to object to the existence of a debt or, even worse, has recorded the invoice in its own books, thus giving the impression that the invoice amount is confirmed and recognised as a payable debt. In a case such as this, where all legal presumptions indicate the existence of a debt, it is crucial to demonstrate that it is impossible for the defendant to have entered into a contract with the plaintiff. Emphasising the nature of a turnkey construction contract was key to the defendant's success in this dispute. However, the inspection of invoices and accounting records is crucial to avoid similar disputes.

This case clearly demonstrates the importance that the courts place on the legal basis of an invoice and the presumptions of proof associated with invoices and accounting books. Although the rules regulating presumptions of proof under Turkish law provide shortcuts for parties to prove their claims, the basic concepts pertaining to contracting and the creation of an obligatory relationship can be used to reveal the artificial nature of claims that rely on procedural rules rather than facts.

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