



ICLG

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Zavadetskyi Advocates Bureau



Turkey

Beril Yayla Sapan



Asena Aytuğ Keser



Gün + Partners

I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Turkey got? Are there any rules that govern civil procedure in Turkey?

Turkey's legal system is based on civil law. Civil procedure is governed by the Code of Civil Procedure ("the CCP") dated 01.10.2011 and numbered 6100. There are also some specific procedural rules regulated by the Turkish Commercial Code and the Code of Labour Courts, etc.

1.2 How is the civil court system in Turkey structured? What are the various levels of appeal and are there any specialist courts?

Civil courts of first instance and civil peace courts are the main courts for civil disputes for the first instance stage. However, for disputes requiring special expertise, there are also some specialist courts such as the commercial court, land registration court, labour court, enforcement court, consumer court, civil courts for intellectual and industrial property rights and family court.

The CCP introduces a three-tier court system; namely first instance courts, regional appellate courts and courts of appeal. However, the regional appellate courts are not operational, since the judicial infrastructure is yet to be set up. Therefore, the current system is a two-tier court system.

1.3 What are the main stages in civil proceedings in Turkey? What is their underlying timeframe?

An action is filed with a petition by the plaintiff. Under Turkish law there are two types of procedures. Written procedure is the main type, whereas the simple procedure, as the name suggests, is a simplified version. In the written procedure, the usual circle of submissions is possible for the parties where pleading, response, rebuttal and rejoinder can be filed. In the simple procedure, however, only pleading and response petitions can be filed by the parties and no further exchange of petitions can be carried out.

The main stages of the civil proceedings are (i) exchange of petitions, (ii) preliminary proceedings, (iii) examination phase, and (iv) oral proceedings.

There is no specific timeframe for the courts to complete the above mentioned stages and to render their decision. Therefore, the timeframe of the proceedings depends on the nature of the dispute, but in general it takes around 1.5 to two years. The appeal stage can take 1.5 years and the revision of a decision phase takes a further six months as well.

1.4 What is Turkey's local judiciary's approach to exclusive jurisdiction clauses?

Merchants and/or public entities can agree on an exclusive jurisdiction clause unless there is exclusive jurisdiction provided by the law. A jurisdiction clause or agreement shall be deemed valid if it is clearly expressed and written.

1.5 What are the costs of civil court proceedings in Turkey? Who bears these costs? Are there any rules on costs budgeting?

Application fees, litigation expenses (such as notification fees, expert fees and witness fees) and official attorney fees are the main costs of civil court proceedings. In principle, litigation costs should be paid by the plaintiff who initiates the proceedings. However, the court may also decide the party requesting a procedural transaction should bear the relevant expenses.

At the end of the proceedings, the losing party shall refund the litigation costs and official attorney fee determined as per the Minimum Attorney Fee Tariff. However, in principle, the professional fee which is agreed between a party and its attorney cannot be refunded.

With regard to costs budgeting, most of the litigation costs are determined by the Code of Fees and Charges and also the secondary tariffs.

1.6 Are there any particular rules about funding litigation in Turkey? Are conditional fee arrangements permissible? What are the rules pertaining to security for costs?

The CCP enables those who cannot afford litigation expenses to request legal aid from the court. It is permissible for the attorneys to enter into fee arrangements with their clients. However, the agreed fees cannot be lower than the minimum amounts set out by the Official Tariff. The attorney fees can also be determined over the value of the claim set forth with the proceedings. However, it cannot exceed 25% of the total value of the matter of the dispute.

As to security for costs, a plaintiff who is a Turkish citizen/entity shall provide security if he is not resident in Turkey or if it is documented that he is having serious financial difficulties.

Plaintiffs who are foreign persons/entities are also obliged to provide security unless there is an agreement or reciprocity between Turkey and the plaintiff's state.

1.7 Are there any constraints to assigning a claim or cause of action in Turkey? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

In principle, the parties can assign a claim or cause of action to a non-party before or during the proceedings if such assignment has not been restricted by the court through an injunction.

A non-party can finance litigation proceedings pursuant to the liberty of contract principle and general provisions of the Code of Obligations.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

There is no particular formality to be followed before initiating proceedings. The plaintiff can initiate proceedings by filing a petition and depositing the application fee.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

As per the Code of Obligations the principle statute of limitation is 10 years. This period is calculated starting from the due date of the obligation.

However, the statute of limitation is five years for some claims, such as: lease payments; principal interest; salary; claims arising out of attorney; agency, commission and brokerage agreements (except commercial brokerage); claims between a company or its shareholders and its managers, representatives or auditors; accommodation fees in hotels, pensions, etc.; catering costs in restaurants and similar places; claims arising out of minor artwork and small-scale retail sales; claims between the shareholders arising out of a shareholding agreement; and claims arising out of works contracts, except those that arise out of improper performance or non-performance due to a contractor's gross fault.

The statute of limitation for tort claims is two years as of the date on which the plaintiff becomes aware of the tortious act, damage and the person committing it, within the upper limitation of 10 years.

Time limits are treated as a substantive law issue. Expiration of the statute of limitation as a plea should be raised by the defendant. This is to say that the court cannot *ex officio* take into consideration time limits.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Turkey? What various means of service are there? What is the deemed date of service? How is service effected outside Turkey? Is there a preferred method of service of foreign proceedings in Turkey?

Civil proceedings commence with the submission of the plaintiff petition to the court. Subsequently, the court serves the plaintiff petition alongside with the opening record on the defendant's residence address via the Official Postal Service.

The post officer notes the date when the addressee receives the notification and this date is deemed the date of service. However, the deemed date of service differs in some specific circumstances where the post officer is required to follow certain procedures, e.g. when the addressee refuses to receive the notification, the addressee cannot be found at the address or the address of the addressee is unknown.

Notifications outside Turkey are made with the help of foreign authorities in accordance with the international agreements on legal assistance. In the absence of such agreement, the notifications are made according to domestic provisions.

Foreign proceedings are served via the Ministry of Justice and relevant prosecution office in accordance with the international agreements.

3.2 Are any pre-action interim remedies available in Turkey? How do you apply for them? What are the main criteria for obtaining these?

As a pre-action interim remedy, for non-monetary claims, a party can apply for interim injunction and where it proves that the acquisition of a right can become significantly difficult or impossible, or the delay is likely to cause serious damage, the court accepts the application in return for a security for compensation of the possible losses of the counterparty, which is generally 15% of the claimed amount in practice. The same conditions apply to provisional attachment for monetary claims.

3.3 What are the main elements of the claimant's pleadings?

Plaint petition should include the following: the name of the court; the names and addresses of the parties; the ID number of the plaintiff; the names and address of the parties' attorneys; the subject of the litigation; factual grounds; evidence; legal reasons; claims; and the signature of the plaintiff or the attorney.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Parties can amend their pleadings until the exchange of petitions stage is completed. However, with the explicit consent of the counterparty, it is possible to amend the pleadings in all stages of the proceedings.

In addition, during the same course of the proceedings, each party is entitled to amend their pleadings only once by an oral or written request even after the exchange of petition stage and without consent of the defendant.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The response petition should include the same main elements as the plaintiff petition. The preliminary objections, namely jurisdiction objection, arbitration objection and judicial division of work, should also be filed with the statement of defence.

The defendant can file a counter action in the scope of the same proceedings provided that (i) principal action is pending and (ii) there is a connection between the principal and counter action, or (iii) there is a set-off relation between the claims of the parties. However, where the defendant's grounds of defence are set-off, it can also choose to file it as a plea with its response petition.

4.2 What is the time limit within which the statement of defence has to be served?

The defendant shall submit its response petition to the court within two weeks as of the service of the plaintiff petition. However, upon request, the court may grant a time extension of up to one month for the written procedure and up to two weeks for the simple procedure.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

The defendant is not entitled to share liability by bringing an action against a third party during ongoing proceedings. However, as explained below in detail, the defendant can request from the court to notify the third party in order to ask it to intervene in the proceedings.

4.4 What happens if the defendant does not defend the claim?

Where the defendant fails to file a defence, it is deemed as if it has denied all claims of the plaintiff.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant can dispute the court's jurisdiction with its response petition as a preliminary objection. However, if there is exclusive jurisdiction for the subject of the case, the court shall *ex officio* examine its jurisdiction and the defendant can dispute the court's jurisdiction in any phase of the proceedings.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A party to the case, considering a subsequent recourse action to be filed by or against it, may request the court to notify the proceedings to a third party.

Even if there is no notification, a third party may request from the court to join ongoing proceedings as an intervenor if the decision to be rendered may affect its rights and/or lead to a recourse action.

An intervenor can choose the party with whom he acts. The intervenor is bound by the actions performed, claims, defences and evidence submitted by that party.

In any case, the court shall render its decision for the main parties of the case. The effect of the intervention occurs between the intervenor and the related party in the case of a recourse action. In such a recourse action, the intervenor cannot challenge the decision rendered for the main case.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Connected cases filed before civil courts of the same level and specialisation can be consolidated upon the request of the parties or *ex officio* during all stages of the proceedings. A connection exists if both cases are based on similar grounds or if a decision rendered in one case would affect the other.

5.3 Do you have split trials/bifurcation of proceedings?

The court may decide, upon request of the parties or *ex officio*, to split the cases in any phase of the proceedings.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Turkey? How are cases allocated?

As explained under question 1.2 above, civil courts of first instance have jurisdiction for all civil disputes except those that fall under the jurisdiction of civil courts of peace, and disputes requiring special expertise are allocated to specialist courts.

6.2 Do the courts in Turkey have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The courts have the power to take any measures for management and conduct of the case and along with the parties of the case, third parties and other public authorities must comply with and respond to the court's orders and requests.

As interim applications, the parties can request procedural steps such as hearing witnesses or holding expert examination, apply for temporary legal protections referred to under question 3.2 above or request the necessary correspondence to be made for showing documents/evidence.

In principle, the party making the interim application shall pay the relevant expenses and the court can take a measure using the court expenses paid in advance.

6.3 What sanctions are the courts in Turkey empowered to impose on a party that disobeys the court's orders or directions?

In the case of non-compliance with the court's orders or directions, a judge can expel the parties from the courtroom, impose fines, order disciplinary detention or decide a witness to be brought to the court by force.

Attorneys of the parties can neither be expelled from the court nor detained; instead, the court can notify the Bar Association or prosecution office if necessary.

6.4 Do the courts in Turkey have the power to strike out part of a statement of case or dismiss a case entirely? If so, in what circumstances?

The courts in Turkey do not have the power to strike out a statement of case. However, the court can partially accept or dismiss a claim at the end of the proceedings with its decision on the merits.

6.5 Can the civil courts in Turkey enter summary judgment?

For cases subject to simple procedure, the court can form its decision without holding a trial.

6.6 Do the courts in Turkey have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Courts shall discontinue the proceedings if:

- the plaintiff waives the case;
- the defendant accepts the case;
- the parties settle;
- the legal interest of the plaintiff or subject of the case disappears; or
- neither party attend a hearing or one of the parties does not attend and the other one declares that he/she will not pursue the proceedings.

If there are matters which should be resolved by another court or authority in order to continue the proceedings and render a decision, the court can stay the proceedings until the preliminary question is resolved.

In case the preliminary question should be resolved by the Constitutional Court or the Court of Jurisdictional Disputes, the court shall stay the proceedings.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Turkey? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure?

There is no full disclosure mechanism under Turkish law. In principle, disclosure obligation is limited to the evidence on which either one of the parties base their allegations. However, parties are entitled to request the court to collect evidence from the counter party or from third parties and institutions.

Disclosure pre-action is limited to requesting the collection of evidence such as discovery, expert examination or witness testimonies.

There is no obligation of disclosure specified according to different classes of documents.

7.2 What are the rules on privilege in civil proceedings in Turkey?

Since there is no compulsory full disclosure mechanism, there is no specific privilege regulated under Turkish law either. On the other hand, as per the Attorneys' Code, attorneys are prohibited from disclosing information received from their clients. In order for an attorney to testify regarding such information, consent of the client is required. Yet even then, the attorney may use the right of exemption from testifying.

7.3 What are the rules in Turkey with respect to disclosure by third parties?

If any document constituting evidence is under possession of a third party, the court can order the disclosure of such evidence which is deemed mandatory to prove the allegations of the parties. If ordered by the court, third parties are obliged to disclose such documents and if not, explain the reason for failure to disclose. If the court does not find the explanations sufficient, the court can hear the third party as a witness.

7.4 What is the court's role in disclosure in civil proceedings in Turkey?

In principle, courts are obliged to clarify the dispute where there are mistakes of fact or legal ambiguities or contradictions. In this regard, the court is entitled to question the parties and demand explanations from them, as well as order disclosure of documents by parties of the dispute or third parties.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Turkey?

There are no restrictions as to the use of documents obtained upon disclosure. However, parties may request that the documents and information submitted to the court be kept confidential.

8 Evidence

8.1 What are the basic rules of evidence in Turkey?

In principle, evidence must be submitted by the party having the burden of proof. The parties are not allowed to withdraw evidence they have submitted without the express consent of the counter party.

The parties should list and submit all their evidence or at least the information as to evidence that is not in their possession within the period of exchange of petitions. A peremptory term of two weeks is granted to the parties in the preliminary examination hearing, to submit the evidence listed in petitions or at least provide information for the collection of evidence that is not in their possession. In the event that the deficiencies regarding submission of evidence are not completed within this period, the court decides that the relevant

party is deemed to have renounced the right to rely on such evidence. Parties may request submission afterwards, unless late submission was made for the purpose of extending the duration of proceedings or caused by the fault of the party requesting late submission.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

All means of proof can be accepted as evidence unless they are provided unlawfully. Under Turkish law, the court is bound by some means of proof such as final judgments; and cannot make an assessment whether or not they reflect the truth as long as they are valid. On the other hand, witness testimony, expert opinion, discovery, professional opinion and also evidence that are not listed by the law are not binding and are left to the court's discretion.

Voice records and electronic records such as e-mail correspondence are defined as a "document" but they are not binding and are also left to the court's discretion.

In cases specified by the law, the means of proof can only be in the form of a "deed", which is an instrument created for the purpose of representing a legal record of a status or action. In this regard, claims against a deed can only be proven with another deed.

The court can decide to conduct an expert examination either *ex officio* or upon request of either party in cases where special and technical knowledge is required to solve the disputes. In principle, expert evidence is inadmissible on subjects that may be solved with the general and legal knowledge of the judge.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

A party who wants to call witnesses of a fact should inform the court about the facts to be proven and submit the list of witnesses, including their names and addresses. If a witness is not residing in the province where the hearings are held, then the court may issue an order to the judge in the province where the witness resides to take such witness's testimony.

In principle, witnesses are not allowed to use written notes during their depositions. Other witnesses cannot be present in the court room while one of the witnesses is heard.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

The court can appoint experts either *ex officio* or upon request of either party. Experts owe their duties to the court. Rather than being heard as a witness, experts submit their opinions to the court in writing. However, it is also possible, yet rare in practice, for the court to rule that the experts shall provide their opinions orally before the court.

Experts are chosen from the expert list prepared by each civil jurisdiction commission in the relevant judicial locality. In principle, the court chooses a sole expert, yet assigning an expert committee is also possible. The court determines the limits of the examination subject, questions which the expert is required to answer and the timeframe in which the report should be submitted.

On the other hand, parties may also submit professional opinions as evidence. Such professionals owe their duties to the party that is their client.

8.5 What is the court's role in the parties' provision of evidence in civil proceedings in Turkey?

As explained above, courts can order the disclosure of evidence from the parties, third parties or institutions upon request of the parties. The courts can also appoint experts, hear witnesses and carry out discovery.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Turkey empowered to issue and in what circumstances?

Courts may issue interim decisions and final decisions. The final decisions may be in the form of (i) declaratory decisions determining the existence or absence of a right or a relationship between the parties, (ii) orders to give something, perform or refrain from doing something, and (iii) constitutive decisions which are changing, revoking or creating a legal status or position.

Additionally, courts may also order preliminary injunctions. The court may order a preliminary injunction if there is a concern that an inconvenience or serious damage would occur as a result of a delay or a change in the current situation, which would result in difficulty or impossibility regarding acquisition of a right.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The court may order pecuniary damages and non-pecuniary damages. The court is bound by the request of the parties and cannot decide anything exceeding or differing from the request. Similarly, the collection of the interest cannot be ordered by the court *ex officio*; the interest should have been requested by the parties.

9.3 How can a domestic/foreign judgment be recognised and enforced?

The party whose rights were recognised by a domestic court decision can apply to any enforcement office in Turkey in order to enforce the decision.

In case of recognition/enforcement of foreign judgments, the following requirements must be met:

- The decision must be final and binding according to the law of the state where the decision was rendered.
- The subject matter of the decision must be out of the scope of the Turkish courts' exclusive jurisdiction.
- The decision must not be in evident contradiction with the Turkish public order.
- The counter party's right of defence must be respected and complied with.

In addition, for the enforcement of foreign decisions there must be reciprocity between Turkey and the state where the decision was rendered.

In principle, the courts examine the existence of the recognition and/or enforcement requirements *ex officio*.

9.4 What are the rules of appeal against a judgment of a civil court of Turkey?

The grounds for appeal are: (i) wrongful application of the law or the agreement between the parties; (ii) absence of preliminary requirements to file an action; (iii) unlawful dismissal of evidence; and (iv) the existence of procedural mistakes or deficiencies affecting the judgment.

In principle, all final decisions of the courts of first instance can be appealed. Interim decisions, however, can only be appealed along with the final decision. It should be noted that only decisions concerning a movable or debt amounting to or exceeding TRY 2,080 can be appealed. Similarly, a hearing can only be requested before the Court of Appeals, if the value in dispute is equal to or over TRY 21,220.

Aside from exceptional time limits set by area-specific legislations such as the Labour Code, the time limit to file an appeal is 15 days from the notification of the decision for decisions rendered by the courts of first instance, and eight days for decisions rendered by the courts of peace.

A decision by the court of appeal can also be challenged by the parties by way of requesting the revision of the decision from the same chamber of court of appeal which ruled over the appeal. In principle, a revision of the decision can be requested within 15 days from the notification of the court of appeal decision and only if the value in dispute is equal to or over TRY 12,690.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of alternative dispute resolution are available and frequently used in Turkey? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Methods of alternative dispute resolution such as arbitration and mediation are available, and arbitration is the most frequently used method of ADR in Turkey.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

The main legislation regulating international arbitration is the International Arbitration Code numbered 4686, which is essentially based on the UNCITRAL Model Law.

The CCP regulates domestic arbitration but it is not applicable to international arbitration unless stated otherwise in the International Arbitration Law.

Turkey is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, the ICSID Convention and the European Convention on International Commercial Arbitration of 1961.

Mediation is regulated under the Mediation in the Civil Disputes Code numbered 6325 and dated 22.06.2012.

1.3 Are there any areas of law in Turkey that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Disputes arising from or relating to rights *in rem* in immovable properties that are located in Turkey, and disputes that cannot be subject to the parties' will, such as disputes relating to criminal, administrative or family law, are not arbitrable or subject to mediation. In terms of labour law, only re-instatement cases can be arbitrable, provided that the parties execute the arbitration agreement after the termination of employment.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Turkey in this context?

Parties can apply to the courts for interim measures and attachments prior to or during the arbitration proceedings, provided that such application does not constitute a contradiction to the arbitration agreement between the parties.

The arbitrator or arbitral tribunal may also decide to grant an interim measure or attachment upon the request of either party during the arbitration proceedings, unless otherwise agreed. If a party fails to abide by the restrictions imposed by an interim measure or attachment, then the other party may request the assistance of the competent court.

If either party files a lawsuit in the court despite the presence of an arbitration agreement, the court can only dismiss the case based on the arbitration agreement if it is invoked by the parties.

The parties may agree to apply for mediation prior to or during the litigation process. The court may encourage but cannot order the parties to mediate.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to Turkey in this context?

Arbitral awards cannot be appealed for a review of the dispute on the merits; they can only be set aside with an application of the defendant to the competent court of first instance. Filing an action in order to set aside an arbitral award does not prevent or stop the execution of the arbitral award, since arbitral awards become enforceable at the moment they are rendered. However, the decision on setting the award aside can be appealed.

The agreement that the parties reach at the end of the mediation process is binding. The parties may request that the court gives an annotation on the enforceability of the agreement and request the enforcement of the agreement with this annotation.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in Turkey?

There are two major bodies that currently provide services for domestic arbitration in Turkey: the Istanbul Chamber of Commerce; and the Union of Chambers of Commerce, Industry, Maritime Trade and Commodity Exchanges of Turkey. In addition, the Istanbul Arbitration Centre, which was recently established with the law numbered 6570 on January 1, 2015, will soon become operational and provide arbitration or ADR services for all private disputes of both foreign and domestic nature.



Beril Yayla Sapan

Gün + Partners
Kore Şehitleri Cad. 17 Zincirlikuyu
34394 İstanbul
Turkey

Tel: +90 212 354 0000
Fax: +90 212 274 2095
Email: beril.yayla@gun.av.tr
URL: www.gun.av.tr

Beril Yayla Sapan is a senior associate in the Commercial and Corporate Department of the firm. She received her LL.M. in Economy Law from Galatasaray University and her LL.B. from Bilkent University Faculty of Law.

She concentrates on contracts, customs and commercial litigation matters. She has been involved in legal audits, high-profile commercial conflicts and various high-profile debt collection procedures ranging from concordats to bankruptcy proceedings.

She is also experienced in areas where commercial and criminal laws overlap. She has advised several multinational companies in relation to white collar crimes. Her practice also includes labour law issues and she has advised clients in relation to employment contracts, restructuring facilities and related litigation.

3 Trends & Developments

3.1 Are there any trends or current issues in the use of the different alternative dispute resolution methods?

With the enforcement of the recent law establishing the Istanbul Arbitration Centre and the Mediation in Civil Disputes Code, Turkey is expected to show progress in becoming more arbitration-friendly and to focus on making arbitration and ADR methods more accessible.

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Asena Aytuğ Keser

Gün + Partners
Kore Şehitleri Cad. 17 Zincirlikuyu
34394 İstanbul
Turkey

Tel: +90 212 354 0000
Fax: +90 212 274 2095
Email: asena.keser@gun.av.tr
URL: www.gun.av.tr

Asena Keser is an associate in the Commercial and Corporate Department of the firm. She received her LL.B. from İstanbul Bilgi University.

Her practice mainly focuses on dispute resolution. She advises and represents both national and international clients in their commercial law, construction and real estate-related disputes. She also has a special focus on labour law issues in relation to employment contracts, personnel management, reemployment actions and various employer-employee disputes.

Her practice area also includes business crimes and she handles various disputes where these practice areas overlap.

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