

Specialised or general-jurisdiction courts for enforcing foreign judgments and arbitral awards?

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Litigation, Turkey

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Introduction

The recognition and enforcement of foreign judgments and arbitral awards in Turkey is subject to the International Private and Civil Procedure Law, under which enforcement actions must be filed before the civil courts of first instance, which are comprised of general-jurisdiction civil courts and specialised courts (eg, labour courts, IP courts and consumer courts). While the jurisdiction of family courts in enforcing judgments and awards on family matters is explicitly regulated by law, the jurisdiction of other specialised courts in enforcement actions is a grey area. Although the Court of Appeals appears to have adopted a single approach with its precedents in recent years, a recent decision has created uncertainty once again.

Court of Appeals precedents

Under the International Private and Civil Procedure Law, Turkey has similar standards of judicial review for foreign judgments and arbitral awards. Given that in principle the courts are prohibited from reviewing the merits of foreign judgments or arbitral awards, the standards of review are independent from the matter in dispute and enforceability conditions are not area specific.

Until recently, the Court of Appeals appeared to uphold the jurisdiction of general civil courts to hear enforcement actions relating to judgments or arbitral awards rendered on all kinds of civil disputes since 2000. In early 2012, when the commercial courts of first instance were still classified as general-jurisdiction courts, a commercial court decision regarding its lack of jurisdiction to hear an enforcement action was appealed and the 15th Chamber of the Court of Appeals ruled that commercial courts had jurisdiction. The 15th Chamber justified the ruling by explaining that commercial courts are not specialised courts and thus have the same jurisdiction as general civil courts in hearing enforcement actions.

When the new Commercial Code (6012) came into force in July 2012, the commercial courts were reclassified as specialised courts. Even after the commercial courts were given this new status, first-instance courts

generally continued to assume the commercial court's jurisdiction in enforcement actions where both parties were merchants, which compelled parties to file enforcement actions before commercial courts. However, after the change in status of commercial courts began to be adopted in practice in 2014, the 17th Chamber of the Court of Appeals upheld that commercial courts had no jurisdiction to hear an enforcement action, even if the parties were merchants or the case to be heard concerned a commercial dispute. The 17th Chamber justified its ruling by stating that the authority to hear all enforcement actions was conferred to general civil courts of first instance by the International Private and Civil Procedure Law and that as the law included no distinctions regarding the subject matter of foreign judgments, the general civil courts have jurisdiction in all kinds of enforcement actions. Similarly, in a later decision rendered in 2014, the 11th Chamber of the Court of Appeals ruled that enforcement actions are not listed as commercial actions under Article 4 of the Commercial Code and therefore the general civil courts have jurisdiction over commercial courts.

Facts

The dispute arose from an IP licensing agreement following the licensee's default in payment of the licence fee. The licensor resorted to Independent Film & Television Alliance (IFTA) arbitration on the grounds of the arbitration clause in the licence agreement. At the end of proceedings, the licensor was awarded compensation with interest for the outstanding license fees.

The licensor then applied to a commercial court of first instance for the enforcement of the arbitral award. The court ruled thus:

"Since Law No. 5846 on Intellectual Property Rights applies to the matter of dispute and the dispute is subject to the application of Decree No. 556 on Protection of Trademarks, this court lacks the jurisdiction to hear a case concerning the foreign arbitral award on the said dispute and its enforcement. Given that the Intellectual Property Courts have jurisdiction over the cases concerning the application of the said Law and the Decree, [...] due to the lack of jurisdiction of this court, the plaint petition shall be rejected and the case file shall be sent to the Intellectual Property Court."

The commercial court decision was appealed by the defendant before the Court of Appeals. The defendant argued that the dispute did not fall under the scope of Law 5846 on Intellectual Property Rights.

Decision

The 11th Chamber of the Court of Appeals recognised that:

- the agreement that gave rise to the dispute was a licensing agreement;
- the arbitral award established the non-payment of outstanding fees arising from the licensing agreement, the full ownership of IP rights should be returned to the licensor and the necessary compensation must be paid.

The Court of Appeals ruled that a foreign arbitral award brought before the court for recognition and enforcement was subject to the jurisdiction of the IP courts. Thus it held that the commercial court lacked jurisdiction and upheld the specialised court's jurisdiction.

Comment

Despite the fact that recent Court of Appeals precedents have recognised the jurisdiction of general civil courts in enforcement actions regardless of the matter in dispute, the 11th Chamber judgment departed from this approach. In contrast with the 2014 decision in which it ruled that the commercial courts lacked jurisdiction and ruled for the jurisdiction of the general civil courts its latest decision ruled for the jurisdiction of one specialised court over another.

The interpretation of the jurisdiction of specialised courts regarding enforcement actions may create uncertainty during the application stage for parties seeking enforcement and prolong this process by two to six

months. Nevertheless, given the recent trend, a single decision does not provide sufficient information to interpret this as a change of opinion by the Court of Appeals. Further precedents are needed to determine the best strategy when applying for the enforcement of foreign judgments and arbitral awards.

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