

# Litigation and enforcement in Turkey: overview

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Country Q&A | [Law stated as at 01-Dec-2018](#) | Turkey

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.

To compare answers across multiple jurisdictions visit the dispute resolution [Country Q&A tool](#).

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## Main dispute resolution methods

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

The main and most commonly used method for resolving large commercial disputes in Turkey is litigation.

The Civil Procedural Code No. 6100 (CPC) is the primary legislation governing civil disputes. In addition, the following legislation is also relevant to more specific civil disputes:

- Turkish Commercial Code.
- Code of Labour Courts.
- Enforcement and Bankruptcy Code.
- International Arbitration Code.

Alternative dispute resolution (such as arbitration and mediation) is also available in Turkey. The main legislation governing international arbitration is the International Arbitration Code No. 4686 (IAC), which is essentially based on the UNCITRAL Model Law. Domestic arbitration is governed by the CPC. The main legislation governing mediation is the Mediation in Civil Disputes Code No. 6325.

## 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 (*Code of Obligations*).

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

- 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. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute 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 TRY300,000.
- 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 for intellectual and industrial property rights.

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

With regard to the appeals process, the CPC 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 İstanbul, Ankara, İzmir, 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.

**The answers to the following questions relate to procedures that apply in the first instance courts.**

### **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 who are also members of the Turkish Bar Association can represent clients in the Turkish courts (*Advocacy Code*). 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 notification and expert fees) at the end of the proceedings. Where a defendant is successful at trial, the official costs will be reimbursed 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.

## **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 order hearings to be held in private for public morality and/or public security reasons.

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?

The concept of pre-action conduct does not exist under Turkish law.

### **Main stages**

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

The two types of procedures for civil proceedings are the written procedure and the simple procedure. The written procedure is the main procedure, where the usual cycle of submissions (such as claim, response, rebuttal and rejoinder) can be filed by the parties. In the simple procedure (a simplified version of the written procedure), only the claim and response petitions can be filed by the parties and no further exchange of petitions can be carried out. Commercial disputes are subject to the written procedure. The simple procedure can be used for disputes such as labour disputes.

The main stages of civil proceedings are as follows:

- 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). In addition, parties must submit objections to an expert report or appeal a final decision within two weeks.

### **Starting proceedings**

A court claim is commenced when the claimant submits its claim petition to the competent court. 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 his or her 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 simple procedure.

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 jurisdiction), it must include these objections in its response petition.

### **Subsequent stages**

In the written procedure, the parties can file the following:

- Claim petition.
- Response petition.
- Rebuttal.
- Rejoinder.

However, in the simple procedure, only claim and response petitions can be filed by the parties.

After the exchange of petitions, the subsequent stages are as follows:

- Preliminary investigation stage, where the court:
  - determines the disputed matters of the case;
  - 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).
- 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 actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?

In principle, a case cannot be dismissed before a full trial under Turkish law. In other words, summary judgments are not permitted 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 his or her 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 state of which the foreign claimant is a national.

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.

### **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.

### **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**

A party that attends the hearing on the injunction has one week from the execution date to object to the:

- Conditions of the preliminary injunction.
- Court's competence.
- Guarantee deposited to the court.

If the injunction is ordered without a hearing, the parties must object within one week of the service of the injunction order. Third parties whose interests are explicitly violated can also object to the conditions of the preliminary injunction or to the guarantee deposited to the court within the same time frame. Decisions rendered after the examination of the objection can also be appealed. The appeal does not suspend the execution of the injunction. Decisions rendered following the appeal examination are final.

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 a precautionary 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.

#### **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 he or she 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 discovery, 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 just 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

### 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.

In principle, the parties must submit their evidence during the exchange of petitions stage. In the preliminary examination hearing, the court will usually order the parties to submit the evidence listed in the petition or at least provide information on the collection of evidence that is not in their possession within two weeks. If a party fails to comply with this order, he or she will be deemed to have renounced his or her right to rely on the evidence.

### **Privileged documents**

17. Are any documents 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 his or her right of exemption to refuse to do so.

The law and case law are silent as to whether this privilege extends to in-house counsel. However, the Turkish Competition Authority has previously ruled that it must review in-house counsel correspondence on the basis that there is an employment relationship between in-house counsel and a company.

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.

### **Examination of witnesses**

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

### **Oral evidence**

Witnesses of fact give oral evidence under Turkish law. The court can ask a witness for written evidence, if it considers it appropriate.

### **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 he or she 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.

#### 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. In addition, the parties can obtain private expert reports.

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

#### Right of reply

The parties can submit their statements and objections regarding the expert examination report within two weeks of the notification of the report. If the court finds the report insufficient, it can:

- Ask for explanations.
- 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 he or she 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?

### Which courts

Decisions rendered by the first instance courts can be appealed before the regional appellate courts. However, only decisions concerning a movable or a debt amounting to at least TRY3,560 (the amount is subject to review) 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. However, monetary claims amounting to less than TRY47,530 (the amount is subject to review) cannot be appealed before the 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 decision.

## Class actions

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

There are no mechanisms available for collective redress or class actions. 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.

## 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 local judgment in the local courts?

The claimant can enforce a local judgment by making an application to the bailiff's office. The defendant must comply with the enforcement order within seven days of the notification.

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 yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

The parties can choose the governing law that applies 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. In addition, Turkish law can be applied (partly or entirely) when the application of the foreign law is explicitly incompatible with the Turkish public order. Generally, the Turkish courts respect the choice of governing law in a contract. However, in some cases, the court can broadly interpret the Turkish public order and apply Turkish law instead of the governing law chosen by the parties.

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, unless the subject matter is within the exclusive jurisdiction of the Turkish courts (such as disputes relating to employment, insurance and consumer contracts) or the matter is explicitly incompatible with the Turkish public order.

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

27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction 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.

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

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 differs 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. Local arbitration is governed by the CPC and international arbitration is governed by the IAC. The IAC applies to a dispute if either:

- The dispute involves a foreign element and the place of arbitration is Turkey.
- The parties or the arbitrators choose to apply the IAC.

Mediation is also one of the ADR methods used in Turkey. The Mediation in Civil Disputes Code No. 6325 came into force on 22 June 2013.

Compared to arbitration, the use of mediation is quite limited but the government encourages its use to decrease the courts' workload. In that respect, mandatory mediation is regulated for employment disputes and employees involved in re-employment claims or claims for the collection of debts arising out of employment agreements must attempt mediation before commencing litigation before the courts.

Arbitration is more used in certain industries such as construction, energy and infrastructure.

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, if the parties agree to resolve a dispute through arbitration in a commercial agreement, a dispute arising out of that agreement can only be resolved through arbitration.

During court proceedings, the court must ask the parties' intention relating to settlement, which can be regarded as a simple form of ADR.

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 IAC.

Parties can seek the assistance of the Turkish courts to collect evidence in both local and international arbitration. The CPC and the IAC do not contain 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?

From 1 January 2018, employees involved in re-employment claims or claims for the collection of debts arising out of employment agreements must attempt mediation before commencing litigation before the courts. The authors consider that this is likely to increase the use of mediation as an ADR method, as practitioners and parties become more familiar and apprised of the process.

Additionally, the Law amending the Enforcement and Bankruptcy Law and Other Laws entered into force on 15 March 2018 with the aim to increase the quality and speed of the judicial system. Several amendments were made in the area of dispute resolution, for example:

- Commercial cases under the value of TRY100,000 are now subject to the simple procedure.
- To shorten notification periods, the scope of persons and organisations that are subject to mandatory electronic notification will be extended from 1 January 2019.

## Online resources

### **The Official Gazette of Turkey**

W [www.resmigazete.gov.tr](http://www.resmigazete.gov.tr)

**Description.** This is the website of the *Official Gazette of Turkey*.

### **General Directorate of Legislation Development and Publication**

W [www.mevzuat.gov.tr](http://www.mevzuat.gov.tr)

**Description.** This is the website of the General Directorate of Legislation Development and Publication. This website is official and potentially up to date.

## Contributor profiles

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**Professional qualifications.** Turkey, Lawyer

**Areas of practice.** Dispute resolution; corporate and M&A; insurance and reinsurance; finance; construction and real estate.

**Non-professional qualifications.** LLM, Law Faculty, Ruprecht-Karls University, Heidelberg, Germany, 2005; LLB, Law Faculty, Ankara University, Ankara, Turkey, 2001

#### **Recent transactions**

- Advising and representing the shareholders of a company active in the medical and industrial gas sector, in an arbitration held before the ICC with regard to a dispute arising out of a share purchase agreement.
- Advising and representing a leading Turkish company active in the food sector, in an arbitration held before the ICC with regard to a dispute with its supplier arising out of defective delivery.
- Advising and representing an insurance company in an arbitration held before the ICC with regards to a dispute arising out of the sale of 100% of the shares of its Turkish subsidiary operating in the insurance sector to an American-UAE joint venture.

**Languages.** English, Turkish, German

#### **Professional associations/memberships**

- International Insurance Law Association (AIDA).
- Federation of Defense and Corporate Counsel (FDCC).
- Transparency International Turkey.
- International Bar Association (IBA), Secretary of Insurance Committee (2012 to 2017).

#### **Publications**

- *Enforcement of Foreign Judgments 2019 in Turkey, GTDT, Co-Author, 17 October 2018.*
- *The Insurance and Reinsurance Law Review, 6th Edition, Turkey Chapter, The Law Reviews, Co-Author, 8 June 2018.*
- *Choosing the "Right" Arbitration Institution - Guidance for Businesses on Costs, LexisNexis, Co-Author, 16 April 2018.*
- *Litigation & Dispute Resolution 2018 in Turkey, ICLG, Co-Author, 21 February 2018.*

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**Professional qualifications.** Turkey, Lawyer

**Areas of practice.** Dispute resolution; employment; white collar crime.

**Non-professional qualifications.** LLM, Economy Law, Galatasaray University, 2012; LLB, Bilkent University Faculty of Law, 2008

### **Recent transactions**

- Representing and advising a leading technology and construction firm in multiple disputes arising out of the embezzlement of funds.
- Representing a multinational client in the robotics sector in an unfair competition action.
- Representing a client in the media sector in unfair competition and fraud litigation.
- Representing a client in the medical devices sector in a compensation action with respect to termination of their relationship with their former exclusive distributor.

- Representing a client in the agricultural sector in several product liability cases.
- Representing a client in the energy sector for the collection of its debt.

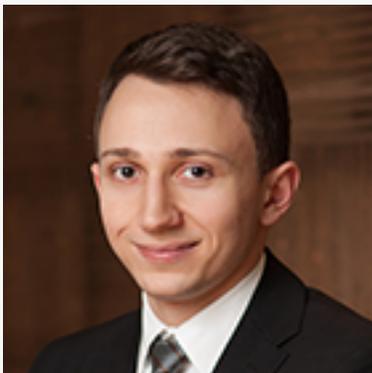
**Languages.** English, Turkish

### **Publications**

- *Enforcement of Foreign Judgments 2019 in Turkey, GTDT, Co-Author, 17 October 2018.*
- *Enhancing the Justice System, The Oath, Co-Author, 20 September 2018.*
- *Commercial Cases Worth Less than TL100,000 now Subject to Simplified Procedure, ILO - Litigation Newsletter, Co-Author, 25 April 2018.*
- *Litigation & Dispute Resolution 2018 in Turkey, ICLG, Co-Author, 21 February 2018.*

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**Areas of practice.** Dispute resolution; employment; white collar crime.

**Non-professional qualifications.** LLB, Galatasaray University Faculty of Law, 2013

### **Recent transactions**

- Representing a client in the medical devices sector in a compensation action with respect to termination of their relationship with their former exclusive distributor.
- Representing a multinational client in the robotics sector in an unfair competition case.
- Advising and representing a reputable German bank with respect to a series of claims pursued by a local shipping company.

- Advising a leading global technology company with regards to manufacturer's liability and consumer law.
- Advising and representing a leading Turkish agricultural company in four different disputes in relation to international trade and sale of goods.

**Languages.** English, Turkish, French

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