

## COMMERCIAL LITIGATION IN TURKEY: HOW DOES IT WORK?

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**LITIGATION: MAINSTREAM DISPUTE RESOLUTION.** So much has been said and written about how the ADR (Alternative Dispute Resolution) would help the legal world become a better place thanks to its cost and time effective methods, flexibility in terms of applicable law and language (both in substance and procedure), the luxury it offers by use of experts and the comfort it gives to foreign investors. Despite the fact that ADR (Alternative Dispute Resolution) has certain procedural advantages compared to “traditional” resolution of commercial disputes through courts, court-litigation is still the mainstream way of dealing with cumbersome commercial issues in Turkey. Turkish businessmen are still reluctant to take their cause to an unknown arbitral tribunal, at a distant venue, subject to rules not familiar to them and finally a procedure with very limited chance for review by national authorities. ADR may be equally expensive in terms of both procedure and representation. Certain areas of commercial/corporate world such as collection of receivables, employment matters, foreclosures, disputes concerning rights *in rem* on real properties in Turkey may simply not be suitable for ADR.

**JUDICIAL COURT SYSTEM.** The judicial courts consist of the civil and criminal courts. Review of the rulings of the judicial courts is handled by the Court of Appeals (*Yargıtay*) that has the final word on the legality of the rulings of the civil and criminal courts of first instance.

For purposes of this article, the focus will be on the civil courts.

The Civil Courts under the Turkish judicial system are categorized under two classes: Civil Courts of General Jurisdiction and the Civil Courts of Specific Jurisdiction. For purposes of efficiency and accuracy in trials of specific matters, cases requiring specific expertise are assigned to the courts of specific jurisdiction. All the rulings of the Civil Courts, either of general or specific jurisdiction, are subject to the review of the Court of Appeals.

**Civil Courts of General Jurisdiction.** The civil courts of general jurisdiction are “the civil courts of peace” (*Sulh Hukuk Mahkemeleri*) which are the lowest-level courts having jurisdiction (usually) over matters with lower disputed amounts and “the civil courts of first instance” (*Asliye Hukuk Mahkemeleri*) which handle the cases with relatively higher amounts in dispute.

**Civil Courts of Specific Jurisdiction.** Following are the most common Courts of Specific Jurisdiction that have authority to rule on fields of law in which judges must have expertise with and knowledge of a specific set of rules and customs of the relevant practice areas:

The “Commercial Courts” (*Ticaret Mahkemeleri*) are the civil courts established to resolve disputes between merchants within the scope of the Turkish Commercial Code.

The “Labor Courts” (*İs Mahkemeleri*) have the authority to resolve employment disputes between employers and employees under the Labor Law.

The “Courts of Intellectual and Industrial Rights” (*Fikri ve Sınai Haklar Mahkemeleri*) are vested with jurisdictional powers under different laws and regulations, and have, *inter alia*, jurisdiction over matters concerning protection of trademarks, geographical signs and patent rights.

The “Cadastral Courts” (*Kadastro Mahkemeleri*) have jurisdiction over disputes relating to land ownership matters.

The “Execution Courts” (*İcra Mahkemeleri*) rule on complaints and requests regarding the acts of the execution and bankruptcy offices.

The “Family Courts” (*Aile Mahkemeleri*) decide on matters relating to family law.

**THE PROCEDURE AT A GLANCE.** The Law No.6100 (The Law on Civil Procedure) sets out the procedural rules for court-litigation in Turkey. There are two types of procedure in Turkish civil litigation. The *written procedure* applies to most of the commercial disputes unless the art.316 of the Law states that the matter in hand falls into one of the categories that is governed by the *simplified procedure*, an expedited way of getting through the process. Employment disputes, matters within the jurisdiction of courts of peace, cases where the court have the authority to make a decision on the file (without trial), certain matter of domestic law, cases on corporate restructuring, requests for injunctive relief are among disputes that are subject to the *simplified procedure*.

The process starts by filing of the complaint by the plaintiff, and service of the same with the defendant/s. Some provisions of the Law apply to both types of procedure (*written and simplified*) on matters concerning production of evidence, subpoena, discovery, witnesses and expert witnesses as well as court fees.

The parties to litigation must file their petitions in time limits set by the Law, generally within 10-14 days from the receipt of other party’s notice; and the courts are able to set definitive deadlines for the service or production of documents. The trials begin following the exchange of two rounds of petitions (complaint-reply and replication-rejoinder) with a *pre-inspection trial* where the parties are invited to settle the question before the proceedings start. The parties very rarely reach a settlement at this point, if any at all.

Due to the need of special expertise in technical matters and the extreme workload of the courts, the use of expert witnesses play a key role in the civil procedure. Use of experts has been vigorously criticized by almost every member of the judicial branch, lawyers, judges and the litigants since it may even lead to the partial delegation of the judicial power to third persons whose reports usually set the ground for the final decision of the court.

**HOW EXPENSIVE?** The fee for filing an action largely depends on the type of dispute and procedural requirements. However Turkish legal system has been long-criticized by scholars, legal practitioners as well as European institutions for high court fees that create an unfair burden for those who seek justice. The court fees are updated every year in accordance with the re-evaluation rate announced by the Ministry of Finance.

Lawyer fees usually depend on the location, the level of expertise needed and the amount in dispute. Courts award legal fees in accordance with the official tariff, but city bars announce their recommended rates on a yearly basis. However, clients usually have to pay much more than the minimum tariffs to receive proper legal advice or representation in court.

The legal fees awarded by the courts belong to the lawyer, according to the Law on Attorneyship. In other words, lawyers get paid by their clients and are also entitled to the fees awarded by the court.

**DURATION.** The most controversial issue within the context of virtually any discussion on the judicial system in Turkey is the duration of the trials. It is not unusual to see a commercial

lawsuit to take four to six years before it is sent to the Court of Appeals. The average duration of an appellate review may anywhere from six to eighteen months depending on the complexity and the type of the matter. It is usually a strong deterrent for entities and individuals to be subjected to long trials and lengthy procedures. Nevertheless the judicial system made significant progress over the past ten years, and the construction of new court houses and use of electronic databases substantially enhanced the effectiveness.

**Conclusion.** Despite the government's regulatory efforts to encourage amicable resolution through settlement, mediation and arbitration, a vast majority of commercial disputes end up in the courts. The quality matters more than the numbers or "*brand names*" of the law firms in litigation practice.

It is certainly imperative for both Turkish and foreign parties to work with lawyers who have practical knowledge and substantial experience with litigation in order to avoid unpleasant surprises for their commercial enterprises. Very small details may be game-changers in a jurisdiction where the time-limits, procedural rules, and written statements have pivotal role in the process.