



**COUNTRY
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Turkey

LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Turkey.

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TURKEY LITIGATION



1. What are the main methods of resolving disputes in your jurisdiction?

In Türkiye, litigation is commonly regarded as the conventional and widespread approach to resolving disputes. Additionally, arbitration is widely preferred, particularly in the context of complex commercial disputes arising from cross-border contracts. That being said, mediation has recently gained a particular importance. First introduced in 2013 as a voluntary alternative dispute resolution method, since 2019, mediation became a prerequisite for filing a commercial lawsuit related to monetary claims.

Furthermore, according to recent legislative amendment, mediation becomes mandatory in commercial lawsuits involving the annulment of objections, negative declaratory action, and claims for restitution. This requirement will come into effect as of September 1, 2023. Moreover, besides mandatory mediation, disputing parties have also the opportunity to resort to voluntary mediation before filing a lawsuit before the relevant court or arbitral tribunal.

In addition, it is also common for parties to resolve disputes in out-of-court settlements. In this regard, pursuant to Article 35/A of the Attorney Law No. 1136, a settlement minute signed by the parties and their attorneys is deemed as a court judgment.

2. What are the main procedural rules governing litigation in your jurisdiction?

The main procedural rules governing civil and commercial litigation are set forth in the Code of Civil Procedure ("CCP") and Turkish Commercial Code ("TCC"). Provisions of the TCC determine which claims are considered as arising out of a commercial relation, in consideration of the subject matter and/or quality of the parties.

In principle, the commercial courts of first instance are competent civil courts of special jurisdiction for resolving disputes between merchants within the scope of the

TCC. However, there are exceptions to the rule. For instance, when it comes to commercial conflicts regarding patent infringement claims, protection of trademarks and others subject matters falling within the scope of the Intellectual Property Code, the specialized courts of intellectual and industrial property rights are competent in Istanbul, Ankara and Izmir and the civil courts of first instance are competent in other regions.

The CCP sets out the rules regulating the course and conduct of civil court proceedings. The five main stages of a commercial proceeding following mandatory mediation process (if applicable) is (i) the exchange of submissions, (ii) preliminary proceedings, (iii) examination of the facts, (iv) oral hearings and (v) the verdict.

The TCC also stipulates that as of April 05, 2023, the limit of TRY 500,000 prescribed for simplified trial procedure in Commercial Courts has been increased to TRY 1,000,000. This type of procedure implies, for instance, that stages of (ii) preliminary proceedings and (iii) examination of the facts can be performed within the same hearing.

While the procedural rules regulating domestic arbitration are found in the CCP, International Arbitration Code (No. 4686) sets out procedural rules relating to international arbitration. It should also be noted that for commercial litigations involving at least one foreign element, the Turkish International Private and Procedural Law (No. 5718) complements the CCP.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

Turkish Law follows the principle of three instances for civil and commercial litigation.

Final judgements concerning immaterial rights may be appealed at each stage following the scheme described below. For monetary claims, value of the dispute is

relevant for determining to what extent the judgement is appealable. Please note that those values are annually revaluated and revised. Below are the reference amounts effective as of January 2023 until the end of the year:

For monetary claims up to TRY 17,830 judgements of the court of first instance are final. For amounts exceeding TRY 17,830 judgements may be appealed before Regional Courts of Appeal within two weeks following their notification or delivery to parties.

For monetary claims up to TRY 238,730 judgements of the Regional Court of Appeal are final. For amounts exceeding TRY 238,730 judgements of the regional courts of appeal may be appealed before the Court of Cassation within two weeks following their notification or delivery to parties. The Court of Cassation is the court of last resort for commercial litigation. The court's control is limited to overseeing correct application of the law to the facts.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

Appearance at the court comes after completion of the exchange of submissions. In the ordinary procedure, each party is entitled to two submissions in order to clarify factual and legal grounds for their claims/defenses. It may take from three to six months to get to trial.

However, if the simplified trial procedure is applicable, each party is entitled to one submission. Therefore, the time frame between commencement of the proceeding and the first trial will be shorter than the aforementioned hypothesis.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

In principle, court hearings are public. This open court principle, as a fundamental element of the right to a fair trial, has a constitutional value (Article 141 of the Constitution), in parallel with the Article 6 of the European Convention on Human Rights. The court can only order hearings to be held in private for public morality and/or public security reasons. However, in a commercial lawsuit, we are of the opinion that it is unlikely to have recourse to these exceptions.

For documents filed at court, it should be noted that parties and their lawyers can examine and make copies of all submitted documents without any restriction. Moreover, lawyers admitted to the Turkish Bar Association can examine court files even if they do not represent one of the parties. However, they cannot obtain copies.

6. What, if any, are the relevant limitation periods in your jurisdiction?

Pursuant to the Turkish Code of Obligations ("TCO"), the general limitation period is ten years from the date when the claim is due.

The limitation for tort claims is two years from the date on which the claimant becomes aware of the tortious act, the damage, the person committing it and in any case, ten years from the date of commitment of the tortious act.

There may also be longer or shorter limitations depending on the nature of the claim. For example, the TCO provides that the limitation period is five years for claims related to lease payments, interest on principal, professional negligence, from the date when the claim is due.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

The TCC provides that commercial disputes where the subject matter is a debt or indemnity claim requiring the payment of a sum of money will be subject to mandatory commercial mediation. In addition, according to recent legislative amendment, mediation becomes mandatory in commercial lawsuits involving the annulment of objections, negative declaratory action, and claims for restitution. This requirement will come into effect as of September 1, 2023. As a consequence, application for mediation is a prerequisite for initiating the specified lawsuits before Turkish Commercial Courts. Non-compliance is sanctioned by procedural dismissal of the case.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings commence by directly filing a statement of

claim before the competent court. This can also be done electronically via Turkish e-justice platform called "National Judiciary Informatics System" (UYAP). All submissions shall be directly addressed to the court, which will serve the opposing party.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

The court's determination of jurisdiction will be primarily based on an ex officio examination of the subject matter and quality of the parties in the light of the rules set by the TCC and CCP, in order to determine whether it is the right forum for hearing the case. This examination can be done at any stage of the proceedings.

When it comes to territorial competence, the CCP's provisions will be applied. Furthermore, it should be noted that territorial objection shall be raised as a first defence, in the absence of which, the party shall be deemed to accept the territorial jurisdiction of the court.

10. How does the court determine which law governs the claims in your jurisdiction?

The CCP requires ex officio application of the rules of conflict of laws. The judge shall determine whether Turkish law or a foreign law is applicable based on the facts of the case. Foreign law may be applicable either by application of the rules of conflict of laws or a choice of law clause. The judge is required to clarify the content of the applicable foreign law and if necessary, can have recourse to the assistance of the parties. However, a foreign law carrying effects contrary to the Turkish public order may be set aside.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

Court proceedings at first instance may be terminated without review of the merits if the procedural requirements are not met (such as non-compliance with the mandatory mediation application).

At Regional Court of Appeals, it is also possible for the court to decide without holding a hearing, under circumstances regulated by the Article 353 of the CCP. Article 356 of the CCP also states that if the opposing party fails to attend the hearing without any just cause or fails to pay court expenses, a judgement can be rendered based on existing documents, provided that

the case does not require conduction of further investigations.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

The court can grant interim remedies if it is necessary for the protection of the disputed rights. The claimant party must provide satisfactory evidence showing that (i) its claim is based on just grounds and (ii) likelihood of irreparable and significant damage. A reasonable deposit amount will often be required from the claimant to secure rights of the defendant. The court may decide on any kind of suitable interim remedy. It can for example order performance or avoidance of a specific action, temporary seizure in banks accounts, freezing of an immovable asset or transfer of the disputed goods to a trustee.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

Once a statement of claim is submitted to the court, the defendant will in principle have two weeks from the date of reception to submit its response petition, with a possibility of extension of one month under ordinary procedure and two weeks under the simplified trial procedure. The parties are in principle entitled to submit any written document supporting their claims. The Court may set a specific and reasonable timetable for submission of supporting documents during the proceedings.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

The court may order litigant parties or any third party to disclose documents which are deemed to be necessary for clarifying the case. Legal ground of privileges (such as professional secrecy) granting exemption from giving testimony as witness could constitute a legitimate basis for refusal.

15. How is witness evidence dealt with in

your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Under Turkish Law, witnesses give oral evidence during the court proceedings. Lawyers of the parties and the judge can address direct questions to witnesses. While there is no provision of law prohibiting their submission, a deposition would not have the same probative value since it does not allow a formal examination by the court.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Expert reports are not only permitted but often required. In most cases, independent experts will be appointed by the court either ex officio or upon request of the parties, particularly when there is need to clarify technical aspects of the case. The parties are free to provide private expert reports. While such reports can serve as support to parties' claims, they do not have an equivalent probative value to court-appointed and independent expert's reports.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

For appeal of final decisions, please see our answer to question 3.

In principle, interim decisions can only be appealed with the final judgement. For interim remedies, an objection can be submitted to the court upon delivery or having heard the decision (if the decision has been rendered in absentia), within one week. The decision upon objection is appealable before Regional Courts of Appeal. Appealing before the Court of Cassation is not possible.

Apart from this, if an interim remedy was rejected by the court of first instance, it is possible to appeal the decision before Regional Courts of Appeal without going through the objection procedure.

18. What are the rules governing

enforcement of foreign judgments in your jurisdiction?

A foreign judgement can be enforced in Türkiye if (i) the judgement is final and binding within the jurisdiction that rendered the judgement, (ii) Turkish courts do not have an exclusive jurisdiction with regard to the subject matter, (iii) the judgement does not oppose to the Turkish public order, (iv) there is a conventional agreement or a de facto reciprocity on enforcement of foreign judgments between Türkiye and the country where the foreign judgment was rendered.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

The costs of litigation can be recovered from the losing party. However, the recoverable amount may be lower than the actual legal fees incurred. For instance, lawyer fees will be calculated based on minimum tariffs of the Turkish Bar Association.

An exception to the rule: If the mediation procedure has ended due to the failure of one of the parties to participate to the first meeting without just cause, the failing party will have to bear fully costs of litigation even in the event that the final judgement is in its favour.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

Collective/class actions are not available under Turkish Law, at least not in the Common Law sense. The CCP provides the possibility of group actions, allowing associations and other legal entities to file actions on their own behalf to protect the rights of their members or groups they represent. That being said, it should be noted that the main idea is the prevention or rectification of an unlawful situation; therefore, claimant(s) (which must be a legal person) cannot claim compensation for damages on behalf of their members.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

Any person with legitimate interest may submit an

intervention application to the court in order to join in support of a claimant or a defendant. The court shall decide in consideration of whether the legal position of that person justifies such intervention for protection of its legal interests. As a result of the procedural economy principle, the CCP provides possibility of consolidating two sets of related proceedings, if both actions are within the scope of the court's subject matter jurisdiction.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Litigation funding is not statutorily regulated under Turkish Law. Considering absence of any restrictive provision of the law, a third party may in principle finance litigation costs. Such agreements shall be deemed to be valid in application of the contractual freedom principle, as long as they comply with general provisions of the TCO.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

The COVID-19 pandemic has greatly affected the Turkish legal market, particularly with an increase in contract disputes. The economic challenges and disruptions caused by the pandemic have resulted in disagreements and breaches of contracts, leading to a rise in litigation and arbitration cases. Businesses and individuals have faced difficulties in fulfilling their contractual obligations due to unexpected circumstances like supply chain disruptions, travel restrictions, and lockdown measures. Consequently, contractual disputes have increased and these disputes involve issues such as force majeure clauses, performance delays, and contract terminations.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

One of main advantages of litigating international commercial disputes in Türkiye is its arbitration-friendly legislation and presence of numerous efficient arbitration institutions. Moreover, presence of bilateral treaties and de facto reciprocity practices with a high number of jurisdictions constitute a promise of security

for enforcement of judgements rendered by Turkish jurisdictions in foreign countries.

The main disadvantages are (i) long processing times due to workload of the courts and (ii) lack of possibility to plead in any other language than Turkish. Therefore, any document which is not in Turkish must be translated, which may be a source of inconvenience.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

Considering the pandemic's economic implications in the world and in our society, as well as recent correspondences we had with our clients, we anticipate that contractual disputes will continue to characterize the post-COVID-19 era in our jurisdiction, reflecting the ongoing effects of the pandemic on business relationships and agreements.

Apart from this, in the light of swift advancements in technology, it is foreseeable that matters encompassing data protection, cybersecurity, e-commerce disputes and intellectual property rights infringements may also exhibit an increase in the realm of commercial disputes.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

Türkiye's judicial system has already been making an extensive use of electronic means, through its National Judiciary Informatics System (UYAP). Within the framework of the Turkish Judicial Reform Strategy, an ambitious plan has been announced by the executive branch that projected establishment of digital enforcement offices. As of February 2021, certain enforcement offices in Istanbul have already initiated the practice of exclusively storing files in a digital format and this prevailing situation persists unabated. In addition, as per National Action Plan for EU Accession prepared by the Ministry of Foreign Affairs of the Republic of Türkiye (covering the period from January 2021 to December 2023), it is planned to make amendments to the Turkish Commercial Code in accordance with Directive 2017/1132/EU, which covers provisions on the use of digital tools and processes in corporate law. The new set of rules are foreseen to enable companies to use digital tools in corporate law procedures and to restructure and move cross-border, while providing strong safeguards against fraud and to protect stakeholders. We deduct that the tendency goes towards intensification of use of digital means in the judiciary organisation, which will

make the justice faster and more accessible for all legal practitioners.

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