

Recent Turkish Dispute Resolution Trends: Increased Commercial Cases and Post-Transaction Disputes

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Q: As a dispute resolution expert, what trends have you noticed in terms of methods of dispute resolution over the last year?

There is an increase in commercial cases before courts across Turkey. The business which could not cope with the economic stagnation apply for bankruptcy postponements. Foreign brands which ties the stagnation to their underperforming distributors cancel the contracts which give rise to compensation claims. Equally, post MA disputes have been on the rise. Marketing for arbitration is at high level but litigation is still the frontrunner despite endless complaints.

Q: What are the most common types of dispute you see?

The most common type of disputes is collection proceedings. Creditors send payment orders to debtors via execution offices. If the debtor files an objection within seven days of the service, the creditor must file a lawsuit to lift the objection. Receivable claims based on contracts or invoices constitute the majority of pending commercial cases. Similarly, the number and volume of employment disputes is eye opening. While the public sector grows, the private sector has shrunk in size which caused terminations. Reinstatement, compensation and union cases are quite common these days.

Q: How popular is Turkey as a place from which to do business? What impact does this have on the level of business disputes that occur?

Turkey is a hub for manufacturers and service providers from where they can reach a population over 1 billion with a three hour flight. Young and well-educated population with reasonable fees also made the western companies to divert their manufacturing facilities to Turkey. Equally, with a consumer population over 75 million, Turkey is one of the most attractive countries for all types of business in Turkey. The attractiveness of Turkey as an inbound and outbound market has induced thousands of foreign investors to enter directly into this market. Foreign investors who have common law background might have complaints about the court system in Turkey, but others would not see so much difference at least theoretically. Unlike the practice 10 years ago, the foreigners prefer to be on the ground in Turkey rather than remote controlling their activities via their distributors or agencies. This causes compensation cases between the foreign companies and their distributors. Or the ones who hold shares in their Turkish JV tend to increase their shares in the partnership which could be the reason of disputes if the positions and requests of parties can be satisfied amicably.

Q: What challenges you the most about your role?

The biggest challenge is the case overload of courts. There are days when commercial judges have to hear up to 50 cases. This inevitably affects the quality of adjudication. The evidence collection, merits review, expert appointment and evidence attract less attention than it should. As practicing lawyers we raise those issues should there be any shortcoming on the court side in the case we are involved. However, lack of resources, and facilities might bring on occasions the quality of adjudication in undesirable level. To avoid those types of outcomes, we believe that preparation to the court case is utterly important in Turkey that includes submitting all but only relevant evidence; and

providing the court with expert evidence at the outset that would potentially prevent the court from appointing experts who are not relevant to the case.

Q: You have advised on all types and levels of dispute resolution in Turkey, from local ad-hoc tribunals through to supreme courts. Which type do you find most enjoyable? Why?

The fact commercial disputes have the element of civil fraud is intellectually challenging and satisfactory. Establishing and running a strategy considering the interplay between commercial and criminal courts, different procedural rules merit review they adopt requires knowledge, experience and good risk analysis. Given the extraterritorial consequences, gauging and avoiding serious risks that might arise on the entities and individuals is rewarding. This is why, in those types of cases, I feel like we are in a three dimensional chess game with different layers.

Q: Have you noticed any rise in popularity of one particular form of dispute resolution recently? To what do you attribute this?

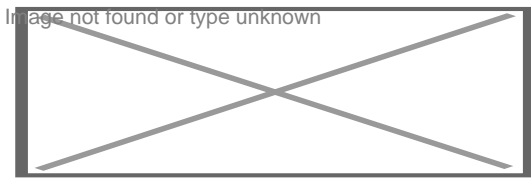
I have not noticed any rise but court litigation is still the most preferred dispute resolution method. The expectancy is that arbitration will increase in numbers and volume with the recent launch of Istanbul Arbitration Centre.

Q: When using mediation to resolve a business dispute, what happens if mediation is unsuccessful in reaching a resolution? Does the case automatically go to litigation?

Mediation is not an integral part of any court litigation type in Turkey yet. That said, there is a draft legislation to make it prerequisite to employment disputes. As a result of such a move, we might expect that the cases could go to litigation if they are not solved at the mediation stage.

Q: Do you see the need for any changes?

Structural changes are needed to bring the judiciary to the level, pace and sophistication and level of variety of businesses in Turkey. More specialized courts are needed. Banking, maritime and negligence claims should not be the specialization of a branch of commercial courts in big cities but instead specialized courts should be set up with the appointment of Judges having high level sectorial knowledge. At the moment, the judges due to their low level of sectorial knowledge, try to apply law without being able to factor in the dynamics of industries to where the claimants/defendants belong. On occasions, expert witnesses try to fill the gap but such an approach carries the risk of miscarriage of justice should the judge rely heavily on their determinations.



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