CHAMBERS

Global Practice Guides

Litigation

Turkey – Trends & Developments

Contributed by

Hergüner Bilgen Özeke Attorney Partnership

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CHAMBERS AND PARTNERS

TURKEY

The 'Trends & Developments' sections give an overview of current trends and developments in local legal markets. Leading lawyers analyse particular trends or provide a broader discussion of key developments in the jurisdiction.

Contributed by Hergüner Bilgen Özeke Attorney Partnership ***Authors:*** Tolga Danışman, Ece Başaran Küçük

Trends and Developments

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Hergüner Bilgen Özeke Attorney Partnership has an experienced dispute resolution team who engage in arbitration and other forms of alternative dispute resolution (ADR). The team advises and represents Turkish or non-Turkish corporate claimants or defendants in international or domestic arbitrations in a variety of legal fields. Lawyers are also experienced in handling pre-arbitration, pending-arbitration and post-arbitration negotiations as well as mediation and conciliation processes. Hergüner has been involved in a significant number of large-scale arbitrations that made headlines in the international media. Hergüner has extensive experience in advising clients as regards the investment environment as well as proper structuring of investments in Turkey, which is a key threshold question in any investment arbitration. In addition to representation of clients in ad hoc and institutional arbitrations, Hergüner has significant experience in enforcement of international arbitral awards in Turkey. Hergüner's dispute resolution practice is not limited to representation of clients locally. Lawyers assist clients in connection with their disputes outside of Turkey, through coordination of and cooperation with local counsel in various jurisdictions. As such Hergüner has built an extensive network of leading law firms around the world and developed the necessary skill set to co-represent clients with international law firms.

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Tolga Danışman is a partner in the litigation and real estate practice. He co-heads the dispute resolution and commercial practice and advises and represents multinational companies and clients in international arbitration and mediation matters. Danışman has advised and represented several multinational companies in connection with lawsuits arising from commercial and criminal disputes, investment and consumer claims and is instrumental in the firm's corporate strategic communications. Mr. Danışman is also a licensed mediator under the Turkish Ministry of Justice, Mediator's Registry. He specialises in litigation, alternative dispute resolution, public policy & government affairs corporate governance, strategic case management & communications, collection of receivables, labour. He is a member of the Corporate Governance Association of Turkey (TKYD) and TEİD, Ethics and Reputation Society. Mr. Danışman has published a number of articles in industry publications.

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Mandatory Mediation in Labour Disputes

Turkish courts are regularly burdened by heavy caseloads, which inevitably lead to delayed outcomes in the cases pending before them. There have been attempts in recent years to alleviate these backlogs by introducing requirements to initiate mandatory alternative dispute resolution (ADR) sessions prior to filing suit in court. Such requirements have been introduced in consumer disputes and collective labour disputes before, albeit without much success. Most recently, a proposal has been advanced to introduce mandatory mediation in labour disputes. This proposal would be limited to the work of the specialised labour courts, and promises to ease their workload significantly.

The conceptual presumption underlying Turkish labour law is that employers and employees have unequal bargaining power, leading to unjust outcomes to the disadvantage of employees, and that employees need protective rules to correct this imbalance. Labour courts have jurisdiction over employment-related disputes and are cognisant of this motivating purpose behind the law, with the attendant licence and tendency to interpret the law favourably towards employees wherever they have discretion to do so. This slant in favour of employees has tended to encourage would-be employee-plaintiffs to file suit, even with relatively weak claims.

The plaintiffs' bar has also had some influence in increasing the volume of cases filed in labour courts. Lawyers representing workers are generally willing to provide representation in return for contingency fees, and given the relative ease of obtaining favourable judgments, these attorneys have an understandable tendency to encourage clients to take an adversarial stance and file suit rather than settle out of court.

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As a result of the heavy workload created by these incentives, the labour courts strain to conclude the cases on their dockets in a timely manner, and end up being forced to dedicate less time to examine each case than they would ideally like. Courts have even been known sometimes to order expert witness reports on the merits of the case, which in effect amounts to delegating to expert witnesses the task of deciding the case.

To stem this tide of litigation and ease the workload of the labour courts, a bill currently under consideration proposes a mandatory mediation procedure before suit can be filed. Specifically, the mandatory mediation step would apply in cases arising from collective bargaining agreements, employee receivables and reinstatement claims. This procedure would be enforced by the courts, in that any suit that is filed directly with a labour court without going through arbitration would have to be dismissed for lack of jurisdiction.

The bill proposes a remarkably swift process: the assigned mediator would have to resolve any given dispute within three weeks of assignment, with a maximum of one week's extension. The bill would also give the parties a strong incentive to attend mediation sessions: any party that fails to attend mediation sessions without good reason would have to pay all litigation costs, including the cost of mediation, even if the action were eventually resolved in its favour after litigation in court.

The bill as it stands would thus make it mandatory for would-be litigants to go to a mediator before filing suit, and would give them very strong incentives actually to appear at mediation sessions. Given the relative speed of these proceedings, it is conceivable that many parties may indeed choose to reach a settlement in mediation rather than get involved in cumbersome, lengthy and expensive litigation. This formula appears to have some promise, and at the time of writing is under consideration by various NGOs and relevant governmental authorities, the bill having been circulated to them for comment on 23 March 2016.

Attempts at incentivising ADR can significantly reduce the caseloads of busy Turkish courts. Previous attempts to integrate ADR into the Turkish dispute resolution landscape may have failed before, but the resolve to introduce it remains strong, and the Turkish judiciary would be much relieved if a winning formula could eventually be found.