

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

# **TURKEY**

## **Responses submitted by:**

*Name: Dr. Döne Yalçın*

*Law Firm/Company: CMS İstanbul*

*Location: İstanbul, Turkey*

### **1. Would your jurisdiction be described as a common law or civil code jurisdiction?**

Turkey is one of the countries in which a civil law system is enforced. However, the legal system in Turkey is not a pure civil law system, since the legal concept of precedent is not totally unknown to Turkish Law. Besides codified core principles of Turkish Law, decisions of the Joint Chamber of the High Court of Appeals also serve as a primary source of law. In this regard, similar to codifications, judicial decisions also have a general binding effect on courts.

### **2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?**

In civil litigation practice, an adversarial method of adjudication is used. In principle, courts are not allowed to collect evidence on their own accord and the decision is rendered upon the facts brought before the court by the respective parties. In this respect, the parties must provide the court with all evidence supporting their claims. However, this principle is not adopted very strictly, since the competent court is obliged to resolve the dispute in a definitive manner and is therefore in need of all evidence necessary for such a resolution. Indeed, the court may order one party, both parties, or a third party to provide documents with respect to any unclear, contradictory, or ambiguous facts, provided that this is necessary for the clarification of the relevant facts.

In addition to the foregoing, there are also other exceptions hereto, e.g. disputes related to public order and ex parte proceedings. In such cases, the court shall investigate the facts ex officio and decide without being bound by the requests of the parties, for instance, in cases such as the establishment or denial of paternity, or matters relating to the protection of children.

### **3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?**

The Turkish civil adjudication system does not include any secondary judicial mechanism (e.g. jury) but rather defers such tasks solely to judges.

Judicial appointments are only open to Turkish citizens who are not older than 35 at the time of the entrance examination. With the exception of administrative court judges, who may also be graduates of economics, public management, etc., all other judicial posts require the completion of a law degree. Persons barred from public service and those who have been sentenced with certain crimes are not allowed to apply for judgeship. In order to qualify as a candidate for Judgeship, the two-layered State Examination, which consists of a written and an oral exam, needs to be passed successfully. Candidates having succeeded in the first phase are allowed to begin a formal training period. This training period takes 2 years and involves a final written examination. Candidates who have successfully completed this phase are accepted into the profession by the High Board of Judges and Prosecutors, which also determines their respective place of duty.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

### **4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?**

Under Turkish Law, there are several types of private competent courts at first instance. These courts include the Commercial Court, the Land Registration Court, the Labour Court, the Enforcement Court, the Consumer Court, the Intellectual and the Industrial Court and the Family Court. However, rather than being governed by separate pieces of legislation, the Civil Procedural Code No. 6100 governs all proceedings before such specialized courts.

### **5. Is arbitration an option and when? If so, what rules are typically used?**

Arbitration is an option with respect to legal claims over which the parties may freely dispose of. By way of example, parties are not allowed to conclude an arbitration agreement with respect to a dissolution of marriage or any dispute related to public order, such as paternity. Furthermore, parties are also not entitled to resort to arbitration if the subject matter of the relevant dispute is related to rights in rem in immovable property. On the other hand, the parties' freedom to dispose of rights in rem in movable assets is recognised and any claim in this regard may be the subject matter of an arbitration agreement.

Parties are free to agree upon the law applicable to their legal dispute and the arbitration proceedings. In Turkey, there are two codifications which regulate arbitration procedures: the Civil Procedure Code and the International Arbitration Law No. 4686. The International Arbitration Law is applicable provided that the subject matter of the dispute involves a foreign element. In practice, parties often resort to the Arbitration and Amicable Dispute Resolution Rules of the International Chamber of Commerce.

### **6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?**

The Turkish civil courts do not conduct ex officio examinations with respect to the availability of a valid and effective arbitration agreement between the parties; therefore, this needs to be raised by the relevant parties to the agreement as a first objection in case the matter is wrongfully brought before Turkish courts. Otherwise, the court may continue with the proceedings.

### **7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?**

Mediation is not mandatory for court proceedings. Parties are free to resort to mediation either before filing a claim or during the proceedings. Furthermore, in the pre-examination phase, the court is responsible to remind the parties about the possibility of mediation in order to facilitate an out-of-court amicable settlement of the legal dispute.

In addition to the foregoing, there is a special provision for public institutions. Public institutions are obliged to try to settle legal disputes, which they are a party to, amicably out of court before the initiation of legal proceedings.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

### **8. What is the process for pre-hearing fact discovery (if any)?**

Under the Civil Litigation System, following the receipt submissions of the parties, the court conducts a pre-examination before the main proceeding/examination is initiated. This procedure mainly serves the purpose of providing a general overview of the legal dispute not simply for the benefit of the court but also the parties.

The court's pre-examination initially focuses on the fulfilment of the pre-requisites for filing a claim and the parties' initial objections. Secondly, the court designates the main arguments of the parties and designates merits of the case. Subsequently, the court examines whether the evidence adduced by the parties or the explanations of the parties regarding the evidence adduced with the aid of the court are given. Following these procedures, the court asks the parties whether they are willing to settle their legal dispute by means of mediation. As a final step, all these procedures are recorded in the form of minutes, which are signed by the parties. During these procedures, the court may summon parties at a hearing in order to facilitate the pre-examination phase.

Unless this pre-examination phase is duly followed and completed, the court shall not begin with the main proceedings/examinations. In addition, the court shall not hear witnesses, tender an oath, examine documents, conduct an inspection, or obtain expert opinions, pending the completion of the pre-examination phase.

#### *a. Are there provisions for mandatory document disclosures?*

The court may ask for specific documents in order to clarify issues regarding procedural requirements and initial objections of the parties, e.g. territorial jurisdiction of the court, capacity to be a party / to take legal action, advance and security costs, objections with respect to the jurisdiction or arbitration.

In addition to the foregoing, parties are obliged to submit evidence supporting their arguments during the pre-examination phase. If the required evidence is not in the possession of the party submitting his/her claim, the court may order the opposing party or a third party to provide the requested documents.

#### *b. Is there a provision for oral examinations of the parties or others?*

In the pre-examination phase, the court shall not conduct an oral examination of the parties. However, the court may call parties to a pre-examination hearing in order to designate merits of the case.

#### *c. Are there limits on the length of oral examinations?*

Please see our response to question 8 (b) above.

#### *d. Are witness statements or summaries to be provided before the hearing?*

In the pre-examination phase, the court shall not obtain witness statements to be provided before the hearing.

### **9. What is the process for pre-hearing expert disclosure (if any)?**

In the pre-examination phase, the court shall not obtain an expert opinion.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

a. *Are expert reports or written summaries required to be exchanged?*

Please see our response to question 9 above.

b. *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

Please see our response to question 8 (b) above.

c. *Are there provisions requiring experts to meet and narrow issues before the hearing?*

Please see our response to question 9 above.

### **10. Are there other notable discovery rules?**

Within 15 days of the pre-examination hearing, parties are obliged to provide the court with the documents indicated in their petitions or to give an explanation regarding those documents which are not in their possession in order to submit them before the court. Otherwise, it shall be assumed that the party is waiving to submit that document.

### **11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?**

Under Turkish Law, a prehearing conference is not available. However, before the main proceedings/examination, the court calls parties to a pre-examination hearing in which parties are asked whether they want to settle their legal dispute via mediation. Following the pre-examination phase, the court commences with the main proceeding/examination and calls parties to a hearing, which is held at least 15 days after the pre-examination hearing.

### **12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?**

A motion in this regard may be brought provided that the procedural requirements are not fully met or the initial objections raised by the parties have a legal basis, e.g. jurisdiction, capacity to be a party and the capacity to be take legal action, pendency, presence of an arbitration agreement. In this case, the court dismisses the lawsuit.

In addition to the foregoing, following the pre-examination hearing but prior to the main proceeding/examination, the court may rule on the matters relating to the objections of the parties regarding lapses of time and statutes of limitation.

### **13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?**

Such a process is not available under Turkish Law.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

### **14. What is the standard for admissibility of expert evidence?**

Expert opinions are considered discretionary evidence, meaning that the competent court is not bound by the information provided thereunder.

### **15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?**

The court has the power to obtain expert opinions ex officio in the event that the court is in need of special or technical expertise, excluding legal expertise.

Experts are chosen from amongst the pre-designated lists of experts prepared with respect to each specific area. The number of experts to be appointed for a specific matter shall be designated by the court. The standard practice for courts is to appoint a sole expert for most matters, however it is also possible to appoint any odd number of experts as and if so required.

### **16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?**

In civil litigation, it is permitted to refuse participation in the evidence gathering process on the basis of personal status, privacy, interest breach, and other special reasons regulated in any other applicable legislation.

For instance, the following persons have the right to refuse to cooperate with respect to the relevant evidence gathering process (e.g., testimony, document disclosure) based on the grounds cited above:

- Any person who is engaged with a party,
- Any person who is or was married to a party,
- Any person who is related to a party by birth or marriage in direct line or collaterally,
- Any person if the cooperation could reveal his/her trade secrets,
- Any person if the cooperation could result in criminal liability or damages to his/her reputation,
- Lawyers, doctors, notaries, diplomatic representatives of foreign countries.

### **17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?**

Please see our response to question 16 above.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

**18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?**

The court before which the evidence is adduced determines privilege disputes.

**19. Briefly describe the trial process?**

Examination of the case may vary in detail depending on the procedure used. In civil litigation, there are two different procedures, namely ordinary procedures and summary procedures.

Following the completion of the pre-examination phase, the court initiates main proceedings/examinations and invites parties to the main hearing in order to examine the merits of the case. In principle, the court shall not accept any other evidence in this phase and rule on the basis of the evidences collected during the pre-examination phase. However, the court may allow new evidences in exceptional circumstances, provided that the adducement of further evidence is not intended as a means of prolonging the lawsuit or it was not possible to adduce that evidence in the pre-examination phase.

Upon examination of the parties' arguments of and the evidences, the court shall hear the parties and inquire whether they have anything to declare in relation to the examination phase. Following the declarations of the parties, the court shall end the main proceeding/examination phase provided that there is no other issue left to be examined. Subsequently, the court shall invite the parties one last time and render its decision in their presence.

*a. Are there opening submissions, in what form and of what length?*

In the main proceeding/examination phase, the court shall only examine the merits of the case and shall not re-designate them. Therefore, necessary submissions and the grounds therefor need to be presented in the pre-examination phase.

*b. What is the order of presentation of witnesses?*

The party intending to base its claims or defences on any witness statement shall initially inform the court of the details of the facts contained within the witness's prospective statement. Subsequently, it shall provide the court with the personal and contact details of the relevant witness(es). The list of witnesses shall be submitted by the respective parties only once, i.e. the parties will not be allowed to submit a second/supplementary list of witnesses for evidentiary purposes (except for certain cases explicitly permitted by law, e.g. divorce claims). However, the parties are allowed to bring along witnesses on the day on which the witnesses are to testify before the court, even though the list of witnesses was not submitted on time.

Following the receipt of the aforementioned information, the court shall consider whether it is possible, by virtue of law, to resort to witness statements for the purposes of proving the subject matter at hand. Even in cases where, by law, resorting to witnesses is not allowed, the court may allow such a mechanism to the extent that the opposing party (e.g. the claimant) gives its consent in this respect.

In the main proceeding/examination phase, witnesses are summoned by the court. However, the court may also hear a witness if a party brings along witnesses without summons on the day on which the witnesses are to testify before the court.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

*c. Who conducts examination and in what order?*

The court examining the merits of the case shall obtain witness statements on its own accord. However, it is also possible to obtain witness's statements via the assistance of the court located in the place of the witness's residence. The witnesses are summoned separately for examination purposes so as not to be influenced by the statements of others. Each witness has to swear an oath on the accuracy and validity of the information provided prior to the initiation of the examination process. The witness shall testify without use of written documents. If it is deemed necessary, the court may confront the witnesses with one another or with the parties. In order to ease or shorten the main proceeding/examination phase, the court may obtain witness statements in any order it sees fit.

*d. What is the process for closing submissions?*

Following the examination of the evidences adduced and the arguments of the parties, the parties may comment orally on the entire examination phase. If the court is in a position to reach a decision, it shall close the main proceeding/examination phase by deciding not to consider the merits or by making a decision on the merits. Following the finalization of the main proceeding/examination phase, the parties are invited to the court for the last time to provide their oral statements/final remarks just before the announcement of the final decision at the final oral hearing. This is to ensure that the parties are given an adequate chance to provide their statements orally since the proceedings are, in principle, carried out in a written form and therefore the parties have a limited chance to demonstrate any issues in this manner.

### **20. Please identify any other notable trial procedures.**

The Civil Procedural Codes also allow for the arraignment of parties, where the judge presiding over the court may also interrogate the defendant of a claim with respect to matters that are explicitly against its favour. Furthermore, in case the party subject to an arraignment process is not present at the arraignment date before the competent court or is unwilling to respond to the queries raised by the court, it will be deemed to have acknowledged the accuracy of the claims raised against him/her.

### **21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?**

The party basing his/her demands on certain facts is liable to prove such facts unless the legislation provides any exception to this principle. In the Law of Torts, a person claiming damages shall have to prove liability, causation, and damages. However, for instance, the legislation shifts the burden of proof if the damage is caused by an animal. In this case, its keeper is liable unless he/she proves that in keeping and supervising the animal he/she took all necessary care. Furthermore, the owner of a building is liable for any damages caused by defects in its construction and this liability is not removable.

Regarding the standard of proof for liability, causation, and damages, the court shall be convinced beyond any reasonable doubt. In other words, the plaintiff must convince the court of the liability, causation, and damages, so that the court is sure. "A preponderance of the evidence" does not meet the standard of proof unless the legislation stipulates otherwise. A court award regarding interim measures is an example for such an exception.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

**22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?**

When determining the sum of the compensation provided for damages, which have been incurred as a result of a tort, pecuniary and intangible damages shall be taken into consideration. The amount of the compensation provided for pecuniary damages is subject to a threshold of the total actual loss incurred by the party seeking compensation. In this regard, the following damages may be subject to compensation: treatment expenses, loss of earnings, losses due to the party's inability to work, loss of future earnings, funeral expenses, loss of support, loss in value of goods, expenses incurred in order to save goods, expenses incurred in order to replace damaged goods.

In case of personal injury, death, injury to personality rights, or unfair competition, the court may also grant compensation for intangible damages incurred by the relevant party. The answer as to whether the sum of the compensation should be determined on the basis of the time when such judgment was rendered or the time that the damage occurred varies depending on the subject matter of the dispute at hand. In any case, the court should also rule on the accrual of interest starting from the date of the first incurrence of the damage to the time of the judgment in the event that the compensation amount is calculated by reference to such time. Apart from this, the tortfeasor shall automatically be deemed in default on the date on which the tort occurred.

**23. If punitive damages are available, what is the threshold for recovery, and range of awards?**

Punitive damages are not available under Turkish Law.

**24. Are there time limits for bringing claims? Responding to claims? Please describe.**

A plaintiff is allowed to bring his/her claim before the court within the limitation period which varies for each specific claim. A claim for damages is subject to a statute of limitation of two years from the date on which the injured party first became aware of the loss or damage and of the identity of the person responsible for such damage. In any event, a claim becomes time-barred ten years after the date on which the damage was incurred. However, if the relevant action of the tortfeasor leading to damages is also a criminal offence under Turkish criminal legislation, the extended statute of limitation (leading to criminal or civil liability) shall apply to the claim for damages. According to the Civil Procedural Code, the defendant has to file his/her response within two weeks after the service of a complaint. However, upon request, the competent court may extend the deadline.

**25. What are the requirements to establish jurisdiction in your court over foreign defendants? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?**

A jurisdiction of a civil court over foreign defendants is established in accordance with the International Private and Procedure Law No. 5718 and Civil Procedural Code together or an agreement between the parties with respect to the choice of jurisdiction, if such an agreement exists. This agreement shall be valid provided that certain requirements pursuant to the applicable Turkish legislation have been met. These are as follows:

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

- The agreement has been concluded in a written form.
- A jurisdiction of a court can only be agreed upon by way of an agreement between merchants and/or public legal persons.
- The matter of dispute and the choice of venue are clearly set out in the agreement.
- There is no exclusive jurisdiction imposed by the applicable Turkish law (e.g. in cases of disputes relating to immovable assets) with respect to the relevant dispute.

The defendant may request that the court rejects its jurisdiction on the basis that there is a valid agreement between the parties authorising another venue for such a purpose. An objection with respect to a jurisdiction shall not be taken into consideration if it is not filed along with the pleading.

**26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.**

Pursuant to the Civil Procedural Code, a defendant may give notice to a third-party in order for such third party to intervene/participate in the proceedings in support of the defendant. For a third party notice, it is necessary that the defendant has the possibility of taking recourse against or is subject to recourse by a third party in the event of being unsuccessful at the end of the litigation proceedings. The notification shall be in writing and is not subject to the prior consent of the court or any other party. Upon notification, the third party may intervene/participate in the proceedings as an accessory or may also refuse to intervene/participate. However, in both cases, any decision of the court which is unfavourable to the defendant shall also be effective for third parties, who are not allowed to claim any more than the legal dispute has been ruled on incorrectly.

**27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).**

In principle, the unsuccessful party bears the legal costs, which consist of court fees, court expenses, and attorney fees, which is calculated and determined by the court on the basis of the Minimum Attorneyship Fee Tariff announced by the Presidency of the Union of Turkish Bar Associations. The recovery of the legal costs by the unsuccessful party is not subject to a request by the successful party in this regard. The court decides on such matters ex officio. If the plaintiff only succeeds in part, the legal costs are split between the parties accordingly.

**28. Are contingency fees allowed?**

Since the Presidency of the Union of Turkish Bar Associations announces the Minimum Attorneyship Fee Tariff, attorneys are not allowed to accept lower fees for their services. However, there is no obstacle against a fee agreement based on which the successful attorney also gets a percentage of the pecuniary claims awarded in favour of his/her client.

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

### **29. Is third party funding of claims permitted? Under what circumstances?**

A third party funding mechanism is not provided for under Turkish civil litigation practice. Yet, the Turkish judicial system provides certain legal aid for persons who are unable to pay court expenses. An additional interference by a third party might be questioned by Turkish courts. In addition, this may also be seen as using judicial remedies as an investment method and be declined by Turkish courts.

### **30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?**

Class or multi-party action mechanisms are not provided for under Turkish civil litigation practice. The Civil Procedural Code only allows for two types of joinder of parties, which are (i) a mandatory joinder of parties, e.g. challenge of the presumption of paternity by father against the child and the mother, and (ii) a voluntary joinder of parties, e.g. compensation claims against tortfeasors.

### **31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?**

According to the Civil Procedural Code, associations and other organizations which are authorized by their statutes to protect the interest of a certain group of individuals may commence claims in their own name to protect the rights of such individuals. There are also specific provisions in this regard in various different legislations, e.g. the Consumer Protection Act No. 6502 dated 7 November 2013.

### **32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?**

The duration varies based on the workload of the courts, the complexity of cases, the claims raised by the parties and the effectiveness of the hearing process. According to statistics from the year 2012, the average time needed for a civil justice court at first instance for reaching its decision is 232 days and the average time needed for a High Court of Appeal to reach its decision is 176 days. It is important to bear in mind that such durations are calculated without taking into account the basis of the subject matters of the cases.

### **33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?**

The Civil Procedure Code provides for two types of appellate courts: the Regional Court of Justice and the High Court of Appeals. However, this system has not fully come into force yet, since the Regional Courts of Justice have not been entirely established. Therefore, the High Court of Appeals in Ankara is still the sole appellate court. Accordingly, cases are brought before the High Court of Appeals where the amount in dispute exceeds TL 1,890 (approx. €650) and when there is no special provision barring an appeals process applicable to the particular dispute at hand. Apart from this, oral hearings to be held at the High Court of Appeals may only take place if the amount in dispute exceeds TL 19,280 (approx. €6,900). Members of the High Court of Appeals are appointed by the High Council of Judges and Prosecutors from

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

among the first category judges and public prosecutors of the civil judiciary or those considered members of this profession. In order to be appointed as a member, it is also necessary to complete the first 3 year period successfully following the promotion to the first category; to retain requirements which are necessary to be promoted to the first category; and to have a 20-year experience as a judge or a prosecutor.

**34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?**

It is possible to conduct such trials or appeal processes upon the request of the parties.

**35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?**

The use of graphics, computer animations, and power point presentations is not common practice in the Turkish civil litigation practice.

**36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?**

The lawyer at trial may be the same as the one responsible for the respective pre-trial procedures. In addition, the client has a right to change his/her lawyer at any time at his/her sole discretion. There is no "solicitor / barrister" distinction or any similar distinction applicable under Turkish law.

**37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?**

Provisions regarding contributory negligence with respect to claims resulting from a tort are regulated under the Turkish Code of Obligations, which states that persons who have jointly caused damages shall be jointly and severally liable towards the injured party. The applicability and the extent of any rights of recourse amongst tortfeasors shall be decided by the competent court at its discretion. In addition, any contributory negligence by the plaintiff and/or his/her consent may reduce the amount of compensation imposed on the tortfeasors or even prevent the plaintiff from receiving any compensation whatsoever.

**38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?**

Any means of service of process shall be deemed valid under Turkish law to the extent that the relevant addressee acknowledges the due service thereof. However, as a belt and braces approach (and in line with the standard practice in

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

## **TURKEY**

Turkey with respect to services of process) the service of a complaint should be issued in accordance with the relevant provisions of the Turkish Notification Law, Turkish Commercial Law, the Hague Convention or any other domestic or international source of legislation in order to avoid any claims of unlawful service by the counterparty.

**39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

There are no specific restrictions under Turkish law on the exportation of documents which are allowed to be brought before Turkish Courts regarding civil litigation practices for the purpose of litigation outside of the Turkish jurisdiction.

**40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

The legislation allows the filing of a claim via electronic means for civil courts. In this regard, following paper based judicial proceedings is no longer mandatory for the parties to a dispute.

**41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

The Civil Procedural Code does not create a distinct advantage for either the plaintiff or the defendant. In principle, each party is obligated to prove their claims, as long as the legislation does not provide an exception or specific provisions in this respect. An exception regarding product liability is provided for by the Consumer Protection Act, based on which a defect acknowledged within 6 months of the purchasing of the product shall be assumed a default defect which already existed at the time of the delivery. In this regard, the person who is liable for the defect must prove that the defect did not exist at the time of the delivery.

**42. Are there legislative efforts under way that address any of the litigation practices in your country?**

Not known. Apart from this, it must be noted that the appeal system under the Civil Procedure Code has not yet come into force. Following the establishment of the Regional Courts of Justice, the old appellate system will be replaced.