

Located in Asia Minor and Eastern Europe, Turkey is a bridge—both geographical, and, increasingly, politically and economically—linking Asia, Europe, and the Middle East. Founded as a republic in 1923 after the dissolution of the Ottoman Empire, Turkey is a parliamentary democracy with a predominantly Muslim population, mostly Sunni, of about 70.4 million people. Turkey has candidate status in the European Union, and is a member of several international organizations, including the North Atlantic Treaty Organization, the Organization of the Islamic Conference, and the World Trade Organization.

The Turkish economy has developed considerably since the 1980s because of changes that have liberalized laws and privatized certain aspects of the economy. Both domestic and international trade has grown rapidly on the heels of many significant structural changes. The main factors shaping Turkey's international trade policies and orientations today are the customs union between the nation and the European Union countries —allowing for tariff-free trade for most goods—and the conclusion of the Uruguay Round of multilateral trade negotiations.

When commercial disputes arise in this rapidly evolving economy, they may be resolved through litigation, arbitration, or, in limited circumstances, mediation. Disputes considered to be commercial rather than civil include those arising out of transactions deemed to have a commercial nature for both parties; disputes listed in Article 4 of the Turkish Commercial Code, as well as matters arising out of issues regulated by the code; and bankruptcy cases initiated in accordance with the Turkish Code of Enforcement and Bankruptcy. Article 9 of Turkey's Constitution places judicial power in independent courts which are empowered to hear civil, commercial, and criminal cases. Civil and commercial cases are regulated by the Code of Civil Procedure, or CCP, and as complemented by other legal instruments.

LIMITED, SPECIALIZED COURTS AND INTERNATIONAL ARBITRATION

There is specialization of courts for commercial cases, some of which are tried in the first instance before three-judge commercial courts. But such specialized courts are available only in cities with a sufficiently high number of commercial cases, such as Istanbul, Ankara, and Izmir.

In the cities with no commercial courts of first instance, the civil courts try commercial cases. Moreover, certain chambers of the Court of Appeals—the Yargıtay—are specialized for commercial disputes; hence, the appeals for the commercial disputes are tried before these specialized chambers.

Commercial disputes also may be resolved by arbitration, provided that the disputants mutually agree to it. In Turkey, both domestic and international arbitration are governed by law. Domestic arbitration is regulated in detail by CCP Articles 516-536, enacted in 1927, which was based on the Swiss Code de Procédure Civile of Neuchâtel, dated 1925.

Although the laws of Switzerland have completely altered in the meantime, the CCP provisions regulating arbitration have remained the same. Therefore, the provisions have been criticized for being inappropriate for current conditions.

The Istanbul Chamber of Commerce has established an arbitration center that is one of the most successful in Turkey. The center plays a national role and has its own arbitration rules, which are currently under revision.

International arbitration is regulated by the 2001 International Arbitration Law. The IAL was inspired by the United Nations Commission on International Trade Law, or Uncitral, Model Law on International Commercial Arbitration, and Swiss International Arbitration Law. It was motivated by the desire to enable Turkey to harmonize its legislative framework with the West's developed trading countries, and to attract foreign investors.

Until Turkey's promulgation of the International Arbitration Law, no other legal tool had dealt with international arbitration; the only source for its regulation was the CCP's domestic arbitration provisions. As a result, the IAL's enactment filled an important gap in Turkish law and commercial practice. Apart from sources of municipal law related to domestic and international arbitration, Turkey also has been party to major arbitration conventions, i.e., the New York Convention, the Geneva Convention, and the International Center for Settlement of Investment Disputes Convention, better known as Icsid.

RISING ADR INTEREST

Historically, the use of ADR techniques other than arbitration has been limited to a few areas. Labor law requires the representatives of employers and workers to apply to a mediator or arbitrator to resolve collective bargaining deadlocks.

There also are public entities that employ mediation, such as the Energy Market Financial Conciliation Center. Furthermore, attorneys may invite an opponent to mediation with the approval of their clients and only for individual—as opposed to public—claims.

The Ankara Bar Association's Alternative Dispute Resolution Center is the only ADR provider in Turkey. The Chamber of Commerce and other similar institutions have focused solely on arbitration. Founded in 2005, the Ankara Center provides ADR service and training, and creates awareness about the field in Turkey, especially within the legal and commercial communities.

In the training area, the situation is similar to the providers' landscape. There is only one specific training program in Turkey that is concerned with ADR, the Masters in Conflict Analysis and Resolution offered by the Sabanci University Faculty of Arts and Social Sciences. (See www.sabanciuniv.edu.tr/ssbf/conf/eng/.) This program offers several ADR courses, including Advanced Conflict Resolution Practice and Third Party Roles in Peace Processes.

The beginning of accession talks between Turkey and the European Union in October 2005 signaled a likely sea change in the use of ADR, and other areas in the Turkish legal landscape. Developments since that time are confirming that indication—for mediation in particular.

On May 21, 2008, the European Parliament and the Council of the European Union adopted the

Directive on Certain Aspects of Mediation in Civil and Commercial Matters. It was intended to promote the use of mediation in member countries and to suggest a framework within which judicial proceedings and mediation could co-exist harmoniously.

In response, the Turkish Ministry of Justice put together a Draft Mediation Law and submitted it to the Turkish Parliament. The draft, currently under consideration, is intended to approximate the standards in the EU Directive. The drafters looked to the legislation of various EU countries for inspiration and followed the model of Austria's law in particular, but the Turkish draft varies from the models to some degree. For example, while the EU Directive makes the use of mediation essentially compulsory, its use is voluntary in the Turkish draft. Perhaps the most contentious of the Turkish draft provisions is that only lawyers can be mediators, which is not an EU rule.

The establishment of a legal framework for the use of mediation makes it likely that Turkey's historical limitations on the use of mediation and the availability of providers and training will be changing in the near future.

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