

NEW YEAR, NEW RULES IN THE TURKISH JUDICIAL SYSTEM: TARGET TIME AND MANDATORY MEDIATION IN COMMERCIAL DISPUTES

In Turkey, litigation processes take a long time due to many different reasons. The European Court of Human Rights has received many individual applications due to long-standing litigation processes in Turkey. To increase confidence in the Turkish judicial system and judicial authorities, on 31 August 2018 the Ministry of Justice published an official announcement on its website and wrote to the courthouses, initiating what is called "target time" in litigation. The target time has been implemented in the Turkish judicial system since 3 September 2018.

"Target time" is a lawsuit management system, aiming to speed up litigation proceedings and shorten the litigation duration. To achieve this, the system introduces a target time to be determined for each lawsuit. The determined target time will be notified to the prosecution/litigation parties in accordance with the procedures set forth under the Regulation on Determination and Implementation of Investigation, Prosecution or Litigation Processes' Target Time (the "**Regulation**"). The target time procedure is regulated separately for public prosecutors, criminal courts, civil courts as well as civil and administrative appellate courts. As of 1 January 2019, it is mandatory to include the target time in lawsuit initiation reports prepared by civil, administrative and tax courts. The target times will also be announced on the Ministry of Justice's website.

The target time starts on the date on which (i) the suspicion of a crime was discovered by the competent authorities, (ii) the indictment is accepted by the criminal court, (iii) the lawsuit is registered by the civil, administrative or tax court or (iv) the file reaches the relevant chamber of the civil and administrative appellate courts. In the investigation phase, the target time ends upon the prosecutor's decision that ends the investigation, while in the prosecution and litigation proceedings the target time ends upon issuance of the reasoned decision.

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While determining the target times, the Ministry of Justice will take into account the (i) average investigation, prosecution or litigation periods shown in the judicial statistics, (ii) actual number of judges and prosecutors, (iii) number of pending lawsuits handled by each chamber, court, judge and prosecutor, (iv) procedural rules of the investigation and litigation proceedings and (v) annual reports prepared by chief prosecutors and presidencies of the Justice Commission.

The target time phases can be followed via the national judiciary informatics system (UYAP). The statistical data regarding the (i) average duration and number of trials of each lawsuit, (ii) average service period of a lawsuit file and (iii) average time spent for review by an expert witness can be obtained from UYAP.

The target time will be followed by the Chief Public Prosecutors and the Presidencies of the Justice Commission's report regarding the reasons and suggestions for delays, to be prepared at the end of January each year. The data in these reports will be used for the purposes of supervision of judges, prosecutors and administrative judicial judges. The data will also be considered in preparation of judicial review forms during the appellate and appeal examination processes.

Another significant change that was introduced on 1 January 2019 is mandatory mediation in commercial disputes. With Law No. 7155 published on 19 December 2018 (the "**Law**") in the Official Gazette, it became mandatory to apply to a mediator before filing a lawsuit within the scope of the Turkish Commercial Code ("**TCL**"). The Law also amends the Law on Mediation in Civil Disputes. Accordingly, parties are no more able to file these kinds of lawsuits before commercial courts, without initially attempting to resolve their dispute through mediation. In other words, if a court determines that a claimant has filed the lawsuit before applying to a mediator in disputes where mediation is mandatory, that lawsuit will be dismissed on procedural grounds, without any further action.

The mediation process begins with one of the parties applying to the mediation office where the competent court is located. If the parties reach an agreement as a result of the negotiations, the mediator drafts the agreement in light of the mediation meeting minutes. Such an agreement signed by the mediator, the parties and their attorneys has the force of a court decision. Therefore, if a party fails to fulfil its obligations under the agreement, the other party can directly initiate execution proceedings based on this agreement. Moreover, the parties cannot reassert claims before courts, if these claims have already been settled by mediation.

If the parties cannot reach an agreement at the end of a mediation process, they will be able to file a lawsuit regarding the dispute by attaching the minutes of the mediation meeting to their statements of claim. If one of the parties does not attend the negotiation process, that party will be liable for the court expenses and will not be entitled to any attorney fees (*even if he/she files a lawsuit and obtains a favourable decision*).

The mandatory mediation provisions will not apply if a specific legislation or agreement sets forth arbitration or any other alternative dispute resolution method for the parties.

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The provisions regarding mandatory mediation in the TCL entered into force on 1 January 2019. These provisions will not apply to disputes that have already been filed before courts of first instance as well as those pending at Regional Appellate Courts and the Court of Appeals.

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