

# Foreigners, contracts and languages

**Umut Kolcuoglu,**  
Partner  
**Kolcuoglu,**  
**Demirkan Kocakli**  
*ukolcuoglu@kolcuoglu.av.tr*

**THE REASONABLE** expectation to the question of whether foreign parties should be required to complete their contracts with Turkish clients in Turkish is that it should be a simple yes or no answer. Unfortunately, this is not the case for Turkish lawyers. The problem is twofold, and it has yet to be settled.

In 1926, three years after the national assembly declared Turkey a Republic, it enacted a law requiring the mandatory use of Turkish in commercial enterprises. While the reason for this law after the creation of the nation state is clear, its wording is not. The first article of the Law requires Turkish entities and enterprises in Turkey to use Turkish in their transactions, contracts, correspondence, accounts and books. For instance, if two Turkish entities conclude a contract in Turkey, the Law obliges them to do it in Turkish. The second article, on the other hand, requires foreign companies and enterprises to use Turkish. However, the scope of this requirement is limited to their correspondence, transactions, and contact with Turkish enterprises and Turkish citizens, and to the documents and books that they must submit to State authorities and offices. While the first article that applies to Turkish entities and enterprises refers to “contracts,” the second article applying to foreign ones does not.

Thus the ambiguity. Further complicating the matter is the question of whether the lawmakers’ omission was intentional, giving rise to differing opinions, which confound

the reasonable expectation of a client for a yes or no answer.

Secondly, courts interpreting and applying the law have not settled the problem either. On the contrary, they have made it more difficult for Turkish lawyers to advise their clients. It is not unusual for foreign parties to conclude their contracts with Turkish parties in English or any other foreign language. However, the number of cases in which courts have considered and discussed the law is limited.

There are several reasons, but it is generally accepted that the law requiring the mandatory use of Turkish was relevant for a particular period in history, but it is now outdated and irrelevant.

For this reason, the parties in most cases do not rely on the law. This consensus may have contributed to the lack of a large number of decisions interpreting and applying the law, although it is still in force. More importantly, in cases in which courts have considered and discussed the law, their decisions have been inconsistent, particularly in relation to contracts between foreign and Turkish parties.

In 2013, a Cassation Court decision, being the final court of appeal in civil and criminal matters, caused “chaos when the 11th Chamber of the Cassation Court held that an arbitration clause in a contract concluded in English between a foreign party and a Turkish party is invalid. It stated that foreign parties are obliged to conclude their contracts with Turkish parties in

Turkish. This precedent was not followed in other decisions of the 11th Chamber or by other chambers of the Cassation Court. However, this one decision was more than sufficient to worry foreign parties that they may not be able to enforce their contracts with Turkish parties unless they are concluded in Turkish. Recently, in 2020, the same 11th Chamber of the Cassation Court decided that the Law does not apply to contracts between a foreign party and a Turkish party, and these parties do not have to conclude their contracts in Turkish. The decision does not “reveal” why the decision in 2013 was now implicitly overruled, but the recent interpretation of the Law is now leaning towards enforceability of contracts in a foreign language if the contract involves a foreign party. More recently, in 2021, a Regional Court of Appeals decision adopted the same interpretation of the Law.

Returning to the question of this article, while the problem is less worrying now for foreign parties, it is not settled. Negotiating a contract in English, having to translate the contract into Turkish after agreeing on the terms of the contract, and even having to negotiate the translation itself may be frustrating, time-consuming, and costly. However, as the possible sanction under the Law is invalidation of the contract, it may still be advisable to consider any possible interpretation of the Law, and to sign the contracts or at least foreign jurisdiction clauses in Turkish until the recent precedent becomes well-established.

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