

## Arbitration - Turkey

### New communiqué sets out international arbitration fee tariffs

Contributed by **Cerrahoğlu Law Firm**

May 29 2014

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#### Introduction

On March 15 2014 a new communiqué concerning international arbitration fee tariffs entered into force.<sup>(1)</sup>

The new communiqué applies to the determination of arbitrators' fees where the parties and the arbitral tribunal could not agree on the fees to be set, or where the parties have made no provision or referral to international rules or institutional arbitration rules in the arbitration agreement.

Since December 29 2001, following the entry into force of the International Arbitration Law,<sup>(2)</sup> a communiqué concerning international arbitration fee tariffs has been published every March by the Ministry of Justice, in accordance with Article 5 of the Regulation on International Arbitration Fees.<sup>(3)</sup> Each communiqué has included the same provisions. However, the fee tariff listed in Article 11 has been modified once (in the 2012 communiqué,<sup>(4)</sup> where the rates of the arbitrators' fees were reduced significantly). The new communiqué replaces that of March 15 2013<sup>(5)</sup> and adopts the same provisions with no modifications.

The temporal application of the new communiqué is regulated under Article 10, according to which arbitrators' fees are determined in accordance with the communiqué in force at the time when the award is rendered.

#### Scope of arbitrators' fees

Under Article 3 of the new communiqué, the fee for the president of the arbitral tribunal is determined to be 10% more than that paid to each arbitrator.

The new communiqué also defines the work included within arbitrators' fees. According to the new communiqué, arbitrators' fees correspond to the work and transactions performed from the date of filing the arbitration case until the final award is rendered.<sup>(6)</sup> The arbitrators will be entitled to the fee at the end of the arbitration proceedings.<sup>(7)</sup>

The new communiqué also clarifies that, in case of correction, interpretation or completion of the arbitral award, an additional fee will not be required.<sup>(8)</sup>

#### Rates under fee tariffs

The chart detailed under Article 11 of the new communiqué distinguishes between the rates for a sole arbitrator and for an arbitral tribunal constituting of three or more arbitrators. The chart, which regulates the rates in accordance with the value of the dispute, is as follows.

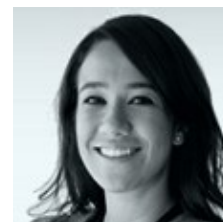
Value of subject matter to which dispute relates	Fee for sole arbitrator	Fee for three or more arbitrators
For the first TRY0.5 million	5%	8%
For additional TRY0.5 million	4%	7%
For additional TRY1 million	3%	6%

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For additional TRY3 million	2%	4%
For additional TRY5 million	1%	2%
Over TRY10 million	0.1%	0.2%

### Reductions in fees

The arbitrators will be entitled to one-quarter of the fee determined under Article 11 if the duty of the arbitrators terminates for any of the following reasons:

- They decide that the arbitral tribunal lacks jurisdiction.(9)
- The claimant fails to submit its statement of claim within the prescribed time limit without a valid reason.(10)
- The statement of claim submitted by the claimant does not include the required information and the deficiency is not completed within the prescribed time limit, as determined by the arbitral tribunal.(11)

Arbitrators will be entitled to no arbitration fee if their tasks are terminated for any of the following reasons:

- The arbitrator is refused by the parties.
- The arbitrator who accepted his or her duty in arbitration proceedings fails to fulfil his or her duties without a justifiable cause.
- The arbitrator's duty is terminated due to his or her resignation or through an agreement by the parties as a result of not fulfilling his or her duties, or not fulfilling such duties in a timely manner.(12)

Arbitrators will be entitled to the full fee for any terminations that occur after the period granted to the parties to submit their evidence expires, and half of the fee for any terminations that occur before the period granted to submit their evidence expires,(13) if the arbitration proceedings are terminated because:

- the claimant withdraws its claim, except in cases where, on the objection of the respondent, the arbitrator or arbitral tribunal accepts that the respondent has a justified interest in the final settlement of the dispute;
- the parties agree on the termination of the proceedings;
- the arbitrator or arbitral tribunal finds the continuation of proceedings unnecessary or impossible;
- a request for an extension to the arbitration term is rejected by the court under Article 10(B)(2);(14)
- pursuant to Article 11(B)(2),(15) arbitration proceedings cannot be continued; or
- advance payment for costs of proceedings are not deposited pursuant to Article 16 (C)(2).(16)

If the dispute comes to an end due to renunciation or settlement, or the case is left without a subject matter, the arbitrators will be entitled to the full fee if the arbitration is terminated after the period granted to the parties to submit their evidence expires, and they will be entitled to half of the fee if the arbitration is terminated before the period granted to the parties to submit their evidence expires.(17)

### Partial awards

Pursuant to Article 6 of the new communiqué, in case of the issuance of a partial award, arbitrators fees are determined on the value of the dispute of the partial award in question. However, if the partial award is rendered as a final award, the arbitrators will be entitled to the full fee.

### Reviews of cases where award is set aside

Under Article 7, if the same arbitrators are reappointed after the award has been set aside, the arbitrators will be entitled to one-quarter of the fee where one of the following applies:

- The setting-aside is accepted and the decision to set aside is not appealed.
- The award is set aside due to acceptance of the existence of the following situations:
  - The appointment of the arbitrator or arbitral tribunal has not been in accordance with the procedure provided in the law or specified in the agreement between the parties;(18)
  - The arbitrator or arbitral tribunal has decided on its competence or incompetence in contradiction with the law;(19)
  - The arbitrator or arbitral tribunal has decided on a matter beyond the scope of the arbitration agreement, has not decided on all of the matters claimed or has

exceeded its competence;(20)

- The arbitral proceedings have not been carried out in accordance with the agreement of the parties as to the procedure or, failing such agreement in this respect, in accordance with the provisions of the law, and this situation has affected the substance of the award;(21)
- The principle of the equality of parties has not been respected;(22) or
- The award is in contradiction with public policy.(23)

## Comment

The communiqué dated March 16 2012 introduced two substantial modifications. Before 2012, arbitrators' fees were determined at the date of the filing of the arbitration. However, with the temporal application rule adopted in 2012 (which still applies today), arbitrators' fees are determined in accordance with the communiqué in force at the date on which the award is rendered. In addition, the rates stated in the 2012 communiqué, which remain the same in the new communiqué, were significantly reduced compared with the prior rates.

As a result, fees cannot be predicted at the time of filing the arbitration proceedings. Therefore, the temporal application rule adopted in 2012 may create a legal uncertainty for parties to arbitration and for the arbitrators who accepted their duty.

Therefore, for arbitration proceedings initiated before March 16 2012 that ended after such date, the arbitrators received or will receive a significantly lower fee than they would have expected to receive at the start of proceedings (where the fees would have been decided by the application of the communiqué before the one issued in 2012).

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## Endnotes

(1) Published in the *Official Gazette* dated March 15 2014, numbered 28942.

(2) International Arbitration Law (4686) published in the *Official Gazette* dated July 5 2001, numbered 24453.

(3) Published in the *Official Gazette* dated December 28 2001, numbered 24624.

(4) Published in the *Official Gazette* dated March 16 2012, numbered 28235.

(5) Published in the *Official Gazette* dated March 15 2013, numbered 28588.

(6) Article 2(1) of the new communiqué.

(7) Article 8 of the new communiqué.

(8) Article 2(2) of the new communiqué.

(9) Article 4(1) of the new communiqué and Article 7(H) of the law.

(10) Article 11(C)(1) of the law.

(11) Article 11(C)(2) of the law.

(12) Articles 7(C), 7(E) and 7(F) of the law.

(13) Article 4(3) of the new communiqué and Article 12(B) of the law.

(14) Article 10(B)(2) states: "The term of the arbitration may be extended with the agreement of the parties, failing such an agreement, by the court of first instance upon the recourse of one of the parties. In the case of rejection of the recourse, the proceedings shall come to an end at the expiration of the term of the arbitration. The decision of the court is definitive."

(15) Article 11(B)(2) states: "If no notification is made within 6 months or if the ones who are notified do not expressly serve the other party or the arbitrator or the arbitral tribunal that they will continue to the arbitral proceedings, the arbitral proceedings shall come to an end."

(16) Article 16(C)(2) states: "If the advance is not paid within the period provided in the decision of the arbitrator or the arbitral tribunal, the arbitrator or the arbitral tribunal may suspend the proceedings. If the advance is paid within thirty days following the notification to the parties stating that the proceedings are suspended, the proceedings shall be continued, otherwise it shall be terminated."

(17) Article 5 of the new communiqué and Article 12(B) of the law.

(18) Article 15(A)(1)(b) of the law.

(19) Article 15(A)(1)(d) of the law.

(20) Article 15(A)(1)(e) of the law.

(21) Article 15(A)(1)(f) of the law.

(22) Article 15(A)(1)(g) of the law.

(23) Article 15(A)(2)(b) of the law.

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