

Litigation - Turkey

Court rules that attorneys' fees are presumed to be paid in advance

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Facts

First-instance decision

Court of Appeals decision

Comment

On October 24 2013 the Court of Appeals ruled that all costs required to perform the work assigned to an attorney are presumed to be paid in advance by the client.⁽¹⁾ Based on this determination, the Court of Appeals concluded that in this case the attorney's resignation was unfair; thus, it reversed the first-instance decision, which was rendered on the grounds that the attorney's resignation was fair.

Facts

The plaintiff – an attorney – and G Elektronik Ltd – non-party to the case, but a subsidiary of the corporate group of which the defendant was part – signed an attorney agreement on September 1 2002. The defendant, which was not a party to the signed agreement, appointed the plaintiff as its attorney, with the power of attorney dated April 22 2004.

On January 16 2009 the plaintiff resigned from proxy of all companies within the corporate group on the grounds that his attorneys' fees and expenses were not being paid.

The plaintiff filed suit and requested the payment of unpaid attorneys' fees accrued through matters he had pursued on behalf of the corporate group. The plaintiff claimed that he was owed TRY1,550 and reserved the right to amend his claim. During the proceedings, he increased his claim to TRY2,262.46. The plaintiff alleged that:

- his resignation was based on justified reasons;
- the September 2002 agreement should be applied; and
- the Istanbul Bar Attorney Fee Tariff should be considered when calculating the attorneys' fees and expenses he was owed.

The defendant argued that it had signed no agreements with the plaintiff, and that the plaintiff had not duly performed his duties, as he had not informed his clients or concluded his work properly; thus, the plaintiff's resignation was unfair. The defendant further alleged that it had paid the attorneys' fees and expenses and requested that the case be dismissed.

First-instance decision

The first-instance court concluded that there was an attorney-client relationship between the parties, although there was no written agreement between them. After hearing from a court-appointed expert, the court – in line with the expert's report – concluded that the plaintiff had resigned for justified reasons, and thus partially accepted his claim, ruling that the plaintiff was entitled to TRY1,826.23, in accordance with the Attorney Law,⁽²⁾ for the cases that he had pursued by proxy.

Both parties appealed the decision before the Court of Appeals.

Court of Appeals decision

The Court of Appeals sought to determine whether the plaintiff's resignation was fair and based on justified reasons. The court referred to the second paragraph of Article 173 of the Attorney Law, which reads as follows:

"All tax, duties, charges and expenses required to perform the work assigned to the attorney at law or to obtain the consequence once the work is performed, are

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at principal's responsibility and shall be paid to the attorney at law with the initial request of the attorney at law or to the place where it is required. In order for the attorney at law to make these expenses, a sufficient advance payment should have been given by the principal."

The court stated that, according to this article, it is presumed that an attorney receives the expenses required to perform his or her duties in advance of performing those duties. The court found that the plaintiff had failed to prove that the defendant had not paid his expenses in advance. Based on this determination, the court concluded that the plaintiff's resignation was unfair.

The court further explained that in a case of unfair resignation, the resigning attorney is entitled to recover attorneys' fees only for the work that he or she has already completed as of the date of the resignation.

Following such reasoning, the court reversed the first-instance decision and indicated that the first-instance court should have found that the plaintiff's resignation was unfair.

Comment

The Thirteenth Chamber of the Court of Appeals has issued similar rulings in the past. However, the Fourth Chamber has issued a contradictory ruling, which did not accept the presumption explained above and required the client to prove that fees were actually paid to the attorney. Some Turkish scholars have supported the Fourth Chamber's decision. However, this latest decision of the Thirteenth Chamber shows that the court has not changed its view, despite the contradictory views in the Turkish doctrine, which have criticised this Chamber's approach.

The Thirteenth Chamber interpreted the Attorney Law⁽³⁾ to mean that there is a presumption that expenses have already been paid to an attorney. However, arguably, the article is meant to put an obligation on a client to pay in advance all expenses rendered by an attorney. This interpretation of the law protects an attorney's rights. Moreover, obligating the attorney to prove that he or she received no payments from a client is contrary to the general principle of burden of proof, set out in Article 6 of the Civil Code.⁽⁴⁾ The Civil Code states that unless there is a contrary provision, each party is obliged to prove the grounds of his or her claim.

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Endnotes

(1) Decision of Thirteenth Civil Chamber of the Court of Appeals, dated October 24 2013, Number E 2013/12078, K 2013/25995.

(2) Law dated March 19 1969, Number 1136, published in the *Official Gazette* on April 7 1969, Number 13168.

(3) Second Paragraph of Article 173.

(4) Law dated November 22 2001, Number 4271, published in the *Official Gazette* on December 8 2001, Number 24607.

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