

Arbitration - Turkey

Enforcement of foreign arbitral awards subject to progressive court fees

Contributed by **Cerrahoğlu Law Firm**

August 23 2012

On April 4 2012 the 19th Chamber of the Court of Appeals ruled that the enforcement of a foreign arbitral award was subject to progressive court fees, since the award related to the collection of debt.

The plaintiff had requested the enforcement of a 2008 foreign award rendered by the Korean Commercial Arbitration Board, claiming that the award was finalised. The defendant requested that the case be dismissed on the grounds that:

- another court of first instance was competent to hear the case;
- the award was unenforceable, as the defendant's right to be heard in the arbitral proceedings had been breached; and
- the arbitral award was not finalised.

When the court of first instance ruled on behalf of the plaintiff, the defendant's counsel appealed the decision.

The Court of Appeals overruled the court of first instance's decision, based on the fact that the court had ruled on fixed court fees instead of progressive court fees, despite the fact that the case in which the award was to be enforced related to the collection of debt. The Court of Appeals further stated that:

"The case is subject to progressive fees since the foreign arbitral award which is requested to be enforced is related to debt collection. Thus, instead of determining the amount of debt in Turkish Liras at the time the case was initiated and receiving a progressive fee over this amount in accordance with the Code of Fees, it wasn't correct to rule on fixed fees."

There is a fundamental difference between proportional and fixed court fees. A proportional fee is calculated as 59.4 per thousand of the claim amount, whereas a fixed fee is TRY21.15. Thus, fixed court fees are much lower than proportional fees. According to Article 28 of the Code of Fees, one-quarter of such court fees must be paid initially and the remaining amount must be paid within two months of the date on which the decision is rendered. Although the plaintiff is under obligation to pay the progressive court fees, the amount is recoverable if the decision is in favour of the plaintiff, following the provisions of the Code of Civil Procedure.

This decision is of great significance, as the Court of Appeals has clearly ruled that the enforcement of a foreign arbitral award is subject to proportional court fees if the award relates to debt collection. However, the Union of Chambers and Commodity Exchanges of Turkey is attempting to have a law passed that would apply fixed court fees with respect to the enforcement of foreign arbitral awards.

For further information on this topic please contact **Emine Eda Cerrahoğlu Balssen** at Cerrahoğlu Law Firm by telephone (+90 212 355 3000), fax (+90 212 266 3900) or email (eda.cerrahoglu@cerrahoglu.av.tr).