

## Arbitration - Turkey

### No uncertain terms: dispositive sections of awards must be standalone

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According to Article 297(2) of the Code of Civil Procedure:

*"The ruling on each of the claims and the rights granted and obligations imposed on the parties shall be stated in the dispositive section of the [court] decision in a numbered sequence and clearly in a way to prevent any doubts or hesitation without repeating any statements included in the legal reasoning."*

In short, in order to avoid uncertainty, the dispositive sections of court decisions should be able to stand alone.

The Court of Appeals has ruled in a number of recent decisions that this provision of the code is mandatory. As a result, dispositive sections that cannot stand alone and give rise to doubt are in breach of the law.

For example, on October 3 2011 the Court of Appeals overruled a court of first instance decision, holding that the court's order regarding the payment of interest did not state the start date in the dispositive section, contrary to Article 297, and thus may have given rise to doubt during the execution.<sup>(1)</sup>

In a May 14 2012 decision<sup>(2)</sup> the Court of Appeals also held that a court decision cannot refer to petitions, expert reports or any other documents in the dispositive section. Furthermore, all rights granted and obligations imposed on the parties must be clearly declared.

When executing court decisions, the execution offices also consider only the dispositive sections of the decisions and execute only the rulings in such sections. If the dispositive sections cannot stand alone and refer to other sections of the decision, the execution officers will refuse to interpret the ruling in the dispositive sections based on such referrals.

The same principle applies to the enforcement of foreign arbitral awards in Turkey. The courts and execution offices will consider only the dispositive sections of the arbitral awards and refuse enforcement if such sections cannot stand alone.

Mechanisms such as 'interpretation of the award' - as detailed in Article 35(2) of the 2012 International Chamber of Commerce Arbitration Rules - may be utilised after the fact to correct arbitral awards that do not have standalone dispositive sections. However, such mechanisms may be time consuming for the party that is eager to enforce the arbitral award. Therefore, instead of after-the-fact fixes, parties are advised to consider this issue during the proceedings.

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### Endnotes

(1) Court of Appeals Decision 2011/12945, Case 2010/3833.

(2) Court of Appeals Decision 2012/13068, Case 2012/9196.

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