

Arbitration & ADR - Turkey

Decision for enforcement of arbitral award not required for preliminary injunction

Contributed by **Cerrahoğlu Law Firm**

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Facts
Decision
Comment

On April 19 2014 the Court of Appeals reversed a first-instance court decision rejecting a request for a preliminary injunction on the grounds that the party seeking the injunction did not have a final decision on enforcement of the arbitral award on which the request was based.⁽¹⁾

Facts

After obtaining an arbitral award from the Moscow Court of Arbitration, the claimant applied to the Turkish courts seeking enforcement of the award. The Turkish courts granted the enforcement on March 19 2013. However, the respondent appealed and precluded the enforcement decision from becoming final until the appeal proceedings were concluded.

While these proceedings were ongoing, the claimant applied to the first-instance court seeking a preliminary injunction on the grounds that its receivable was unsecured, and that the respondent had attempted to conceal its assets, had sold assets registered under its name to third parties and planned to sell the rest.

The first-instance court rejected the request for a preliminary injunction by stating that appealing an enforcement decision suspends the execution of such decision until the appeal proceedings are concluded and thus the requirement of maturity stipulated under Article 257 of the Code on Enforcement and Bankruptcy⁽²⁾ is not met.

Decision

The Court of Appeals reversed the decision and stated that a preliminary injunction decision may be given on the following grounds:

- Although enforcement decisions cannot be executed before becoming final, there is no legal obstacle to requesting a preliminary injunction based on such decisions.
- Although Article 257 stipulates that a preliminary injunction may be requested for receivables that are mature and unsecured, it also regulates the conditions for requesting preliminary injunctions for receivables that are not yet mature.⁽³⁾
- Since a preliminary injunction allows only for temporary attachment on the goods and rights of a debtor, there is no need to seek enforcement of an arbitral award to give a decision on a preliminary injunction.
- Pursuant to the International Arbitration Law,⁽⁴⁾ it is possible to apply for a preliminary injunction before or during arbitration proceedings. Therefore, a preliminary injunction may also be requested after the arbitral award has been rendered.

Comment

This decision is significant in that it protects the rights of a party seeking the enforcement of an arbitral award in Turkey, since the enforcement proceedings, including an appeal, may take approximately three to four years.

For further information on this topic please contact [Emine Eda Cerrahoğlu Balssen](#) or [Defne Zeynep Sirakaya](#) at Cerrahoğlu Law Firm by telephone (+90 212 355 3000), fax (+90 212 266 3900) or email (eda.cerrahoglu@cerrahoglu.av.tr or defne.sirakaya@cerrahoglu.av.tr). The Cerrahoğlu Law Firm website can be accessed at www.cerrahoglu.av.tr.

Endnotes

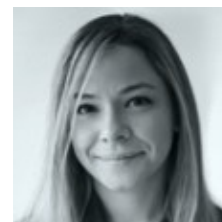
(1) Decision of the Court of Appeals Sixth Civil Chamber, March, 14 2014, E 2014/3906, K 2014/4941.

Authors

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(2) The Execution and Bankruptcy Law 2004, published in the *Official Gazette* on June 19 1932.

(3) Article 257 states:

"... Preliminary injunction may be requested for a debt that has not yet become due only in following cases:

- *If the debtor do not have a specific residency,*
- *If, with the purpose of getting out of his/her commitments, the debtor gets ready to hide, smuggle its assets or to run away or if he/she runs away or performs fraudulent acts for such purpose in violation of the rights of the creditor".*

(4) The International Arbitration Law numbered 4686, published in the *Official Gazette* on July 5 2001.

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