

## Litigation - Turkey

### General Assembly rules on law that applies to talk show agreements

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#### Background

In a recent case the General Assembly of the Court of Appeals focused on an agreement between a production company and a Turkish showman regarding the showman's role in hosting and acting in talk shows, contests or television series. The showman terminated the agreement and the production company filed suit before the Commercial Court of First Instance, requesting a contractual penalty and indemnification of damages arising from the unfair termination.

#### Facts

The Commercial Court of First Instance decided that the agreement between the parties was an artwork agreement governed by the Law on Intellectual and Industrial Rights (Law 5846), and thus the competent court to settle such dispute was not the Commercial Court, but rather the Intellectual and Industrial Rights Court.

The production company appealed the decision. The 15th Chamber of the Court of Appeals overruled the decision of the Commercial Court of First Instance and decided that the agreement between the parties should instead be evaluated as a work agreement, which is regulated by the Code of Obligations, not by Law 5846.

The Commercial Court of First Instance insisted on its previous decision. Upon renewed appeal by the production company, the lawsuit was brought before the General Assembly of the Court of Appeals.

#### Decision

The General Assembly examined the legal nature of the agreement between the parties to determine whether it was a work agreement governed by the Code of Obligations or an artwork agreement governed by Law 5846.

On November 18 2009 the General Assembly decided by majority that the agreement was subject to the Code of Obligations (2009/15-459 E and 2009/541 K).

In its decision, the General Assembly stated that in order for a case to be heard before the Intellectual and Industrial Rights Court as a dispute over an artwork, the plaintiff should rely on IP rights or the ownership of such rights; however, in this case the production company did not rely on any such rights or their ownership. As per Article 1/B-a of Law 5846, an 'artwork' is defined as "any intellectual or artistic product which carries the characteristics of its owner and which is considered as an intellectual, literary, musical, fine artistic or cinema work". According to the definition, in order for a work to be deemed an artwork, it must meet the following criteria:

- The objective criterion - the law mentions a 'product'; thus, an artwork should exist as a physical entity.
- The subjective criterion - in order to be deemed an artwork, the product must also demonstrate the characteristics of its owner.

The General Assembly stated that pursuant to Article 355 of the Code of Obligations, in a work agreement the contractor undertakes to produce something in return for a fee to be paid by the client. Provided that they are produced as a result of human efforts, it is accepted that intellectual products fall within the concept of work.

Considering the above definition of the work agreement, the General Assembly decided that since the plaintiff had requested the indemnification of damages and a contractual penalty arising from a work agreement, which is

governed by the Code of Obligations, the dispute between the parties should be settled before the Commercial Court of First Instance in accordance with the Code of Obligations.

The General Assembly concluded that no artwork was produced as a result of the agreement. Law 5846 thus did not apply to the lawsuit and the Intellectual and Industrial Rights Court was not the competent court.

There were two dissenting votes to the General Assembly decision. In one, it was stated that although the agreement was a hybrid agreement, its principal element fell within the scope of Law 5846 and thus the decision of the Commercial Court of First Instance was correct.

The second dissenting vote argued that in terms of work agreements governed by the Code of Obligations, the subject matter, content, type and even the materials of the work are determined by the client; whereas at the execution date of the agreement subject to the lawsuit, there was no work that satisfied the definition of 'work' in the Code of Obligations. Therefore, the agreement was not a work agreement subject to the Code of Obligations and thus the competent court to settle the dispute was the Intellectual and Industrial Rights Court.

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