Esin Attorney Partnership.

Esin Dispute Quarterly

SEPTEMBER 2024 — FIRST ISSUE

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Introduction

Welcome to the inaugural issue of Esin Dispute Quarterly. As we embrace the midyear warmth and reflect on the first half of 2024, we are excited to introduce a comprehensive resource that merges the rich histories of the Esin Litigation Quarterly and Arbitration Quarterly. In this landmark August edition, we delve into the transformative rulings of the Constitutional Court and Court of Cassation, offering in-depth analyses and perspectives. We also explore the most important breakthroughs and emerging themes that occurred in the international arbitration field in the last few months. Furthermore, we expand our horizons to include significant developments in dispute resolution worldwide.

Join us as we embark on this new journey with Esin Dispute Quarterly, your essential guide to the evolving world of legal disputes.

1. Significant court decisions of 2024

1.1 The Constitutional Court annuls provisions of the Law on Mediation in Civil Disputes imposing an unfair burden on non-attending parties.[1]

The Constitutional Court of the Republic of Türkiye ("**Constitutional Court**") recently made a significant ruling (file no. 2023/160, decision no. 2024/77) ("**Decision**"), published in the Official Gazette on 18 April 2024. The Constitutional Court found that certain provisions of the Law on Mediation in Civil Disputes ("**Mediation Law**") violates fundamental rights and freedoms, specifically the right to property and the liberty to seek legal redress.

Under the Mediation Law, a party who fails to attend the initial mediation meeting without a valid reason is held accountable for all trial costs, even if this party wins the lawsuit partially or entirely. Furthermore, no attorney fees will be awarded to the party who failed to attend the meeting without a valid reason.

The Çorum Consumer Court, hearing a case related to these provisions, deemed them unconstitutional and sought their annulment before the Constitutional Court. After reviewing the case, the Constitutional Court annulled the contested provisions.

The Constitutional Court noted that in disputes where mediation is a prerequisite for litigation, parties can implicitly reject settlement by not attending the mediation meeting. This way, they may directly seek to resolve the dispute in court. The Constitutional Court argued that holding a party liable for all trial costs, even if this party has won the lawsuit, places an undue restriction on the right to be heard.

The Constitutional Court also emphasized that the trial costs and attorney fees, which the non-attending party is held responsible for, are subsumed under the meaning of the property as per the constitutional right to property. The Constitutional Court further highlighted that the freedom to seek legal redress is a fundamental right and a crucial guarantee for the protection and exercise of fundamental rights and freedoms.

In essence, the Constitutional Court established that holding the party, who did not attend the mediation meeting but won the case, fully liable for trial costs and dismissing their right to attorney fees imposes an excessive burden on individuals. This disrupts the fair balance between public interest and individual rights to property and access to justice. As a result, the Constitutional Court annulled the contested provisions.

This annulment will take effect nine months after its publication in the Official Gazette (i.e. 18 January 2025).

1.2 Court of Cassation overturns its stance on the improper service in execution proceedings under Article 150/I of the Execution and Bankruptcy Law (the "EBL")[2]

In a recent ruling by the 12th Civil Chamber of the Court of Cassation, a debtor involved in mortgage foreclosure proceedings based on court judgment initiated by a creditor argued that the notices for account closure and debt repayment were not correctly delivered to the addresses listed in the loan agreement. The debtor also contended that the original documents or certified copies supporting the claim were not submitted to the execution office. Consequently, the debtor sought the cancellation of the execution order and the termination of the execution proceedings.

The First Instance Court accepted the debtor's argument, ruling that the objection is linked to public order and thus subject to complaint for an indefinite period of time. However, the Regional Court reversed the First Instance Court's decision, stating that the debtor's objection is merely based on an improper service and is subject to complaint for a limited period of time. Since the debtor missed the complaint period that is limited, the Regional Court decided that the complaint should not be accepted and that the execution proceedings should continue. The Court of Cassation revoked the Regional Court's decision. It noted that the debtor's complaint that the

1. The decision can be accessed here.
2. The decision can be accessed here.

notices were not served in accordance with the method stipulated in the law constitutes an illegal complaint in the foreclosure of mortgages initiated based on a court judgment. Therefore, it should be subject to a complaint for an indefinite period of time under Article 16/2 of the EBL.

Previously, the approach adopted by the Court of Cassation was that if the notices were not served per the law, the complaint for such service was subject to a limited period of time. With the abovementioned, the Court of Cassation has changed its previous stance on the issue. The Court of Cassation stated that since service is a prerequisite for mortgage foreclosure proceedings initiated based on a court judgment under Article 150/I of the EBL, such a complaint should be subject to an indefinite period for filing. In conclusion, the Court of Cassation ruled that the notices were not served in accordance with the method stipulated in the law and overturned the Regional Court's decision.

1.3 Ankara Regional Court ruled that if there is no foreign element in a case, the parties cannot be considered having agreed to arbitration as per the International Arbitration Law ("IAL").[3]

The underlying dispute between the parties arose from a sale agreement executed following a tender initiated by an administrative institution ("**Administration**"). The Administration initiated a lawsuit before the First Instance Court ("**First Instance Court**") alleging that the supplier failed to deliver the products and therefore, incurred damages in the amount of TRY 6,374,457.35. The defendant raised a preliminary arbitration objection since the agreement between the parties referred the disputes to arbitration. The First Instance Court dismissed the case as it determined that the parties agreed to resolve the dispute through arbitration.

The Administration appealed the First Instance Court's decision before the Ankara Regional Court ("**Regional Court**") on the following grounds: (i) the First Instance Court misinterpreted the agreement; (ii) Article 42 of the agreement refers the disputes to Ankara Administrative Courts, except for disputes involving a foreign element; (iii) the agreement also states that the dispute between the parties shall be settled by arbitration only if the parties are domiciled in different countries; however, both parties are domiciled in Türkiye; (iv) the First Instance Court did not assess the requirement that the arbitration clause should be clear and precise; and (v) if there are both jurisdiction and arbitration clauses in a contract, the arbitration clause should be deemed invalid.

The Regional Court found that the contract between the parties stipulated that the dispute would be settled by arbitration if there was a foreign element within the meaning of Article 2, paragraph 1.1 of the IAL. As such, the Regional Court overturned the decision of the First Instance Court.

1.4 Istanbul Regional Court ruled that the absence of procedures for arbitrator selection, applicable law, and language does not invalidate the arbitration clause, and that execution or mandatory mediation proceedings before arbitration do not negate the parties' will to arbitrate.[4]

The dispute between the parties arose from the "Consultancy Services Contract" and the "Bank Guarantee and Insurance Certificate Issuance Agreement". The plaintiff claimed that although it had provided consultancy services to the companies proposed by the defendants and had fulfilled its obligations under the contracts, the defendants had failed to pay for the services and for travel and accommodation expenses. As a result, the defendants

3. The decision can be accessed here.
4. The decision can be accessed here.

did not fulfill their obligations under the above-mentioned contracts. Instead, the defendants objected to the execution proceedings initiated by the plaintiff. The plaintiff requested the cancellation of the objection to the execution proceedings.

The defendants stated that the case must be dismissed since the parties agreed to refer all disputes arising from the contracts to arbitration. The First Instance Court ("**First Instance Court**") decided to dismiss the case, as Article 18 of the above-indicated contracts establishes that all disputes between the parties are subject to arbitration.

The plaintiff filed an appeal to the Istanbul Regional Court to revoke the First Instance Court's decision, as the arbitration clauses in the contracts were not valid for the following reasons: (i) they did not specify where and before which arbitral tribunal the arbitrations were to be conducted; (ii) the arbitration clauses did not contain the laws applicable to the merits of the dispute as well as to the arbitral procedures; (iii) the arbitration clauses did not regulate the language applicable to the proceedings, and (iv) the parties resorted to the mandatory mediation proceedings -which shows that their will to arbitrate has disappeared- before the initiation of the present lawsuit.

The 17th Civil Chamber of Istanbul Regional Court ("**Regional Court**") found that the contracts between the parties contained arbitration clauses that also regulated the selection of the presiding arbitrator. The Regional Court further stated that both the IAL and the Code of Civil Procedure (**CCP**) — the law governing domestic arbitration — regulate the determination of the place of arbitration in the absence of an agreement between the parties. Similarly, the Regional Court noted that both the IAL and the CCP contain clauses providing that the tribunal shall determine the law applicable to the merits of the dispute and to the arbitral proceedings if the parties have not agreed thereon. Therefore, the failure of the parties to determine the place of arbitration or the applicable law does not render the arbitration clause invalid. In addition, the Regional Court stated that as the IAL also regulates the determination by the arbitral tribunal of the language of the proceedings, an arbitration clause that does not determine the language applicable to the proceedings is not void. Furthermore, the Regional Court held that as the parties had chosen to refer their dispute to a tribunal composed of arbitrators appointed by the parties, the failure to select an arbitration institution did not render the arbitration clause invalid. Finally, the Regional Court decided that the plaintiff's initiation of enforcement proceedings and the mandatory mediation procedure did not mean that it had waived its consent to arbitration, and upheld the decision of the First Instance Court.

1.5 Istanbul Regional Court stated that Turkish courts have jurisdiction over interim measures in foreign arbitrations.[5]

The dispute arose from a contract for work in which the contractor received bank guarantee letters from the subcontractor to secure the completion and delivery of the work. The subcontractor (plaintiff) requested the local First Instance Court to order an interim injunction to prevent the contractor from liquidating the bank guarantee letters. The plaintiff alleged that the contractor had struggled to make due payments towards the end of the work and could not collect its receivables. Despite owing millions of euros to the plaintiff, the contractor allegedly attempted to liquidate the bank guarantee letters.

The local First Instance Court initially granted the interim injunction but later rejected the plaintiff's lawsuit to cancel the bank guarantee letters and thereby removing the injunction. Subsequently, the plaintiff applied to the Istanbul First Instance Court for another interim injunction, arguing that the contractor had been declared bankrupt, had no valid residence or business address in Türkiye, and was still trying to liquidate the bank guarantees.

5. The decision can be accessed here.

The Istanbul First Instance Court granted the interim injunction, citing Article 6 of the IAL, which allows parties to an international arbitration to request interim injunctions from Turkish courts before or during arbitral proceedings.

The contractor objected the decision of the Istanbul First Instance Court and argued that (i) the plaintiff had been unable to complete the work for over two years, (ii) that the risk covered by the bank letters had materialized, (iii) despite the local First Instance Court's decision to remove the injunction, the plaintiff sought to obtain interim injunctions from both the Izmir and Istanbul First Instance Courts, and (iv) the IAL was not applicable since the parties did not agree to it.

The Istanbul First Instance Court ruled that, under Article 397 of the CCP, the arbitral tribunal would handle any objection on the interim injunction, as the plaintiff had already initiated arbitration proceedings before the Vienna International Arbitration Centre. The contractor appealed the First Instance Court's decision before the Istanbul Regional Court by citing a decision by the 6th Civil Chamber of the Court of Cassation which states that Turkish courts have jurisdiction to rule over objections to interim injunctions in arbitrations and cannot delegate this jurisdiction to arbitration institutions.

The Istanbul Regional Court held that the IAL applies only if (i) the arbitration has foreign elements and the seat is in Türkiye or (ii) the parties or arbitrators decide to apply the IAL. Since the arbitration seat was not in Türkiye and the IAL was not chosen as the applicable law in the present case, the IAL could not be applied in principle. However, Articles 5 and 6 of the IAL, which govern interim injunctions and attachments, are exceptions thereto and are applicable regardless of the above-mentioned requirements.

Additionally, the Istanbul Regional Court emphasized that interim injunctions or attachments are provisional in nature and cannot be recognized or enforced in Türkiye if granted by foreign courts or tribunals. Therefore, any interim injunction or attachment granted by foreign courts or tribunals on assets located in Türkiye will have no effect in the country, which will deprive the parties of the benefits of such measures. The Istanbul Regional Court also stated that Article 6 of the IAL indicates that injunctions are outside the scope of arbitral proceedings and the existence of an arbitration agreement does not prevent a party from seeking an injunction. Based on this, the Istanbul Regional Court ruled that it is possible to request an interim injunction from Turkish courts even in an arbitration with a foreign element and that Turkish courts can rule over objections to interim injunctions issued by Turkish courts regardless of whether arbitration has commenced.

1.6 The General Assembly of Civil Chambers of the Court of Cassation ruled that if parties to an agreement whose term is expired continue their contractual relationship, the arbitration clause therein does not apply to the extended relationship.[6]

In its decision dated 29 November 2023 and numbered 2023/103, 2023/1185 ("**Decision**"), the General Assembly of Civil Chambers of the Court of Cassation ("**Court of Cassation**") ruled that even if the parties resumed their contractual relationship in practice after the expiration of the contractual term, any dispute arising therefrom will not be subject to the arbitration clause in the expired agreement. The Court of Cassation stated that the fact that the parties continued their relation in practice does not mean that they also consented to the application of the arbitration clause in the expired contract to their ongoing relationship.

The dispute arose from a distributorship agreement. The distributor claimed before the Istanbul 18th Commercial Court of First Instance ("**First Instance Court**") that the distributorship agreement was terminated rightfully due to the supplier's breach of contract and it requested the First Instance Court to award it a portfolio compensation. In defense, the supplier stated that the parties signed three distributorship agreements (all of which included arbitration clauses) and following the expiry of the last agreement's term, they continued their relationship in accordance with the last agreement. Since the agreement included an arbitration clause, the supplier raised a preliminary arbitration objection based on the arbitration clause referring disputes to the Commercial Arbitration Rules of the Korean Commercial Arbitration Board in accordance with Korean law.

The First Instance Court held that the parties resumed their contractual relationship despite the expiry of the contractual term and thus, explicitly manifested their will to continue their contractual relationship. As a result, although the distributorship agreement was agreed for a limited period of time, it turned into an agreement for indefinite period of time. The First Instance Court stated that since there was a valid arbitration clause in the distributorship agreement, which became indefinite term contract, it ruled that it had no jurisdiction over the dispute.

The distributor filed an appeal against the First Instance Court's decision, but this appeal was rejected. The distributor further appealed the decision of the Regional Court of Appeals to the Court of Cassation. Examining the distributor's appeal, the 11th Civil Chamber of the Court of Cassation stated that the last distributorship agreement signed between the parties dated 1 January 2008 stipulated that the agreement would remain in force for two years, and it would automatically terminate unless the parties mutually and expressly decide to extend the agreement at least 30 days before the termination date. The Court of Cassation held that there were no evidence showing that the agreement was renewed. Even if the parties *de facto* continued the distributorship relationship after the termination date, it cannot be assumed that the parties also consented to the arbitration clause because there was no explicit will of the parties to renew the agreement, and specifically agree on the arbitration clause. In light of these explanations, the Court of Cassation revoked the Regional Court of Appeal's decision. It ruled that the distributorship relationship between the parties continued without a written agreement, and that the parties' explicit consent should

6. You may find more details here.

have existed for an arbitration agreement. For these reasons, the Court of Cassation decided that the dispute was not subject to arbitration. The case file, after going back to the First Instance Court, resisted the revocation decision and insisted upon its previous decision by a majority vote. The distributor appealed against the First Instance Court's decision once again.

The Court of Cassation first established that the legal issue in the present dispute was whether the arbitration clause in the distributorship agreement would be automatically extended due to the fact that the parties resumed their distributorship relation despite the automatic termination of the distributorship agreement. The Court of Cassation emphasized that the arbitration agreement is separable (or independent) from the underlying contract and it stated that the validity of the underlying contract and the arbitration agreement should be considered separately. Furthermore, the Court of Cassation held that to conclude an arbitration agreement, the parties must express their clear and unambiguous will to arbitrate, which is one of the essential elements of an arbitration agreement. In light of these explanations, the Court of Cassation stated that the last distributorship agreement between the parties dated 1 January 2008, was concluded for a two-year period, and all the agreements signed between the parties included an arbitration clause but the parties continued their distributorship relationship until 2017 without executing a new agreement. Considering the parties' reciprocal notices terminating the last agreement, as well as the term clause in the agreement, the Court of Cassation concluded that the parties could not be said to have accepted the terms of the last distributorship agreement exactly as they were. On the contrary, the parties wished to continue their relationship without a written agreement.

During discussions at the Court of Cassation, some judges stated in their dissenting opinion that the parties continued to comply with the last distributorship agreement by *de facto* resuming their relationship and Article 17 of the agreement expressly stated that the arbitration clause would continue to be in effect even after the termination, cancellation or expiration of the agreement. The dissenting opinion further elaborated that no law states that some provisions of an agreement would remain in force. In contrast, others would terminate if the parties implicitly resumed the agreement. For these reasons, the dissenting opinion concluded that the arbitration agreement between the parties continued to be in effect. However, the majority dismissed the above-mentioned opinion and revoked the First Instance Court's decision.

In its Decision, the Court of Cassation stated that the continuation of the relationship between the parties despite the termination of the agreement containing an arbitration clause does not mean that the parties explicitly consented to the application of the arbitration clause to the distributorship relation that was resumed in practice.

2. Significant news and developments concerning dispute resolution

(a) The Presidential Decree on the increase of the legal interest rate was published in the Official Gazette dated 21 May 2024.

With the Presidential Decree published in the Official Gazette dated 21 May 2024, it has been decided that the legal interest rate regulated under Article 1 of the Law No. 3095 on Legal Interest and Default Interest, which was previously applied as 9% per annum, will be applied as 24% per annum effective from 1 June 2024.

(b) Updated arbitration rules of the China International Economic and Trade Arbitration Commission have come into effect.

On 1 January 2024, the China International Economic and Trade Arbitration Commission (**CIETAC**) brought into effect the updated version of its arbitration rules, which are applicable to cases commenced on or after this date. This revision represents a notable expansion from the preceding 2015 edition. These changes are a response to recent developments in international arbitration practices and draw upon CIETAC's extensive expertise

garnered from handling over 60,000 cases since its establishment in 1956.

The primary objective behind the amendments is to enhance the flexibility, efficiency and transparency of arbitration proceedings administered by CIETAC. Key enhancements include the integration of provisions concerning third-party funding disclosure, early dismissal procedures, expanded tribunal jurisdiction and measures for addressing multi-contract disputes. By introducing regulations on third-party funding disclosure (Article 48) and early dismissal of claims (Article 50), CIETAC aims to provide a framework that ensures fairness and procedural efficiency while adapting to evolving practices in international arbitration.

Moreover, the 2024 Rules incorporate innovative measures to accommodate the complexities of modern international commerce. Notably, the provisions regarding multi-contract disputes (Article 14) and consolidation of arbitrations (Article 19) have been expanded to facilitate more efficient resolution of disputes involving interconnected contracts and related subject matters. Additionally, the rules embrace digital tools, acknowledging the growing importance of technology in arbitration proceedings and prioritize electronic communication and submissions (Article 8.2).

Furthermore, CIETAC has introduced measures to safeguard due process and procedural fairness. The rules grant tribunals the authority to determine jurisdiction, addressing a departure from internationally recognized principles such as *kompetenz-kompetenz* (Article 6.1). They also establish mechanisms to prevent conflicts of interest and ensure tribunal impartiality (Article 22.2, Article 26.4).

These changes reflect CIETAC's commitment to providing competitive, cost-effective and efficient arbitration services while upholding principles of party autonomy and due process. Through the implementation of the 2024 Rules, CIETAC aims to further solidify its position as a leading arbitration institution, capable of effectively addressing the evolving needs of the business community and the complexities of contemporary international trade and investment.

(c) The Grand Chamber of the Ukrainian Supreme Court decided that non-signatories may also be bound by arbitration clauses.

The Grand Chamber of the Ukrainian Supreme Court ("**Grand Chamber**") issued a landmark judgment regarding the extension of arbitration clauses to non-signatories in case No. 910/3208/22 ("**Berezan Case**"). This judgment signifies a departure from previous practices, where Ukrainian courts had been reluctant to extend arbitration clauses to non-signatories due to contractual privity concerns.

Prior to the Berezan Case, Ukrainian courts had predominantly based their decisions on the principle of privity of contracts. For example, in an earlier case, the court refused to enforce an arbitral award in favor of New Alternative Oak against Galicia Distillery, a non-signatory to the arbitration agreement contained in the original contract.

The Berezan Case involved a dispute between Berezan Processing Plant LLC, the seller, and Grain Power LLC, the guarantor, a non-signatory to the arbitration clause in the original contract. The Grand Chamber's ruling established that non-signatories could be bound by an arbitration clause under certain circumstances, such as when assuming the rights and obligations of a signatory party to the contract. This decision reflects a pro-arbitration shift in Ukrainian court practices, influenced by legislative amendments and international arbitration principles.

The Grand Chamber's reasoning emphasized the importance of changes in Ukrainian procedural codes, requiring courts to adopt a pro-arbitration approach. Additionally, the decision highlighted the role of the International Council for Commercial Arbitration's Guide to the Interpretation of the New York Convention in shaping international arbitration standards.
While the Berezan Case sets a precedent for future arbitration disputes involving non-signatories, its application may vary depending on the specific circumstances of each case. Nonetheless, this judgment marks a significant step toward enhancing Ukraine's arbitration framework and fostering a more arbitration-friendly environment in the country.

(d) The Paris Court of Appeal has rejected the claims of Sew Infrastructure regarding an ICC award against the Ethiopian Roads Authority.

The Paris Court of Appeal ("**Paris Court**") deliberated on an application by Sew Infrastructure ("**Sew**"), an Indian company, to revive an ICC claim against the Ethiopian Roads Authority (**ERA**), citing alleged biases between an arbitrator and a partner at the counsel firm of the ERA. The dispute originated from a contract assigned to Sew in 2012 for road construction in Ethiopia. In 2016, the ERA terminated the contract, leading Sew to initiate

arbitration proceedings. The tribunal, which is chaired by Michael Bühler, rendered award in 2021, partially in favor of Sew but validating the ERA's calls on bank guarantees.

Sew subsequently sought the annulment of the awards before the Paris Court, alleging nondisclosure of arbitrators' connections and erroneous rulings on several issues. However, the court found Sew's contentions inadmissible, asserting that Sew had not challenged the tribunal's impartiality during the arbitration process. Additionally, arguments contesting the enforcement of the award on public policy grounds were dismissed. Despite Sew's concerns about potential human rights violations by the Ethiopian government, the court deemed such considerations unrelated to the award's enforcement.

Furthermore, Sew's assertions regarding the economic consequences of the ERA cashing bank guarantees were rejected. This way, the Paris Court affirmed the compensatory nature of damages awarded by the tribunal. The Paris Court also dismissed claims of improper decisions on contractual matters, including questions on bank guarantees and currency exchange rates. It concluded that Sew's objections lacked merit, ordering Sew to bear the ERA's costs.

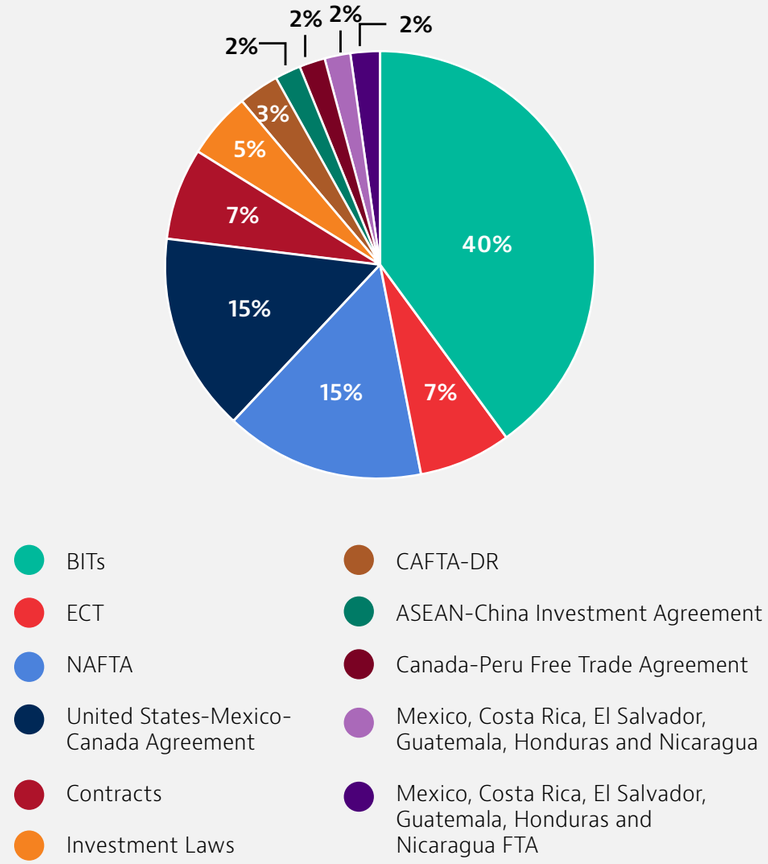
This case exemplifies the intricacies of arbitration proceedings, highlighting the importance of transparency and adherence to procedural standards in resolving international disputes.

(e) ICSID's 2023 caseload statistics announced.

The latest release of caseload statistics highlights the current patterns and developments observed in ICSID arbitrations during 2023.

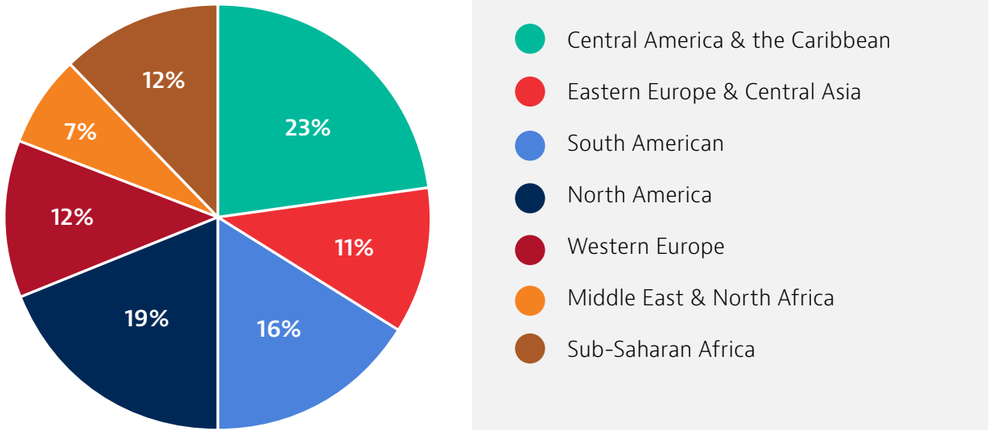
Among the 57 newly registered cases within the ICSID during this period, 56 were categorized as arbitration cases, with three falling under ICSID's Additional Facility Rules. Concerning the grounds of consent in the ICSID cases, approximately 47% of the cases registered in 2023 were associated with arbitrations linked to bilateral investment treaties and the Energy Charter Treaty (**ECT**). Furthermore, bilateral investment treaty-related arbitrations constituted 58% of all cases registered under ICSID during the specified timeframe.

Basis of Consent Invoked in ICSID Cases Registered 2023



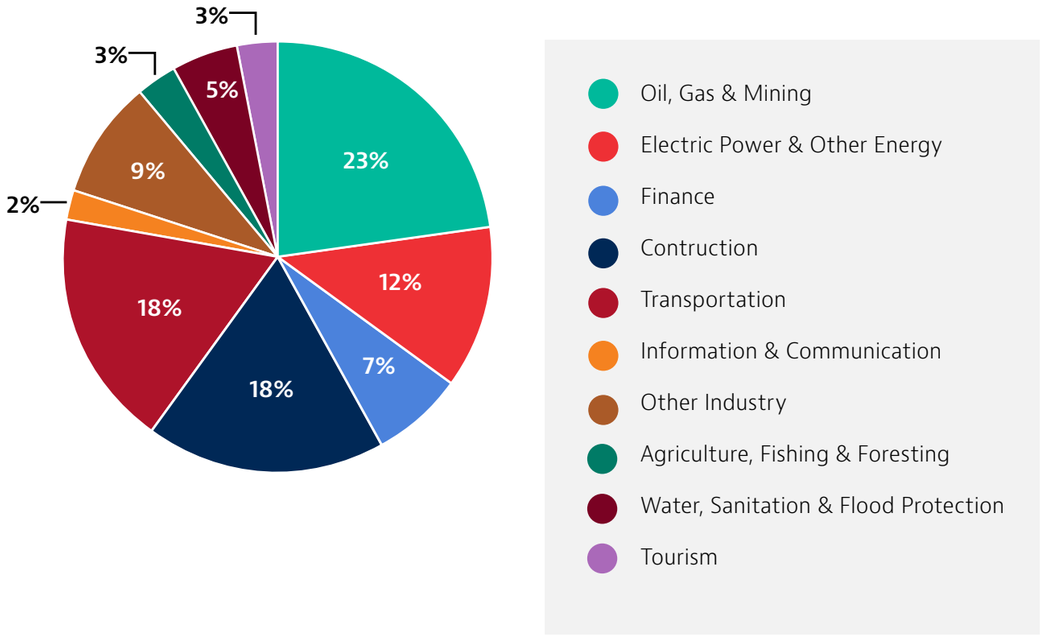
In addition, of all the cases registered in 2023, European parties ranked first with 23% of the caseload.

Distribution of ICSID cases registered in 2023



On the other hand, around one-quarter of the cases registered in the year were oil, gas and construction, and transportation came a close second with 18% respectively.

Distribution of ICSID cases registered in 2023



Almost one-third of the cases finalized in 2023 were concluded by settlement or otherwise discontinued. Out of all arbitrator appointments made in 2023, 45% were from Western Europe. Arbitrators from the Middle East and North Africa only made 3% of all appointments.

3. Other developments from around the world

(a) The International Bar Association conducted a diversity survey.

The arbitration committee of the International Bar Association ("IBA") has conducted a survey with the aim of ascertaining ethnic diversity in international arbitration and its role over the processes therein.
The team leading the study explains that despite efforts, there has not been sufficient focus on the advantages that may emanate from an increase in ethnic diversity in arbitration. The team believes that comprehending these advantages will contribute greatly to the arbitration. Therefore, the team ran interviews with candidates from a diverse background of countries including Chile, Costa Rica, Egypt, the UAE, Kenya and the US.

The words of research lead Cartwright-Finch show how unique the study is: *"What the IBA is doing with this research project is ground-breaking and ambitious. Talking about ethnic diversity at a global level is not straightforward because there are no internationally accepted definitions we can use, and no one has ever tried to address this topic with scientific rigor before."*

(b) The Silicon Valley Arbitration and Mediation Center ("SVAMC") issued a guideline on the use of artificial intelligence ("AI") in international arbitration.

After a year of work on the subject and a public consultation period, SVAMC has finally shared its first edition of the Guidelines for the Use of AI in International Arbitration ("**Guidelines**"). The team behind the Guidelines is led by well-known arbitrator Benjamin Malek. There have also been multiple reviews of the draft by different committees including important figures from the practice. According to the SVAMC, there will be a continuous review and analysis of the Guidelines so that they keep up with the developments in the field of AI.
The Guidelines provide an insight into what qualifies as AI: *"any computer system that perform[s] tasks commonly associated with human cognition, such as understanding natural language, recognizing complex semantic patterns and generating human-like outputs."*

As can be seen, the definition aims to encompass all sorts of AI, existing or future.

According to the Guidelines, AI may be used in a plethora of ways, including conducting research on potential arbitrators or experts for a case, providing accurate summaries and citations to create a first draft of the procedural history of a case, or generating timelines of key facts.

The Guidelines contain three sections based on who they are applied: (i) guidelines for all participants; (ii) guidelines for parties and their representatives; and (iii) guidelines for arbitrators. The application will either be based on the parties' agreement or the tribunal's decision.
A commentary incorporated into the Guidelines states that with the aim of providing transparency and ensuring the parties' right to be heard, the arbitrator has a duty to reveal whether they have resorted to AI-generated products that have an impact on how they conceive the case, etc.

The Guidelines also establish that incorrect information produced by AI may lead tribunals not to consider it or instruct the parties to revise their submission. In such cases, the tribunals may also make inferences about such submissions.

(c) Hong Kong International Arbitration Centre ("HKIAC") published its revised rules.

After a six-year period, HKIAC has published the 2024 Administered Arbitration Rules ("**Rules**"). The HKIAC plans to make the Rules available in Korean, Russian, Arabic and Spanish.

According to the HKIAC, the revised Rules are mostly the refined version of those introduced in 2018. The revisions are aiming to bolster the effectiveness and efficiency of the HKIAC arbitration proceedings and adjust them better to modern practices. Thus, one of the most important revisions is that the HKIAC is authorized to adopt any measure to ensure that the arbitral proceedings are efficient after consulting with the parties and tribunal.

Moreover, in line with furthering the efficiency of the proceedings, the Rules set out stricter time limits on tribunals. For instance, after the last directed substantive oral or written submissions, the tribunals will have only 45 days to announce that the procedural phases are closed.

The Rules are also furthering diversity and environmental considerations such as encouraging parties and co-arbitrators to pay attention to diversity in determining the arbitrators.

The Rules come at a time when the HKIAC recently announced that it has been registered with the third highest number of cases since 2017, whose value indicates a record high figure.

(d) Arbitration Bar of India ("ABI") has been established.

After a decade-long effort for the creation of an independent arbitration bar, a group of professionals have established the ABI. The ABI is to be led by Gourab Banerji SA of Essex Court Chambers and it has two honorary presidents: Hemant Gupta, former Indian Supreme Court justice, and Tushar Mehta, chair of the India International Arbitration Centre and India's solicitor general.

The ABI opens its membership doors to a wide variety of people including legal professionals, arbitrators, independent experts, academics and ADR service providers.

The ABI's establishment coincides with the recent judgment by the Indian Supreme Court whereby a USD 960 million award against a state-owned entity has been revoked on the grounds of "*grave miscarriage of justice.*"

4. Energy Charter Treaty

(a) Spain withdrew from the ECT.

While the EU-wide pullout from the ECT was on the way, Spain made a proactive move to withdraw from the much-criticized ECT. The exit comes nearly two years after Spain raised its intention for the first time in 2022 to do this on the grounds of the ECT's incompatibility with climate change objectives.

Spain's concerns are also shared by France, Germany, Poland, Luxembourg, Slovenia and Portugal, all of which have already formally exited from the ECT.

Meanwhile, Spain is the member with the highest number of claims under the ECT filed against it. Almost all of those claims have been brought by renewable energy investors.

(b) European Parliament has given the greenlight for pullout from ECT

After the European Council's positive vote for withdrawal from the ECT in March 2024, the European Parliament has also approved the exit with a large majority. The pullout is now before the European Council one more time for final approval. The vote comes at a time when many European countries including France, Germany, Poland, Portugal and others have already submitted a notice to leave, while the UK, Spain, the Netherlands, Denmark and Ireland are also planning to exit the ECT.

The ECT has been long criticized for the investment protections for fossil fuels it contains. Many fear that these protections constitute hurdles to the fight against climate change. On the other hand, those opposing the exit argue that climate change is not the main motivation of the countries. Rather, the exit is made with the aim of escaping obligations toward investors.

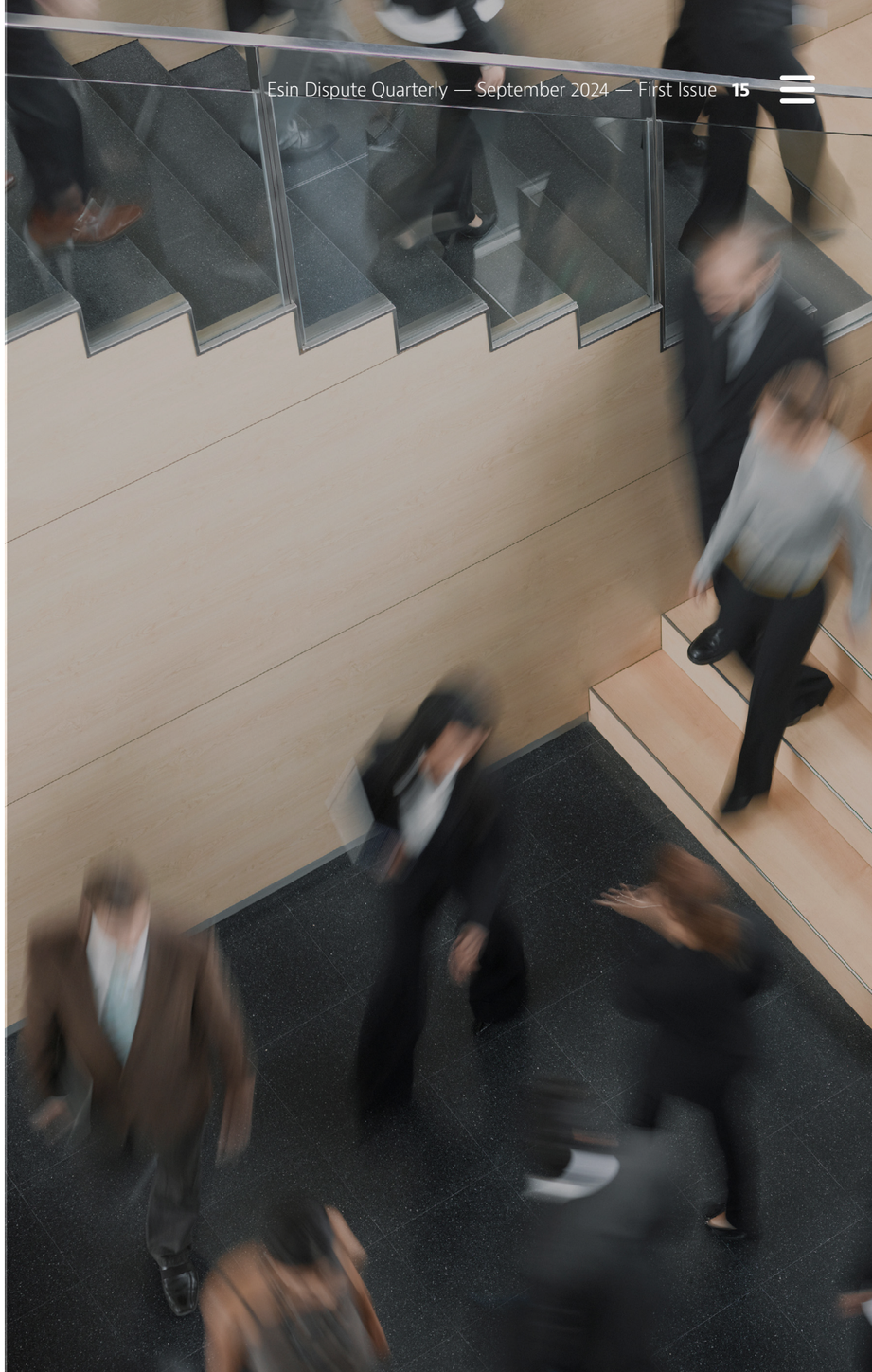
(c) Spain faces an ECT claim brought by a uranium miner

With a filing to the London stock exchange, it has been revealed that an Australian company ("**Investor**") is preparing to file a claim with ICSID against Spain for blocking the project. The Investor has been running a uranium mine project in the Salamanca region west of Madrid for more than 10 years.

After, Spain enacted a legislation in May 2021 to prohibit extracting radioactive materials including uranium and also ordered all open proceedings for the authorization of radioactive facilities to be terminated. In addition, the Ministry for Ecological Transition and Demographic Challenge did not authorize the continuation of construction works at the project site. The ministry based its decision on the opinion by the country's Nuclear Safety Council. The Investor appealed the ministry's decision through an administrative procedure.

The Investor has also resorted to an appeal to the Spanish Supreme Court for the annulment of its land use authorization for the project site and license.

Although Spain has pulled out of the ECT, it would still be subject to claims arising thereof due to the 20-year sunset clause in the ECT. As per this clause, the member states would have claims brought against them over the investments that were existing at the time of that state's pullout.



Conclusion

In this first issue of Esin Dispute Quarterly, we explore rulings from the Constitutional Court, the Court of Cassation, and the Regional Court of Appeals. We delve into a myriad of themes, from improper service in enforcement and bankruptcy law to the applicability of arbitration clauses in expired agreements, while curating significant and exciting news in the world of dispute resolution. Stay tuned for our next issue, as the world of dispute resolution promises, as always, more to come this fall.

Events Calendar

September 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3 ICC Institute of World Business Law Advanced Training on Oral Advocacy Jakarta	4 6th ICC Indonesia Arbitration Day Jakarta ICC YAAF - Don't Cut What You Can Untie: Facilitating Agreement in International Arbitration Lima	5 6th ICC Peruvian Arbitration Day Lima	6	7 ISTAC - TBB Tahkimde Taraf Vekilliği Eğitimi Online
8 ISTAC - TBB Tahkimde Taraf Vekilliği Eğitimi Online	9 ICC - Advanced Arbitration Academy for Middle East Doha, Abu Dhabi	10	11 ICC YAAF - Arbitration Dynamics in Central Asia: Shaping the Future Tashkent	12	13 ICC - Use (or Abuse) of Interim Measures in International Arbitration - Franco-Lusophone Perspectives Paris	14 ICC India Arbitration Conference – Mumbai 2024
15 IBA Arb40 Symposium – New Horizons in International Arbitration Mexico City, Mexico	16	17	18	19	20	21
22	23	24 GAR Live: North America 2024 White & Case, New York	25 ICC YAAF-Rising Stars of Arbitration and Mediation: Empowering Young Lawyers for Success Almaty	26 SCL Türkiye 2nd Annual Construction Law Conference Istanbul	27 GAR Live: Vienna 2024 Vienna International Arbitral Centre	28
			19th ICC New York Conference on International Arbitration New York			
29	30					

Organizer

ICC ISTAC ICC YAAF IBA GAR SCL

Events Calendar

October 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2 SCL (Singapore) Conference 2024: Singapore Inc - Staying Best in Class in Construction? Singapore	3	4	5
6	7 ICC Croatia - 2nd Annual Regional Conference on Arbitration and ADR – Construction Projects Disputes Dubrovnik, Croatia	8	9 GAR Live: Civil Law Summit 2024 Thompson Madrid ICC Canada - Arbitration Committee Annual Conference 2024 Vancouver, Canada	10	11	12
13	14	15 GAR Live: London 2024 Freshfields Bruckhaus Deringer, London ICC - Conversations With ICC Australia Brisbane	16	17 ICC - FIDIC Conference on International Construction Contracts and Dispute Resolution Seoul, South Korea	18	19
20	21	22	23 ICC - UK Annual Arbitration & ADR Conference London, UK	24 GAR Live: Hong Kong 2024 HKIAC, Hong Kong	25 ISTAC ASA Arbitration Retreat Çeşme/İzmir, Turkey	26
27	28	29	30 ICC Italia Arbitration Forum Milan	31 GAR Live: Seoul 2024 Seoul, South Korea		

Organizer

SCL ICC GAR ISTAC

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