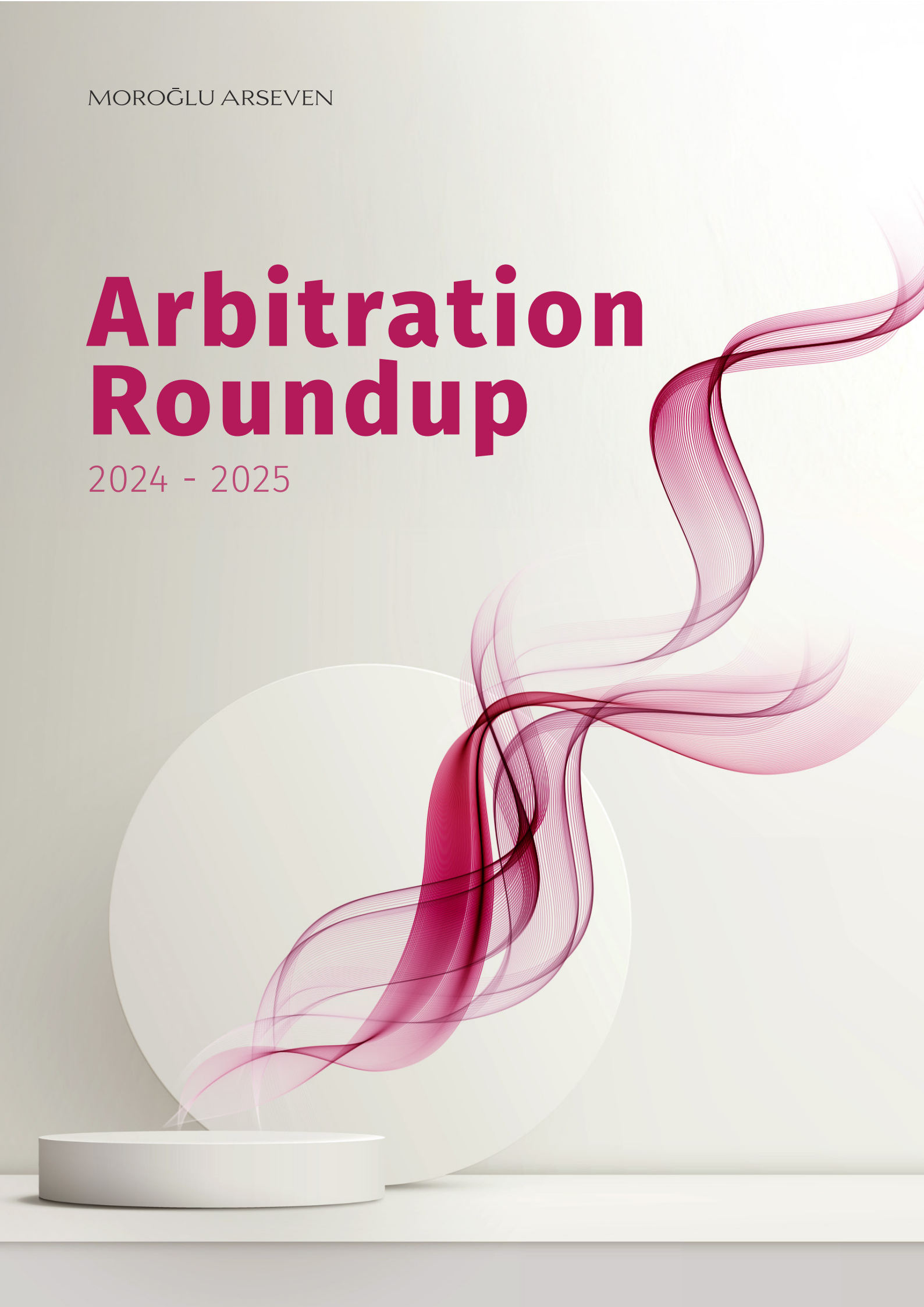
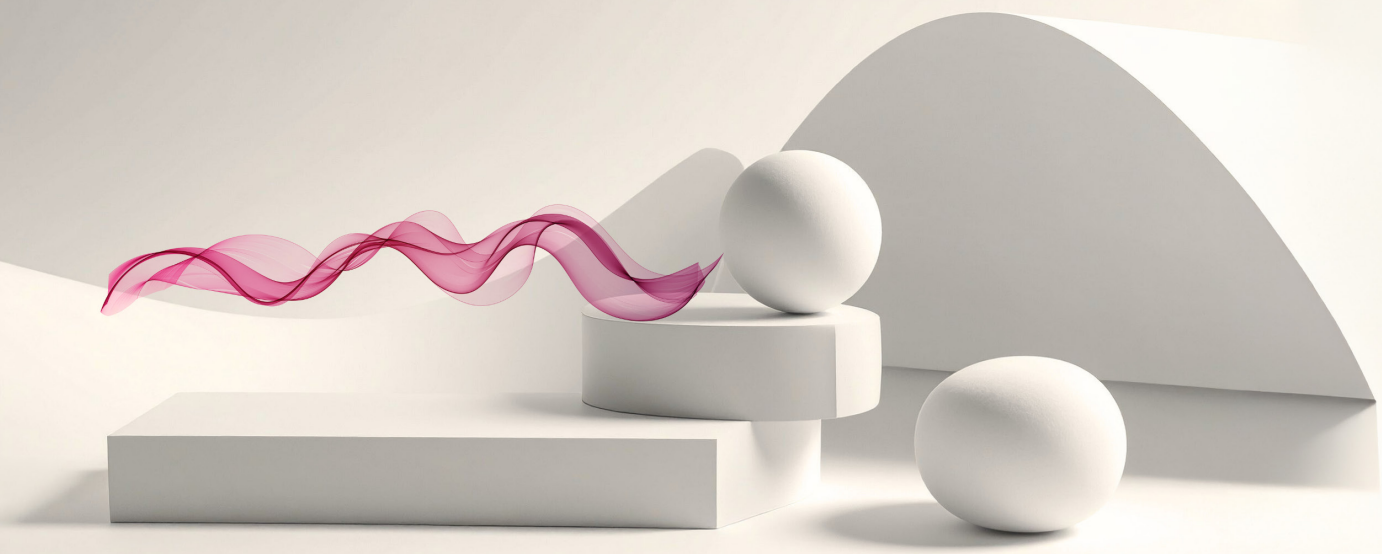
MOROĞLU ARSEVEN

Arbitration Roundup

2024 - 2025





Introduction

Arbitration has become an increasingly prominent method of dispute resolution in Türkiye, underpinned by a legal framework that reflects both domestic and international standards. Türkiye is a party to major international instruments such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**NYC**")[1], the European Convention on International Commercial Arbitration[2], and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("**ICSID Convention**")[3], all of which have played a central role in shaping its arbitration practice. Türkiye has also signed 140 bilateral investment treaties ("**BITs**"), 84 of which are currently in force[4], and is a party to several multilateral investment treaties ("**MITs**"), including the Energy Charter Treaty ("**ECT**")[5]. These commitments underscore Türkiye's investor-oriented policy and support arbitration as a preferred route for resolving international investment disputes.

At the national level, arbitration is governed primarily by the Turkish Code of Civil Procedure No. 6100 ("**CCP**") for domestic disputes and the Turkish International Arbitration Law No. 4686 ("**IAL**") for international ones, both of which were heavily inspired by the United Nations Commission on International Trade Law ("**UNCITRAL**") Model Law. This alignment allows Türkiye to offer arbitration procedures that meet international standards and offer efficient outcomes, particularly in cross-border commercial matters. The establishment and growth of key institutions like the Istanbul Arbitration Centre ("**ISTAC**") and the Istanbul Chamber of Commerce Arbitration and Mediation Center ("**ITOTAM**") highlight Türkiye's strong institutional commitment to advancing arbitration as a credible and accessible dispute resolution mechanism.

Taken together, these developments point to Türkiye's steady evolution into an arbitration-friendly jurisdiction, increasingly regarded by foreign investors and commercial actors for its legal framework, international engagement, and expanding institutional capacity. This arbitration roundup provides an overview of Türkiye's arbitration landscape, highlighting key legislative frameworks, governing principles, and institutional developments along with notable case law, and recent statistics. It offers a guide through Türkiye's evolving arbitration practices, from legislative foundations to emerging trends and institutional activity.

[1] Türkiye ratified the NYC on 02.07.1992.

[2] Türkiye signed the European Convention on International Commercial Arbitration on 21.04.1961 and ratified it on 24.01.1992.

[3] Türkiye signed the ICSID Convention on 24.06.1987, ratified it on 03.03.1989, and ICSID Convention entered into force for Türkiye on 02.04.1989.

[4] "Türkiye." International Investment Agreements – UNCTAD, United Nations Conference on Trade and Development, investmentpolicy.unctad.org/international-investment-agreements/countries/214/t-rkiye (last visited 16.09.2025).5 Signed on 17.12.1994, ratified on 13.02.2001, deposited on 05.04.2001, and thereby bringing it into force for Türkiye on 04.07.2001. Energy Charter Secretariat. "Türkiye." Energy Charter, https://www.energycharter.org/who-we-are/members-observers/countries/tuerkiye/ (last visited 02.09.2025).

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TÜRKİYE'S ARBITRATION REGIME: LEGAL BACKGROUND

This section looks at the main laws that shape arbitration in Türkiye. It highlights the rules and standards that guide how disputes are resolved and enforced, providing a picture of the legal framework that supports arbitration across the country.

1.1. LEGISLATIVE FRAMEWORK

The legal framework governing arbitration in Türkiye is divided into two main categories: domestic arbitration, regulated under the CCP, and international arbitration, primarily governed by the IAL. This dual structure is designed to address the differing needs and characteristics of disputes with and without foreign elements. While both regimes draw inspiration from the UNCITRAL Model Law, they differ in certain procedural aspects.

1.1.1. DOMESTIC ARBITRATION

Matters related to domestic arbitration are governed by Articles 407 to 444 of the CCP. These provisions, based on the UNCITRAL Model Law, apply to disputes without a foreign element and where the seat of arbitration is in Türkiye. Whether a dispute contains a foreign element is determined the IAL[6].

The CCP covers key aspects such as arbitration agreement, procedural rules, the issuance of arbitral awards, the annulment of awards, and the appointment of arbitrators. As an important note, pursuant to Article 439/4 of the CCP, initiating an annulment action does not suspend enforcement of the award, unlike under the IAL, where annulment action suspends enforcement. This reflects the legislator's intention that arbitral awards under the CCP become enforceable immediately.

1.1.2. INTERNATIONAL ARBITRATION

1.1.2.1. International Arbitration Law No. 4686

The IAL, inspired by the UNCITRAL Model Law, serves as the primary legislation regulating international arbitration in Türkiye and sets out the procedures and principles governing it. According to its first article, the IAL applies to disputes that contain a foreign element, where the seat of arbitration is in Türkiye, or where the parties, arbitrators, or arbitral tribunal have chosen to apply its provisions.

The conditions under which a dispute is considered to have a foreign element are outlined in Article 2. Foreign elements arise:

- When the parties to the arbitration agreement have their domiciles, habitual residences, or places of business in different states;
- When the place of arbitration, as determined in or pursuant to the arbitration agreement, is situated outside the state in which the parties have their domiciles, habitual residences, or places of business;
- When a substantial part of the obligations arising from the underlying contract is performed outside the state in which the parties have their domiciles, habitual residences, or places of business;
- When the dispute is most closely connected to another jurisdiction;
- When at least one shareholder in the company that is a party to the main contract introduces foreign capital in accordance with foreign investment promotion laws;

[6] See Article 2 of the IAL.

- When a loan and/or a guarantee agreements are established to secure financing from abroad for the implementation of this contract;

- When the underlying contract or legal relationship involves the transfer of capital or goods across national borders.

However, disputes related to *rights in rem* over immovable properties located in Türkiye and disputes that are not within the disposal of the parties are excluded from the scope of the IAL.

Pursuant to the IAL[7] , arbitral awards are not automatically enforceable; instead, a certificate of enforceability from the civil court of first instance is required, differently from the CCP where awards under domestic arbitration are enforceable immediately. In practice, the courts also examine *ex officio* whether the dispute is arbitrable and whether there is any violation of public policy before giving the certificate of enforceability.

Similarly, initiating an annulment action automatically suspends enforcement of the award[8], again differently from the CCP regime, where enforcement continues despite annulment proceedings.

1.1.2.2. Law No. 4501 - Arbitration in Public Concessions

This legal framework governs the principles to be followed when arbitration agreements are made in relation to concession contracts containing a foreign element. Notably, Article 5 of Law No. 3996, which regulates the Build-Operate and Build-Operate-Transfer models, provides that such contracts are subject to private law provisions, thereby departing from the traditional view of concession agreements as purely administrative contracts.

From a private law perspective, concerns have long been raised regarding the fairness and legal security of resolving disputes involving foreign investors solely within the domestic courts of the host state. Recognizing this, a constitutional amendment to Article 125 of the Turkish Constitution introduced an explicit provision allowing disputes arising from public service concession agreements to be resolved through national or international arbitration, provided that the dispute contains a foreign element. To implement this constitutional change and to eliminate legal uncertainties, Law No. 4501, enacted on 21.01.2000, sets out the procedural and substantive rules applicable when concession agreements provide for arbitration. It offers a more predictable and neutral dispute resolution mechanism, especially in cases involving foreign investment. As a result, international arbitration has increasingly been embraced as a reliable and impartial alternative to domestic litigation in the context of large-scale infrastructure projects.

1.1.2.3. Investment Arbitration

Investment arbitration is a key mechanism for resolving disputes between foreign investors and host states, and Türkiye has developed a legal and institutional framework that supports this mechanism. As a country that actively promotes foreign investment, Türkiye has adopted international investment arbitration standards and practices, incorporating them into its international treaty commitments. Türkiye's arbitration-friendly approach is reflected in its adherence to international conventions, as well as the significant number of investment treaties it has concluded with other states to protect foreign investors and promote cross-border investments.

[7] See Article 15/B of the IAL.

[8] See Article 15/A(2)(b) of the IAL.

1.1.2.3.1.Bilateral & Multilateral Investment Treaties (BITs and MITs)

Türkiye is a party to several MITs, most notably the ECT. In addition, Türkiye is a party to the Agreement on Promotion, Protection and Guarantee of Investments Among Member States of the Organisation of the Islamic Conference, in force since February 1988, which offers arbitration as a dispute resolution mechanism for investors from OIC member states[9]. Accordingly, the Organisation of Islamic Cooperation Arbitration Centre was established in İstanbul, Türkiye, as a dedicated platform for resolving commercial and investment disputes. These treaties reflect Türkiye's engagement in broader international efforts to protect and regulate foreign investment, supported by effective dispute resolution mechanisms.

Beyond MITs, Türkiye has signed 140 BITs, of which 84 are currently in force[10]. These BITs typically include core investor protections such as fair and equitable treatment (FET), full protection and security, protection against direct and indirect expropriation, national treatment, and most-favored-nation (MFN) clauses. In this context, international arbitration practices in Türkiye generally uphold fundamental principles such as the protection of legitimate expectations and due process, reflecting a commitment to internationally recognized standards. The BIT network supports Türkiye's aim of providing a promising legal environment for foreign investors.

1.1.2.3.2. ICSID Arbitration

Türkiye is a party to the ICSID Convention, entered into force on 02.04.1989[11]. As a member state, Türkiye accepts the jurisdiction of the ICSID for resolving disputes arising between foreign investors and the host state, provided that the conditions set out in the ICSID Convention and the applicable BITs or MITs are met.

In terms of ICSID statistics, there are 35 cases involving Turkish investors as claimants; six are still pending, while the remaining 29 have been concluded. Additionally, there are 17 cases in which the Republic of Türkiye or Turkish state-owned companies were named as respondents, with three cases still pending and the others concluded[12].

In practice and in line with Türkiye's implementation of the ICSID Convention, the Turkish Court of Cassation has clarified[13] that ICSID awards cannot be enforced directly through execution offices in Türkiye. Instead, enforcement must first be sought through a competent court designated by the state, as required by Article 54(2) of the ICSID Convention. Türkiye officially designated the competent courts as commercial courts or civil courts of first instance[14].

The role of the competent court should be limited to verifying whether the ICSID award satisfies the procedural requirements set out in the ICSID Convention; it is not authorized to reassess the merits of the case. This is in line with Article 53 of the ICSID Convention, which states that no appeal or other legal remedy may be pursued against an ICSID award beyond the mechanisms expressly provided therein. Thus, ICSID awards are binding and enforceable in Türkiye, but only after a formal application to the competent domestic court.

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[9] UNCTAD. OIC Investment Agreement (1981). International Investment Agreements Navigator, UNCTAD Investment Policy Hub, https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/5079/oic-investment-agreement-1981- (last visited 02.09.2025).

[10] R"Türkiye." International Investment Agreements – UNCTAD, United Nations Conference on Trade and Development, investmentpolicy.unctad.org/international-investment-agreements/countries/214/t-rkiye (last visited 16.09.2025).[1]

[1] International Centre for Settlement of Investment Disputes. Member States. ICSID, https://icsid.worldbank.org/about/member-states. (last visited 02.09.2025).

[12] International Centre for Settlement of Investment Disputes. Database of ICSID Cases. ICSID, World Bank Group, https://icsid.worldbank.org/cases/case-database. (last visited 05.09.2025)

[13] Turkish Court of Cassation Decision, 12th Civil Chamber, Case No: 2021/875, Decision No: 2021/4586, Date: 28.4.2021

[14] The competent authority notified by Türkiye to ICSID on 01.02.2017 is as follows: "*The commercial court of first instance ("asliye ticaret mahkemesi") belonging to the subject place, as designated in the written agreement between the parties, and in case of absence of such agreement, the commercial court of first instance having the jurisdiction over the place of the losing party's domicile, if not, residence, or, in the absence of both, over the place of the subject property of the claim, or in places where a commercial court of first instance does not exist, the civil court of first instance ("asliye hukuk mahkemesi") of the subject place.* International Centre for Settlement of Investment Disputes. Turkey. ICSID, https://icsid.worldbank.org/about/member-states/database-of-member-states/member-state-details?state=ST144 (last visited 01.09.2025).

1.2. MAIN PRINCIPLES

The main principles governing arbitration in Türkiye are derived from both the applicable statutory provisions and the case law developed by the Turkish Court of Cassation. While the scope of procedural principles are broader, including equality of arms, confidentiality, and party autonomy, this section focuses on the core principles consistently recognized and applied by Turkish courts.

1.2.1. ARBITRABILITY

Disputes related to *rights in rem* arising from immovable properties located in Türkiye, and/or disputes that are not within the free disposal of the parties, are not arbitrable[15]. Accordingly, family law, administrative law (except for disputes arising from concessions contracts), criminal law, consumer disputes, bankruptcy proceedings, employment disputes, ex parte proceedings (such as recourse for certificate of inheritance, change of name etc.) are principally excluded from arbitration.

1.2.2.NO *REVISION AU FOND*

The principle of no *revision au fond* is recognized in Türkiye. Turkish courts do not conduct a substantive review of the merits of arbitral awards; their examination in annulment and enforcement proceedings is strictly limited to the grounds for annulment or enforcement as provided by law.

This approach reflects the parties' express intention to resolve disputes before arbitrators and underscores that appellate review of arbitral awards is excluded under Turkish law.

1.2.3. COMPETENCE-COMPETENCE

In Türkiye, arbitral tribunals are empowered to decide on their own jurisdiction, including any objections related to the existence or validity of the arbitration agreement[16]. While the tribunal's jurisdictional decision may ultimately be challenged together with the final award through a setting aside application or in proceedings for recognition and enforcement, courts in Türkiye also respect the arbitration agreement when a party initiates proceedings despite its existence. In such cases, the party relying on the arbitration agreement may raise a preliminary arbitration plea before the national court. The court then conducts a limited review of the arbitration agreement's validity[17]. Unless the agreement is null, void, or unenforceable, the court must uphold the jurisdictional objection and dismiss the case on procedural grounds. Failure to raise a timely objection is deemed as acceptance of the court's jurisdiction.

[15] See Article 1/4 of the IAL; Article 408 of the CCP.

[16] See Article 7/h of the IAL; Article 422 of the CCP.

[17] See Article 5 of the IAL; Article 413 of the CCP.

1.2.4. SEPARABILITY

The principle of separability is recognized in Türkiye. An arbitration agreement may be concluded either as a separate contract or as an arbitration clause incorporated into the main contract. Regardless of how it is executed, the arbitration agreement is treated as independent from the main contract[18]. Pursuant to this principle, if a dispute arises concerning the invalidity of the main contract, the arbitration clause retains its autonomy, allowing recourse to arbitration to resolve the dispute.

1.2.5. EXTENSION TO THIRD PARTIES

The principle that arbitration agreements may extend to third parties is recognized in specific instances as established in Turkish jurisprudence, although such agreements primarily create rights and obligations between the contracting parties. Their effects may be extended to third parties where there is a clear intention to arbitrate.

The Turkish Court of Cassation has ruled that beneficiaries who are aware of their rights under a contract cannot be deemed to have implicitly consented to an arbitration clause contained therein. Due to the exceptional nature of arbitration, the intention to submit to arbitration must be expressed clearly and explicitly, or at least implied in a manner that leaves no room for doubt[19].

Moreover, the principle of good faith may support extending arbitration rights to third parties in certain circumstances. For example, a person who behaves as if they are a party to the arbitration, despite not being formally involved, and thereby acts inconsistently with the prohibition against contradictory behavior, may be subject to such extension.

In the context of succession, such as the assignment of receivables, subrogation by an insurer, or the death or bankruptcy of a party, the rights associated with an arbitration clause can be transferred without requiring the successor's explicit consent. These rights are transferred in full, encompassing both substantive and procedural law rights. The Court of Cassation's decision indicates that this includes the right to pursue arbitration, supporting the conclusion that extension is possible[20].

As a general rule, a successor can be considered to have consented to arbitration without additional approval. However, in proceedings under the IAL, a clear intention confirming the successor's willingness to arbitrate must be sought[21]. If one party loses capacity to be a party to the arbitration, the tribunal must suspend the proceedings and notify the relevant parties. If no response is received within six months, or if the notified parties do not clearly indicate their intention to continue, the arbitration proceedings shall be terminated.

[18] See Article 4/4 of the IAL; Article 412/4 of the CCP.

[19] Turkish Court of Cassation 11th Civil Chamber, Case No: 2014/9538, Decision No. 2015/8707, Date: 25.06.2015

[20] Turkish Court of Cassation, 6th Civil Chamber, Case No. 2024/159, Decision No. 2025/1431, Date: 10.04.2025

[21] See Article 11/B of the IAL.

2

RECOGNITION AND ENFORCEMENT

There are two regulations regarding the recognition and enforcement of foreign arbitration awards in Türkiye. The first is set out in Articles 60 to 63 of the Turkish Private International and Procedural Law No. 5718 ("**IPPL**"), while the second is the NYC, to which Türkiye is a contracting party. The scope and application of both frameworks are discussed in detail below.

2.1. NEW YORK CONVENTION

Türkiye has ratified the NYC with certain reservations. Due to these reservations, the recognition and enforcement under the NYC are limited to commercial disputes and awards rendered in relation to countries that are parties to the Convention.

If the country where the foreign arbitral award was rendered has not ratified the NYC, the recognition and enforcement of the foreign arbitral award will be sought not under the Convention, but under the provisions of the IPPL. Since the NYC has been ratified by many countries, its provisions generally apply to the recognition and enforcement of foreign arbitral awards.

NYC provides that arbitral awards must be treated as binding and enforced by national courts, subject only to limited procedural steps. In Türkiye, this requires filing the award and the arbitration agreement with certified translations, after which the courts restrict themselves to examining the limited refusal grounds. This streamlined process ensures procedural fairness while preventing any re-litigation of the merits.

Under Article 5 of NYC, the enforcement of a foreign arbitral award may only be refused under the limited circumstances, primarily addressing procedural defects rather than the substance of the arbitral tribunal's decision. The first paragraph of Article 5 sets out five separate grounds for refusal of enforcement, which can be raised by the party against whom the award is invoked. In brief, enforcement of an arbitral award may be refused if the party against whom the enforcement is sought proves that:

- one of the parties was incapacitated during the conclusion of arbitration agreement,
- the arbitration clause or agreement was invalid,
- one of the parties was not properly notified and/or defended during the arbitral process,
- the arbitral award is not yet final,
- the award resulted from a dispute not contemplated by, or not falling within the terms of the submission to arbitration, or containing decision on matters which are out of the submission's scope, and
- there was non-compliance with the composition of the arbitral tribunal, or the arbitral procedure, or with the agreement between the parties or the applicable law.

In addition to the reasons above, under Article 5(2), the court may also refuse enforcement *ex-officio* if it considers the subject matter non-arbitrable or if enforcement of the award would be contrary to the public policy.

2.2. TURKISH PRIVATE INTERNATIONAL AND PROCEDURAL LAW NO. 5718

In Türkiye, the provisions of the NYC take precedence in the recognition and enforcement of foreign arbitral awards, underscoring the country's commitment to international arbitration standards and facilitating cross-border dispute resolution. The IPPL applies only in cases where the NYC is either inapplicable or silent.

Articles 60 to 63 of the IPPL set out the procedural requirements for filing recognition and enforcement petitions, the grounds for refusal, and the roles of Turkish courts in these proceedings. While the grounds for refusal under the IPPL largely correspond to those under the NYC, there are slight variations in terminology. Fundamentally, the IPPL leads to the same practical conclusions as the NYC regarding enforcement refusal.

Article 62 of the IPPL explicitly incorporates the grounds for refusal listed in Articles 5(1) and 5(2) of the NYC. In addition, it introduces an additional ground for refusal: the absence of an arbitration agreement or the failure to include an arbitration clause in the principal contract. Although this specific ground is not expressly stated in Article 5 of the NYC, it can nonetheless be inferred from the underlying spirit and purpose of the NYC that such a situation constitutes a valid ground for refusal of enforcement.

2.3. CONSIDERATIONS ON REFUSAL GROUNDS

Among all the conditions of enforceability, Turkish courts attach a particular importance to public policy. The term "public policy" is not explicitly defined by Turkish law; therefore, the standards for refusing recognition or enforcement on public policy grounds largely depend on judicial practice[22]. The most common examples of a violation of public policy are:

- violations of the right to be heard,
- awards being contrary to good morals,
- awards violating foreign trade, customs or tax regulations, and
- awards concerning non-arbitrable disputes.

Although Turkish courts generally avoid revisiting the merits of the case (*revision au fond*), an arbitral award that violates fundamental principles of public policy or general ethics under the Turkish legal system may be reviewed to the extent necessary to assess such violations.

In cases where the agreement or the arbitral award foresee actions such as tax evasion, issuing fake invoices, or attempting to evade customs duties, Turkish judges carefully assess whether enforcement of the award would be contrary to public policy.

[22] The Plenary Assembly of the Turkish Court of Cassation, in its Unification of Judgments decision, defined public policy as comprising rules derived from both public and private law, which parties must comply with and over which they cannot freely dispose. The decision further states that the scope of public policy under domestic law encompasses:

In general, the Turkish Court of Cassation adopts a narrow interpretation of public policy violations, favoring arbitration, although some contradictory decisions exist[23], reflecting tensions in practice.

As another important note, the Turkish Court of Cassation requires a clear and unequivocal expression of the parties' intention to arbitrate. In the absence of a definitive arbitration agreement leaving no room for doubt, Turkish courts have frequently upheld objections to arbitration[24].

Finally, the instances in which Turkish courts have adopted an arbitration-friendly approach by refraining from reviewing the substance of the dispute should not be overlooked. The Turkish Court of Cassation has clarified that procedural discretion exercised by arbitrators will not be considered contrary to public policy unless it infringes upon the right to be heard. Indeed, the court indicated that matters such as conducting inspections or obtaining expert reports relate to the conduct of proceedings do not fall within the limited statutory grounds for annulment[25].

- rules based on the fundamental values of Turkish law,
- the general sense of morality and ethics in Turkish society,
- fundamental notions of justice underlying Turkish legislation,
- general policies on which Turkish laws are built,
- fundamental rights and freedoms enshrined in the Turkish Constitution,
- universally accepted principles in international law,
- the principle of good faith in private law, and
- legal norms reflecting moral values and concepts of justice commonly embraced by civilized societies.

It also includes considerations regarding societal civilization, the country's political and economic system, and respect for human rights and freedoms (See the Plenary Assembly of the Turkish Court of Cassation, Case No. 2010/1, Decision No. 2012/1, Date: 10.02.2012).

[23] For example, in a dispute arising from a concession agreement concerning the operation of GSM services, the Court of Cassation found that the award reduced the treasury share and public contributions in a manner inconsistent with the nature of the concession, the State's objective of continuous revenue, mandatory legal provisions, and the public interest, thereby violating Turkish public policy. Consequently, the court overturned the first instance court's decision and annulled the award (See Turkish Court of Cassation 13th Civil Chamber, Case No: 2012/8426, Decision No: 2012/10349, Date: 17.4.2012).
Similarly, in another decision, The court held that the arbitral award should be scrutinized for its compliance with Turkish public policy, emphasizing that the impact of the arbitral tribunal's findings on the calculation of the Treasury's share should have been examined. Accordingly, the court reversed the decision dismissing the annulment action on the grounds of insufficient review.. (See Turkish Court of Cassation 13th Civil Chamber, Case No: 2011/19737, Decision No: 2012/25406, Date: 13.11.2012).

[24] In an illustrative decision, the Turkish Court of Cassation, 15th Civil Chamber, Case No: 2009/1438, Decision No: 2009/2153, Date: 13.04.2009 stated that the intention to arbitrate must be explicit and unambiguous. In this case, although the contract provided for the resolution of disputes by an arbitral tribunal, it also stipulated at the end of the same clause that Istanbul courts retained jurisdiction in the event of disputes, indicating that no definitive arbitration agreement was present. See also Turkish Court of Cassation 15th Civil Chamber, Case No: 2016/4735 Decision No. 2017/259 Date: 23.01.2017.

[25] For example, in its decision dated 17.06.2025 (Case No: 2024/2713, Decision No: 2025/3359), the 3rd Civil Chamber of the Turkish Court of Cassation ruled that the rejection of an expert report does not constitute a violation of the right to a fair trial.

2.4. PROCEDURAL CONSIDERATIONS IN ENFORCEMENT

In the process of recognizing and enforcing foreign arbitral awards in Türkiye, several procedural requirements must be observed. These include, among others, the payment of court fees, the provision of collateral where necessary, and the submission of certified Turkish translations of the award and arbitration agreement. Compliance is essential to ensure that enforcement proceedings proceed smoothly and without unnecessary delays.

2.4.1. COURT FEE

The filing fee in enforcement proceedings has long been a subject of debate. Judgment and writ fees are regulated under Tariff No. 1 attached to Court Fees Law No. 492. According to Section III/1, which governs proportional fees, a fee of 68.31 per thousand of the dispute value is generally collected in cases decided on the merits.

However, in enforcement proceedings, courts do not review the merits (*revision au fond*); only a procedural examination is conducted to verify whether the enforcement conditions are met. Consequently, enforcement lawsuits are generally not subject to proportional court fees. Accordingly, the Turkish Court of Cassation tended to rule in its recent decisions that a fixed fee shall be charged for the enforcement of foreign arbitral awards[26].

Nonetheless, a non-negligible part of the doctrine and decisions of the Turkish Court of Cassation maintain that a proportional fee may still apply, leaving some debate in practice.

In addition, the Turkish Constitutional Court's recent assessment may further fuel discussions regarding court fees. The Court reviewed the proportional fee requirement under Article 4 of Fee Law No. 492 for enforcement of foreign court decisions. While acknowledging that such fees limit property rights and the right to access the courts, the Court found these limitations justified, necessary, and proportionate to legitimate aims, such as reducing the judiciary's workload. The Court concluded that the proportional fee serves a valid public interest, does not impose an excessive financial burden on litigants, and is clear and foreseeable in application. Accordingly, the Court ruled that the relevant provisions are constitutional and do not violate fundamental rights[27].

This practice creates uncertainty regarding the applicable court fee for enforcement of foreign arbitral awards and may lead to inconsistencies in practice.

[26] The Grand Chamber of Turkish Court of Cassation, Case No. 2017/930, Decision No. 2019/812, Date: 27.06.2019

[27] Turkish Constitutional Court, Application No: 2024/104, Decision No: 2024/173, Date: 17.10.2024

2.4.2. COLLATERAL

Under Article 48 of the IPPL, foreign individuals or legal entities filing a lawsuit, intervening in a case, or initiating enforcement proceedings before Turkish courts or execution offices are required to provide collateral. The court or execution office determines the amount to cover potential adverse costs, losses, or damages incurred by the counterparty. Collateral is a procedural requirement under Article 114(1)(ğ) of the CCP, and failure to deposit it in the prescribed form and amount may result in rejection of the case on procedural grounds.

According to Article 87 of the CCP, the judge has discretion to determine the amount and form of collateral. If the parties agree on the collateral form, it may be set accordingly.

Exemptions from providing collateral may apply on the basis of reciprocity. Bilateral or multilateral agreements on mutual judicial assistance in civil matters can establish reciprocity. Türkiye is a party to two multilateral treaties providing such exemptions: the 1954 Hague Convention on Civil Procedure and the European Convention on Establishment. While both treaties exempt parties from providing collateral for legal costs, the European Convention on Establishment applies only to natural persons.

2.4.3. TRANSLATION REQUIREMENT

Law No. 805, enacted in 1926, is an archaic statute requiring transactions in Türkiye to be conducted in Turkish. Under Article 1 of Law No. 805, all Turkish companies and institutions are required to conduct transactions in Turkish within Türkiye. This obligation extends to contracts, which may raise practical issues regarding arbitration agreements. In some cases, the Turkish Court of Cassation has held that arbitration agreements between Turkish parties are invalid if not drafted in Turkish, resulting in annulment of arbitral awards or rejection of enforcement requests.

However, a positive trend has emerged. The Court has ruled that Law No. 805 does not apply when a foreign element is involved[28]. These developments reflect a more flexible approach toward language requirements in arbitration agreements involving foreign elements.

[28] Turkish Court of Cassation 15th Civil Chamber, Case No: 2020/1714, Decision No 2020/2652 Date: 02.10.2020

3

ANNULMENT

Arbitral awards in Türkiye may only be challenged through annulment (set-aside) actions. Domestic awards are governed by Article 439 of the CCP, while awards with a foreign element seated in Türkiye fall under Article 15 of the IAL. Both statutes set out an almost identical and exhaustive list of annulment grounds, which are outlined in this section along with key procedural considerations.

Under both CCP and IAL, arbitral awards may only be challenged through an annulment (set-aside) action. For awards without a foreign element, annulment proceedings are governed by Article 439 of the CCP, whereas for awards with a foreign element where the seat of arbitration is in Türkiye, such proceedings are regulated under Article 15 of the IAL.

Accordingly, both statutes provide an exhaustive and almost identical list of grounds for setting aside arbitral awards. These grounds are as follows:

- One of the parties to the arbitration agreement lacked legal capacity, or the arbitration agreement is invalid;
- The composition of the arbitral tribunal was not in accordance with the parties' agreement or, in the absence of such agreement, with the applicable provisions of the relevant law;
- The award was rendered after the expiry of the arbitration time limit;
- The arbitral tribunal ruled on its own jurisdiction either in violation of the law or without proper authority;
- The arbitral tribunal ruled on a matter not submitted to arbitration, failed to rule on all claims, or exceeded its authority;
- The arbitral proceedings were not conducted in accordance with the procedure agreed by the parties or, in the absence thereof, in accordance with the relevant legal provisions, and this procedural defect affected the substance of the award;
- The principle of equality of the parties or the right to be heard was violated[29];
- The dispute is not arbitrable under Turkish law; and
- The arbitral award is contrary to public policy.

Among the grounds for annulment, Turkish courts attach particular significance to public policy. The explanations provided in Section 2.3 regarding public policy are equally applicable in this context.

Additionally, our explanations in Section 2.4 regarding collateral and Turkish translation requirement also apply to the annulment proceedings. In terms of court fee, a fixed court fee applies in annulment proceedings, as the court does not evaluate the merits of the case.

[29] From a wording perspective, Article 15 of the IAL refers solely to the principle of equality and does not explicitly mention the right to be heard. However, in practice, the right to be heard is generally considered to be encompassed within the principle of equality.

4

THIRD-PARTY FUNDING

Third-party funding ("**TPF**") is an emerging tool in arbitration, allowing non-parties to finance legal proceedings in exchange for a return linked to the outcome. While still uncommon in Türkiye, interest in TPF is growing, especially in high-value investor–state disputes. Although Turkish law does not yet regulate TPF, some institutional rules, such as those of ITOTAM, require disclosure of funding arrangements, signaling a gradual shift toward greater transparency.

In essence, TPF refers to an arrangement where a non-party finances the legal costs of one of the parties, usually in exchange for a return contingent on the outcome. This typically covers legal fees, arbitral costs, and sometimes security for costs. While traditionally claimant-driven, defense-side funding has begun to emerge in more mature markets, albeit at a limited scale.

In Türkiye, TPF remains largely unregulated, with no explicit prohibition or detailed legal framework under domestic or international arbitration rules. As there is no regulation or jurisprudence regarding third-party litigation funding, the fees and interests that can be charged by funders are not subject to any specific limitation. Funders generally have the freedom to evaluate the dispute, merits, chances of success, and enforceability to determine their fees and interest rates. However, this freedom is tempered by general principles of mandatory provisions and public policy applicable to commercial transactions, including the good faith requirement under Article 2 of the Turkish Civil Code No. 4721, economic hardship considerations, and the potential reduction of penalty clauses. It should also be noted that, according to Article 164 of the Attorneyship Law No. 1136 ("**Law No. 1136**"), legal services must be remunerated with a fee, and the Union of Turkish Bar Associations sets minimum annual rates. Pure contingency fee agreements ("no win, no fee") are prohibited; however, conditional fee structures combining a guaranteed base fee with a success fee are accepted within limits. The success fee calculation can be based on a percentage of the recovered amount, a fixed sum, or a multiplier of the base fee, but total fees cannot exceed 25% of the claimed amount in accordance with Law No. 1136. These regulations impact how TPF arrangements involving legal representation are structured in Türkiye.

From an institutional perspective, the ITOTAM Arbitration Rules require disclosure of TPF arrangements[30]: parties must promptly inform the Secretariat, the tribunal, and the other party about any non-parties financing claims or defenses and having an economic interest in the outcome.

In practice, TPF is not yet widely used in Türkiye. Most proceedings are funded directly by the parties or their corporate resources. Nevertheless, as arbitration costs rise and Turkish investors increasingly initiate disputes under BITs and the ICSID Convention, TPF is expected to become more relevant, particularly in investor–state arbitrations where potential claims are substantial.

[30] See Article 19 of ITOTAM Arbitration Rules 2021

5

ARBITRATION INSTITUTIONS

Türkiye hosts several arbitration institutions that provide both domestic and international arbitration services. These institutions have adopted modern arbitration rules and procedures to align with global standards and enhance the efficiency of dispute resolution.

5.1. İSTANBUL ARBITRATION CENTRE (ISTAC)

ISTAC was established in Istanbul under the Istanbul Arbitration Centre Law (No. 6570) dated 20.11.2014 to provide arbitration services. The institution has also published rules on fast-track arbitration, emergency arbitrators, med-arb procedures, and mediation.

ISTAC is recognized as an active and innovative center, particularly for organizing arbitration-related events and competitions. Its flagship event, Istanbul Arbitration Days (**IAD**), is held annually and has become a prominent international conference, attracting leading arbitrators, legal professionals, and academics. IAD focuses on current arbitration trends, procedural innovations, and contemporary challenges such as digital transformation and expedited proceedings. By fostering international collaboration, the event significantly contributes to Istanbul's reputation in the global arbitration community.

Another notable example of ISTAC's initiatives is the Future Arbitration Counsel Competition, which aims to nurture the next generation of arbitration practitioners.

An overview of ISTAC's 2024 statistics is presented in Section 6.1.3

5.2. İSTANBUL CHAMBER OF COMMERCE ARBITRATION AND MEDIATION CENTER (ITOTAM)

The Istanbul Chamber of Commerce has promoted arbitration since 1979 through its Arbitration Bureau. To provide services aligned with international standards, it established an autonomous arbitration center in 2014 and drafted new rules. The current ITOTAM Arbitration Rules (2021) cover expedited arbitration, emergency arbitrators, and related procedures.

5.3. ARBITRATION BOARD OF THE UNION OF CHAMBERS AND COMMODITY EXCHANGES OF TÜRKİYE (TOBB)

The TOBB Arbitration Council was established under Article 56(t) of Law No. 5174 (Union of Chambers and Commodity Exchanges of Türkiye Act). TOBB acts as the founding body and administers arbitration for commercial disputes among Turkish and international entities. The Council maintains its own institutional arbitration rules designed to facilitate efficient dispute resolution.

5.4. ARBITRATION CENTER OF THE UNION OF TURKISH BAR ASSOCIATIONS (UTBA)

The UTBA Arbitration Center was officially established in 2015. Initially created to resolve attorney-client fee disputes, the Center now handles a broader range of arbitral matters. It operates under its own institutional arbitration rules, formalized and updated in February 2022, providing an independent and impartial forum for arbitration.

6

ANNUAL DEVELOPMENTS

This section provides an overview of the most recent developments in arbitration involving Türkiye. It highlights 2024 statistics from major arbitration institutions and reviews notable decisions rendered over the past year. The data and cases presented illustrate current trends, institutional activity, and evolving judicial approaches within the Turkish arbitration landscape.

6.1. INSTITUTIONAL STATISTICS (2024)

6.1.1. ICSID

As of the latest ICSID data, Türkiye has been sued in one new case: ENCORE Investment Group Limited v. Türkiye, where the investor's home state is Malta. This dispute concerns the energy sector, specifically electricity, gas, steam, and air conditioning supply, and is currently pending. Notably, the last case registered against Türkiye before this was in 2021.

Regarding Turkish investors initiating cases in 2024, there are two pending arbitrations: Kent Kart v. Serbia and Lotus v. Turkmenistan (II).

In Kent Kart v. Serbia, the claims include alleged indirect expropriation, breaches of the fair and equitable treatment/minimum standard of treatment (including denial of justice), and umbrella clause violations. The dispute arises from the alleged wrongful termination by a municipal authority of a public-private partnership contract with the claimants for operating and maintaining public transport ticketing services.

The Lotus v. Turkmenistan (II) case, brought under the Energy Charter Treaty (ECT), involves a bankrupt Turkish construction company challenging Turkmenistan over alleged breaches of investment protections. This arbitration is also currently pending[31].

6.1.2. ICC

Türkiye continued to demonstrate strong engagement in international arbitration under the ICC in 2024. Out of the total number of parties involved in ICC cases worldwide, 80 were from Türkiye, accounting for 3.34% of all parties across the year's filings. This placed Türkiye 8th globally and 1st within the Central and South-East Europe region. Of these 80 parties, 40 were claimants and 40 were respondents, showing a balanced representation. In terms of applicable laws in contracts in newly registered cases, Turkish law was chosen 15 times.

Regarding the appointment of arbitrators, nationals of Türkiye received a total of 24 appointments, which corresponds to 1.68% of all appointments made globally. These appointments included:

- 18 as co-arbitrators
- 6 as presidents of arbitral tribunals

Additionally, in 2024, Türkiye was selected as the place of arbitration in six ICC cases[32].

6.1.3. ISTAC

ISTAC continued to strengthen its position in the Turkish arbitration landscape in 2024. ISTAC's annual caseload increased from 138 cases in 2023 to 167 in 2024. Along with this growth, the distribution of dispute types shifted, with service agreement disputes surpassing construction disputes as the most common case category.

Around 80% of disputes were resolved within six months to one year, while 20% took longer than one year to conclude. In the case of expedited arbitration, 82% of disputes were resolved within three months, and 18% within six months.

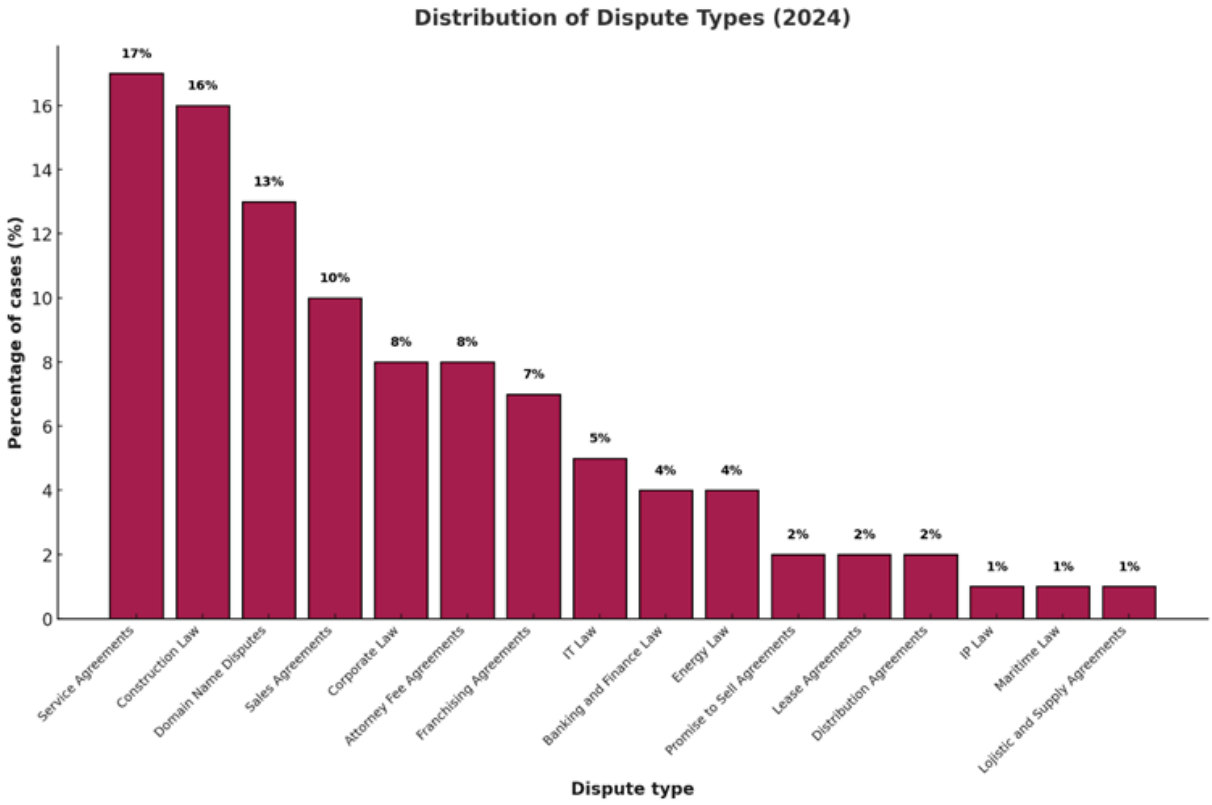
In this context, the following chart illustrates the sectoral distribution of cases at ISTAC in 2024, showing the percentage breakdown and demonstrating how service agreement disputes have become the leading category,

[31] UNCTAD. Investment Dispute Settlement Navigator: Turkey – Investor Cases. UNCTAD, 2025, https://investmentpolicy.unctad.org/investment-dispute-settlement/country/214/turkey/investor (last visited 04.09.2025).

[32] International Chamber of Commerce. ICC Dispute Resolution 2024 Statistics. ICC Publication No.: DRS992E, 2025, https://iccwbo.org/news-publications/news/icc-dispute-resolution-statistics-2024/ (last visited 05.09.2025).

[33] İstanbul Arbitration Centre (ISTAC). 2024 Statistics. İstanbul Tahkim Merkezi, https://istac.org.tr/wp-content/uploads/2025/02/2024-Statistics.pdf, (last visited 05.09.2025).

overtaking construction[33].



6.2. NOTABLE DECISION (2024-2025)

Right to Defense–Based Public Policy Objections Insufficient to Prevent Enforcement of ICC Award

Turkish Court of Cassation – 11th Civil Chamber, Case No: 2024/54, Decision No: 2024/8389, Date: 27.11.2024

A dispute over receivables arising from a commercial agency agreement between the claimant, a company domiciled in Oman, and the Turkish company Havelsan was resolved through arbitration conducted under ICC rules. The claimant subsequently applied for recognition and enforcement of the arbitral award in Türkiye.

The respondent objected to enforcement, arguing that, pursuant to Article 48 of the IPPL, the claimant was required to provide collateral and that the award did not satisfy the conditions for enforcement under the IPPL. The respondent further contended that no decision had been issued by the competent Swiss authorities, the seat of arbitration, confirming that the award was final and enforceable. Additionally, the respondent argued that its right to defense had been restricted, constituting a violation of Turkish public policy, and requested dismissal of the case.

The Court of First Instance found that the arbitral award was final, the respondent had been duly represented during the arbitration, and the dispute arose from a commercial claim, which did not violate Turkish public policy. Accordingly, it granted enforcement of the award. The respondent appealed the decision.

The Regional Court of Appeal dismissed the appeal, noting that Switzerland, where the award was rendered, is a party to the New York Convention, and thus the conditions for recognition and enforcement must be assessed under its provisions, to which Türkiye is also a party. The court further found that the dispute arose from a contractual claim for unpaid receivables and was arbitrable under Turkish law, thereby not violating public policy. Moreover, the court held that the respondent had been duly notified of the arbitration proceedings, as notification had been sent via courier to the address provided in the petition. While the respondent claimed its right to defense had been restricted and fundamental procedural principles breached, the Regional Court of Appeal emphasized that the arbitration clause did not prescribe a specific method of notification, that Switzerland was the designated seat of arbitration, and that there was no legal obstacle to applying Swiss procedural rules or serving documents in accordance with Swiss law.

> *Although the respondent claimed that its right to defense was restricted and that fundamental principles of procedural law were violated, the arbitration clause in the contract does not contain any provision regarding the form of service of notices in the arbitration proceedings. Furthermore, since the seat of arbitration was determined as Switzerland, there is no impediment to applying the provisions of the Swiss Arbitration Act and the Swiss Rules of Civil Procedure regarding service.*

The decision was subsequently appealed to the Turkish Court of Cassation. The Court of Cassation upheld the Regional Court of Appeal's decision, confirming that dismissal on the merits complied with both procedural rules and substantive law.

Raising the Invalidity of an Arbitration Agreement Only at the Enforcement Stage Violates Good Faith

Turkish Court of Cassation – 11th Civil Chamber, Case No: 2023/6475, Decision No: 2024/7846, Date: 07.11.2024

The dispute arose from a sales agreement entered into between the claimant company and Aston FFI S.A., a Swiss-based company acting as the principal debtor, with another company serving as guarantor. Following the alleged breach of contract, the dispute was resolved through arbitration conducted in London. The claimant subsequently applied for recognition and enforcement of the arbitral award in Türkiye.

The respondents objected to the enforcement, arguing that the parties lacked legal capacity, that the arbitration agreement was invalid, and that it should be investigated whether the agreement was signed by duly authorized company representatives. They further claimed that the arbitral award was rendered in violation of their right to defense and the rule requiring proof by written evidence, and that it was contrary to Turkish public policy. Additionally, they argued that the claimant deliberately withheld evidence that could have been favorable to them. On these grounds, the respondents requested the dismissal of the enforcement application.

The Court of First Instance rejected the respondents' objections and granted enforcement of the arbitral award. In its reasoning, it found that there was no procedural breach in the appointment of the arbitrators or in the notifications made to the respondents regarding the arbitration proceedings, and that the respondents, in fact, submitted a statement of defense before the arbitral tribunal. Although the respondents argued that the arbitration clause was invalid on the grounds that the agreement was signed by authorized representatives, the court noted that this objection had not been raised during the arbitration proceedings. Moreover, based on the parties' statements and correspondence, the court concluded that the contract was acknowledged and adopted by both parties.

> *The contract between the parties was concluded through correspondence, which satisfies the validity requirements under the New York Convention. Moreover, the respondent did not raise any such objection during the arbitration proceedings and, in fact, adopted the contract. Raising such an objection during the enforcement stage is incompatible with the principle of good faith.*

Consequently, the court held that the respondents' objection to the validity of the arbitration clause was contrary to the principle of good faith. The court also emphasized that an arbitration agreement must be in writing, and that this requirement is deemed fulfilled if a written arbitration agreement is alleged in the statement of claim and not contested in the statement of defense. In the present case, the email correspondence between the parties demonstrated that the respondents were aware of the arbitration, and no objection was raised regarding the validity of

the arbitration clause during the arbitral proceedings. Furthermore, the court held that the respondents' substantive objections could not be examined at the enforcement stage. On these grounds, the court granted the recognition and enforcement of the arbitral award. This decision was subsequently appealed by the respondents.

The Regional Court of Appeal upheld the decision of the Court of First Instance, finding that the dispute was arbitrable and that the arbitral award did not violate Turkish public policy. The court emphasized that the procedural rules cited by the respondent as a basis for the alleged public policy violation did not require the application of Turkish law on evidentiary matters, and that the respondent exercised its right to defense since it submitted a statement of defense during the arbitration proceedings. The court also noted that there was no concrete evidence supporting the respondent's allegation that the claimant withheld evidence during the arbitration. It held that the submission of a certified copy of the agreement by the claimant was sufficient, and that the agreement was concluded through correspondence between the parties, which satisfies the formal validity requirements under the New York Convention. Moreover, the respondent did not raise any objection regarding the validity of the arbitration agreement during the arbitration proceedings and acknowledged the agreement. The court found that it would be contrary to the principle of good faith to deny the validity of the agreement at the enforcement stage. It was also established that the respondent company was a guarantor under the contract, and this fact was confirmed by the respondent's counsel. The court reiterated that in recognition and enforcement proceedings, the parties are not permitted to re-litigate the merits of the case, and therefore, the respondent's objections regarding the substance of the arbitral award could not be examined.

The decision was subsequently upheld by the Turkish Court of Cassation.

Neither Procedural Timeline Breaches Nor Non-Use of Expert Reports Constitute Grounds for Annulment

Turkish Court of Cassation – 11th Civil Chamber, Case No: 2025/944, Decision No: 2025/1933, Date: 19.03.2025

In the annulment proceedings, the claimant argued that, pursuant to the arbitration clause in the purchase agreement signed between the parties, the respondent had initiated arbitration before ITOTAM, which resulted in an award ordering the claimant to pay TRY 6,750,000 as the cheque amount, along with commercial interest accruing from the date of the claim until the actual payment date. However, the claimant contended that the arbitral tribunal failed to issue its decision within the procedural timetable it had established and exceeded its authority by obtaining expert reports based on the principle of equitable justice regarding the recovery of the cheque amount. On these grounds, the claimant requested that the arbitral award be set aside.

The Regional Court of Appeal held that the grounds for setting aside an arbitral award are exhaustively listed under Article 439 of the CCP, and that an annulment is not possible based on reasons outside those enumerated. The court noted that, pursuant to Article 427 of the CCP, the award had been rendered within the prescribed one-year period, and that any failure by the arbitral tribunal to comply with its internal procedural timetable did not constitute grounds for annulment. It further found that obtaining an expert report fell within the tribunal's authority and that the award did not violate any provisions under Article 439 of the CCP. On these grounds, the court dismissed the case. The decision was appealed by the claimant, but the Turkish Court of Cassation upheld the ruling.

> *The arbitral tribunal's failure to comply with the internal procedural timeline does not constitute a ground for annulment.*

Expert Determinations Fall Outside the Scope of Annulment Proceedings

Turkish Court of Cassation – 6th Civil Chamber, Case No: 2025/629, Decision No: 2025/1118, Date: 19.03.2025

In the annulment proceedings, the claimant argued that the construction agreement between the parties was terminated due to a force majeure event (earthquake) and a subsequent mutual agreement to liquidate. Following liquidation, a dispute arose over the final account, prompting the respondent to

initiate arbitration. The claimant contended that the arbitral award was contrary to the principle of equity and asserted that grounds for annulment under Article 439 of the CCP existed, thereby requesting the award to be set aside.

The respondent objected, asserting that the decision in question was not an arbitral award within the meaning of CCP, but rather a technical report issued in accordance with the contract's dispute resolution clause, which functioned as a binding expert determination unless challenged before a competent court.

The Regional Court of Appeal, acting as the first instance court, held that the arbitration clause lacked the required clarity and exclusivity, as the parties authorized both the arbitrator and the courts to resolve disputes. Therefore, the court annulled the award on the grounds that the arbitrator should have declined jurisdiction instead of issuing a decision on the dispute.

The respondent appealed the decision, arguing that the arbitral award was actually an expert evidence report prepared under the evidentiary provisions of Article 193 of the CCP and not an arbitral award subject to annulment. It further contended that, according to the contract, the competent authority for objections was the courts, and since the claimant already filed a pending case at the Osmaniye 6th Civil Court on this matter, the Regional Court of Appeal should have dismissed the case on procedural grounds rather than ruling on the annulment of the arbitral award.

Upon appeal, the Turkish Court of Cassation reversed the decision. The Turkish Court of Cassation found that under Article 24.1 of the contract, the contractor alone was entitled to refer disputes concerning project manager decisions to an arbitrator within 14 days, and this provision did not establish arbitration as the exclusive means of resolving all disputes. The earlier version of Article 24.3 allowed either party to initiate arbitration within 28 days after the arbitrator's decision, otherwise making the decision final and binding; however, this procedure did not amount to a full arbitration proceeding. The 28-day deadline was insufficient for a proper arbitration process, and the parties later amended Article 24.3 to forgo arbitration after the arbitrator's decision, permitting either party to contest it before courts within the same timeframe. Despite abandoning arbitration, the parties maintained the right to an initial technical review by the arbitrator, whose decision effectively functioned as an expert determination rather than a binding arbitral award. Consequently, such expert determinations do not qualify as arbitral awards subject to annulment under Article 439 of the CCP. The parties' contractually agreed process, including the arbitrator's acceptance of expert review requests, was valid, and any challenges to the report's findings must be addressed by the competent courts. Therefore, the annulment claims against the expert determination lacked legal basis and should be dismissed on lack of jurisdiction.

> *Expert determinations made by arbitrators do not constitute arbitral awards rendered within the scope of arbitration proceedings governed by Articles 407 to 444 of the CCP, and therefore, cannot be subject to annulment proceedings under Article 439 of the CCP.*
>
> *The contractual clause providing for an objection to the arbitral award concerns the referral of the dispute to court in order to challenge the binding nature of the award, rather than constituting a ground for annulment under the CCP.*

Unless Otherwise Agreed, Parties May Amend or Expand Claims and Defenses

Turkish Court of Cassation – 6th Civil Chamber, Case No: 2025/93, Decision No: 2025/294, Date: 03.02.2025

The claimant argued that the arbitral tribunal exceeded its authority in violation of the *ultra petita* prohibition by awarding the full contract amount of TRY 550,200 to the respondent, even though such relief was not requested in its request of arbitration. This, according to the claimant, also breached the principle of equality. It was further argued that the respondent's allegations of unexpected income loss and financial hardship were not supported by any concrete evidence. Moreover, the tribunal's decision to order a lump-sum payment, despite the contract providing for payment in 12 equal installments, contradicts the terms of the agreement and violates the principles of good faith and equity. On these grounds, the claimant sought the annulment of the arbitral award issued by the Istanbul Chamber of Certified Public Accountants Arbitration Tribunal.

The respondent argued that the claimant caused financial harm by assigning the contract work to another party without providing any written or verbal notice of termination. Contrary to the claimant's assertions, the respondent claimed that the arbitration proceedings were conducted in accordance with a valid arbitration agreement, covering all claims, while ensuring the principles of equality and the right to be heard. Accordingly, the respondent asserted that there were no legal grounds for annulment and requested the dismissal of the claim.

> *Unless otherwise agreed by the parties, claims and defenses may be amended during arbitral proceedings.*

The Regional Court of Appeal, acting as the court of first instance, held that although the respondent's request for arbitration did not explicitly include a compensation claim, the arbitral tribunal rendered an award granting such relief. It found that the arbitration was not conducted in accordance with Article 428 of the CCP, and that this procedural defect had a material impact on the merits of the award. On these grounds, the court accepted the annulment claim and set aside the arbitral award pursuant to Article 439 of the CCP.
Upon appeal, the Turkish Court of Cassation held that, pursuant to Article 428(3) of the CCP, unless otherwise agreed by the parties, claims and defenses may be amended or expanded during arbitration proceedings, and since the claimant clarified its claims and explicitly quantified its monetary demand as TRY 550,200 in its rejoinder petition, the Regional Court of Appeal should have assessed the remaining annulment grounds accordingly; its failure to do so warranted the reversal of the judgment.

No Right to Be Heard Violation in TFF Arbitration Conducted Without Hearing

Turkish Court of Cassation – 3rd Civil Chamber, Case No: 2025/854, Decision No: 2025/2730, Date: 12.05.2025

> *The award was issued without holding a hearing in accordance with Article 11 of the TFF Arbitration Board Regulations, and no violation of the principle of equality or the right to be heard was identified.*

In the annulment proceedings, the claimant argued that it initiated arbitration to recover its bonus payment, but its claim was rejected. The claimant contended that clear contractual provisions were improperly interpreted, disregarding the parties' true intent. It further asserted that this violation of fundamental rights, including freedom of contract and the principle of legal certainty, made the decision contrary to public policy. Moreover, despite the claimant's repeated requests, the Turkish Football Federation (TFF) Arbitration Board failed to hold a hearing, violating the right to be heard and providing no justification for denying the hearing. Accordingly, the claimant sought annulment of the TFF Arbitration Board's decision on the grounds of public policy violations and breaches of equality and the right to a fair hearing.

The Regional Court of Appeal dismissed the case on the basis that the grounds for annulment under the CCP were not established, and the claimant subsequently appealed the decision.

The Turkish Court of Cassation held that the decision of the TFF Arbitration Board was issued without hearing in accordance with Article 11 of the TFF Arbitration Board Regulations and found no violations of the principles of equality or the right to be heard. The Court further determined that the decision did not contain any elements contrary to public policy. It held that the claimant's objections related to substantive law could not be raised in an annulment action under Article 439 of the CCP, as the required grounds for annulment were not met. Consequently, the Turkish Court of Cassation upheld the decision.

Claims for Annulment of Objection and Enforcement Denial Compensation Considered Arbitrable Under Turkish Law

Turkish Court of Cassation – 11th Civil Chamber, Case No: 2024/4628, Decision No: 2025/306, Date: 21.01.2025

In the annulment proceedings, the claimant argued that the respondent initiated an execution proceedings despite the existence of an arbitration clause in the distributorship agreement, and that an action for annulment of objection (=*itirazın iptali davası*)[34], triggered by the claimant's challenge to the payment order, was not arbitrable under Turkish law. The claimant alleged that the arbitral tribunal exceeded its authority by ruling matters beyond the scope of the request in the execution proceedings and failed to respect the principle of equality between the parties. It was further contended that the notice underlying the execution proceedings did not contain any acknowledgment of debt, but merely proposed a settlement offer, which was never accepted, thus no enforceable debt had arisen. The claimant also argued that the tribunal misinterpreted the parties' contractual roles, reached factually and legally flawed conclusions, and based its award on a legal relationship that had never come into effect. The award was also challenged on the grounds that it granted enforcement denial compensation (=*icra inkar tazminatı*)[35], which the claimant argued was non-arbitrable, and that it failed to consider the claimant's objections to the interest and interest rates. Finally, the claimant cited the dissenting opinion of one arbitrator to support its claim that the tribunal acted ultra vires, committed manifest error, and rendered an award in breach of public policy.

> *In cases where the claimant in arbitration seeks enforcement denial compensation, there is no legal impediment to assessing and ruling on such a request, either positively or negatively. Furthermore, claims asserting that enforcement denial compensation amounts to a violation of the right to property will not be subject to review*

The Regional Court of Appeal held that actions for annulment of objection are arbitrable under Turkish law, as they concern matters over which the parties may freely dispose. It further noted that determining the applicable legal rules and evaluating the evidence fall within the exclusive competence of the arbitral tribunal. The court emphasized that the correctness of the arbitral tribunal's interpretation of the law or the merits of the award cannot be reviewed in annulment proceedings, and that claims alleging misinterpretation of contractual or substantive legal provisions do not constitute grounds for annulment based on public policy. The claimant's allegation that the arbitral tribunal exceeded its authority by ruling on non-arbitrable matters was found to be unsubstantiated. The court also found that the

[34] The action for annulment of objection is a legal remedy available to the creditor to challenge the debtor's objection raised against an enforcement proceeding before the enforcement offices and to ensure the continuation of the proceeding, which has been suspended due to such unlawful objection. This action primarily aims to determine whether the debtor's objection to the enforcement proceeding is substantively justified.

[35] Enforcement denial compensation is for the creditor to compensate for the loss suffered as a result of the debtor unjustly objecting and hence suspending the execution proceedings before the execution offices.

claimant's defenses had been duly considered and reasoned in the award, and that the claimant's right to be heard and right to a fair trial were not violated. Furthermore, the court ruled that there is no legal barrier preventing the tribunal from ruling on a claim for enforcement denial compensation and rejected the argument that such compensation infringed upon the claimant's property rights. Accordingly, the court found that none of the annulment grounds set forth under CCP were established and dismissed the claimant's request for annulment.

Consequently, the decision was appealed by the claimant, and the Turkish Court of Cassation upheld the Regional Court of Appeal's decision.

Decision Regarding Arbitrators' Fees Provides No Valid Ground for Annulment

Turkish Court of Cassation – 11th Civil Chamber, Case No: 2025/512, Decision No: 2025/2983, Date: 30.04.2025

The claimant, who previously served as a factory manager at the respondent company, made certain patentable inventions, and claims that the respondent failed to assert full rights over these inventions within the four-month period prescribed under Article 115 of Industrial Property Code No. 6769, which requires employers to notify employees in writing of their full or partial rights claim within four months of receiving the employee's disclosure. Despite this failure, the respondent insisted that a timely full rights claim was made, leading to arbitration to determine whether such claim was duly made; following the arbitral award, the claimant initiated annulment proceedings on the grounds that the arbitral tribunal ruled on matters beyond the scope of the arbitration agreement and thereby exceeded its authority; that the award was unlawful due to an ambiguity regarding arbitrators' fees and the lack of a decision on litigation costs; and that the proceedings were tainted by procedural irregularities that affected the outcome of the award.

> *Although the decision regarding arbitrators' fees may initially give the impression of ambiguity as to which party is responsible for payment, a review of the other provisions of the award makes it clear that each party was to bear the fees of the arbitrator it appointed.*

Acting as a court of first instance, the Regional Court of Appeal ruled that the arbitral award was issued within the one-year period prescribed under Article 427 of the CCP. The court further found that the legal assessment made by the arbitral tribunal on this issue could not be subject to review under Article 439 of the CCP, which exhaustively enumerates the limited grounds on which an arbitral award may be set aside, and that the award did not contain any violation of public policy. The court ruled that, although there initially appeared to be some ambiguity in the arbitral award as to which party would be responsible for the arbitrators' fees, a holistic reading of the decision made it clear that each party was to bear the fees of the arbitrator they had appointed, and, in any case, the arbitrators subsequently waived their fees, thereby eliminating any dispute on that matter. Based on these grounds, the court dismissed the annulment action, and upon the claimant's appeal, the Turkish Court of Cassation upheld the decision of the Regional Court of Appeal.

Annulment Request Denied Due to Tribunal's Compliance with Arbitration Scope and Parties' Claims

Turkish Court of Cassation – 11th Civil Chamber, Case No: 2025/1524, Decision No: 2025/3024, Date: 30.04.2025

In the annulment proceedings initiated by the debtor against the arbitral award issued in an ISTAC arbitration concerning the annulment of objection to a payment order, the debtor claimed that the arbitral tribunal exceeded its authority and issued an unlawful award by ruling on matters involving a third-party mortgagor who was not a signatory to the arbitration agreement. The debtor argued that the execution proceedings had been suspended due to its denial of debt, which should also apply to the third party, making arbitration an invalid forum for resolving such a dispute. It was further noted that the underlying debt had already been fully paid under a supplementary protocol signed before the service of the payment order; therefore, it was incorrect for the tribunal to hold the third-party mortgagor liable for the full amount of the debtor's obligation. On these grounds, the debtor requested the arbitral award to be set aside.

The respondent (the creditor in the execution proceedings), argued that separate payment orders had been duly served on both the debtor and the owner of the mortgaged property. Although the claimant (the debtor) objected to the execution proceedings, the mortgagor did not raise any objection. The respondent contended that an action for annulment of objection cannot be brought against a party who has not objected to the execution proceedings, and therefore, the arbitral award was lawful. On these grounds, the respondent requested the dismissal of the annulment action.

> *No decision was rendered against the mortgagor, who was not a party to the arbitration proceedings. The arbitral award concerning the dispute between the parties did not exceed the scope of the claims, nor did it contain any illegality that would amount to a violation of public policy.*

The Regional Court of Appeal ruled that the enforcement proceedings initiated by converting the mortgage into cash were suspended upon the debtor plaintiff's objection. Considering that the execution proceedings became final with respect to the third-party mortgagor who did not object within the prescribed time, and in light of the arbitration agreement between the plaintiff and defendant, the court found that the annulment of objection proceedings were subject to arbitration and that the arbitral tribunal had jurisdiction. The court therefore held that there was no illegality in directing the arbitration proceedings solely against the objecting debtor. Although the plaintiff debtor argued that the arbitral tribunal exceeded its authority by issuing a ruling holding the third-party mortgagor liable for the entire debt despite the debt being paid in full prior to

the service of the payment order under the protocol signed by the parties, the court found that no decision was rendered against the third-party mortgagor, who was not a party to the arbitration. Furthermore, the court determined that the award remained within the limits of the parties- submissions and it did not violate public policy. Accordingly, the court dismissed the case.

Consequently, this decision was appealed by the plaintiff, and the Turkish Court of Cassation upheld the ruling.

Claims from Lease Agreements Are Arbitrable Despite Land Registry Annotation

Turkish Court of Cassation – 3rd Civil Chamber, Case No: 2025/1109, Decision No: 2025/3522, Date: 24.06.2025

In the annulment proceedings, the claimant argued that the agreement between the parties concerned not only the lease of the immovable property where the hospital operates but also the transfer of a private hospital license and hospital equipment, constituting an atypical contractual relationship. The claimant maintained that it had fully fulfilled its obligations under the contract and duly delivered the premises. Following a fire that occurred on the leased property, the tenant company initiated arbitration proceedings before ISTAC, alleging that the claimant was liable for the resulting damages. The claimant, however, contended that it bore no responsibility for the fire and that the arbitral tribunal rendered a partially unfavorable award based on an incomplete examination, disregarding expert reports and factual evidence. It further claimed that the tribunal, while initially stating that the dispute was not subject to any real property restriction, later contradicted itself by evaluating the claimant's liability in its capacity as the property owner. The claimant also asserted that the arbitral tribunal exceeded its authority by addressing matters not raised by the opposing party and failed to observe fundamental procedural principles, including party equality and the right to be heard. Requests for additional expert reports, objections to existing ones, and various procedural submissions were allegedly ignored without justification. Moreover, the tribunal reduced the amount of damages claimed by the tenant, but failed to provide any explanation or methodology for this reduction in the reasoning of the award. The claimant argued that these deficiencies rendered the award contrary to procedural law and public policy, and therefore subject to annulment.

> *The rights arising from lease agreements are personal rights and do not acquire the nature of a real right even if annotated in the land registry. Therefore, the claimant's argument that the dispute is not arbitrable is unfounded.*

The Regional Court of Appeal, acting as a court of first instance, emphasized that rights arising from lease agreements are personal in nature and do not acquire the status of rights in rem, even if annotated in the land registry. Therefore, the claimant's objection concerning the non-arbitrability of the dispute was found to be unfounded. The court further observed that the damages claimed due to the fire were based not only on alleged defects in the leased property and related liability but also on various other legal grounds, such as breach of contract, which were applicable to the case. In this regard, it underlined that arbitral tribunals are vested with the discretion to

assess and determine the legal grounds put forward by the parties, including the authority to interpret and apply the relevant rules of law. Since issues such as whether the arbitral tribunal correctly applied the law or made a proper decision on the merits cannot be examined in annulment proceedings, the claimant's allegation that the tribunal exceeded its authority was deemed unfounded. The court also found that in arbitration proceedings, arbitrators have discretion to decide whether to obtain expert reports, and that the absence of an expert examination does not in itself constitute a violation of the right to be heard or the right to a defense. Based on these considerations, the court dismissed the action for annulment. The claimant subsequently appealed the decision; however, the Turkish Court of Cassation upheld the judgment of the Regional Court of Appeal.

Rejection of Expert Report Request Does Not Breach Right to Fair Trial

Turkish Court of Cassation – 3rd Civil Chamber, Case No: 2024/2713, Decision No: 2025/3359, Date: 17.06.2025

In the annulment proceedings, the claimant stated that a public procurement contract for the purchase of electrical energy was entered into with the respondent. Following the pandemic, an increase in electricity production disrupted the supply-demand balance, while high temperatures and drought conditions led to a decrease in production, resulting in unsustainable prices and consequent losses. The claimant argued that these post-contractual changes were unforeseeable, unpredictable, and beyond its control. The administration enacted legal regulations providing for additional price adjustments and increased price differences. The claimant initiated arbitration proceedings seeking these additional and increased price differences. However, the arbitral tribunal dismissed the claim. The claimant argued that despite its request for an expert report to determine the extent of the damages, this request was rejected without any justification, in violation of the legal certainty, the right to a fair trial, as well as procedural rules and applicable law. Furthermore, it claimed that the arbitration proceedings were conducted in a procedurally defective manner, affecting the merits of the case and undermining the principle of equality between the parties. For these reasons, the claimant requested annulment of the award.

> *The determination and interpretation of the applicable rules of law fall within the authority of the arbitral tribunal, and in an annulment action, the correctness of the arbitral tribunal's application of substantive law cannot be reviewed.*

The Regional Court of Appeal, acting as a court of first instance, held that the arbitration proceedings were conducted in accordance with the procedural provisions set forth in the contract and applicable law. It found no procedural errors affecting the merits of the decision, confirmed that the principles of equality between the parties and the right to be heard were respected, and determined that the dispute was arbitrable under Turkish law. The court further concluded that the award did not violate public policy. Noting that the grounds for annulment under the law are limited and that the claimant's arguments did not constitute valid reasons for annulment, the court dismissed the claim. The claimant appealed the decision; however, the Turkish Court of Cassation upheld the Regional Court of Appeal's ruling.

Disputes on Rent Determination for Residential and Roofed Commercial Leases Are Not Arbitrable Under Turkish Law

Turkish Court of Cassation – 3rd Civil Chamber, Case No: 2025/893, Decision No: 2025/3205, Date: 10.06.2025

The claimant stated that it is the tenant of the respondent's immovable property and that the respondent initiated arbitral proceedings before ISTAC requesting an increase in the monthly rent, which was being paid as TRY 34,087.50 plus VAT, to TRY 150,000.00 plus VAT in accordance with Article 344 of the Turkish Code of Obligations. Following the arbitration proceedings, the monthly rent was determined to be TRY 110,700.00 plus VAT. The claimant argued that the dispute subject to the arbitral award is not arbitrable, that the parties cannot freely dispose of the subject matter in dispute, and that the rent was not determined equitably. Furthermore, the claimant contended that the principles of equality between the parties and the right to be heard were violated and that the award is contrary to public policy. Accordingly, the claimant requested annulment of the arbitral award.

The Regional Court of Appeal, acting as a court of first instance, found that the dispute submitted to arbitration concerned the determination of the rent. However, it held that cases regarding the determination of rent for residential and roofed commercial leases relate to public policy and are therefore not arbitrable. On this basis, the court upheld the claim and annulled the award issued by ISTAC under file number 2024/DA-230 dated 29.07.2024. The respondent filed an appeal against this decision, arguing that the lease agreement between the parties clearly stipulates that disputes shall be resolved through arbitration, that the dispute, being subject to the parties' will and not concerning the specific leased property, is arbitrable, and that the arbitrator respected the principles of equality between the parties and the right to be heard when rendering the decision.

> *The provision of Article 344 of the Turkish Code of Obligations, which imposes an upper limit on rent increases, is of a mandatory nature and pertains to public policy in lease agreements concerning residential and roofed commercial properties. Therefore, in such leases, the parties are not entirely free to determine the rent increase for the new rental period. Due to this characteristic, disputes concerning the determination of rent arising from residential and roofed commercial lease relationships do not meet the criteria for arbitrability.*

The Turkish Court of Cassation held that whether a lease-related dispute is arbitrable depends on whether the subject matter falls within the scope of the parties' contractual autonomy. Disputes involving public policy matters, which are not subject to the free will of the landlord and tenant, are not considered arbitrable. In particular, the court emphasized that in residential and roofed commercial lease agreements, the determination of rent for subsequent terms is strictly regulated under Article 344 of the Turkish Code

of Obligations. This article imposes mandatory limits on rent increases, which are considered to be rules of public policy designed to protect tenants. Even if the parties agree to a rent increase in advance, such provisions cannot exceed the legal limits set by Article 344. As a result, the parties do not have complete freedom to determine rent increases in such leases. Given this mandatory legal framework, the court ruled that the disputes regarding the determination of rent in residential and roofed commercial leases are not arbitrable, as they involve public policy considerations and restrict the parties' ability to freely dispose of their rights. Since the lease in question was classified as a roofed commercial lease, and the dispute concerned the determination of rent for a new term, the court concluded that the matter was not arbitrable. Accordingly, the respondents' appeal was rejected, and the Regional Court of Appeal's decision to annul the arbitral award was upheld.

Arbitral Tribunal Lacks Jurisdiction Over Additional Damages Independent of Contractual Relationship

Turkish Court of Cassation – 3rd Civil Chamber, Case No: 2024/1071, Decision No: 2025/1519, Date: 11.03.2025

A dispute arose concerning the attorney's fee entitlement following the termination of the attorney-client relationship, pursuant to the attorney agreement executed between the parties. The attorney, who was also the respondent in the annulment proceedings, had previously applied to ISTAC, which rendered a partial award in his favor. This arbitral award was then made subject to enforcement proceedings. The claimant's action for annulment of the award was dismissed and the award was upheld. Consequently, the security bond submitted to the Execution Office was deemed payable to the respondent and was duly paid.

Thereafter, the respondent initiated new arbitral proceedings before ISTAC, invoking the arbitration clause in the aforementioned agreement and claiming additional damages (=*munzam zarar*) , alleging that extraordinary economic changes occurred between the date of default and the date of collection, thereby causing financial loss.

> *The arbitration clause applies only to disputes arising directly from the contract itself and does not extend to claims for additional damages that are independent of the underlying contractual relationship and primarily based on the provisions of the Turkish Code of Obligations. Therefore, the resolution of such disputes falls within the jurisdiction of the general courts.*

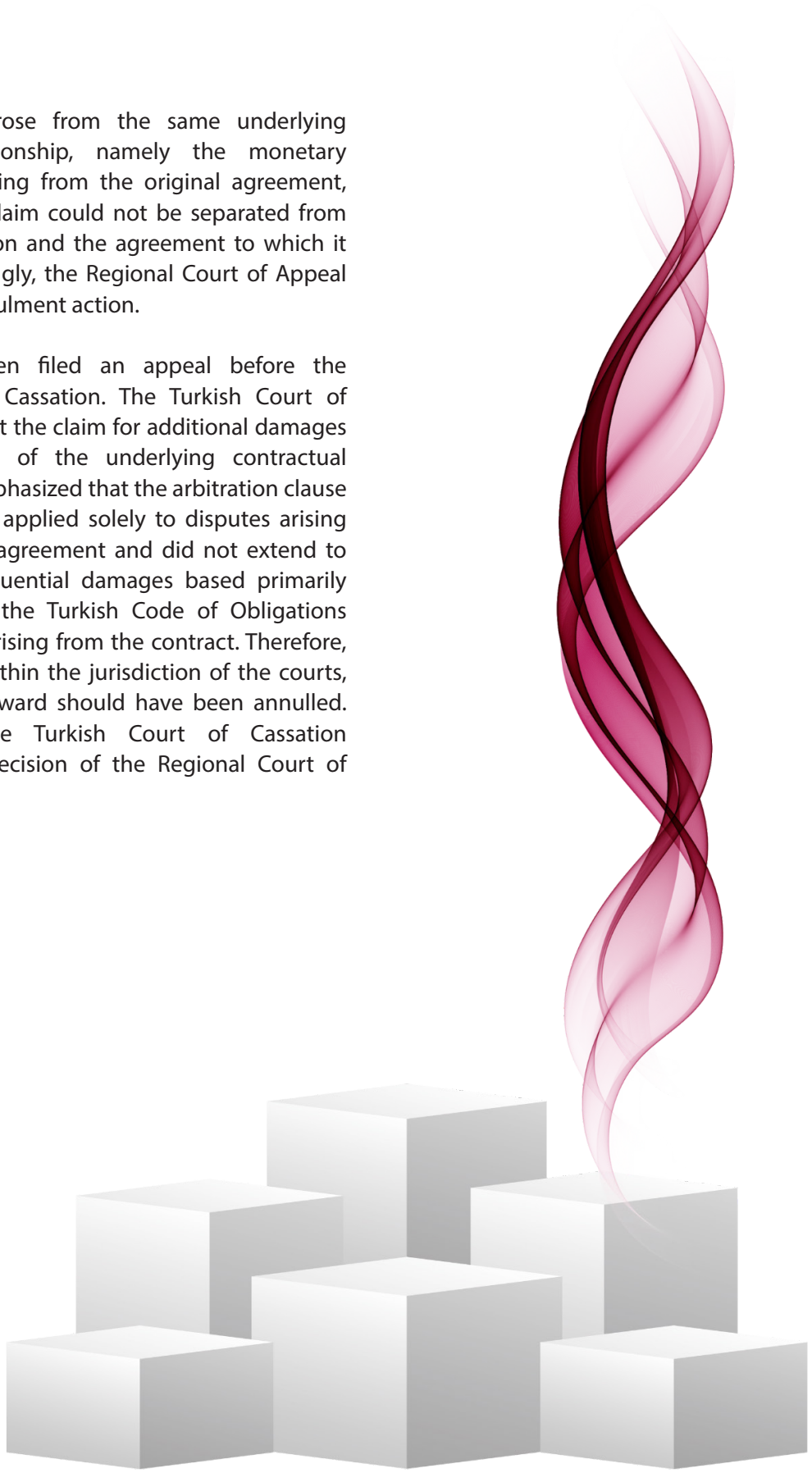
The claimant objected to the arbitral tribunal's jurisdiction, arguing that no arbitration agreement existed regarding the subject matter of this dispute. The arbitral tribunal, however, rejected the jurisdictional objection. The claimant therefore filed an action for annulment of this second arbitral award and maintained that the tribunal's decision on jurisdiction was erroneous and that the delayed payment was not attributable to any fault of his own.

The Regional Court of Appeal, acting as the court of first instance, ruled that the dispute was arbitrable, as it arose out of an attorney agreement relating to rights and obligations over which the parties have dispositive authority. It held that the additional

[35] Additional damages refer to the extra losses suffered by the creditor as a result of the debtor's failure to perform its obligation on time.

damage claim arose from the same underlying contractual relationship, namely the monetary obligation stemming from the original agreement, and that such a claim could not be separated from the main obligation and the agreement to which it was tied. Accordingly, the Regional Court of Appeal dismissed the annulment action.

The claimant then filed an appeal before the Turkish Court of Cassation. The Turkish Court of Cassation held that the claim for additional damages was independent of the underlying contractual relationship. It emphasized that the arbitration clause in the agreement applied solely to disputes arising directly from the agreement and did not extend to claims for consequential damages based primarily on provisions of the Turkish Code of Obligations and not directly arising from the contract. Therefore, the dispute fell within the jurisdiction of the courts, and the arbitral award should have been annulled. Consequently, the Turkish Court of Cassation overturned the decision of the Regional Court of Appeal.



Tribunal Terminated Proceedings Due to Claimant's Failure to Submit Separate Statement of Claim on Time

Turkish Court of Cassation – 6th Civil Chamber, Case No: 2024/2330, Decision No: 2025/1934, Date: 08.05.2025

In the present dispute, the claimant initiated arbitration proceedings pursuant to a contract manufacturing agreement that contained an arbitration clause. The claimant submitted an initial request for arbitration and a statement of claims on 23.01.2023, and later refiled the same document on 31.08.2023, after the procedural timetable was finalized on 07.08.2023, which set a three-week deadline for the submission of the statement of claim. The arbitral tribunal, by majority decision, deemed that the claimant failed to submit a proper statement of claim within the time granted, thereby terminating the proceedings according to Article 430 of the CCP. The claimant challenged the arbitral award on the grounds that its submission dated 23.01.2023, should have been accepted as a valid statement of claim, as it included all required elements under applicable procedural rules. The claimant further contended that the arbitral tribunal failed to duly inform the parties of the legal consequences of missing the procedural deadline for submitting the statement of claim. Additionally, the claimant argued that the tribunal erred in awarding proportional attorney fees, asserting that, pursuant to Article 10/3 of the Turkish Attorneys' Fee Tariff, where a claim for non-pecuniary damages is entirely dismissed, the attorney fee should be awarded on a fixed basis rather than proportionally.

The Regional Court of Appeal, acting as the court of first instance, upheld the tribunal's decision, reasoning that the request for arbitration and the statement of claim are procedurally separate, that the claimant did not submit a statement of claim within the fixed time, nor did it request that its earlier submission of request for arbitration be treated as such. Accordingly, the court found the arbitral tribunal's termination of the proceedings to be in line with procedural law and dismissed the action for annulment. On appeal, the Turkish Court of Cassation upheld the Regional Court of Appeal's decision, emphasizing that the procedural timetable was accepted by the parties and that the claimant's failure to comply with the deadline constituted valid grounds for termination under the applicable arbitration rules.

> *Considering that the submission of the request for arbitration and the statement of claim are entirely separate procedural actions, that the procedural timetable was accepted by the parties, and that the statement of claim was not submitted within the time limit prescribed under Article 430 of the Code of Civil Procedure, the grounds asserted by the claimant's counsel in the appellate petition were not deemed sufficient to warrant reversal of the decision.*

Arbitration Clauses Executed Only in Foreign Languages Between Turkish Parties are Found Invalid

Turkish Court of Cassation – 6th Civil Chamber, Case No: 2024/2136, Decision No: 2025/1930, Date: 08.05.2025

In this case, the dispute arose from a subcontractor agreement concerning construction and architectural works. The contract, including the arbitration clause, had been drafted in English between two Turkish companies. The Court of First Instance dismissed the subcontractor's claims on the basis of preliminary arbitration plea raised by the contractor.

Upon appeal, the Regional Court of Appeal's decision was challenged before the Turkish Court of Cassation. The Court emphasized that pursuant to Law No. 805, Article 1, contracts executed in Türkiye between Turkish parties must be drawn up in Turkish; however, despite both parties being Turkish entities and the contract, including the arbitration clause, relating to a transaction within Türkiye and signed in Türkiye, the contract was drafted in English, in violation of this requirement. While the main contract had been fully performed and invoking its invalidity could arguably constitute an abuse of rights under Article 2 of the Turkish Civil Code No. 4721, the arbitration clause was deemed independent from the main contract. Since the arbitration agreement had been raised only after the initiation of litigation, it could not be considered "performed" together with the underlying contract. Therefore, reliance on the English arbitration clause was not acceptable under Law No. 805.

Accordingly, the Court of Cassation held that the preliminary arbitration plea should have been rejected and the merits of the case examined. It reversed the Regional Court's earlier decision, stressing that arbitration agreements drafted in a foreign language between Turkish parties cannot be relied upon to preclude state court jurisdiction.

> *Even if it were to be argued that raising the invalidity of the main contract after its performance would constitute an abuse of rights under Article 2 of the Turkish Civil Code, the arbitration clause must be treated as a separate and independent agreement from the main contract and since the arbitration clause was invoked only after the present lawsuit was filed, it cannot be considered as having been performed.*

Arbitration Agreement Extends to the Assignee

Turkish Court of Cassation – 6th Civil Chamber, Case No: 2024/159, Decision No: 2025/1431, Date: 10.04.2025

The dispute concerned the annulment of an arbitral award rendered under a construction contract originally signed between landowners and a construction company in 2014. The contract contained an arbitration clause referring disputes to ITOTAM. Due to the contractor's financial difficulties, the project was later undertaken by a joint venture formed by the claimants. Although the joint venture completed the construction and performance took place, the claimants argued in the annulment action that they were not parties to the original contract and had never expressly consented to arbitration, and therefore the arbitral award was invalid.

The Regional Court of Appeal accepted this argument, holding that there was no valid contract assignment in the required official form, and ruled that the arbitration clause was not binding on the claimants. Accordingly, it annulled the arbitral award.

On appeal, however, the Turkish Court of Cassation found that the assignment of the underlying construction contract had been carried out in the proper notarial form and expressly approved by the landowners through notarized consents. It held that once the contract was validly assigned, all provisions, including the arbitration clause, became binding on the assignee. The Court further emphasized that after parties had performed the assigned contract in practice, it would constitute an abuse of rights to later deny the binding effect of the arbitration agreement.

> *Although Article 1 of Law No. 805 requires contracts to be executed in Turkish, and the main contract was executed in English in violation of this rule, even if asserting its invalidity on the grounds that the contract has already been performed may be considered an abuse of rights under Article 2 of the Turkish Civil Code, the arbitration clause and the main contract are separate and independent agreements. Furthermore, since the arbitration clause was invoked only after the commencement of these proceedings, it cannot be argued that the arbitration clause has been performed.*

The Turkish Court of Cassation therefore concluded that the arbitration clause extended to the assignee joint venture and that the annulment action should have been dismissed. It reversed the Regional Court's decision and confirmed the validity of the arbitral award.

Med-Arb Clause Invalid for Lack of Clear Intention to Arbitrate

Turkish Court of Cassation – 3rd Civil Chamber, Case No: 2025/225, Decision No: 2025/2164, Date: 15.04.2025

The claimant requested the annulment of the arbitral award on the grounds that, pursuant to the attorney fee agreement signed between the parties, the Ankara courts were designated as the competent jurisdiction. The Regional Court of Appeal, acting as the first instance court, ruled for the dismissal of the annulment action on the basis that none of the legal grounds for setting aside the arbitral award rendered by the Turkish Bar Association Arbitration Center were present. The claimant's counsel filed an appeal against this decision within the prescribed time.

The agreement executed between the parties included the following clause: "*Disputes arising from this attorney agreement and the attorney fees shall first be resolved through mediation. If mediation fails, the dispute shall be resolved by the Turkish Bar Association Arbitration Center. The Turkish Bar Association Arbitration Regulation is an integral part of this agreement.*"

In the present case, the parties first applied for mediation to resolve the dispute, but the process ended without a settlement. The Court of Cassation overturned the decision of the Regional Court of Appeal, stating that mediation relates to substantive law, and is often a mandatory pre-condition before filing a lawsuit in certain types of cases. The Court further emphasized that for an arbitration clause to be valid, the parties must clearly and unequivocally express their intention to arbitrate, without causing ambiguity or confusion. Since the agreement prioritized mediation and failed to set out a definite and unconditional arbitration clause, the arbitration agreement was deemed invalid. Consequently, the Court concluded that the dispute was not subject to arbitration.

> *Since the agreement prioritized mediation and failed to set out a definite and unconditional arbitration clause, the arbitration agreement was deemed invalid.*

DR. E. SEYFİ MOROĞLU, LL.M.
PARTNER
esmoroglu@morogluarseven.com

E. BENAN ARSEVEN
PARTNER
barseven@morogluarseven.com

FULYA KURAR, LL.M.
PARTNER
fkurar@morogluarseven.com

İBRAHİM ENES ALTAN
SENIOR ASSOCIATE
ealtan@morogluarseven.com

NİLSU NARİNÇ, LL.M.
ASSOCIATE
nnarinc@morogluarseven.com

A. TİBET ÖZEN
ASSOCIATE
tozen@morogluarseven.com

MOROĞLU ARSEVEN

Abdi İpekçi Caddesi 19-1 Nişantaşı İstanbul, 34367
www.morogluarseven.com | info@morogluarseven.com
T: +90 212 377 4700