



Arbitration in Turkey

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OUTLINE

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- ✓ ARBITRATION CENTERS IN TURKEY
- ✓ REMEDIES
- ✓ COMPETENCE-COMPETENCE PRINCIPLE
- ✓ APPEAL

Legislation – Conventions

- Art 407 – 444 Turkish Code of Civil Procedure (for domestic arbitration)
- Turkish Code of International Arbitration (Nr. 4686) (for international arbitration)
- Code of Private International and Procedural Law (Articles 60-63) (for Recog. And Enf. Arbitral Awards)
- [United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#) (New York Convention)
- [The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States \(The ICSID Convention\)](#)
- The Energy Charter Treaty

ARBITRABILITY

- Arbitration is not convenient for disputes arising from
 - rights in rem over immovable goods
or
 - other transactions of which the parties cannot dispose of on their own will.
- Ex; divorce, bankruptcy, corporate governance?
- Turkish Court of Cassation adds;
 - *Lease Disputes*
 - *Employment Disputes*
 - *Consumer Disputes...*

ARBITRATION CENTERS IN TURKEY (main)

- **ISTAC**

Istanbul Arbitration Center Law dated 20 November 2014 and numbered 6570 was published in the Official Gazette on 29 November 2014.

ISTAC is an independent, impartial and autonomous institution that provides arbitration and mediation services for the resolution of disputes between commercial actors both in Turkey and abroad.

- **THE UNION OF CHAMBERS AND COMMODITY EXCHANGES OF TURKEY (TOBB) ARBITRATION CENTER**

The TOBB Arbitration Center has been established with the Bylaws enacted pursuant to subparagraph (t) of Article 56 of the Union of Chambers and Commodity Exchanges of Turkey and the Law on Chambers and Commodity Exchanges numbered 5174.

Through the TOBB Arbitration Court, disputes between Turkish companies, between Turkish companies and foreign companies, and between foreign companies in the economic, commercial or industrial field are resolved through arbitration.

ARBITRATION CENTERS IN TURKEY

- **ITOTAM**

Istanbul Chamber of Commerce established ITOTAM on 16 October 2014 in order to provide arbitration services in accordance with international practices and its counterparts in foreign countries.

ITOTAM Arbitration Rules have been prepared in the light of new developments in the field of arbitration law and contemporary institutional arbitration systems.

REMEDIES

- Possible remedies of arbitration are limited to those that are compatible with Turkish public policy.
- Therefore, remedies available to the arbitrators are:
 - ✓ Damages.
 - ✓ Performance.
 - ✓ Establishment, modification or termination of a legal relationship.
 - ✓ Declaratory judgment.
 - ✓ Costs.
 - ✓ Interest.
 - ✓ Publication of the award in newspapers.

COMPETENCE- COMPETENCE DOCTRINE

Turkish CCP Art 422: ; Code of International Arbitration Art. 7/H:

Competence of arbitral tribunal to rule on its jurisdiction

The Arbitrator or The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

COMPETENCE- COMPETENCE DOCTRINE

Competence-competence has both “positive” and “negative” effects or consequences.

Positive: arbitral tribunal has the power to consider and decide jurisdictional objections

Negative: the exclusion of judicial authority to decide jurisdictional objections, at least until the arbitral tribunal has made a jurisdictional award.

Attention: It is impossible to rest the exclusion of national court authority on an “agreement” to arbitrate whose existence or validity is challenged and which may ultimately prove to be non-existent or invalid.

Time to raise jurisdictional objection

UNCITRAL Model Law, Art 16; T. CCP Art. 422; CIA Art 7/H

- A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.
- A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator.
- A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
- The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

Competence- Competence vs. Separability

The two principles may intersect, but they are analytically distinct concepts.

The separability principle concerns the substantive existence and validity of the arbitration Agreement.

The competence-competence doctrine concerns a tribunal's power to consider and decide jurisdictional issues when the existence, validity, or scope of the arbitration agreement is challenged.

regardless whether the arbitration agreement is separable from the underlying contract and regardless whether the arbitration agreement itself is challenged

APPEAL

- Only a set aside action can be filed against an arbitral awards. The set aside action is filed in the regional court of appeal of the place of arbitration.
- The grounds on which the set aside action can be filed is limited and is counted in the article 439 od Code of Civil Procedure.
- It is possible to appeal against the decisions made about the set aside case in the Court of Cassation.

Thank you!

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