

Arbitration Bulletin

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Developments in Türkiye

Important Court Decisions

The Court of Cassation General Assembly Ruled That Preliminary Objection to Arbitration Cannot Be Upheld Where the Arbitration Agreement Is Not Clear and Definite

The Court of Cassation General Assembly^[1] made the following findings:

- Arbitration is an exceptional method of dispute resolution, and for an arbitration agreement to exist, the parties' intention must be expressed in a manner that is clear, explicit, and leaves no room for doubt.
- Whether the intention to arbitrate is clear and unequivocal is to be assessed under Turkish law as the *lex fori*; this assessment must be conducted prior to determining the law applicable to the arbitration agreement.
- Where a lawsuit is filed despite the existence of an arbitration agreement and a preliminary objection to arbitration is raised, the court is obliged to examine *ex officio* the existence and certainty of the arbitration agreement. The fact that arbitrators are empowered to rule on their own jurisdiction does not eliminate or replace this judicial review.
- If the parties, either in the arbitration agreement or in the arbitration clause incorporated into the main contract, accept the jurisdiction of arbitrators while also conferring jurisdiction on state courts, or use ambiguous and non-definite wording that is open to such an interpretation, it cannot be concluded that they have adopted arbitration as an exclusive dispute resolution mechanism.

The Court of Cassation Ruled That a Report in the Nature of an Expert Opinion Cannot Be Deemed an Arbitral Award and Cannot Be Subject to Annulment Proceedings

The Court of Cassation^[2] made the following findings:

- The mechanism of referral to an "arbitrator" stipulated under the contract does not aim at resolving the disputes between the parties directly through arbitration but rather at obtaining a technical assessment prior to judicial proceedings.
- Accordingly, the decision rendered within this framework does not constitute an arbitral award, but rather amounts to an expert examination.
- Accordingly, such an expert determination cannot be subject to an action for the annulment of an arbitral award under Article 439 of the Code of Civil Procedure (CCP).

The Court of Cassation Ruled That the Arbitration Clause Was Invalid Due to the Absence of a Clear and Unequivocal Intention to Arbitrate in a Dispute Arising from an Attorney Fee Agreement

The Court of Cassation^[3] made the following findings:

- In actions for the annulment of arbitral awards, judicial review is strictly limited to the grounds for annulment exhaustively listed under Article 439 of the CCP and does not extend to a review of the merits.
- For an arbitration clause to be valid, the parties' intention to arbitrate must be clear and definite manner, leaving no room for doubt.
- A contractual provision stipulating that disputes shall first be resolved through mediation and, failing that, referred to an arbitrator, was found insufficient to demonstrate a clear and definitive intention to arbitrate. Accordingly, the arbitration clause contained in the attorney fee agreement between the parties cannot be deemed valid.

The Court of Cassation Ruled That Disputes Concerning Rent Determination in Roofed Workplace Leases Are Not Arbitrable

The Court of Cassation^[4] made the following findings:

- Arbitrability is a concept related to public order, and disputes arising from matters that are not subject to the free will of the parties are not arbitrable.
- In assessing arbitrability in disputes arising from lease agreements, due consideration must be given to the nature of the lease and whether the subject matter of the dispute falls within the parties' freedom of contract.
- The determination of the rent for a new term under lease agreements regarding residence and roofed workplace is regulated in a mandatory manner under Article 344 of the TCO and is therefore a matter of public order. Accordingly, disputes concerning the determination of rent under lease agreements regarding residence and roofed workplace are not arbitrable.

The Court of Cassation Ruled That Turkish Courts Lack Jurisdiction to Set Aside Arbitral Awards Not Subject to the International Arbitration Law (IAL)

The Court of Cassation^[5] made the following findings:

- Although the agreement between the parties contained an arbitration clause, it was observed that the seat of arbitration was designated as either Kyiv or Istanbul, depending on the choice of the party applying for arbitration.
- The IAL applies to disputes involving a foreign element only where the seat of arbitration is designated as Türkiye,

or where the parties or the arbitral tribunal have expressly chosen the application of the IAL.

- In the present case, as the seat of arbitration was not exclusively designated as Türkiye and there was no indication that the parties or the arbitral tribunal had agreed on the application of the IAL, the conditions for the application of the IAL were not met. Accordingly, Turkish courts lack jurisdiction to hear an action for the annulment of the arbitral award.

The Court of Cassation Ruled That the Arbitral Tribunal's Award Granting Payment for the Principal Claim and Interest in an Annulment of Objection Dispute Violates Public Policy

The Court of Cassation^[6] made the following findings:

- In actions for the annulment of an objection to execution proceedings, an arbitral tribunal may, as a rule, decide on the annulment of the objection and the continuation of the execution proceedings. In addition, it may render a decision regarding compensation for unjustified denial of debt, arbitrators' fees, procedural costs, and attorneys'

fees. However, issuing an additional ruling ordering the collection of the principal receivable and accrued interest in such disputes may create to uncertainty at the execution stage.

- Where the arbitral tribunal renders a decision exceeding the scope of the claim, such ruling undermines the enforceability of the award and constitutes a violation of public order.

The Court of Cassation Ruled That an Erroneous Reference to the CCP Does Not Affect the Outcome of Annulment Action Governed by the IAL

The Court of Cassation^[7] made the following findings:

- The grounds for annulment and the scope of judicial review set forth under the IAL and the CCP do not materially differ.
- Although the annulment action was filed pursuant to Article 15 of the IAL, the court's reference to the grounds for annulment under the CCP stems from a material error and does not affect the outcome of the dispute.

The Court of Cassation Ruled That an Arbitration Agreement Concluded Through E-Mail Correspondence by an Unauthorized Representative is Valid Where It Was Known by the Authorized Representative and the Commercial Relationship Was Maintained

The Court of Cassation^[8] made the following findings:

- Pursuant to Article 412(3) of the CCP, the written form requirement for an arbitration agreement may be satisfied not only by a signed contract, but also through means of communication such as letters, telegrams, facsimiles, e-mails, or by electronic means exchanged between the parties.
- The e-mail correspondence conducted by an unauthorized representative may nevertheless give rise to a valid arbitration agreement where such correspondence is known and implicitly accepted by the company's authorized representative, the parties continue their commercial relationship on that basis.
- In such circumstances, raising an objection on the ground that the company's representative was not a party to the correspondence is incompatible with the principle of good faith set forth under Article 2 of the TCC. Accordingly, the objections against the annulment of the arbitral award are unfounded.

The Regional Court of Appeal Addressed the Limits of Public Policy Review in the Enforcement of Foreign Court Judgments

The Regional Court of Appeal^[9] made the following findings:

- For foreign court judgments to be enforceable in Türkiye, an enforcement decision must be obtained pursuant to Articles 50 et seq. of the Law on International Private and Procedural Law (IPPL). The scope of the enforcement review is limited to the conditions set forth under Article 54 of the said Law. Accordingly, Turkish courts may not examine the substantive merits of the foreign judgments.
- One of the most significant limitations in enforcement proceedings is that the foreign judgment must not be manifestly contrary to Turkish public policy. Public policy concerns arise in cases involving violations of the fundamental principles of the Constitution, fundamental rights and freedoms, the sense of justice, and the core values of society. The mere fact that a foreign judgment conflicts with mandatory provisions of Turkish law does not constitute a violation of public policy.
- The enforcement judge does not examine the content of the foreign judgment as such but rather assesses whether the consequences of enforcing the judgment in Türkiye would be manifestly contrary to Turkish public policy. Furthermore, a violation of the right to be heard constitutes an independent ground for refusal of enforcement under Article 54(ç) of the IPPL.
- In the present case, the foreign court's bankruptcy decision was not found to be manifestly contrary to the fundamental principles of Turkish law, public policy, or the right to be heard. Considering also that the claimant qualifies as a merchant subject to bankruptcy under Turkish law, the enforcement of the judgment in Türkiye does not constitute a violation of public policy.

Important Developments on Legislation and Arbitration Rules

Istanbul Chamber of Commerce Arbitration and Mediation Center (ITOTAM) Signed a Cooperation Agreement with the Dubai International Arbitration Centre (DIAC)

A cooperation agreement was signed between ITOTAM and DIAC^[10]. The agreement aims to enhance institutional cooperation in the field of arbitration and alternative dispute resolution, to increase the exchange of knowledge and experience, and to contribute to the resolution of disputes between the two countries.



ITOTAM Signed a Cooperation Agreement with the Vienna International Arbitration Centre

At the signing ceremony held at the Vienna Chamber of Commerce and Industry, the further development of cooperation between the two centres and the undertaking of joint initiatives in the field of arbitration were discussed^[11]. In this context, reference was made to the increasing trade volume between the two countries, and the importance of this cooperation for the swift and effective resolution of commercial disputes was emphasized.



ITOTAM Signed a Cooperation Agreement with the Swiss Arbitration Centre

A cooperation agreement was signed between the Swiss Arbitration Centre and ITOTAM^[12]. At the meeting attended by Dr. Christopher Boog, President of the Swiss Arbitration Centre, and Mr. Tobias Zuberbühler, along with other representatives of the Centre, the further development of cooperation between the two institutions and the undertaking of joint initiatives in the field of arbitration were discussed.



Istanbul Arbitration Centre (ISTAC) Signed a Cooperation Agreement with the Shenzhen Court of International Arbitration (SCIA)

ISTAC hosted a delegation including Dr. Xiaochun Liu, President of the Shenzhen Court of International Arbitration^[13]. During the meeting, views were exchanged on the growing interest of Chinese companies in Türkiye, their investment decisions, Türkiye's position in the region, and Turkish arbitration practice, as well as on the respective activities of ISTAC and SCIA. Following the meeting, a cooperation agreement was signed, thereby strengthening the institutional cooperation and dialogue between the two centres.



The Cooperation Agreement Between ISTAC and the Permanent Court of Arbitration (PCA) Was Renewed

Within the scope of the Cooperation Agreement, ISTAC and the PCA will continue their cooperation in the areas of information sharing, capacity building, and the facilitation of arbitration proceedings^[14]. Under this cooperation framework, hearings may be held in either The Hague or Istanbul, being the respective headquarters of the PCA and ISTAC, in accordance with the rules of either institution.



ITOTAM Signed a Cooperation Agreement with the Arbitration Center of the Iran Chamber of Commerce (ACIC)

A cooperation agreement was signed between ITOTAM and ACIC^[15]. Within the scope of this cooperation, joint efforts are envisaged for the resolution of disputes that may arise from commercial activities between Iran and Türkiye.



The Istanbul Arbitration Centre (ISTAC) Updated Its Arbitrators' and Administrative Fees Tariff

Pursuant to the Rules^[16] on the Schedule of Costs and Fees published by ISTAC, the tariff applicable to administrative costs and arbitrators' fees in arbitration proceedings conducted under the auspices of ISTAC entered into force as of 01.05.2025. Under the updated tariff, the minimum arbitrators' fee was set at TRY 5,000. For disputes with a value of up to

TRY 1,000,000, the arbitrators' fee shall be applied at a rate of 5 percent in the case of a sole arbitrator and 7 percent in the case of an arbitral tribunal. Where the value of the dispute exceeds this amount, the arbitrators' fees shall be calculated on the basis of progressively decreasing rates.

The Arbitrators' Fee Tariff under the Code of Civil Procedure was Published

The Arbitrators' Fee Tariff under the ^[17] CCP was published in the Official Gazette dated 28.10.2025 and numbered 33061. The Tariff sets forth the fees to be paid to arbitrators or arbitral tribunals, as well as the procedures and principles governing the payment of such fees, in cas-

es where the parties fail to reach an agreement on the determination of fees, where the arbitration agreement does not contain any provision in this regard, or where no reference has been made to established practices or institutional arbitration rules.

The Communiqué on the International Arbitration Fee Tariff was Published in the Official Gazette

The Communiqué^[18] published in the Official Gazette dated 14.03.2025 and numbered 32841 sets forth the fees to be paid to arbitrators or arbitral tribunals in cases where, pursuant to the IAL, the parties and the arbitrator or arbitral tribunal have not reached an agreement

on the determination of fees, where the arbitration agreement does not contain any provision in this regard, or where no reference has been made to established international rules or institutional arbitration rules.

Developments in the World

Important Court Decisions and Arbitral Awards

Decisions of the Supreme Court of India

M/S Citicorp Finance (India) Limited v. Snehasis Nanda

The Supreme Court of India^[19] held that, in a consumer dispute, even where the contract or related documents contain an arbitration clause, recourse to arbitration is contingent solely upon the consumer's free and exclusive choice. In this regard, the Court emphasised that the consumer retains the right to elect whether to re-

solve the dispute through arbitration or before the consumer courts. It was expressly stated that the existence of an arbitration agreement cannot compel a consumer to waive the rights conferred by consumer protection legislation, nor can the consumer be obliged to submit the dispute to arbitration.

Investment Arbitration Decisions

The AES Corporation v. The Argentine Republic

In its decision dated 30.05.2025, the ICSID Arbitral Tribunal^[20] held that the measures adopted by Argentina in the electricity sector during the 2001–2003 financial crisis — including spot price caps, payment suspensions, and mandatory reinvestment requirements — violated the US–Argentina bilateral investment treaty. Accordingly, the Tribunal ordered Argentina to pay more than USD 700 million in compensation to the US-based

energy company AES. The Tribunal found that the measures were arbitrary and inconsistent, and that they breached the fair and equitable treatment standard. It further rejected Argentina's defences of necessity and security, on the grounds that the measures extended beyond the crisis period and had been employed to control profitability and compel reinvestment.

Enel S.p.A. v. The Republic of Türkiye

In 2022, the Italian energy company Enel S.p.A. initiated ICSID arbitration proceedings against Türkiye following the cancellation by the Energy Market Regulatory Authority (EMRA) of the pre-licence for its solar power plant project in Isparta^[21] Enel claimed that Türkiye had breached the Agreement between Türkiye and Italy on the Promotion and Reciprocal Protection of Investments,

seeking approximately USD 30 million in damages. Following proceedings lasting more than two years, the arbitral tribunal unanimously upheld the position of EMRA and, by its ICSID award dated 22 July 2025, dismissed all of the claimant's claims on the merits. As a result, the case was concluded in favour of the Republic of Türkiye.

Important Developments in Arbitration Institutions and Rules

The American Arbitration Association International Centre for Dispute Resolution (AAA-ICDR) Launched the AI-Powered “AI Arbitrator” Application

AAA-ICDR announced that its artificial intelligence-powered application entitled “AI Arbitrator” has been made available for use in bilateral construction disputes conducted solely on a documents-only basis^[22]. The application is designed to combine the speed and efficiency of ar-

tificial intelligence with human oversight and arbitral supervision. It was further stated that AAA-ICDR’s existing arbitration procedures will continue to apply to disputes falling outside the scope of this application.

The Singapore International Arbitration Centre (SIAC) Published the Restructuring and Insolvency Arbitration Protocol

SIAC announced that the Restructuring and Insolvency Arbitration Protocol^[23] (the SIAC RIA Protocol) entered into force on 26.08.2025. This protocol is the first initiative of an international arbitra-

tion institution to introduce a dedicated procedural framework for the resolution of restructuring- and insolvency-related disputes through arbitration.

Hong Kong International Arbitration Centre (HKIAC) Published a Practice Note on the Compatibility of Arbitration Clauses

HKIAC published a Practice Note^[24] on the compatibility of arbitration clauses under the HKIAC Arbitration Rules. The Practice Note addresses the assessment of compatibility where arbitration clauses are contained in multiple contracts or

documents, the question of whether a single or multiple arbitration proceedings may be conducted in such cases, and issues relating to the jurisdiction of the arbitral tribunal within the framework of the HKIAC Arbitration Rules.

The United Kingdom Arbitration Bill Received Royal Assent

The Arbitration Bill proposing amendments to the Arbitration Act 1996 received Royal Assent^[25], thereby enacting the proposed amendments aimed at modernizing the legal framework govern-

ing arbitration proceedings in the United Kingdom. This development was also announced to the public by the London Court of International Arbitration.

The Swiss Arbitration Centre Published Supplementary Arbitration Rules on Foundation, Trust, and Estate Disputes

The Swiss Arbitration Centre published the Supplementary Swiss Arbitration Rules^[26] specifically designed for the resolution of disputes arising from foundations, trusts, and estates through arbitration. The rules, which entered into force on 01.07.2025, aim to clarify the procedural framework applicable to such disputes, including issues relating to ar-

bitrability, standing of the parties, the scope of the arbitration agreement, and participation in the proceedings. Being supplementary in nature, these rules are intended to complement the Swiss Arbitration Rules and apply to procedural matters that may arise in arbitration proceedings concerning foundation, trust and estate disputes.

The Chartered Institute of Arbitrators (CI Arb) Published a Guideline on Third-Party Funding in Arbitration

The Guideline^[27] on Third-Party Funding published by CI Arb addresses the operation of third-party funding in international arbitration, the types and commercial terms of funding agreements, and the role of the funder. The Guideline also covers issues relating to disclosure obligations, conflicts of interest, security for costs, and the recoverability of third-party funding costs.

ciarb.

Guideline on Third-Party Funding



Sources

1. Court of Cassation General Assembly, File 2024/653, Decision 2025/584, 01.10.2025.
2. 6th Civil Chamber of Court of Cassation, File 2025/629, Decision 2025/1118, 19.03.2025.
3. 3rd Civil Chamber of Court of Cassation, File 2025/225, Decision 2025/2164, 15.04.2025.
4. 3rd Civil Chamber of Court of Cassation, File 2025/893, Decision 2025/3205, 10.06.2025.
5. 6th Civil Chamber of Court of Cassation, File 2025/1047, Decision 2025/1802, 30.04.2025.
6. 6th Civil Chamber of Court of Cassation, File 2024/1700, Decision 2025/1758, 29.04.2025.
7. 11th Civil Chamber of Court of Cassation, File 2025/118, Decision 2025/2959, 29.04.2025.
8. 6th Civil Chamber of Court of Cassation, File 2025/285 Decision 2025/569, 18.02.2025.
9. Denizli Regional Court of Appeal 4th Civil Chamber, File 2025/1274 Decision 2025/1550, 02.10.2025.
10. Istanbul Chamber of Commerce Arbitration and Mediation Center (İTOTAM). (n.d.). [Signing of the cooperation agreement between İTOTAM and DIAC.](#)
11. Istanbul Chamber of Commerce Arbitration and Mediation Center (İTOTAM). (n.d.). [Signing of the cooperation agreement with VIAC Vienna International Arbitration Center.](#)
12. Istanbul Chamber of Commerce Arbitration and Mediation Center (İTOTAM). (n.d.). [Signing of the cooperation agreement between the Swiss Arbitration Centre and İTOTAM.](#)
13. Istanbul Arbitration Centre (n.d.). [Cooperation agreement with Shenzhen Court of International Arbitration.](#)
14. Istanbul Arbitration Centre (n.d.). [Cooperation between the Istanbul Arbitration Centre \(ISTAC\) and the Permanent Court of Arbitration \(PCA\).](#)
15. Istanbul Chamber of Commerce Arbitration and Mediation Center (İTOTAM). (n.d.). [Signing of the cooperation agreement with the Arbitration Center of the Iran Chamber of Commerce \(ACIC\).](#)
16. Istanbul Arbitration Centre. (2022). [Rules on the schedule of costs and fees of the Istanbul Arbitration Centre.](#)
17. Official Gazette of the Republic of Türkiye. (2025, October 28). [Comminique.](#)
18. Official Gazette of the Republic of Türkiye. (2025, March 14). [Communiqué.](#)
19. Supreme Court of India. (2025, March 20). [Judgement in Case No. 21755/2023.](#)
20. International Centre for Settlement of Investment Disputes (ICSID). (n.d.). [ICSID award/document DS20819.](#)
21. Jus Mundi. (2025, July 25). TR Enel S.p.A. v. Republic of Turkey – [Press release regarding the arbitration outcome concerning the Energy Market Regulatory Authority \(EMRA\).](#)
22. American Arbitration Association. (n.d.). [AAA-ICDR AI arbitrator now available.](#)
23. Singapore International Arbitration Centre. (2025). [Press release: SIAC announces the launch of the SIAC RIA Protocol and Institute of Ethics in International Arbitration.](#)
24. Hong Kong International Arbitration Centre. (2025). [Practice note on compatibility of arbitration clauses.](#)
25. London Court of International Arbitration. (n.d.). [English Arbitration Bill receives royal assent.](#)
26. Swiss Arbitration Centre. (n.d.). [Supplemental Swiss Rules for trust, estate and foundation disputes.](#)
27. Chartered Institute of Arbitrators. (n.d.). [Guidelines on third-party funding.](#)

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