Gökyayla: The Turkish Supreme Court's Approach to Recognition and Enforcement of Foreign Arbitral Awards under the New York Convention

SchiedsVZ 2020, 265

The Turkish Supreme Court's Approach to Recognition and Enforcement of Foreign Arbitral Awards under the New York Convention

By Assoc. Prof. Dr. Cemile Demir Gökyayla, Istanbul*

Turkey has been a Contracting State to the New York Convention 1958. Numerous Turkish Supreme Court's decisions on the recognition and enforcement of foreign arbitral awards depict the arbitration climate in Turkey as well as the distinct features of the enforcement proceedings before the local courts. As the Convention does not describe the procedural rules and jurisdiction of the enforcement courts, they are both subject to Turkish law. The paper analyzes the Supreme Court's decisions, including the contradictory ones, on each ground to refuse the enforcement under the Convention and reverts to the leading Turkish doctrine in the field to either reveal different views or unanimously established principles. This paper aims to reflect the Supreme Court' decisions from an objective point of view in order to assist non-Turkish lawyers better understand Turkish law and practice.

Die Türkei ist ein Vertragsstaat des New Yorker Übereinkommens 1958. Zahlreiche Entscheidungen des Obersten Gerichtshofs der Türkei über die Anerkennung und Vollstreckung ausländischer Schiedssprüche stellen das Schiedsklima in der Türkei sowie die Besonderheiten der Vollstreckbarerklärungsverfahren vor den ordentlichen Gerichten dar. Da das Übereinkommen die Verfahrensregeln und die Zuständigkeit der Vollstreckungsgerichte nicht festlegt, unterliegen beide dem türkischen Recht. Das Papier analysiert die Entscheidungen des Obersten Gerichtshofs, einschließlich der widersprüchlichen, in Bezug auf jeden Ablehnungsgrund nach dem Übereinkommen und greift auf die führende türkische Lehre auf diesem Gebiet zurück, um entweder unterschiedliche Ansichten oder einstimmig festgelegte Grundsätze zu offenbaren. Die Analyse soll die Entscheidungen des Obersten Gerichtshofs unter objektivem Gesichtspunkt widerspiegeln, um nichttürkischen Anwälten ein besseres Verständnis des türkischen Rechts und der türkischen Vollstreckungspraxis zu ermöglichen.

I. Introduction

Turkey is an important actor in international arbitration. In the 2017 Dispute Resolution Statistics of the International Chamber of Commerce (ICC), Turkey ranked 13th in the list of most represented nationalities among parties[1] – the highest in Central and East Europe.[2] In total, 49 of the 810 cases registered in 2017[3] involved Turkish national parties (18 claimants, 31 respondents), although Turkey was selected as the place of arbitration in only eight cases.[4] With 62 parties represented in ICC cases in 2018, Turkey reached the top 10 for the first time.[5] In 2019, 47 parties from Turkey were involved and Turkey remained the most represented nationality within the region. Turkey ranked 16th in the list of most represented nationalities among parties. Turkey was selected as the place of arbitration in only five cases.[6]

These figures demonstrate that a significant number of international arbitral awards can potentially be recognised and enforced in Turkey. As arbitrators' core duties include issuing an enforceable award,[7] non-Turkish lawyers can benefit from familiarity with Turkish legal provisions on the recognition and enforcement of international awards. This article provides such information, citing relevant legislation and decisions of the Turkish Supreme Court (TSC).

II. Relevant Legislation

Turkey has been a Contracting State to the Convention on the Recognition and Enforcement of

Foreign Arbitral Awards (NYC) since September 1992.[8] Upon ratification, Turkey made two reservations, declaring that it would apply the Convention (i) on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another Contracting State, and (ii) only to differences arising out of legal relationships, whether contractual or not, considered commercial under Turkish law (Art. I(3) NYC).[9]

The Turkish Supreme Court confirmed that whilst Art. 60-63 of the Turkish Act on Private

International and Procedural Law (Act No. 5718 (TPIL))[10] govern the recognition and enforcement of foreign arbitral awards, under Art. 1(2) TPIL, provisions of international conventions to which Turkey is a signatory are reserved. Therefore, the New York Convention prevails over the TPIL except on the enforcement procedure stipulated under Art. 60(2) and 61 TIPL.[11] So for any foreign arbitral awards not made in the territory of a Contracting State to the Convention, or for those not considered commercial under Turkish law, Art. 60-63 govern the recognition and enforcement.

In practice, with 165 NYC Contracting States (as of October 2020) and commercial legal relationships being broadly defined under Turkish law, Art. 62-63 TPIL have very limited application.[12] Therefore, this paper focuses on the recognition and enforcement of arbitral awards under the New York Convention. It should be noted, though, that Art. 62 TPIL lists very similar reasons for refusing enforcement to those under Art. V NYC, and reciprocity is required under TIPL.[13]

The New York Convention applies to arbitral awards not considered domestic awards in Turkey (Art. I). If the seat of arbitration is in Turkey and international arbitration rules (e. g. of the ICC or UNCITRAL) apply to the proceedings, this arbitration is still domestic and recognition and enforcement are not required.[14] By contrast, if the seat of arbitration is not in Turkey but Turkish procedural law applies, the decision is deemed a foreign arbitral award.[15]

III. Commercial Legal Relationship under Turkish Law

Under Art. 3 of the Turkish Code of Commerce (TCC), all matters stipulated in TCC or any transactions related to a commercial enterprise are commercial legal relationships. For example, matters of unfair competition covered by Art. 57 TCC entail a commercial relationship.[16] Art. 19(1) TCC also presumes that any undertaking by a merchant – a natural person or a legal entity – is commercial; under Art. 19(3), unless otherwise stipulated by law, a contract that is commercial for one party is also commercial for the other party. As Art. 3 and 19 TCC thus define a commercial legal relationship quite broadly, the New York Convention applies to the enforcement of almost all arbitral awards.[17]

IV. Procedure

Art. III NYC states that:

"Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles."

Accordingly, arbitral awards are enforced in accordance with Art. 60(2) and 61 TPIL, Turkish rules of procedure covering, inter alia, court jurisdiction, court fees, cautio judicatum solvi, and appellate procedure.[18]

Under Art. 61 TPIL, a party requesting enforcement of a foreign award shall attach (i) the original or a duly certified copy of the arbitration agreement or arbitration clause, (ii) the original or a duly certified copy of the final and executable or binding award, and (iii) translations and duly certified copies of the award and the arbitration agreement. Art. IV NYC is similar to Art. 61 and provides that the party applying for recognition and enforcement shall, at the time of the application, supply (i) the duly authenticated original award or a duly certified copy thereof, (ii) the original arbitration agreement or a duly certified copy thereof, and (iii) a translation of both documents into the official language of the country in which the award is relied upon (here: Turkish), certified by an official or sworn translator or by a diplomatic or consular agent. If the arbitration agreement is a contract clause, only a translation of that clause is required.[19]

Art. 55-57 TPIL concern the enforcement of foreign judgments, and they apply by analogy to the recognition and enforcement of arbitral awards (Art. 61 TPIL). Under Art. 55, "the petition for the request for enforcement shall be served upon the opposing party and shall contain the date of the hearing"; the request shall be reviewed and resolved by the court in accordance with the provisions of simple trial procedure (Art. 316-322 of the Turkish Code of Civil Procedure (TCCP)). The opposing party may only object by claiming that the enforcement conditions under the New York Convention are not met; the award had been "partially or wholly executed or a reason hindering the enforcement has arisen,"[20] for example, the award's execution becoming time-barred under the law of the arbitration seat.[21] Under Art. 56 TPIL, the court may decide to fully or partially enforce the arbitral award or may dismiss the request.

Art. 55 and 56 prohibit the revision of arbitral awards (revision au fond),[22] and the Supreme Court has accordingly rejected many objections related to the

substance of the case. For instance, the Court rejected the party's argument that the arbitral tribunal awarded compensation twice for the same reason,[23] and refused to consider whether the substance of an award breached Turkish laws.[24] In another enforcement case, the Supreme Court dismissed the appellants' argument that they were not party to a charter party agreement, which was also formally invalid, emphasizing that these allegations concerned the substance of the award, which could not be revised under Turkish law.[25] In a 2016 case, the respondent argued that the tribunal violated due process by rejecting his request for „a technical investigation" and disregarding Turkish competition legislation. Again, the Supreme Court dismissed these arguments as related to the substance of the award.[26]

Under Art. 57 TPIL, arbitral awards for which enforcement is rendered shall be executed using the same procedure as for Turkish court judgments. First instance court decisions on enforcement may be appealed to the courts of appeal and the Supreme Court; appeal of the decision suspends the execution until the decision becomes final (Art. 57 TPIL).

If enforcement is rejected, the party seeking to enforce the award may file a new lawsuit on the merits of the dispute relying on Art. II(3) NYC, since the arbitration agreement is deemed inoperative under Turkish law.[27] In this new lawsuit, the award may be presented in evidence.[28]

As stated above, the recognition and enforcement of foreign arbitral awards are subject to the same conditions. In a pending litigation, a party may seek the court's recognition of the res judicata effect of the award, which would lead to a dismissal of the case.[29]

Only arbitral awards may be enforced under the New York Convention, so settlement agreements resulting from mediation[30] and foreign court judgments are not subject to its provisions. For example, one enforcement case turned on whether the decision of the (Russian)

Sverdlovsk Arbitrage Court was a foreign court judgment or an arbitral award. Because the first instance court did not properly analyze this point, its decision to allow enforcement was overruled by the Supreme Court.[31]

The party pursuing enforcement may seek an interim attachment on the debtor's assets if there is a serious risk of their transfer to third parties.[32]

V. Jurisdiction of Enforcement Courts

Art. 60(2) TPIL stipulates the Turkish courts' jurisdiction for recognition and enforcement. The parties are to designate as competent the Turkish courts. Otherwise, the courts at the domicile of the party against whom the award is rendered are competent. If the party does not have the domicile in Turkey, the courts at the place of habitual residence are competent. If neither the domicile nor the habitual residence are in Turkey, the courts at the location of their property in Turkey are competent.

Art. 60 TPIL entitles the parties to mutually designate the Turkish courts competent for enforcement. Parties that designate the enforcement court need to ensure that it only has jurisdiction on enforcing the award, and not on the substance of the dispute. Otherwise, if one party brings a lawsuit on the substance before a Turkish court, that court may conclude that the arbitration agreement is invalid as the parties' consent to arbitration is not without reservation.[33]

The domicile of Turkish legal entities is the place where their administrative head-offices are located, unless otherwise provided in their statute (Art. 51 of the Turkish Civil Code (CC)).[34] Commercial companies' statutes are available online.[35] Under Turkish law, only natural persons may have habitual residence in Turkey.[36]

If a respondent who is not domiciled or habitually resident in Turkey has property that may be subject to execution in the country, then the Turkish court at the location of the property has jurisdiction over enforcement of an arbitration award. However, if a respondent is domiciled in one region of Turkey but has property in another, the applicant should sue him in the former location.[37]

Art. 1360 TCC covers marine claims. A Turkish court which ordered an interim measure on a marine claim has jurisdiction to enforce foreign judgments and arbitral awards on the substance if, at the time of the enforcement application, the ship is within the court's territorial jurisdiction or the court possesses any security deposited to release the ship under Art. 1370-1372 TCC.

Finally, even if there is no competent court in Turkey, the Turkish courts shall become competent if the opposing party does not raise any jurisdictional objection (Art. 19 TCCP).[38]

VI. Grounds for Rejecting Recognition and Enforcement of Arbitral Awards

Unless any ground to reject the enforcement exists, foreign arbitral awards are enforceable in Turkey.[39]

Turkish scholars contend that Art. V NYC gives the enforcement judge discretion on whether to refuse recognition and enforcement, so they may recognize and enforce an award even if a ground for rejecting exists.[40]

1. Invalidity of the arbitration agreement or incapacity of the parties

Under Art. V NYC, recognition and enforcement of the award may be refused in the case that the

arbitration agreement is not valid under the applicable law.

a) Invalidity of the arbitration agreement

The validity of the arbitration agreement is determined by the law the parties designated as applicable or, absent such designation, the law of the seat of arbitration. The Supreme Court has often stated that an arbitration agreement governed by Turkish law is subject to the general requirements for contractual validity under the Turkish Code of Obligations (TCO). In particular, Art. 26-27 governing the validity of agreements[41] apply to arbitration agreements. Invalidity due to fraud, mistake, or threat is also governed by the law applicable to arbitration agreements and the relevant articles of TCO.[42]

Turkey recognizes the doctrines of autonomy, severability, or separability of arbitration agreements.[43] Art. 4 of the Turkish International Arbitration Law (Law No. 4686, TIAL)[44] states that an arbitration agreement cannot be contested by arguing that the underlying contract is invalid or that the agreement concerns a dispute yet to arise. Where the party against whom the enforcement of the award is sought did not contest the arbitration agreement's validity during the arbitration proceedings, the judge may reject an objection to validity in the enforcement proceedings as contrary to good faith.[45]

aa) Unambiguous intention to arbitrate

According to the Supreme Court's established position,

„The main principle is that the court has jurisdiction to resolve the dispute and arbitration is an exception. Therefore, if the parties would like to refer to arbitration, this should be explicitly and clearly stated in the arbitration clause or agreement." [46]

The Supreme Court has often ruled that arbitration agreements referring to both arbitration and the courts are invalid as the parties' consent to arbitration is not explicit and clear.[47] For example, an agreement stating that if the arbitrators fail to resolve the dispute, the courts shall have jurisdiction[48] or that the arbitrator's decision shall not be binding,[49] is invalid as the parties' consent to arbitration is not unambiguous.

In a 2019 annulment decision, the Supreme Court interpreted a Turkish arbitration agreement providing that any disputes shall be finally settled through arbitration but designating the Turkish courts as competent should arbitration become impossible. The parties had amended the contract and arbitration agreement several times and no previous versions referred to Turkish courts. The appeal court ruled the arbitration agreement invalid as the parties did not clearly consent to arbitration. However, the Supreme Court overruled this decision, referring to previous versions of the arbitration agreement wherein the parties' consent was unambiguous; in the amended version, the parties did not withdraw their consent but simply designated Turkish courts for resolving cases for which arbitration was impossible.[50]

Under Art. 60(2) TPIL, the parties to an arbitration agreement may designate in writing the enforcement court in Turkey. Supreme Court decisions have clearly established that a dispute resolution clause giving the state court jurisdiction as an alternative to arbitration is an invalid arbitration agreement, as the parties' consent to arbitration is not clear. Therefore, the written agreement on the enforcement court needs to be very clearly worded and should not cause confusion on the parties' consent to arbitrate.[51]

In 1995, the Supreme Court held in two judgments, that Clause 67 of the FIDIC Conditions of Contract for Works and Civil Engineering (4th ed., 1987) is a valid dispute resolution clause: although the Engineer's decision is a precondition for commencing arbitration, this decision is not binding upon the parties, so the precondition does not invalidate the arbitration agreement.

Turkish scholars have criticized these judgments for not addressing the legal problem of whether the tribunal has jurisdiction if the parties do not meet the preconditions for arbitration.[52]

bb) Interpretation of the parties' intention to arbitrate

An arbitration agreement is interpreted according to the applicable law.[53] Under Turkish law, if the arbitration agreement is ambiguous, then the judge will

endeavor to uncover whether the parties' real and common intention was to refer their dispute to arbitration. If the judge establishes such intention, the arbitration agreement is valid; if not, the judge is not allowed to rewrite the agreement. For example, if an arbitration agreement states that "all disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators in Geneva," the judge may establish that the parties' real and common intention is to refer their dispute to the ICC and to hold the arbitration in Geneva.[54]

In one enforcement case, the arbitration agreement provided that the parties may refer their dispute to either the Stockholm Chamber of Commerce Arbitration Institute or the Moscow Chamber of Commerce and Industry International Arbitration Court; it also permitted the claimant to appoint the members of the arbitral tribunal. The Supreme Court ruled the agreement valid: parties are not prohibited from designating alternative arbitration centers, and because either contracting party, as the claimant, could appoint the tribunal members, the second provision was not contrary to the Turkish public policy.[55]

In another case, the arbitration agreement referred disputes to either the Tashkent Chamber of Commerce or the Geneva International Arbitration Court. Neither institution existed when the parties concluded the arbitration agreement. When the claimant started a lawsuit before the Istanbul court, the respondent invoked the arbitration agreement and argued that the Istanbul court lacked jurisdiction. The first instance court referred the dispute to arbitration as the claimant could not prove that the specified institutions did not exist. The Supreme Court upheld this decision.[56]

The Supreme Court also held valid the arbitration agreement stating that "all disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the Paris Chamber of Commerce in Paris." In the court's view, the parties' real and common intention was to refer their dispute to the ICC in Paris, not the Paris Chamber of Commerce.[57]

cc) Arbitration agreement against public policy

The Supreme Court held that an arbitration agreement entitling one party to appoint all members or the majority of the arbitral tribunal was against public policy, and thus null and void. The agreement in question was imposed by a Turkish food producer (the stronger party) on its supplier farmers (the weaker parties).[58] Similarly, the Supreme Court has ruled that an arbitration agreement signed as a result of undue pressure from the stronger party is null and void.[59]

dd) Asymmetric arbitration agreement

In 2011, the Supreme Court decided that an asymmetric arbitration agreement entitling one party to apply for arbitration and requiring the other to sue in the Turkish courts was invalid for two alternative reasons. First, if court proceedings are blocked by the arbitration agreement,

then the party not entitled to apply for arbitration will be denied access to justice, which is unacceptable. Second, the parties' consent to arbitration is ambiguous and so the arbitration agreement is invalid.[60] In a more recent case, the dispute settlement clause provided that disputes shall be referred to arbitration but allowed one party to sue the other before a competent court. The Supreme Court declared the arbitration agreement null and void, as the parties' consent to arbitration was not absolute.[61]

ee) Extension of arbitration agreement to third parties

Another invalidity-related issue is the extension of arbitration agreements to third parties.[62] In two instances, in 2001 and in 2017, the Supreme Court refused to enforce an award wherein the arbitration agreement was extended to third parties.[63] In another case, the Supreme Court overruled the first instance court's decision because it had not established that the party to the arbitration agreement was the same as the party against whom the award was invoked.[64]

In a 2015 case, the Supreme Court decided that a third-party beneficiary of a concession contract was not party to the arbitration agreement therein. Accordingly, the Court annulled the arbitration award (which had been issued in Turkey) in favor of the third party. Notably, the Supreme Court expressed the rule that both parties to the dispute needed to be a party to the arbitration agreement, and that the beneficiary was not a party thereto because the beneficiary did not consent either explicitly or implicitly to the arbitration agreement.[65]

In a dispute arising out of a complex M&A transaction, the court's jurisdiction was contested by a party relying on a dispute resolution protocol containing an arbitration agreement. The first instance court accepted the jurisdictional objection; however, the Supreme Court overruled the decision because both parties to the lawsuit were not signatories of the dispute resolution protocol. Once again, the Supreme Court refused to extend the arbitration agreement to third parties.[66]

In a decision in 2010, the Supreme Court refused to extend the arbitration agreement in a Turkish company's articles of association to company's managers not party thereto. Both the managers and shareholders were respondents in the dispute. Although the shareholders were in principle entitled to rely on the arbitration agreement, the features of the dispute led the Supreme Court to conclude that it must be resolved before the court for all respondents.[67]

There are no reported Supreme Court decisions on piercing the corporate veil, but the concept has been well-researched by Turkish scholars.[68]

ff) Formal validity of arbitration agreement

The Supreme Court held that the form of the arbitration agreement is subject to Art. II NYC.[69] The Supreme Court understands "written agreement" under Art. II NYC to mean a signed document,[70] but also accepts arbitration agreements concluded by incorporating standard contracts[71] such as charter party,[72] Association for International Trading in Oils, Fats and Oilseeds (FOSFA) Rules,[73] or the Grain and Feed Trade Association (GAFTA) Rules.[74]

b) Incapacity of the parties

Art. V(a) NYC does not stipulate the law applicable to the parties' capacity. Therefore, the enforcement court should apply the conflict of law rules of the lex fori, e. g. Turkish conflict of law rules to determine the law applicable to the capacity of the person.[75] Art. 9(1) TPIL provides

that the legal capacity of a person shall be governed by his national law. Under Art. 9(4) TPIL, the legal capacity of legal entities or other types of associations is governed by the law of the jurisdiction where their administrative head-offices are located according to their statutes. However, where the de facto central office is located in Turkey, Turkish law may be applied. The legal capacity of legal entities lacking a statute and of other types of associations shall be governed by the law in their de facto administrative headquarters.[76]

Art. 9(2) TPIL which applies to arbitration agreements stipulates that a person lacking legal capacity pursuant to his national law shall be bound by the transaction he has concluded if he is legally capable under the law of the State where he concluded the transaction. Transactions pertaining to family law and inheritance law as well as in rem rights in immovable property located in foreign countries are excluded from the scope of this provision.

c) Special authority requirement

Under Art. 504(3) TCO, a representative must have special authority to sign an arbitration agreement on behalf of the principal.

In some cases, the Supreme Court has ruled that an arbitration agreement signed by an unauthorized representative can be invalid even if the wider (sale) agreement becomes binding through performance, as the arbitration agreement is severable. The Supreme Court has overruled lower court decisions to allow the enforcement of an award without investigating whether the signatory of the arbitration agreement had specific authority to sign on the principal's behalf.[77] In a 2012 case, the Supreme Court refused to enforce an award because the commercial agency that signed the arbitration agreement was not authorized by the principal to do so.[78] However, in some other cases where the contract had been performed by the parties, the Supreme Court ruled that it was contrary to good faith (under Art. 2 TCC) to argue at the enforcement stage that the arbitration agreement had been signed by a representative without special authority.[79]

The law applicable to representation of the principal is determined by Turkish conflict of laws rules. Art. 30 TPIL[80] stipulates the law applicable to representative authority.[81] Accordingly, the relationship between the parties in case of representation without authority is subject to the law of the representative's workplace. In cases where the representative does not have a workplace, or where third parties are unaware of such a workplace, or where the representative authority is used beyond the workplace, the representative authority is subject to the law of the State where the authority is virtually practiced. If there is an employment relationship between the representative and the principal and if the representative does not have a workplace, the representation without authority is governed by the law of the State where the workplace of the principal is located.

However, the representation of companies is not subject to Art. 504/3 TCO and the applicable law is

not governed by Art. 30 TPIL but rather by Art. 9(4) TPIL on the capacity of the legal person.[82] Accordingly, for a company incorporated in Turkey and whose administrative head-office is located in Turkey, representation is subject to Turkish law. Unless there is a contrary provision in the articles of association, two board members together have the authority to sign on behalf of a joint stock company (Art. 371 TCC).[83]

Turkish law well recognizes apparent authority, accordingly, if the principal causes the counter

party to believe that the representative is authorized to make the arbitration agreement then the arbitration agreement is binding on the principal. In addition, if the principal who became aware of the unauthorized representation does not challenge the validity of the arbitration agreement, the arbitration agreement shall become binding on the principal.[84]

2. Violation of due process

Under Art. V(1)(b) NYC, if the party against whom the award is invoked was not given proper notice of the arbitrator's appointment or of the arbitration proceedings, or was otherwise unable to present its case, recognition and enforcement of the award may be refused at this party's request.

In a recent annulment decision, the Supreme Court referred to Art. 6 ECHR and confirmed that the parties' right to due process is equally applicable to arbitration proceedings.[85] Turkish scholars have identified several examples of violation of due process, including failure to hear a particular witness whose evidence is material to the outcome of the case, extremely short deadlines making the proper presentation of submissions and evidence impossible, and conducting proceedings in a language other than the agreed arbitration language.[86] Notifications made during arbitration proceedings do not need to comply with the Turkish Notification Law[87] or international law on the service of judicial documents abroad as a requirement of due process.[88]

Under Turkish law, enforcement of an award can be refused if the party against whom it is invoked promptly raised the violation of due process in the arbitration proceedings and did not have the opportunity to cure the violation of due process. If the violation was cured in the arbitration proceedings, enforcement of the award shall not be rejected.[89]

If a party duly notified of arbitration proceedings and assured of the right to present its case does not appear at the proceedings without satisfactory justification, this should not prevent the enforcement of the award against it.[90] In a case in 2013, involving two respondents, one argued that it had not been duly notified of the proceedings, yet was represented by the other respondent's lawyers. According to the Supreme Court, this representation raised the presumption that the party was aware of the proceedings, so there was no violation of due process. The Supreme Court also stated that lower courts should not rely on the violation of due process ex officio unless the relevant party objects to enforcement on that basis.[91]

The party alleging the violation of due process has the burden of proof. However, when the party against whom enforcement is invoked asserts that it was not duly notified, the burden of proving notification shifts to the applicant, who must present the required evidence.[92] If violation of due process may amount to a violation of public policy, the court may refuse enforcement ex officio.[93]

The Supreme Court rarely rejects enforcement because of the violation of due process. In one case, the respondents alleged that their right to due process was violated since the notification took place in English. The Supreme Court rejected this argument, ruling that the notification in the language of the arbitration is not a violation of due process and so not a reason to refuse the enforcement of the award.[94] In another case, a witness who had submitted a witness statement was not called to testify. Again, the Supreme Court ruled that due process was not violated.[95]

In a recent case, the respondent argued that he had not been allowed by the arbitral tribunal to review a document presented by the claimant; only his representatives and experts had been permitted to review the redacted document. The first instance court refused to enforce the award on the ground that the arbitral tribunal had violated due process. However, the Supreme Court overruled the decision because the respondent could not prove that the tribunal had violated the rules applicable to the arbitral proceedings.[96]

3. Exceeding of authority

Under Art. V(1)(c) NYC, recognition and enforcement of the award may be refused if it is proven that the award deals with a dispute not contemplated by, or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreements.

In a 1994 decision on the unification of conflicting judgments, the Supreme Court stated that if the parties agreed on Turkish law applicable to the merits, the tribunal exceeds its authority by acting ex aequo et bono.[97]

In one enforcement case, the respondent argued that the arbitral tribunal had exceeded its authority by applying English law to the merits of the dispute. However, because the parties had not designated the applicable law, the tribunal was entitled to determine which laws should apply. Accordingly, the Supreme Court declared that the arbitral tribunal had not exceeded its authority and its award was enforceable in Turkey.[98]

In another case, the parties had agreed that Turkish law was applicable to the merits of the dispute, but the arbitrator made references to a foreign law in the award. The Supreme Court held that referring to an ancillary source of law did not mean that the arbitrator had not applied Turkish law, and so rejected the objection to enforcement.[99]

The Supreme Court has refused to enforce awards exceeding the scope of arbitration agreements. In a 2003 case involving more than one contract between the same parties, the Supreme Court ruled that the arbitral tribunal had exceeded its authority by deciding on a contract with no arbitration agreement, and so partially rejected enforcement (NYC Art. V(1)(c) and TPIL Art. 62).[100]

In a 2016 case, the Supreme Court reinforced that decision. The dispute arose out of a contract between a film producer and a screenwriter. The screenwriter alleged before the court that the producer made a follow-up film based on his script without any remuneration. The producer raised a jurisdictional objection referring to the arbitration agreement in the contract. The first instance court rejected the objection as the follow-up film was not within the scope of the first film contract, and the Supreme Court upheld the decision.[101]

The Supreme Court has adopted the same position towards settlement agreements. In a recent case, the construction contract between the parties included an arbitration agreement. The parties entered into a settlement protocol replacing the previous contract. The protocol's arbitration agreement referred only to disputes arising out of a strike by subcontractors and workers. The dispute arose with regards to the payment terms in the protocol. The Supreme Court decided that the arbitration clause in the protocol replaced the arbitration clause in the construction contract, and ruled that the new arbitration clause did not cover disputes around payment obligations under the protocol.[102]

Multi-tier dispute resolution clauses provide that when a dispute arises, the parties shall undertake certain steps in an attempt to amicably settle, prior to commencing arbitration.[103] These clauses are valid under Turkish law. The question arises whether the pre-arbitral steps in a multi-tier dispute resolution clause constitute jurisdictional conditions precedent to commencing arbitration. This depends on the language of the clause. Where the pre-arbitral steps are conditions precedent, the arbitral tribunal has no jurisdiction unless the parties undertake those steps. Should they fail to do so, the arbitral award may not be enforced as the

arbitral tribunal exceeds its authority.[104]

4. Irregularity in the composition of the arbitral tribunal or in the arbitral procedure

Under Art. V(1)(d) NYC, recognition and enforcement of the award may be refused if

"The composition of the arbitral authority or the arbitral procedure was not in accordance with the parties' agreement, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place."

In a case before the Supreme Court, the dispute resolution clause stipulated arbitration under the London Court of International Arbitration (LCIA). However, the claimant commenced arbitration under the ICC Arbitration Rules and an ICC arbitral tribunal decided on the merits. The Supreme Court refused to enforce the award as the composition of the arbitral tribunal was not in accordance with the parties' agreement.[105]

In another enforcement case, the respondent alleged that the constitution of the arbitral tribunal was not in accord with the parties' agreement, as Art. 7 of the Turkish Arbitration Code provides that there shall be three arbitrators unless the parties agree otherwise. The arbitration agreement referred to the ICC Arbitration Rules. With no agreement between the parties on the number of arbitrators, the ICC Court appointed a sole arbitrator in accordance with Art. 12(2) ICC Arbitration Rules. The Supreme Court held that the arbitral tribunal's constitution was in accord with the ICC Arbitration Rules, and so rejected the respondent's allegation.[106]

Regarding irregularity in the arbitral procedure, Turkish scholars note that recognition and enforcement may be refused only if the irregularity was not remedied and affected the outcome of the case.[107] In

some cases, the irregularity may be tantamount to violation of due process or even public policy. However, such a violation is not necessarily a precondition to reject the enforcement.[108]

In a 2012 decision on the unification of conflicting judgments, the Supreme Court declared that foreign unreasoned judgments are not against Turkish public policy and thus are enforceable in Turkey. This decision applies by analogy to the enforcement of foreign arbitral awards under the New York Convention.[109] The court may refuse to recognize and enforce an unreasoned award if the rules applicable to the arbitration procedure require the arbitral tribunal to issue the reasoned award. In these circumstances, lack of reasoning constitutes an irregularity in the arbitral procedure[110] and the party objecting the enforcement does not have to prove any effect on the outcome of the award. It should also be noted that an award without reasoning might be arbitrary.[111]

5. Award not binding or set aside

Under Art. V(1)(e) NYC, recognition and enforcement of the award may be refused if the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

The award needs to be binding under the rules applicable to the arbitral proceedings. Under Turkish law, an award is binding where no further arbitral appeals are available under the rules applicable to the arbitration.[112] For example, under Art. 35(6) ICC Arbitration Rules every award shall be binding on the parties.

The Supreme Court stated in 2000 that under the New York Convention, a party alleging that an

award is not binding bears the burden of proof. In that case, the relevant party could not prove that an application had been made to set aside the award, or that the award had been set aside at the seat of arbitration. Therefore, the Supreme Court dismissed the objection against the binding nature of the award.[113]

The Supreme Court ruled that an award does not need to have its binding nature proven or confirmed by a court decision in the seat of arbitration. In other words, double exequatur is not required for the enforcement of an award in Turkey.[114]

In another case, the Supreme Court stated that an award need not be final to be enforceable. On the facts, the Court could deduce that the arbitral award was binding because the arbitration agreement expressly stated that an award would be binding on the parties. Further confirmation of the award's binding nature was found in the applied arbitration rules which provided that the parties should enforce the award voluntarily.[115]

For an ad hoc arbitration, it should be presumed that the parties implicitly agree on the binding nature of the award, even if the arbitration agreement does not expressly state that it shall be binding or final or that the parties shall voluntarily comply. The tribunal may record that the award is binding on the parties.[116]

Partial awards, such as on jurisdiction, liability, or arbitration costs, may be recognized or enforced in Turkey if the applicant has a legal interest.[117] In a 2019 decision, the Supreme Court ruled that a partial award is binding and final, provided that the subject matter of the award is independent from the unresolved issues. The fact that the arbitration continues is not a reason to refuse recognition of a partial award. The Supreme Court emphasized that „final" is distinct from „binding" and that only the latter is required under the New York Convention. Accordingly, the Supreme Court concluded that a partial award on jurisdiction is recognizable in Turkey, albeit not a final award.[118] This represents a significant improvement on the Supreme Court's 2016 decision that only final awards can be enforced.[119]

There are no published Supreme Court decisions on the enforcement of arbitrators' interim measures. The 2019 decision suggests that binding interim measures are enforceable in Turkey. In any event, parties may seek an interim order before competent Turkish courts,[120] even if the seat of arbitration is abroad.[121]

An arbitral tribunal has the authority to issue procedural orders to regulate procedural issues. A tribunal can always alter its own procedural orders, provided such orders do not take the form of an award. Procedural orders are held to be "provisional in nature",[122] and so are not enforceable in Turkey.[123]

In an enforcement case, the respondent argued that an award subject to ICC Arbitration Rules was not binding as it had not been officially notified. Because the award was notified by the ICC Secretariat via e-mail and registered letter with a return receipt, expressly confirming the binding nature of the award, the first instance court allowed the enforcement; the Supreme Court upheld the decision.[124]

Under Art. VI NYC if an application for the setting aside or suspension of an award has been made to a competent authority, that authority may adjourn the decision on the enforcement of the award. Relying on this Article, the respondent in an enforcement case alleged that there were two ongoing annulment proceedings before the Netherlands courts, but the applicant argued that the Netherlands courts had refused to annul the award. The Supreme Court ruled that in the absence of a clear proof of final decisions in the annulment cases, the decision on

enforcing the award had to be adjourned.[125]

There are no reported Supreme Court decisions on the enforcement of an award set aside by foreign competent courts. Leading Turkish scholars opine that the enforcement judge has discretion on whether to refuse to enforce such an award,[126] suggesting that an annulled award can still be enforced in Turkey.

6. Arbitrability

Under Art. V(2)(a) NYC, recognition and enforcement may be refused if the subject matter of the difference is not capable of being solved by arbitration under the law of the country where recognition and enforcement is sought. Therefore, a foreign arbitral award may be enforced in Turkey only if the subject matter of the difference is arbitrable under Turkish law.[127]

Art. 1 TIAL provides the scope of arbitrability under Turkish law. Disputes concerning rights in rem in immovables in Turkey and disputes that cannot be subject to acceptance, waiver, or settlement[128] are not arbitrable. Arbitrability shall be investigated at the enforcement stage ex officio (Art. V(2) NYC).[129]

One party may seek negative declaratory relief from the arbitral tribunal, such as a declaration that they are not in debt to, or in a legal relationship with the other party. The Supreme Court has held that negative declaration relief is arbitrable,[130] so a declarative arbitral award is enforceable in Turkey.

a) Rights in rem

The Supreme Court has ruled many times that disputes related to rights in rem in immovables in Turkey are not arbitrable.[131] However, a dispute arising out of a construction contract is arbitrable if it does not concern the in rem rights. For example, penalty for delay or defects liability are arbitrable claims,[132] but a contractor's claim for rights in rem on the constructed building is not arbitrable.[133]

b) Protection of a weak party

The Supreme Court and Turkish scholars concur that disputes concerning contracts where one party is deemed weak are not arbitrable.[134] To protect lessees, the Supreme Court has held that disputes arising out of non-commercial lease agreements are not arbitrable.[135] Similarly, except for reemployment lawsuits (Art. 20 of Labour Law No. 4857), labour law disputes are not arbitrable in Turkey.[136] The Supreme Court annulled the part of an arbitral award dealing with the payment of annual leave.[137]

Under the Turkish Consumer Protection Law,[138] consumer disputes with the amount not exceeding the determined threshold in Art. 68 shall be mandatorily referred to the Permanent Consumer Arbitral Tribunal in each district. However, the disputes with the amount above the threshold are not arbitrable.[139] The Supreme Court held that an arbitration agreement in a standard consumer contract is not binding on the consumer as it is non-negotiable.[140]

c) Mergers and acquisitions

The Istanbul Commercial Court decided that disputes arising out of a share purchase agreement, such as put or call options, are arbitrable.[141] Recently, the Supreme Court allowed the enforcement of an award

from the Vienna International Arbitration Centre on a dispute arising out of a share purchase agreement.[142] A significant number of merger and accusation disputes involving Turkish parties have been arbitrated over the last decade.

d) Maritime law

Under Art. 1320 TCC, ship creditors have mortgage rights in the ship and can sue debtors before the Turkish courts for a declaration of these rights. Such claims are governed by Turkish law (Art. 1320(3)). The Supreme Court has ruled that an arbitration agreement between a ship creditor and a debtor does not prevent the creditor to benefit from its rights to mortgage before Turkish courts.[143] Disputes concerning rights in rem in a ship bearing a Turkish flag or under construction in Turkey are arbitrable.[144]

e) Execution – bankruptcy proceedings and arbitrability

Bankruptcy is not arbitrable in Turkey,[145] so a foreign arbitral award declaring a Turkish national or company bankrupt is not enforceable in Turkey. Under the Bankruptcy and Enforcement Law,[146] a creditor is entitled to commence execution proceedings without a judgment from a competent court. If the debtor objects to execution, the execution proceedings are suspended. The creditor has one year following notification of the objection to file a lawsuit for its rejection. If the creditor wins, the execution proceedings continue (Art. 61-67 of the Bankruptcy and Enforcement Law).

Under Art. 67, the court may order the respondent to pay the creditor meritless objection compensation of at least 20 % of the awarded amount. Conversely, if the creditor started the execution in bad faith, i. e. despite being aware of, or able to know that it was not entitled to claim, the court may order the creditor to pay bad faith compensation to the respondent.[147]

The arbitrability of lawsuits for rejection of objection, meritless objection compensation, and bad faith under Turkish law is debatable. From the perspective of international arbitration law, the problem is that an arbitral tribunal seated in a country other than Turkey may have jurisdiction over these lawsuits when the law applicable to the substance of the arbitration is Turkish law, and it is questionable whether a foreign award on such lawsuits would be enforceable in Turkey.

It is not rare for a Turkish party to start execution proceedings in Turkey and, upon the debtor's objection, commence arbitration against the debtor for the rejection (or annulment) of the objection and payment of meritless objection compensation. A tribunal unfamiliar with Turkish law would most likely be reluctant to reject (or annul) the objection, lift the suspension of execution proceedings, and order the respondent to pay compensation not less than 20 % of the awarded amount (or order the creditor to pay bad faith compensation). In such cases, the arbitral tribunal would determine whether the respondent is in debt to the claimant and, if so, issue a monetary award, but would not order the continuation of execution proceedings or award either meritless objection or bad faith compensation.[148]

Some scholars opine that rejection/annulment of the objection is arbitrable and that an arbitral tribunal has jurisdiction to order the execution proceedings to continue and the payment of meritless objection or bad faith compensation.[149] A number of Supreme Court decisions affirm that rejection/annulment of objection is arbitrable and that arbitral tribunals may award either type of compensation.[150] For example, in two decisions, the rejection/annulment of an objection was held to be arbitrable as the dispute was within the parties' disposal and not related to

Turkish public policy.[151]

Some scholars opine that because rejection/annulment of the objection is part of the execution proceedings, only the Turkish courts may reject/annul an objection, order the execution proceedings to continue, and order the respondent to pay compensation. One scholar contends that whilst rejection/annulment of the objection is arbitrable, the arbitral tribunal has no jurisdiction to order meritless objection or bad faith compensation.[152] Accordingly, in some cases, the Supreme Court has held that the rejection/annulment of an objection is not arbitrable, and that an arbitral tribunal may only determine whether the claimant is entitled to any payment, with no power to order the continuation of execution proceedings.[153]

f) Corporate law

The Supreme Court declared that the annulment of joint stock company general assembly resolutions is not arbitrable as it is not within the parties' disposal. Furthermore, under the TCC, the company's headquarter courts have exclusive jurisdiction on annulment lawsuits (Art. 445 TCC). In addition, when there are more than one annulment lawsuit against the same general assembly resolution, all of the lawsuits shall be consolidated (Art. 448(2) TCC).[154] For the same reasons, the Supreme Court declared that the termination of a joint stock company is not arbitrable.[155]

Turkish scholars opine that claims concerning the resolutions of limited liability companies and simple partnerships are arbitrable.[156] Disputes arising out of shareholder agreements,[157] joint venture agreements, and share purchase agreement are all subjects to the parties' disposition and thus arbitrable.[158]

7. Violation of public policy

Under Art. V(2)(b) NYC, the competent authority in the country where recognition and enforcement is sought may refuse recognition and enforcement of an award that would be contrary to that country's public policy. The Convention does not define "public policy" or list the circumstances in which it could be violated in the enforcement country. Therefore, the enforcement judge has a wide discretion on defining of what constitutes a violation of public policy[159] and, per the Supreme Court, should consider the particularities of each case.[160]

Violation of public policy shall be investigated at the enforcement stage ex officio (Art. V(2) NYC).[161] Prior to 2012, the Supreme Court refused to recognize and enforce foreign unreasoned judgments on the ground that unreasoned judgments are against Turkish public policy. However, in a 2012 Decision on Unification of Conflicting Judgments, the Supreme Court declared that foreign unreasoned judgments are not against public policy and so are enforceable in Turkey. The principles stated in the reasoning of the decision are also applicable to the recognition and enforcement of foreign arbitral awards under the New York Convention:[162]

- Public policy differs over time and between jurisdictions;
- Public policy should be interpreted considering the circumstances of each case;
- There is no perfect definition of public policy, but it essentially entails protecting fundamental interests and principles in a society;
- Violation of a mandatory rule of Turkish law does not necessarily amount to violation of Turkish public policy. Domestic public policy consists of mandatory rules which are not

subject to disposition of the parties. For private international law, however, the public policy framework is built on the fundamental principles of Turkish law: ethics in Turkey; justice requirements and politics that Turkish law relies on, including constitutional rights and freedoms, fundamental principles of international law; good faith principles; fundamentals of justice and ethics widely accepted in civilized societies; the economical and political regimes of the society; human rights and freedoms; the level of development of civilization;

• Under the TPIL, it is strictly prohibited to review the substance of a judgment in enforcement proceedings;

• The enforcement judge cannot review the law applied to the substance of the judgment. The judge may review only the consequences of recognition and enforcement; and

• The enforcement judge may not refuse recognition and enforcement of a foreign judgment just because the law applied to the substance of the case differs from Turkish law or conflicts with Turkish mandatory rules. The question is whether or not the recognition and enforcement of the foreign judgment would violate fundamental principles of Turkish law.

These basic principles of public policy have been recognized by Turkish scholars for years[163] and are widely accepted in civil law jurisdictions. Nonetheless, their confirmation in the Supreme Court's 2012 unification decision, which is binding on all Turkish courts, was an important development. In a 2016 decision, the Supreme Court expressly referred to these principles, as explained in the 2012 unification decision, and confirmed that they apply to the enforcement of arbitral awards.[164]

The Supreme Court and Turkish scholars unanimously agree that révision au fond is not permitted by Turkish law.[165] The enforcement judge is neither allowed to investigate whether the arbitral tribunal correctly applied the law and appropriately weighed the evidence, nor may consider whether the law applied to the merits violates Turkish public policy. However, the enforcement judge should review pieces of evidence apart from the award itself. Indeed, this is unavoidable as further evidence and investigation may be needed for the relevant party to prove its case. For example, if the party against whom the award is invoked alleges that it was obtained through forgery, the enforcement judge has to investigate the alleged forgery and consider the relevant evidence.[166]

Turkish scholars contend that the following violates Turkish public policy: an arbitral award implicitly or expressly ordering payment of a bribe or a gambling debt, an award related to human or drug trafficking, and an award breaching Turkish customs or exchange legislation.[167] Conversely, non-concrete or notional al-

legations of public policy violations are not enough for the Turkish courts to refuse enforcement.[168]

The Supreme Court held that a foreign arbitral award breaching Turkish tax legislation cannot be enforced in Turkey. It further explained that reviewing the award for tax breaches falls within the scope of checking compatibility with public policy and is not a "revision" of the award.[169] The Supreme Court adopts the same approach towards the annulment of awards in Turkey.[170]

A foreign arbitral award contradicting a Turkish court judgment may be considered to breach public policy.[171] Indeed, the Supreme Court has rejected the enforcement of awards on this ground.[172] In a recent case, the respondent alleged that the arbitral tribunal's findings of fact

contradicted those of the Turkish criminal court. The first instance court refused to enforce the award, but the Supreme Court overruled this decision on the ground that there was no contradiction.[173]

The Supreme Court decided that a domestic arbitral award violated Turkish public policy because the tribunal was not independent.[174] Lack of independence suffices to refuse recognition and enforcement: the party asserting that the arbitral tribunal was not independent does not have to prove that this affected the decision.[175]

In a case concerning an ICC award, the respondent alleged that the sole arbitrator was not impartial because his nationality was the same as the claimants. In fact, their nationalities were not the same, and the ICC Court had already rejected the respondent's impartiality challenge. The Supreme Court stated that the party alleging impartiality must adduce solid facts and that the enforcement judge had to consider that the ICC Court had already dismissed the same allegation.[176] In many decisions over the last 30 years, the Supreme Court has consistently stated that Art. 34 ICC Arbitration Rules (Scrutiny of the Award by the Court) does not affect the independence and impartiality of the tribunal, and that awards scrutinized by the ICC Court are not against Turkish public policy.[177]

In an enforcement case, the respondent argued that the tribunal had disregarded Turkish mandatory rules on safety of products subject to the parties' distribution agreement. The Supreme Court rejected this argument on the ground of bad faith: the respondent had distributed these products in Turkey for several years before raising the argument of product safety.[178]

By contrast, in a 2018 decision, the Supreme Court refused to enforce an award that disregarded the Turkish Biosecurity Law. The Turkish buyer in a sale agreement refused to accept the delivery of corn after laboratory testing proved that it was genetically engineered and, therefore, prohibited under the Biosecurity Law. The seller then obtained an arbitral award against the buyer. The Supreme Court decided that an award incompatible with essential mandatory rules, such as the Biosecurity Law, is against Turkish public policy.[179]

In another decision, the respondent alleged that the amount of the penalty ordered in the award was excessive and, therefore, against Turkish public policy. The Supreme Court explained that the public policy rules governing foreign arbitral awards differ from those applicable to domestic awards. Accordingly, the Supreme Court overruled the first instance decision to refuse enforcement of the award.[180]

In a case before the Supreme Court, the respondent argued that an award not rendered within the timeframe set by Turkish law is against public policy and so not enforceable in Turkey. The respondent alleged that under Art. 10(B) TIAL, the time to render the award could only be extended by the parties' agreement or by a Turkish court decision. Therefore, the award subject to the ICC Arbitration Rules was not rendered in time because the time-frame was extended by the ICC Court, not by the parties or a Turkish court. The Supreme Court rejected this argument and enforced the award.[181] Its decision demonstrates that the arbitration institution's authority to extend the time-limit is not against Turkish public policy. Indeed, the Istanbul Arbitration Centre (ISTAC) Boards have authority to extend the time-limits for an award under Art. 33(2) ISTAC Arbitration Rules, the time-limit for the award may be extended, upon the agreement of the parties; if the parties fail to agree, the Board may extend the time-limit upon the request of a sole arbitrator or an arbitral tribunal or in cases where it deems necessary on its own initiative.

8. Lack of legal interest

Only parties to an award and their successors may seek its recognition and enforcement.[182] In two reported decisions, the Supreme Court has refused to enforce on the ground that the party

seeking enforcement was not a party to the arbitral proceedings.[183]

A party that assigns the awarded amount to a third party has no further legal interest in enforcing the award, but the third party is entitled to pursue enforcement.[184]

The New York Convention does not stipulate the lack of legal interest as a ground to refuse recognition and enforcement of the award. Under Art. 114(1)(h) TCCP, one precondition for filing a lawsuit is that the claimant has a legal interest deserving legal protection. Art. 114 is a general rule to be applied ex officio in each case, including claims for the recognition and enforcement of a foreign judgment or an arbitral award. On the recognition and enforcement of foreign judgments, Art. 52 TPIL also provides that "anyone who has legal interest in enforcement of a decree can request so." Therefore, in order to invoke the recognition and enforcement of an arbitral award, a party must have a legal interest therein.

The Supreme Court refused to recognize an award as the party invoking recognition would not benefit from the res judicata effect of the award in Turkey, and so had no legal interest in claiming recognition of the award there.[185]

Another question is whether, under the New York Convention, a party may have a legal interest in seeking a Turkish court decision that a foreign arbitral award is not enforceable in Turkey. The Supreme Court decided that the party seeking such a declaration did not have a legal interest deserving protection: in an enforcement lawsuit, the party against whom the arbitral award is invoked may seek the refusal of enforcement.[186]

VII. Conclusion

The Turkish Supreme Court has issued numerous important decisions reflecting its approach to the enforcement of foreign arbitral awards in Turkey under the Convention. The most frequent reason to reject the enforcement is the invalidity of the arbitration agreement. According to the Supreme Court's established position, the main principle is that a state court has jurisdiction to resolve the dispute and arbitration is an exception. Therefore, if the parties would like to revert to arbitration, this should be explicitly and clearly stated in the arbitration clause or agreement. The timely reprimand of the lack of a special authority to sign an arbitration agreement in the course of the arbitration proceedings is another ground to reject the enforcement. By the same token, the Supreme Court has not yet enforced any award against a party who is not a party to the arbitration agreement. The Supreme Court's approach to the allegations of violations of due process shows that it distinguishes very well between the procedural rules of international arbitration and those before the Turkish courts. Decisions on excess of authority and irregularities in the tribunal's compensation confirm that the Supreme Court interprets the New York Convention correctly. All in all, the Court's interpretation of arbitrability and international public policy under the New York Convention can generally be described as arbitration friendly.

---

* Assoc. Prof. Dr. Cemile Demir Gökyayla, PhD., Bilgi University, Istanbul. Special thanks to Istanbul Bilgi University for their support in publishing this paper.

1 ICC Disp. Res. Bull. 2018/2, 53.
2 ICC Disp. Res. Bull. 2018/2, 55.
3 ICC Disp. Res. Bull. 2018/2, 52.
4 ICC Disp. Res. Bull. 2018/2, 61.
5 ICC Arbitration Figures reveal new record for awards in 2018, ICC News 11.6.2019, available at the ICC Website.
6 ICC Dispute Resolution 2019 Statistics available at the ICC Website
7 Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 413.

8 Law No. 3731, ratified on 8.5.1991, Official Gazette (OG) 25.9.1991, 21002.
9 Law No. 3731.
10 English translation of TPIL (Wilske/Esin) is available at http://jafbase.fr/docAsie/Turquie/Private%20international%20law%20Turkey.pdf (last accessed on 20.8.2020).
11 TSC 11th Civ. Ct. 11.6.2019 – 3469/4259; TSC 11th Civ. Ct. 19.11.2001 – 6144/9045.
12 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 184; Akıncı, Arbitration Law of Turkey, 2011, 169; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 459; Erdem, Yargıtay Kararları Işığında Yabancı Hakem Kararlarına İlişkin Tenfiz Engelleri, Banka ve Finans Hukuku Dergisi 2019/8, 923 (925).
13 Çelikel/Erdem, Milletlerarası Özel Hukuk, 2017, 798.
14 TSC 15th Civ. Ct. 20.6.1997 – 2781/3533, cited in Akıncı, Milletlerarası Tahkim, 2020, 458 note 15.
15 TSC 15th Civ. Ct. 2.12.1997 – 4213/5603; see also Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 203, when Turkish law governs the arbitration proceedings, the award is a Turkish award and not subject to NYC on recognition and enforcement.
16 Arkan, Ticari İşletme Hukuku, 2014, 64.
17 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 210; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 416.
18 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 218; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 418; Akıncı, Arbitration Law of Turkey, 2011, 174.
19 Akıncı, Milletlerarası Tahkim, 2020, 466.
20 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 440-441.
21 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 442.
22 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 188; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 424; Ruhi, Yabancı Hakem Kararlarının Tanınması ve Tenfizi, 2019, 63; Akıncı, Arbitration Law of Turkey, 2011, 170.
23 TSC 19th Civ. Ct. 19.11.2000 – 7171/7602.
24 TSC 19th Civ. Ct. 30.5.2016 – 1389/9676.
25 TSC 11th Civ. Ct. 2.6.2003 – 13265/5759.
26 TSC 11th Civ. Ct. 6.10.2016 – 725/7777.
27 Akıncı, Arbitration Law of Turkey, 2011, 178.
28 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 222.
29 Akıncı, Milletlerarası Tahkim, 2020, 461; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 443.
30 Akıncı, Milletlerarası Tahkim, 2020, 462.
31 TSC 11th Civ. Ct. 26.10.2015 – 3987/10984.
32 Akıncı, Milletlerarası Tahkim, 2020, 474; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 250-251; TSC 19th Civ. Ct. 30.12.2014 – 9775/13391.
33 Discussed further below; Akıncı, Milletlerarası Tahkim, 2020, 468.
34 Akipek/Akıntürk, Türk Medeni Hukuku Yeni Medeni Kanuna Uyarlanmış Başlangıç Hükümleri Kişiler Hukuku, 2004/I, 468.
35 Turkey Trade Registry, available at https://www.ticaretsicil.gov.tr/.
36 TSC 11th Civ. Ct. 15.3.2012 – 2110/3915.
37 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 432-433.
38 Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 420.
39 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 233; Akıncı, Arbitration Law of Turkey, 2011, 179; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 440; Çelikel/Erdem, Milletlerarası Özel Hukuk, 2017, 805.
40 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 233; Akıncı, Milletlerarası Tahkim, 2020, 535; Ruhi, Yabancı Hakem Kararlarının Tanınması ve Tenfizi, 2019, 106.
41 Turkish Code of Obligations, Law No. 6098, ratified on 11.1.2011, OG 4.2.2011, 27836. Under Art. 26, the parties can freely determine the scope of the contract within the limits stipulated by law. Art. 27 states that contracts that are in breach of the mandatory provisions of the law, morality, public order, or personal rights or whose performance is not possible are absolutely null.
42 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 236; Akıncı, Milletlerarası Tahkim, 2020, 483; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 433; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 454.

43 Akıncı, Milletlerarası Tahkim, 2020, 163; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 437; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 357; Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 35; Tekin, Tahkim Anlaşmasının Esas Bakımından Geçerliliğine Uygulanacak Hukuk, 2019, 43 ff.

44 For a translation, see Paulsson (ed.), International Handbook on Commercial Arbitration, 2005, Supp. 43, Annex I, 1-14.

45 TSC 11th Civ. Ct. 9.4.2004 – 6774/3751; TSC 11th Civ. Ct. 13.2.2001 – 9903/1170; Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 86; Şanlı/Esen /Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 438.

46 TSC 15th Civ. Ct. 13.11.2017 – 5313/3922; TSC 15th Civ. Ct. 13.11.2017 – 10552/256; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 435.

47 TSC 11th Civ. Ct. 15.2.2011 – 3257/1675.

48 TSC 15th Civ. Ct. 13.11.2017 – 5313/3922; TSC 23rd Civ. Ct. 26.5.2014 – 887/4043; TSC 15th Civ. Ct. 9.2.2017 – 5600/512.

49 TSC 15th Civ. Ct. 12.12.2019 – 2824/5139.

50 TSC 15th Civ. Ct. 12.12.2019 – 2824/5139.

51 Akıncı, Milletlerarası Tahkim, 2020, 468.

52 TSC 15th Civ. Ct. 7.2.1995 – 295/578, and 21.2.1995 – 3390/3861, cited in Şanlı/Esen /Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 444.

53 Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 89.

54 Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 435.

55 TSC 19th Civ. Ct., 8 July 1998, 3599/4770; TSC Assembly of Civil Courts 9.6.1999 – 19-467/489.

56 Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 435.

57 TSC 11th Civ. Ct. 2.7.1981 – 2726/3508, J. TSC Dec. 11.11.1981/VII, 1449 ff.

58 TSC 13th Civ. Ct. 25.4.1991 – 8778/4492.

59 TSC 9th Civ. Ct. 17.9.2007 – 28539/26478; TSC 13th Civ. Ct. 25.4.1991 – 8778/4492.

60 TSC 11th Civ. Ct. 15.2.2011 – 3257/1675.

61 TSC 19th Civ. Ct. 30.10.2018 – 10552/256; see also Esen in İstanbul Kültür Üniversitesi Hukuk Fakültesi Dergisi, 2010 Vol. IX/2, 145 (154).

62 Esen, Uluslararası Ticari Tahkimde Tahkim Anlaşmasının Üçüncü Kişilere Etkisi, 2008.

63 TSC 11th Civ. Ct. 16.3.2001 – 10635/2020; TSC 15th Civ. Ct. 18.5.2017 – 152125/2528, cited in Akıncı, Milletlerarası Tahkim, 2020, 465 note 21.

64 TSC 11th Civ. Ct. 10.9.2014 – 7572/14133, cited in Akıncı, Milletlerarası Tahkim, 2020, 494, note 54; Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 187.

65 TSC 11th Civ. Ct. 26.5.2015 – 9538/8707; Esen, Uluslararası Ticari Tahkimde Tahkim Anlaşmasının Üçüncü Kişilere Etkisi, 2008, 224-225; cf. Çelikel/Erdem, Milletlerarası Özel Hukuk, 2017, 773 ff.

66 TSC 11th Civ. Ct. 4.10.2018 – 12278/6023.

67 TSC 11th Civ. Ct. 15.2.2010 – 9429/1648; for more information on simple partnership, see Akıncı in Akıncı/Tepetaş (eds.), ISTAC Yayınları 1: Şirketler Hukuku ve Uyuşmazlıkları ve Tahkim, 2018, 26.

68 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 471-472. For further information, see Esen, Milletlerarası Özel Hukukta Tüzel Kişilik Perdesinin Kaldırılması, 2012.

69 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 449; cf. Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 241: the form of the arbitration agreement is subject to the law determined by the parties if there is no reference to Turkish law (TIAL Art. 4).

70 TSC 19th Civ. Ct. 24.2.2000 – 7119/1342.

71 TSC 19th Civ. Ct. 30.10.2018 – 10552/256; TSC 19th Civ. Ct. 8.5.1997 – 9619/4669.

72 TSC 11th Civ. Ct. 8.1.2013 – 17860/182; TSC 11th Civ. Ct. 16.9.2015 – 7064/9348; TSC 11th Civ. Ct. 3.4.2014 – 17004/6568.

73 TSC 19th Civ. Ct. 8.5.1997 – 9619/4669.

74 TSC 11th Civ. Ct. 18.6.1991 – 2296/4166; TSC 19th Civ. Ct. 8.7.2013 – 14870/122455.

75 Akıncı, Milletlerarası Tahkim, 2020, 496; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 432; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 449; Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 68.

76 For further information, see Çelikel/Erdem, Milletlerarası Özel Hukuk, 2017, 184 ff.;

Nomer, Devletler Hususi Hukuku, 2017, 216 ff.

77 TSC 19th Civ. Ct. 1.5.2003 – 3763/4764; TSC 19th Civ. Ct. 23.12.2015 – 7618/15719; TSC 11th Civ. Ct. 23.3.2010 – 5901/3203; TSC 19th Civ. Ct. 21.5.2007 – 380/5114; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 462; Akıncı, Milletlerarası Tahkim, 2020, 391 ff.

78 TSC GA 22.2.2012 – E 2011/11-742 and K 012/82.

79 TSC 19th Civ. Ct. 23.12.2015 – 7618/17519; TSC 11th Civ. Ct. 9.4.2004 – 6774/375; TSC 11th Civ. Ct. 13.2.2001 – 9903/1170; TSC 15th Civ. Ct. 26.10.2017 – 6273/638.

80 For further information, see Çelikel/Erdem, Milletlerarası Özel Hukuk, 2017, 437.

81 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 450; Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 77; Işık, Milletlerarası Ticari Tahkimde Tahkim Anlaşması Yapma Yetkisi ve Bu Yetkiye Uygulanacak Hukuk, 2015, 119.

82 TIPL Art. 9: „[…] (4) The legal capacities of legal entities or units of persons or assets are governed by the law of the jurisdiction where their administrative head-offices are located according to their statutes. However, where the de facto central office is located in Turkey, Turkish law may be applied. (5) The legal capacity of legal entities lacking statute and the group of persons and goods lacking legal entity shall be governed by the law in their de facto administrative headquarters."

83 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 451.

84 Huysal, Milletlerarası Özel Hukukta Temsile Uygulanacak Hukuk, 2015, 222.

85 TSC 20th Civ. Ct. 2.10.2018 – 2303/6174.

86 Akıncı, Arbitration Law of Turkey, 2011, 185-186; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 442; Gökyayla, Yabancı Mahkeme Kararlarının Tanınması ve Tenfizde Kamu Düzeni, 2000, 204.

87 Turkish Notification Law, Law No. 7201, ratified on 11.2.1959, OG 19.2.1959, 10139.

88 TSC 11th Civ. Ct. 19.11.2001 – 6144/9045.

89 Akıncı, Arbitration Law of Turkey, 2011, 186; Ruhi, Yabancı Hakem Kararlarının Tanınması ve Tenfizi, 2019, 90; Akıncı, Milletlerarası Tahkim, 2020, 504; Güvenalp, Milletlerarası Tahkimde İddia ve Savunma Hakkının İhlali, 2018, 142.

90 Akıncı, Arbitration Law of Turkey, 2011, 185; Güvenalp, Milletlerarası Tahkimde İddia ve Savunma Hakkının İhlali, 2018, 143-144.

91 TSC 11th Civ. Ct. 8.4.2013 – 2820/7002.

92 TSC 11th Civ. Ct. 28.9.1999 – 4616/7247, cited in Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 479 note 586; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 441; Ruhi, Yabancı Hakem Kararlarının Tanınması ve Tenfizi, 2019, 92; Güvenalp, Milletlerarası Tahkimde İddia ve Savunma Hakkının İhlali, 2018, 138.

93 Akıncı, Arbitration Law of Turkey, 2011, 186; Güvenalp, Milletlerarası Tahkimde İddia ve Savunma Hakkının İhlali, 2018, 128. For further information on due process and public policy, see Büyükalp, Adil Yargılanma Hakkının Türk Milletlerarası Usûl Hukuku Üzerindeki Etkileri, 2018, 486 ff.

94 TSC 19th Civ. Ct. 17.12.1998 – 6099//7735.

95 TSC 19th Civ. Ct. 19.11.2000 – 7171/7602.

96 TSC 11th Civ. Ct. 29.11.2018 – 14160/7501.

97 TSC Decision on Unification of Conflicting Judgments 28.1.1994, 4/1, OG 13.4.1994, 21904.

98 TSC 19th Civ. Ct. 9.11.2000 – 7171/7602.

99 TSC 11th Civ. Ct. 3.11.2016 – 1144/8701.

100 TSC 19th Civ. Ct. 18.12.2003 – 7270/12888.

101 TSC 11th Civ. Ct. 4.5.2016 – 8556/5014.

102 TSC 15th Civ. Ct. 14.9.2017 – 776/2981, cited in Akıncı, Milletlerarası Tahkim, 2020, 428.

103 Vlavianos/Pappas, Multi-Tier Dispute Resolution Clauses as Jurisdictional Conditions Precedent to Arbitration, GAR 6.6.2017.

104 Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 444.

105 TSC 19th Civ. Ct. 15.9.2009 – 5703/8256; TSC 19th Civ. Ct. 7.6.2011 – 4149/7619.

106 TSC 11th Civ. Ct. 3.11.2016 – 1144/8701.

107 Akıncı, Milletlerarası Tahkim, 2020, 528; Ruhi, Yabancı Hakem Kararlarının Tanınması ve Tenfizi, 2019, 100; cf. Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 243, with the opinion that irregularity in the arbitral proceedings is sufficient to reject enforcement,

even if there is no effect on the outcome, as the NYC does not stipulate such an additional requirement.

108 Akıncı, Milletlerarası Tahkim, 2020, 526; Ruhi, Yabancı Hakem Kararlarının Tanınması ve Tenfizi, 2019, 103; Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 238; cf. Erdem BATIDER 2019, 923 (937), with the opinion that violation of the right to be heard is a precondition to reject enforcement due to irregularity in the proceedings.

109 Güvenalp, Milletlerarası Tahkimde İddia ve Savunma Hakkının İhlali, 2018, 96-97.

110 Akıncı, Milletlerarası Tahkim, 2020, 531; Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 183-185; Ruhi, Yabancı Hakem Kararlarının Tanınması ve Tenfizi, 2019, 102.

111 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 515.

112 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 186 (216, 245); Akıncı, Arbitration Law of Turkey, 2011, 192; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 447; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 495.

113 TSC 19th Civ. Ct. 9.11.2000 – 7171/7602.

114 TSC GA 9.6.1999 – 19/467-489.

115 TSC 19th Civ. Ct. 8.6.1998 – 3599/4770.

116 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 502.

117 Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 417; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 428.

118 TSC 11th Civ. Ct. 11.6.2019 – 3469/4259.

119 TSC 19th Civ. Ct. 20.6.2016 – 14682/10981.

120 Art. 6 TIAL is applicable even if the place of arbitration is determined to be outside Turkey, and provides as follows on interim measures of protection and interim attachments: „It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection or an interim attachment and for a court to grant such measure or attachment. […] If a party does not comply with the interim measure or attachment, the other party may request the assistance of the competent court for taking an interim measure of protection or an interim attachment. […] The parties' right to make a request [for interim measures of protection or interim attachments to a court] in accordance with the Code of Civil Procedure and the Code of Execution is reserved. Any decision of a court, with respect to interim measures of protection or interim attachments, that is given upon a request of a party prior to commencement of arbitration or during arbitral proceedings, shall automatically cease to have effect where the decision of the arbitral tribunal becomes enforceable or where the arbitral tribunal denies [to hear] the case in its decision."

121 Akıncı, Arbitration Law of Turkey, 2011, 192.

122 Wagner/Bülau, Procedural Orders by Arbitral Tribunals: In the Stays of Party Agreements?, SchiedsVZ 2013, 6.

123 Akıncı, Arbitration Law of Turkey, 2011, 192.

124 TSC 11th Civ. Ct. 17.1.2018 – 13193/371.

125 TSC 15th Civ. Ct. 2.11.2017 – 1094/3777.

126 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 504; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 448; Erdem BATIDER 2019, 923 (929).

127 Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 57; Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 410-411.

128 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 225; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 380.

129 TSC 11th Civ. Ct. 29.11.2018 – 141600/7501.

130 TSC 11th Civ. Ct. 4.2.1986 – 6788/409; Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 289.

131 TSC GA 3.7.1974 – 5/1450/810; TSC 5th Civ. Ct. 22.5.1972 – 3513/5195; TSC 14th Civ. Ct. 7.10.2003 – 6387/6813; TSC 15th Civ. Ct. 18.3.1986 – 3919/1044; TSC 15th Civ. Ct. 23.9.2002 – 4321/4067.

132 TSC 15th Civ. Ct. 24.3.2007 – 193/3494; TSC GA 25.1.2006 – 728/1; TSC 15th Civ. Ct. 24.7.2006 – 2961/4723.

133 TSC 15th Civ. Ct. 13.10.2004 – 1798/5076.
134 Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 48-49; Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 128.
135 TSC 3rd Civ. Ct. 2.12.2004 – 13018/13409; Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 132-133.
136 TSC 7th Civ. Ct. 13.11.2014 – 9899/20785; TSC 9th Civ. Ct. 17.9.2007 – 28539/26478; TSC 9th Civ. Ct. 2.2.2009 – 9747/891; TSC 9th Civ. Ct. 26.5.2008 – 10997/12660; Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 130-131.
137 TSC 9th Civ. Ct. 22.3.2004 – 5846/5621.
138 Consumer Protection Law No. 6502, ratified on 7.11.2013, OG 28.11.2013, 28835.
139 TSC 13th Civ. Ct. 25.9.2008 – 3492/11120; TSC 13th Civ. Ct. 20.10.2008 – 6195/12026; see also Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 129.
140 TSC 13th Civ. Ct. 25.9.2006 – 7789/12275.
141 TSC 12th Civ. Ct. 17.2.2011 – 26990/1145; TSC 12th Civ. Ct. 6.12.2011 – 19550/26795; Beyoğlu 1st Com. Ct. 1st Inst. 16.9.1997 – 38/307, cited in Şanlı/Esen /Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 380 note 568.
142 TSC 11th Civ. Ct. 17.1.2018 – 13193/371.
143 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 511; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 380.
144 Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 380.
145 TSC 23rd Civ. Ct. 27.2.2012 – 192/1405; Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 228; Akıncı, Arbitration Law of Turkey, 2011, 194; Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 45; Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 145, 289.
146 Law No. 2004, ratified on 9.6.1932, OG 19.6.1932, 2128.
147 Tüysüz, Milletlerarası Ticari Tahkim Açısından İcra ve İflas Hukukundaki Davalar, 2017, 107-116.
148 Tüysüz, Milletlerarası Ticari Tahkim Açısından İcra ve İflas Hukukundaki Davalar, 2017, 106
149 Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 381; Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 289; Tüysüz, Milletlerarası Ticari Tahkim Açısından İcra ve İflas Hukukundaki Davalar, 2017, 85.
150 TSC 19th Civ. Ct. 20.1.2006 – 3125/209; TSC 11th Civ. Ct. 1.4.2002 – 10258/3443; Tüysüz, Milletlerarası Ticari Tahkim Açısından İcra ve İflas Hukukundaki Davalar, 2017, 103; TSC 15th Civ. Ct. 3.4.2008 – 262/2138; TSC 19th Civ. Ct. 14.12.2000 – 5610/8669; TSC 15th Civ. Ct. 29.4.2013 – 1386/2764.
151 TSC 15th Civ. Ct. 16.5.2011 – 826/2941; TSC 15th Civ. Ct. 29.4.2013 – 1386/2794.
152 For further information, see Tüysüz, Milletlerarası Ticari Tahkim Açısından İcra ve İflas Hukukundaki Davalar, 2017, 115-116.
153 TSC 19th Civ. Ct. 14.12.2000 – 5610/8669.
154 TSC 11th Civ. Ct. 5.12.2012 – 13485/19915.
155 TSC 11th Civ. Ct. 9.4.2014 – 141/6951.
156 Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 327; Akıncı in Akıncı/Tepetaş (eds.), ISTAC Yayınları 1: Şirketler Hukuku ve Uyuşmazlıkları ve Tahkim, 2018, 26.
157 Yüksel, Pay Sahipleri Sözleşmesinden Kaynaklanan Uyuşmazlıkların Çözümünde Tahkim, in Akıncı/Tepetaş (eds.), ISTAC Yayınları 1: Şirketler Hukuku ve Uyuşmazlıkları ve Tahkim, 2018, 150-152.
158 For further information, see Veziroğlu, Arbitration of Corporate Law Disputes in Joint Stock Companies under Turkish Law: A Comparative Analysis, 2018; Huysal, Milletlerarası Ticari Tahkimde Tahkime Elverişlilik, 2010, 292 ff.
159 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 514; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 453.
160 TSC 11th Civ. Ct. 2.4.2018 – 259/2278.
161 TSC 11th Civ. Ct. 29.11.2018 – 141600/7501.
162 TSC Decision on Unification of Conflicting Judgments 10.2.2012 – 2010/1 and 2012/1, OG 20.9.2012, 28417.
163 Nomer, Devletler Hususi Hukuku, 2017, 161 ff; Çelikel/Erdem, Milletlerarası Özel Hukuk, 2017, 139 ff.; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 453; Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 228 ff.

164 TSC 15th Civ. Ct. 31.3.2016 – 895/2050.
165 Ruhi, Yabancı Hakem Kararlarının Tanınması ve Tenfizi, 2019, 63.
166 TSC 11th Civ. Ct. 19.10.2007 – 10205/13081; TSC 11th Civ. Ct. 31.3.2009 – 9117/3863; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 455; Ruhi, Yabancı Hakem Kararlarının Tanınması ve Tenfizi, 2019, 64.
167 Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 454; Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 187-191.
168 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 515-516.
169 TSC GA 8.2.2012 – 13-568/47; cf. Erdem, Yargıtay Kararları Işığında Yabancı Hakem Kararlarına İlişkin Tenfiz Engelleri, Banka ve Finans Hukuku Dergisi 2019/8, 944-945, it was asserted that the dispute between the parties did not concern the amount or payment of tax but liability for it.
170 TSC GA 30.9.2015 – 13-1847/2020; TSC 13th Civ. Ct. 16.3.2017 – 16140/3322; Erdem, Yargıtay Kararları Işığında Yabancı Hakem Kararlarına İlişkin Tenfiz Engelleri, Banka ve Finans Hukuku Dergisi 2019/8, 951.
171 Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 186.
172 TSC 11th Civ. Ct. 1.5.2007 – 7396/6672; TSC 11th Civ. Ct. 19.10.2007 – 10205/13081; Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 518.
173 TSC 11th Civ. Ct. 29.11.2018 – 14160/7501.
174 TSC 13th Civ. Ct. 26.9.1974 – 2385/2161; Akıncı, Arbitration Law of Turkey, 2011, 155; Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 230; Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 180-182.
175 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 521; Şanlı/Esen/Ataman Figanmeşe, Milletlerarası Özel Hukuk, 2018, 457.
176 TSC 11th Civ. Ct. 3.11.2016 – 1144/8701.
177 Akıncı, Milletlerarası Tahkim, 2020, 547-548; Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 232; Özel, Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri, 2008, 181; Erdem, Yargıtay Kararları Işığında Yabancı Hakem Kararlarına İlişkin Tenfiz Engelleri, Banka ve Finans Hukuku Dergisi 2019/8, 923 (949); see also Çelikel/Erdem, Milletlerarası Özel Hukuk, 2017, 800-801.
178 TSC 11th Civ. Ct. 6.10.2016 – 725/7777.
179 TSC 19th Civ. Ct. 28.2.2018 – 4228/1042.
180 TSC 15th Civ. Ct. 12.5.2014 – 2183/3226.
181 TSC 11th Civ. Ct. 9.10.2014 – 10684/15287; TSC 11th Civ. Ct. 7.6.2011 – 4149/7619.
182 Akıncı, Milletlerarası Tahkim, 2020, 447-448.
183 Kalpsüz, Türkiye'de Milletlerarası Tahkim, 2010, 219; Akıncı, Milletlerarası Tahkim, 2020, 464-465.
184 Şanlı, Uluslararası Ticari Akitlerin Hazırlanması ve Uyuşmazlıkların Çözüm Yolları, 2019, 442.
185 TSC 13th Civ. Ct. 7.10.2010 – 4434/5.
186 TSC GA 27.5.2009 – 19-102/208.