

THE ROLE OF TURKISH COURTS IN INTERNATIONAL ARBITRATION

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Introduction

Arbitration serves as an alternative dispute resolution mechanism to national courts, offering parties a flexible and neutral forum for resolving their disputes. However, arbitral proceedings are neither entirely independent of nor wholly subordinate to the courts. Under Turkish law, courts may intervene at certain stages of arbitration, either to facilitate or to supervise the proceedings. Such interventions range from the appointing arbitrators to the granting interim relief orders and the reviewing arbitral awards. Nevertheless, these interventions are strictly limited to instances explicitly provided by law and are designed to preserve the balance between the autonomy of arbitral tribunals and the authority of state courts.

This study will examine the stages and manner in which Turkish courts may participate in the arbitration process. It will also explore the potential impact of expanding or restricting judicial intervention on the overall effectiveness of arbitration.

Court Intervention in Arbitrator Appointment at the Pre-Arbitration Stage

In an arbitration agreement, the parties are generally free to determine the number of arbitrators and the procedure for their appointment, except in exceptional circumstances. However, in practice, certain situations may arise where the formation of the arbitral tribunal requires court intervention. In particular, if the parties fail to reach an agreement on the appointment of arbitrators or if the agreed-upon method becomes inoperative, Turkish courts are authorized to step in and appoint arbitrators. This authority is regulated under Article 7 of the International Arbitration Law No. 4686 (“TIAL”).

Under Turkish law, the general practice regarding arbitrator appointment is as follows: If the arbitration agreement or clause stipulates that the dispute shall be resolved by a sole arbitrator and the parties fail to reach consensus on the appointment, the arbitrator is appointed by the civil court of first instance upon the request of either party. Where the parties have agreed to a three-member arbitral tribunal, each party typically appoints one arbitrator, and those two arbitrators jointly select the third. However, if one party fails to appoint its arbitrator within one month of receiving a request from the other party, or if the two appointed arbitrators fail to agree on the third arbitrator within one month of their

appointment, the third arbitrator is appointed by the civil court. Additionally, if the parties have delegated the appointment of the arbitrator(s) to a third party and that party fails to fulfill its duty, the court will again intervene to make the necessary appointments.

While the court respects the parties' agreement regarding the composition of the tribunal, it is also obliged to ensure that the appointed arbitrators are independent and impartial.

Decisions rendered by the civil courts of first instance regarding the appointment of arbitrators are final. This allows the parties to proceed with the arbitration process swiftly and efficiently, without resorting to lengthy and time-consuming legal remedies. Consequently, Turkish courts play a supportive role in the pre-arbitration phase by facilitating the constitution of the arbitral tribunal, thereby contributing to the effective implementation of arbitration agreements based on party autonomy.

Interim Measures and Provisional Attachment Before and During Arbitration

The existence of a valid arbitration agreement between the parties does not prevent them from seeking interim relief from the courts. In this regard, both requests for interim measures and provisional attachment orders may be submitted to Turkish courts either prior to the commencement of arbitration proceedings or while the arbitration is ongoing.

TIAL explicitly recognizes that interim relief may be requested from the courts, even where a valid arbitration agreement exists between the parties. Article 6 sets out the principles governing the application of interim measures and provisional attachment orders in disputes subject to arbitration.

Before the commencement of arbitration proceedings, if one of the parties requires interim legal protection, court intervention becomes inevitable. At this stage - prior to the constitution of the arbitral tribunal - requests for preliminary injunctions and attachment orders can only be directed to the courts. However, once the arbitration has commenced, parties may seek such interim measures either from the arbitral tribunal or from the competent court.

Pursuant to Article 6(2) of TIAL, the arbitral tribunal is authorized to render interim measure and provisional attachment orders. However, the enforcement of such measures often requires the coercive power of the state. Arbitral decisions do not carry automatic enforceability; if the opposing party fails to comply voluntarily, the requesting party must apply to the court to render the measure enforceable. For instance, if the tribunal orders the provisional attachment of a party's assets and that party does not comply, the other party may seek enforcement of the attachment through Turkish courts.

On the other hand, the fate of interim relief orders rendered by courts before or during arbitration proceedings is governed by Article 6(5) of the TIAL. According to this provision, court-ordered interim measures or provisional attachment orders automatically lapse either upon the arbitral award becoming enforceable or if the arbitral tribunal dismisses the case.

In this context, the Turkish Court of Cassation has affirmed that interim relief orders - such as interim measures and provisional attachment - granted by courts cannot be modified or revoked by the arbitral tribunal.¹ Accordingly, any objections raised by a party against interim relief ordered by Turkish courts must be reviewed by the courts themselves, regardless of whether arbitration proceedings have been initiated.²

It should also be noted that although the scope of TIAL is generally limited to proceedings where the seat of arbitration is in Turkey, Article 1 provides an exception with respect to interim relief. Specifically, Article 6 concerning interim relief is applicable even when the seat of arbitration is located outside Turkey. Therefore, even if Turkey is not designated as the seat of arbitration, a party may still request interim measures under Article 6 of TIAL, and Turkish courts are authorized to grant such relief.

In summary, interim measures and provisional attachment orders represent one of the most functional areas of judicial involvement within Turkish arbitration practice. These measures, which are sought to protect the parties' rights and secure claims prior to the conclusion of the arbitration process, are implemented by the courts without undermining the parties' intent to arbitrate, thereby ensuring the effectiveness of arbitration and the parties' legal safeguards.

Interim Relief Orders Granted After the Award Before Its Enforceability

As a rule, an arbitral award is final and binding on the parties. However, in practice - particularly when the losing party fails to comply voluntarily - there may be a need for interim relief order during the period before the award becomes enforceable. At this stage, court intervention may be required to ensure the effective implementation of the arbitral award.

Following the issuance of an arbitral award, there are two primary scenarios in which parties may require interim relief: the first involves the filing of a setting aside action against an arbitral award rendered in Turkey; the second concerns the enforcement process of a foreign arbitral award within Turkish jurisdiction. In both cases, there exists a risk that the debtor may attempt to dissipate assets during the period before the award becomes enforceable.

To mitigate this risk, it is common practice to seek interim relief even after the arbitral award has been rendered. These measures serve to safeguard the enforcement of the award and ultimately ensure its effective implementation.

Setting Aside of Arbitral Awards

In arbitral proceedings seated in Turkey, TIAL allows the parties to bring a set-aside action against arbitral awards. Article 15 of TIAL exhaustively enumerates the limited grounds on which an award may be set aside. Within 30 days from service of the award, a party may file a set-aside action before the regional appellate court,

¹ Decision of Turkish Court of Cassation 6th Civil Chamber, numbered 2022/3529E., 2022/4699K. and dated 12.10.2022.

² Decision of Turkish Court of Cassation 6th Civil Chamber, numbered 2022/3529E., 2022/4699K. and dated 12.10.2022.

arguing that the award is subject to annulment. The court's review power is limited: a set-aside decision may be rendered only if one of the grounds expressly provided by law exists - such as invalidity of the arbitration agreement (or clause), excess of authority by the arbitrators, violation of the right to be heard/due process, fundamental procedural defects, or contrariety to public policy. Beyond these, courts have no authority to review the merits or correctness of the award.

Moreover, pursuant to Article 15(A) of TIAL, filing a set-aside action in Turkey stays enforcement of the arbitral award. Accordingly, once such an action is filed, the award cannot be enforced until the case is concluded.

If the court dismisses the set-aside application, the award becomes enforceable once the dismissal decision becomes final. Conversely, if the application is granted, the arbitral award becomes null and void, and a retrial of the same dispute becomes possible. Whether this new trial will be conducted before the general courts or through a renewed arbitration process depends on the grounds for annulment, as stipulated in Article 15(7) of TIAL.

Set aside action is the primary review mechanism through which state courts intervene in arbitral awards. Its purpose is to safeguard the right to a fair trial and to ensure the protection of public order.

Other Court Interventions

Beyond the interventions outlined above, Turkish courts may also play a role in the arbitral process in other respects. Such involvement may arise at different stages of the proceedings, with the aim of supporting the effectiveness and efficiency of arbitration:

i. Collection of Evidence

In arbitration proceedings, arbitrators do not possess coercive powers comparable to those of state courts, which leads to certain limitations - particularly in the process of gathering evidence. As a result, assistance from the courts may become necessary. In this regard, Article 12(B) of TIAL provides that the arbitral tribunal or sole arbitrator may apply to the court for the purpose of collecting evidence.

Within this framework, the arbitral tribunal may request assistance from the civil court for evidentiary procedures such as hearing witnesses, summoning documents, or conducting on-site inspections. In response to such requests, the court carries out the necessary actions in accordance with the provisions of the Code of Civil Procedure. In this way, courts assume a supportive role in the arbitration process, stepping in when direct evidence-taking is not feasible and thereby contributing to the establishment of the material truth within the proceedings.

ii. Challenge of Arbitrators

In arbitration proceedings, each party may request the removal of an appointed arbitrator if the arbitrator does not possess the qualifications agreed upon by the parties, if there exists a ground for challenge as stipulated in the arbitration procedure, or if there are justified doubts regarding the arbitrator's impartiality. If the arbitrator does not accept the challenge - and unless the authority to decide on such matters has been granted to an arbitral institution - the final decision regarding

the challenge will be rendered by the civil court of first instance. In this context, pursuant to Article 7 of TIAL, the court evaluates the grounds for challenge and determines whether the removal of the arbitrator is warranted.

iii. Decision on Extension of the Arbitration Period

Unless otherwise agreed by the parties, pursuant to Article 10(B) of TIAL, the arbitral tribunal is required to render its award within one year from the commencement of the proceedings. If the tribunal fails to do so within this period, the parties may agree to extend the arbitration period.

In the absence of such agreement, either party may apply to the civil court of first instance to request an extension. If the court rejects the application, the arbitration proceedings will terminate upon expiry of the original arbitration period. The court's decision regarding the extension request is final and not subject to appeal.

Conclusion and Evaluation

The relationship between arbitration and state judiciary rests upon a delicate balance. Judicial intervention in the arbitration process can, on the one hand, provide legal assurance to the parties and confer legitimacy to the proceedings; yet on the other hand, it may undermine party autonomy and negatively affect core advantages of arbitration such as speed and flexibility. Conversely, minimal intervention may enhance the independence and efficiency of arbitration, but it also carries the risk of depriving parties of adequate legal protection. Therefore, the ideal approach is one in which judicial involvement is neither entirely restricted nor left entirely unchecked, but rather follows a balanced, measured, and functional model. Ultimately, the answer to the question “To what extent should courts intervene?” lies in striking the right balance between party autonomy - the essence of arbitration - and the legal safeguards offered by the judiciary.

In line with this understanding, many countries have shaped their arbitration regulations within the framework of the UNCITRAL Model Law. Article 5 of the Model Law states that “*In matters governed by this Law, no court shall intervene except where so provided in this Law,*” thereby aiming to limit judicial intervention to exceptional circumstances. Turkish arbitration law has also adopted this approach, allowing courts to intervene only in specific and narrowly defined areas.

While delineating the boundaries of judicial involvement, the current Turkish regime seeks to preserve the balance of power between arbitration and the state judiciary. Arbitration offers parties a swift, flexible, and specialized method of dispute resolution, and the legal safeguards for this process are entrusted - within certain limits - to judicial oversight. Keeping such oversight constrained by statute preserves the final and binding nature of arbitral awards and supports the functionality and reliability of the system.

Accordingly, when the intervention of domestic courts in arbitral proceedings under Turkish law is evaluated, the general tendency is for courts to assume a supportive and auxiliary role. This approach enhances confidence in the arbitral process and makes arbitration more effective in an environment where arbitral awards can be enforced efficiently.

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