

ARBITRATION UNDER TURKISH LAW: PRACTICE, ENFORCEMENT & BEYOND

Summary

Arbitration is not a new concept under Turkish law; in fact, arbitration has been regulated in detail and it has been interpreted in various cases before Turkish courts. However, the Turkish arbitration regime has a multidimensional and fragmented structure under the Turkish legal system. Along with a general criticism of arbitration as a dispute settlement system, arbitration in Turkish law has been subject of fundamental criticisms including involvement and position of domestic courts, enforcement of awards, and conditions of arbitration and arbitrators.

Therefore, the main aim of this paper is to provide a general view of arbitration under the Turkish legal system. In order to provide this perspective, this paper will discuss the pros and cons of arbitration in Turkish law in various aspects, particularly in terms of the structure of arbitration and enforcement of arbitral awards.

Keywords: Türkiye, arbitration, enforcement of arbitral awards, procedural law.

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ARBITRAŽA U TURSKOJ: PRAKSA, IZVRŠENJE ODLUKA & POZADINA

Sažetak

U turskom pravu, arbitraža ne predstavlja novi koncept. Zapravo, arbitraža je detaljno regulisana, a arbitražna pravila tumačena su u različitim slučajevima pred turskim sudovima. Međutim, turski arbitražni režim ima višedimenzionalnu i fragmentiranu strukturu. Stoga je pravni režim arbitraže u Turskoj predmet fundamentalnih kritika uključujući ulogu i položaj domaćih sudova, izvršenje arbitražnih odluka, uslove arbitraže i kriterijume za izbor arbitara. Prema tome, osnovni cilj ovog članka je da obezbedi opšti pogled na arbitražu u turskom pravnom sistemu. U članku će biti reči o prednostima i manama arbitraže u turskom pravu sa različitim aspektima, posebno u pogledu strukture arbitraže i izvršenja arbitražnih odluka.

Ključne reči: Turska, arbitraža, izvršenje arbitražnih odluka, procesno pravo.

1. Introduction

Arbitration, a private and consensual method of resolving disputes outside the traditional court system, has become an essential component of international commerce and trade. Its growth in prominence can be attributed to its flexibility, efficiency, and the binding nature of arbitral awards, which are recognized and enforceable in many jurisdictions around the world. Unlike litigation, arbitration allows parties to choose arbitrators with specialized expertise, craft procedural rules suited to the specific dispute, and maintain a degree of confidentiality that public court proceedings lack.

In Türkiye, the significance of arbitration has expanded over the last few decades, particularly in the context of increasing foreign investment and international trade. As a country that straddles both Europe and Asia, Türkiye has positioned itself as a key player in international commercial arbitration, with an eye on becoming a regional arbitration hub. This is particularly relevant given its unique geographic location, cultural diversity, and its expanding role in the global economy.

The Turkish legal system, influenced by both continental European legal traditions and Islamic law, has gradually integrated arbitration into its domestic legal

structure. This transition has been marked by several legal reforms, notably the adoption of international arbitration principles and the establishment of specialized institutions like the Istanbul Arbitration Center (ISTAC). Despite these advancements, the arbitration landscape in Türkiye continues to face challenges, including inconsistent judicial intervention, lack of awareness among smaller businesses, and concerns over the costs associated with arbitration.

This paper provides a comprehensive examination of arbitration in Türkiye, tracing its historical development, analysing the current legal framework, reviewing the institutional landscape, and addressing the challenges and opportunities that lie ahead in descriptive structure to provide a general overview.

2. Historical Development of Arbitration in Türkiye

2.1. Arbitration in the Ottoman Empire

The history of arbitration in Türkiye dates back to the period of the Ottoman Empire (1299–1922), when informal dispute resolution mechanisms were commonly used. The vast empire encompassed diverse religious and ethnic communities governed by their own legal traditions. In this context, arbitration played a crucial role, particularly in commercial and trade disputes. Islamic law (Sharia), which formed the foundation of legal practice for Muslims within the empire, recognized arbitration as a legitimate form of dispute resolution. Merchants and traders, particularly in the empire’s major commercial hubs, would often rely on trusted community leaders or elders to act as arbitrators, resolving conflicts quickly and efficiently without the need for formal court proceedings.

While arbitration during the Ottoman period was predominantly informal, it served an important function in resolving disputes that might otherwise have burdened the state’s legal infrastructure. However, the absence of a formal legal framework governing arbitration meant that proceedings varied depending on the region, the community involved, and the nature of the dispute. Nevertheless, this early practice of arbitration laid the groundwork for the acceptance of arbitration in the Turkish legal tradition (Öncel, 2006).

2.2. Early Republican Period and the Introduction of Modern Arbitration Concepts

Following the fall of the Ottoman Empire and the establishment of the Republic of Türkiye in 1923, the country underwent a process of legal modernization,

mirroring the broader efforts to westernize its institutions. The new republic sought to create a legal system based on European models, particularly Swiss and German law, as part of a broader initiative to secularize and modernize the country. This included the introduction of modern arbitration concepts into the legal framework (Soylu, 2016).

In 1926, Türkiye adopted the Turkish Civil Code, which was based on the Swiss Civil Code, and in 1927, it introduced the Turkish Code of Civil Procedure (TCCP). The TCCP contained provisions on arbitration, providing a rudimentary framework for the use of arbitration in domestic disputes. However, arbitration during this period was not widely utilized, particularly in comparison to litigation, which remained the preferred method of resolving disputes. Arbitration was largely seen as an exceptional process, suitable only for specific types of commercial disputes where both parties agreed to it (Çelikel & Erdem, 2016, p. 457).

The early republican period saw limited development of institutional arbitration. Most arbitration proceedings were *ad hoc*, and there were few dedicated arbitration institutions. This lack of formal infrastructure, combined with the unfamiliarity of arbitration among domestic businesses, meant that arbitration remained underdeveloped as a dispute resolution method (T. C. Cumhurbaşkanlığı, 2021).

2.3. Türkiye's Ratification of the New York Convention (1991)

A significant turning point in Türkiye's arbitration history came with its ratification of the New York Convention in 1991. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which came into effect in 1958, is one of the most important international treaties in arbitration. It obliges signatory states to recognize and enforce foreign arbitral awards, subject to limited exceptions. By ratifying this convention, Türkiye committed to ensuring that foreign arbitral awards could be enforced within its jurisdiction, thereby significantly enhancing the attractiveness of arbitration for international businesses operating in or engaging with Turkish entities.

The ratification of the New York Convention was a crucial step in integrating Türkiye into the global arbitration community. It marked Türkiye's formal recognition of international arbitration as a legitimate and necessary method for resolving cross-border disputes, aligning the country's arbitration framework with international standards. Foreign businesses and investors became more confident in choosing arbitration as a dispute resolution method when dealing with Turkish counterparts, knowing that arbitral awards would be enforceable in Turkish courts (Soylu, 2016).

However, despite this important legal development, Türkiye still faced challenges in terms of judicial attitudes towards arbitration. While the country had

ratified the convention, Turkish courts were often hesitant to enforce foreign arbitral awards, particularly if they believed that the arbitration process had violated Turkish public policy in wide and complex way. For instance, recently, Turkish Court Cassation ruled that parties to commercial transactions and their merchant/trader status must be recognized by authorized institutions, and also that any relevance of criminal investigations of the arbitration disputes or parties can make arbitral awards set aside on grounds of public policy (Keser & Ozden, 2024). This tension between the international obligations under the New York Convention and domestic judicial practices would continue to shape the arbitration landscape in Türkiye for years to come.

2.4. Adoption of the Turkish International Arbitration Law (2001)

The next major development in the evolution of arbitration in Türkiye came with the adoption of the Turkish International Arbitration Law (IAL) in 2001. The IAL was modelled on the UNCITRAL Model Law on International Commercial Arbitration, which is widely regarded as the gold standard for arbitration laws worldwide. The IAL applies to disputes with an international element and represents a significant modernization of Türkiye's arbitration laws, bringing them in line with international best practices (Ekşi, 2009, pp. 54-74).

The IAL has introduced several key principles, including:

- Party Autonomy (Arts. 7-14, IAL): The law emphasizes the autonomy of the parties in arbitration, allowing them to choose the rules governing the arbitration, the arbitrators, and the procedures. This flexibility is one of the key attractions of arbitration compared to litigation.
- Limited Judicial Intervention (Arts. 3, 6, IAL): The IAL adopts the principle of minimal court intervention in arbitration proceedings. Turkish courts are only allowed to intervene in specific circumstances, such as the appointment of arbitrators, or the recognition and enforcement of arbitral awards.
- Enforcement of Awards (Art. 6, IAL): The grounds for the annulment of arbitral awards are limited under the IAL, in line with the New York Convention. This ensures that courts cannot overturn arbitral awards except in cases where the process was fundamentally flawed or in violation of public policy.

The adoption of the IAL marked a significant step forward in the development of arbitration in Türkiye. By aligning with the UNCITRAL Model Law, Türkiye has demonstrated its commitment to promoting arbitration as a viable alternative to litigation, particularly in international disputes. The IAL has also provided greater certainty and predictability for businesses choosing arbitration, having established clear rules and procedures for the conduct of arbitral proceedings.

2.5. Establishment of the Istanbul Arbitration Centre (2015)

One of the most significant recent developments in the Turkish arbitration landscape was the establishment of the Istanbul Arbitration Centre (ISTAC) in 2015. ISTAC was created as part of Türkiye's broader strategy to promote Istanbul as a global financial and legal hub. The institution was designed to provide both domestic and international arbitration services, offering a modern and efficient framework for resolving commercial disputes.

ISTAC has played a critical role in promoting arbitration within Türkiye and beyond. It provides a range of arbitration services, including (ISTAC, 2024):

- **Expedited Arbitration:** ISTAC provides expedited procedures for smaller disputes, allowing parties to resolve conflicts quickly and cost-effectively.
- **International Standards:** ISTAC arbitration rules are modelled on international best practices, ensuring that the institution can handle both domestic and international disputes effectively.
- **Mediation Services:** In addition to arbitration, ISTAC also provides mediation services as an alternative dispute resolution method, reflecting the growing popularity of mediation in commercial disputes globally (Akıncı, 2011).
- **Med-Arb Services:** ISTAC provides Med-Arb services as an alternative method (see: Istanbul Arbitration Center Mediation – Arbitration Rules).

The establishment of ISTAC marked a new era in the development of arbitration in Türkiye. By creating a dedicated arbitration institution, Türkiye has positioned itself as a serious player in the international arbitration arena, with the potential to attract disputes from across Europe, Asia, and the Middle East (Akıncı, 2011).

3. Legal Framework Governing Arbitration in Türkiye

The legal framework for arbitration in Türkiye is shaped by both domestic and international laws, reflecting the country's efforts to align its arbitration practices with global standards while addressing the specific needs of domestic disputes. This framework is largely governed by two key pieces of legislation: the Turkish International Arbitration Law (IAL), which applies to international disputes, and the Turkish Code of Civil Procedure (TCCP) (see: Turkish Code of Civil Procedure), which governs domestic arbitration. In addition, Türkiye's ratification of international conventions, most notably the New York Convention, has further solidified the legal foundation for arbitration within the country (TC. Cumhurbaşkanlığı, 2021; Karkın, 2015, pp. 49-57).

3.1. *The International Arbitration Law (IAL)*

As previously mentioned, the International Arbitration Law (IAL), adopted in 2001, is the cornerstone of Türkiye's legal framework for international arbitration. Modelled on the UNCITRAL Model Law, the IAL is designed to facilitate the resolution of disputes with an international element, providing clear rules and procedures that are consistent with international norms (Karademir, 2012, pp. 73-104).

Key provisions of the IAL include:

- **Scope of Application (Arts. 1-2, IAL):** The IAL applies to disputes where at least one party is foreign, or where the legal relationship involves a foreign element, such as cross-border contracts or transactions involving international businesses. This distinction is crucial, as it separates international arbitration from purely domestic arbitration, which is governed by different rules under the TCCP.
- **Party Autonomy (Arts. 7-14, IAL):** The IAL places a strong emphasis on party autonomy, allowing the parties involved to choose the rules that will govern their arbitration. This includes the ability to select the seat of arbitration, the language of the proceedings, and the procedures for appointing arbitrators. Party autonomy is a key principle in international arbitration, ensuring flexibility and adaptability to the specific needs of the dispute.
- **Judicial Intervention (Art. 3, IAL):** One of the most important features of the IAL is its strict limitation on judicial intervention in arbitration proceedings. Courts are only permitted to intervene in exceptional circumstances, such as in the appointment of arbitrators when the parties cannot agree or in the enforcement of arbitral awards. This principle of limited judicial interference is crucial to ensuring the integrity and efficiency of the arbitration process.
- **Recognition and Enforcement of Awards (Art. 15, IAL):** The IAL sets out clear rules for the recognition and enforcement of arbitral awards, both domestic and foreign. In line with the New York Convention, Turkish courts are generally required to recognize and enforce foreign arbitral awards, provided that they meet certain criteria, such as not violating Turkish public policy.
- **Grounds for Annulment (Art. 15, IAL):** The IAL also provides specific grounds on which arbitral awards can be annulled. These grounds are narrowly defined, and include situations where the arbitration agreement is invalid, where the award deals with matters outside the scope of the arbitration agreement, or where the arbitral procedure was not in accordance with the parties' agreement or Turkish law (Akıncı, 2011).

3.2. Domestic Arbitration under the Turkish Code of Civil Procedure (TCCP)

While the IAL governs international disputes, domestic arbitration in Türkiye is regulated by the Turkish Code of Civil Procedure (TCCP). The TCCP, which was updated in 2011, provides a modern legal framework for domestic arbitration, ensuring that arbitration is a viable alternative to litigation for domestic disputes (Nomer, 2018).

Key features of domestic arbitration under the TCCP include:

- **Arbitration Agreement (Art. 412, TCCP):** As with international arbitration, the arbitration agreement is the foundation of domestic arbitration. The TCCP requires that arbitration agreements be in writing and clearly express the parties' intention to resolve their disputes through arbitration rather than through the courts. This formal requirement ensures clarity and certainty in the use of arbitration.
- **Appointment of Arbitrators (Arts. 415-417, TCCP):** The TCCP sets out detailed rules for the appointment of arbitrators in domestic arbitration. If the parties cannot agree on the arbitrator(s), the TCCP provides for court intervention to appoint the arbitrator(s), ensuring that the arbitration process can proceed without undue delay.
- **Procedural Rules (Arts. 426-430, TCCP):** The TCCP allows for flexibility in the conduct of arbitration proceedings, with the parties given significant control over the rules and procedures to be followed. However, if the parties do not specify particular procedural rules, the arbitrators are empowered to determine the appropriate procedures, subject to the general principles of Turkish law (Akıncı, 2011).
- **Judicial Review (Arts. 436-437, TCCP):** While the TCCP, like the IAL, seeks to limit judicial intervention in arbitration, it does provide for judicial review in certain circumstances. For example, Turkish courts can annul arbitral awards if they find that the award violates Turkish public policy or if there were serious procedural irregularities in the arbitration process.
- **Enforcement of Arbitral Awards (Arts. 436, 437, 439, 443, TCCP):** Domestic arbitral awards are enforceable through the Turkish courts, provided that they meet the requirements set out in the TCCP. Once the courts has confirmed an award, it has the same legal effect as a court judgment, making it binding and enforceable against the parties.

3.3. Judicial Intervention and Its Limitations

One of the key challenges in any arbitration system is finding the right balance between judicial oversight and judicial restraint. In Türkiye, both the IAL and the TCCP emphasize the principle of limited judicial intervention, recognizing that excessive court involvement can undermine the efficiency and autonomy of the arbitration process. However, in practice, Turkish courts have sometimes been more interventionist than the law would suggest, particularly when it comes to reviewing arbitral awards.

Grounds for judicial intervention in arbitration include (Akıncı, 2011):

- **Appointment of Arbitrators:** If the parties cannot agree on the appointment of arbitrators, the courts can step in to ensure that the arbitration can proceed.
- **Interim Measures:** In some cases, parties may seek interim measures from the courts to protect their interests during the arbitration process. This can include measures to prevent the dissipation of assets or to preserve evidence.
- **Recognition and Enforcement of Awards:** Courts have the power to review arbitral awards before they are enforced, particularly when public policy issues are raised.
- **Annulment of Awards:** Turkish courts can annul arbitral awards if they find that the award violates public policy, or if there were serious procedural irregularities in the arbitration process (Nomer, 2018).

While judicial intervention is generally limited under Turkish law, concerns remain about the inconsistency of court decisions in arbitration matters (TC. Cumhurbaşkanlığı, 2021). Some courts have been more willing to intervene in arbitration than others, particularly in cases involving sensitive public policy issues, such as criminal law-related issues relevant to arbitral procedures or disputes that are directly binding to other public institutions (Ekşi, 2020b). This inconsistency creates uncertainty for parties seeking to use arbitration in Türkiye, and may undermine confidence in the arbitration process.

4. Institutional Arbitration in Türkiye

Institutional arbitration plays a critical role in ensuring the effectiveness and credibility of arbitration as a dispute resolution method. Türkiye has several key arbitration institutions that provide the infrastructure and expertise necessary for the conduct of arbitration proceedings. The most prominent of these is the Istanbul Arbitration Centre (ISTAC), but there are also other significant arbitration bodies that contribute to the development of arbitration in Türkiye (Ekşi, 2020b).

4.1. Istanbul Arbitration Centre (ISTAC)

Established in 2015, the Istanbul Arbitration Centre (ISTAC) is the flagship arbitration institution in Türkiye. ISTAC was created as part of a broader effort by the Turkish government to promote Istanbul as a global business and financial centre, with a specific focus on making it an international arbitration hub (Çıplak, 2017).

ISTAC provides a wide range of arbitration services, including:

- **Arbitration and Mediation:** ISTAC provides both arbitration and mediation services for domestic and international disputes. Its rules are based on international best practices, ensuring that it can handle a wide variety of commercial disputes with efficiency and professionalism.
- **Expedited Arbitration:** Recognizing the need for quicker resolution of certain disputes, ISTAC offers expedited arbitration procedures, particularly for smaller or less complex cases. This allows parties to resolve their disputes more swiftly and at a lower cost than traditional arbitration.
- **Flexible Arbitration Rules:** The ISTAC arbitration rules are designed to be flexible and adaptable to the needs of the parties. Parties have significant control over the procedures to be followed, including the ability to choose the arbitrators, the seat of arbitration, and the language of the proceedings, as well as online or in-person arbitration procedures.

ISTAC's goal is to establish itself as a leading arbitration institution not only in Türkiye but also in the broader region, including Europe, Asia, and the Middle East. By offering a high standard of arbitration services and promoting arbitration as the preferred dispute resolution method, ISTAC aims to attract more international arbitration cases to Istanbul (Aklinci, 2013).

4.2. The Union of Chambers and Commodity Exchanges of Turkey (TOBB) Arbitration Court

Another important arbitration institution in Türkiye is the Arbitration Court of the Union of Chambers and Commodity Exchanges of Turkey (TOBB). Established to provide arbitration services in business-to-business disputes, particularly in the commercial and industrial sectors, the TOBB Arbitration Court plays a significant role in domestic commercial dispute resolution.

Key features of the TOBB Arbitration Court include:

- **Commercial Focus:** The TOBB Arbitration Court specializes in resolving commercial disputes, particularly those arising from business-to-business

contracts. It is widely used by Turkish companies, and has a strong reputation for handling complex commercial cases.

- Institutional Expertise: The TOBB Arbitration Court benefits from the institutional support and expertise of the Union of Chambers and Commodity Exchanges of Turkey, one of the most important business organizations in the country.
- Enforcement of Awards: Arbitral awards rendered by the TOBB Arbitration Court are enforceable under Turkish law, ensuring that parties can rely on the arbitration process to obtain a binding and enforceable resolution to their disputes (Ekşi, 2020b).

4.3. Other Arbitration Institutions

In addition to ISTAC and the TOBB Arbitration Court, several other institutions provide arbitration services in Türkiye. These include:

- The Turkish Maritime Arbitration Commission: Specializes in disputes related to maritime law and shipping, a key sector for Türkiye due to its strategic geographic location (Ekşi, 2020b).
- The Energy Disputes Arbitration Centre (EDAC): Focuses on the energy sector disputes, including disputes arising from oil, gas, and renewable energy projects (Ekşi, 2020b).

5. Procedural Issues in Arbitration under Turkish Law

Arbitration procedures in Türkiye are largely shaped by party autonomy, with significant flexibility given to the parties to tailor the process according to their preferences. However, both the Turkish International Arbitration Law (IAL) and the Turkish Code of Civil Procedure (TCCP) provide default rules for situations where the parties have not specified procedures in their arbitration agreements. In addition, Turkish arbitration institutions, such as the Istanbul Arbitration Centre (ISTAC), have their own procedural rules that align with international standards (Lokmanoğlu, 2020, pp. 347-368).

5.1. Initiation of Arbitration

The arbitration process in Türkiye typically begins when one party submits a request for arbitration. The specifics of this request will depend on whether the arbitration is *ad hoc* or institutional:

- **Ad Hoc Arbitration:** In *ad hoc* arbitration, where the parties do not rely on an institutional framework, the arbitration agreement usually specifies the process for initiating arbitration. This could include notifying the other party in writing of the intent to arbitrate, and providing details such as the nature of the dispute, the relief sought, and the proposed arbitrators.
- **Institutional Arbitration:** For institutional arbitration, such as under ISTAC or the TOBB Arbitration Court, the initiating party submits a request for arbitration to the institution. The institution's rules, such as ISTAC Arbitration Rules, provide detailed procedures for filing the request, including the necessary documentation and fees. The institution will then forward the request to the other party, which has a set period (usually 30 days) to submit their response.

In either case, the request for arbitration must contain key information, including the arbitration agreement, a description of the dispute, and the relief sought. In international arbitration, the request may also specify the seat of arbitration, the applicable law, and the proposed language of the proceedings (Akıncı, 2011).

5.2. Appointment of Arbitrators

The appointment of arbitrators is a crucial step in the arbitration process. Arbitration in Türkiye follows the principle of party autonomy, meaning that the parties have the freedom to agree on the number of arbitrators and the method of their appointment. If the parties fail to agree, Turkish law provides default mechanisms to ensure the arbitration proceeds without undue delay according to IAL Article 3, and TCCP Articles 415 and 416.

- **Number of Arbitrators:** In most cases, the parties are free to choose the number of arbitrators. Typically, commercial disputes are resolved by a sole arbitrator or a panel of three arbitrators. If the parties do not specify the number of arbitrators, Turkish law defaults to a sole arbitrator, unless the circumstances of the case justify the appointment of three arbitrators.
- **Appointment Process:** The process for appointing arbitrators is flexible. In cases involving a sole arbitrator, the parties usually agree on the appointment. In three-member tribunals, each party typically appoints one arbitrator, with the two party-appointed arbitrators selecting the third (presiding) arbitrator. If the parties or the appointed arbitrators fail to agree, the courts or the arbitration institution (such as ISTAC) can intervene to appoint the arbitrators.

Turkish courts and judges have a tendency to respect the parties' autonomy in the appointment process, intervening only when necessary to prevent a deadlock or delays in the arbitration proceedings. This judicial support ensures that arbitration remains efficient and that disputes do not stagnate due to procedural disagreements (Nomer, 2018).

5.3. Procedural Rules

Once the tribunal is formed, it has significant discretion in managing the arbitration proceedings, subject to any agreements made by the parties. The parties can agree on specific procedural rules, or they may rely on the rules provided by the arbitration institution or the default rules in Turkish law. Key procedural aspects include:

- **Language of the Proceedings:** The parties are free to choose the language in which the arbitration will be conducted. In international arbitration, English is commonly selected, especially in disputes involving foreign parties. If no agreement is reached, the tribunal has the authority to determine the appropriate language.
- **Seat of Arbitration:** The seat (or legal place) of arbitration determines the procedural law governing the arbitration. In international arbitration, parties often select a neutral seat, such as Istanbul, which has been promoted as a favourable arbitration hub. If the parties do not specify a seat, the tribunal may determine it based on the circumstances of the case.
- **Applicable Law:** The parties can choose the substantive law that will govern their dispute. For international disputes, this could be Turkish law, the law of another country, or even principles of international law. In the absence of an agreement, the tribunal will apply the law it deems most appropriate, considering factors such as the nature of the contract and the place of performance (Nomer, 2018).
- **Hearings and Evidence:** Arbitration in Türkiye allows for flexibility in how hearings are conducted. The tribunal can decide to hold oral hearings or to resolve the dispute based solely on written submissions, depending on the complexity of the case and the preferences of the parties. The tribunal also has discretion over the admissibility of evidence, and Turkish arbitration law does not impose strict rules of evidence, unlike those for litigation in state courts (Bayata, 2022, pp. 395-421).

5.4. Confidentiality of Proceedings

One of the key advantages of arbitration, particularly in commercial disputes, is the confidentiality of the proceedings. While Turkish law does not explicitly mandate confidentiality in arbitration, it is generally understood that arbitration proceedings and the resulting awards are private, especially in *ad hoc* arbitration or under institutional rules like those of ISTAC. This confidentiality is particularly appealing to businesses that wish to resolve their disputes without public scrutiny (Bulut, 2011, pp. 33-44).

5.5. Interim Measures and Preliminary Relief

Arbitral tribunals in Türkiye have the authority to issue interim measures to protect the interests of the parties during the arbitration process. These measures may include orders to preserve assets, maintain the *status quo*, or prevent one party from taking actions that could prejudice the arbitration outcome.

In addition, parties can also seek interim measures from Turkish courts, particularly when the tribunal has not yet been constituted or when court enforcement is necessary. Turkish courts are generally supportive of arbitration and will grant interim measures if they believe the applicant has a strong case and that urgent action is necessary (Bulut, 2011, pp. 33-44).

5.6. Issuance of the Arbitral Award

The final step in the arbitration process is the issuance of the arbitral award. The tribunal is required to render its award within the specified timeframe, as agreed upon by the parties or as provided in Turkish law. Under the IAL Article 15, the tribunal must issue its award within one year of the commencement of arbitration, though this period can be extended by agreement of the parties or by a court decision.

The arbitral award must be in writing and must be signed by the arbitrators. It must also state the reasons for the decision unless the parties have agreed otherwise. Once the award is rendered, it becomes binding on the parties, and they are obligated to comply with its terms (Bayata, 2022, pp. 395-421).

6. Recognition and Enforcement of Arbitral Awards in Türkiye

One of the key strengths of arbitration is the enforceability of arbitral awards, both domestically and internationally. In Türkiye, the recognition and enforcement of arbitral awards are governed by both the Turkish International Arbitration Law (IAL) and the Turkish Code of Civil Procedure (TCCP), as well as by Türkiye's international treaty obligations, most notably the New York Convention (Nomer, 2018).

6.1. Domestic Arbitral Awards

Domestic arbitral awards are enforceable in Türkiye through the provisions of the TCCP. Once an arbitral award is rendered, the winning party can apply to the Turkish courts for its enforcement. The court will review the award to ensure that it meets the necessary legal requirements, such as that it was rendered in accordance with the

arbitration agreement and that it does not violate Turkish public policy under Articles 408 and 412 of the TCCP (Atakan, 2007, pp. 59-136).

Grounds for refusing enforcement of a domestic arbitral award are limited and include:

- The arbitration agreement was invalid.
- The party against whom the award is invoked was not given proper notice or was otherwise unable to present its case.
- The arbitral tribunal exceeded its authority or decided on matters not covered by the arbitration agreement.
- The composition of the arbitral tribunal or the arbitration procedure was not in accordance with the parties' agreement or Turkish law.
- The award is contrary to Turkish public policy (Ekşi, 2020a).

Once the court confirms the enforceability of an arbitral award, it becomes enforceable in the same manner as a court judgment, meaning that the winning party can take enforcement actions such as seizing assets or garnishing wages to satisfy the award (Nomer, 2018).

6.2. Foreign Arbitral Awards and the New York Convention

Türkiye's ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1991 marked a turning point in its arbitration landscape. Under the New York Convention, Turkish courts are generally required to recognize and enforce foreign arbitral awards, subject to limited exceptions. This has made Türkiye an attractive jurisdiction for parties seeking to enforce foreign arbitral awards (Börü, 2023).

To enforce a foreign arbitral award in Türkiye, the winning party must apply to the Turkish courts and provide the necessary documentation, including a certified copy of the award and the arbitration agreement. The courts will review the award to ensure that it meets the requirements of the New York Convention, but their grounds for refusing enforcement are narrowly defined and include:

- The arbitration agreement was invalid under the applicable law.
- The losing party was not given proper notice of the arbitration or was otherwise unable to present its case.
- The award deals with matters outside the scope of the arbitration agreement.
- The composition of the arbitral tribunal or the arbitration procedure was not in accordance with the parties' agreement.
- The award has not yet become binding on the parties or has been set aside by a competent authority in the country where it was issued.
- The award is contrary to the public policy of Türkiye (Ekşi, 2020a).

The public policy exception is one of the most commonly invoked grounds for refusing enforcement, though Turkish courts have generally interpreted this exception narrowly. As a result, foreign arbitral awards are usually recognized and enforced in Türkiye unless there are compelling reasons not to do so (Ekşi, 2020b).

7. Challenges and Reforms in Turkish Arbitration

Despite significant progress in developing a robust legal framework for arbitration, several challenges still persist in the Turkish arbitration landscape. Addressing these challenges is crucial to improving efficiency, predictability, and attractiveness of arbitration as an alternative dispute resolution method. These challenges can be grouped into several categories, including judicial intervention, arbitrator selection, cost and duration of arbitration, and awareness of and trust in arbitration (TC. Cumhurbaşkanlığı, 2021).

7.1. Judicial Intervention

One of the key challenges in Turkish arbitration is the scope of judicial intervention in arbitration proceedings. Although Turkish law emphasizes limited judicial intervention, in practice, Turkish courts have sometimes been more interventionist, particularly in cases involving the annulment of arbitral awards or interim measures. This is partly due to inconsistencies in how different courts interpret public policy and procedural fairness.

- **Inconsistent Court Decisions:** Some Turkish courts have been willing to review the merits of arbitral awards under the guise of public policy, leading to unpredictability in arbitration outcomes. This undermines the finality of arbitration and discourages parties from choosing arbitration over litigation (Önay, 2024, pp. 843-870).
- **Public Policy Concerns:** The concept of public policy, while meant to protect fundamental legal principles, can be interpreted broadly by courts, leading to increased judicial scrutiny of arbitral awards. This can result in annulments or refusals to enforce awards, particularly in sensitive cases involving government contracts or issues of national interest (Ekşi, 2020a).

Efforts to streamline judicial involvement are needed to ensure consistency and predictability. Training for judges on arbitration-related matters and clearer legislative guidelines could help reduce unwarranted court intervention.

7.2. Arbitrator Selection and Qualifications

Another challenge in Turkish arbitration is the selection and qualifications of arbitrators. While the parties have significant freedom to choose their arbitrators, there have been concerns about the availability of qualified arbitrators, particularly for specialized disputes, such as those in the energy, maritime, or construction sectors (Karkın, 2015, pp. 49-57).

- **Lack of Specialized Arbitrators:** In certain industries, the pool of qualified arbitrators with the necessary technical expertise is limited. This can lead to delays in appointing arbitrators or in the resolution of disputes, as parties may struggle to find arbitrators who understand the specific issues involved (T. C. Cumhurbaşkanlığı, 2021).
- **Impartiality and Independence:** Ensuring the impartiality and independence of arbitrators is a fundamental principle in arbitration. However, there have been instances where parties have raised concerns about potential bias or conflicts of interest among arbitrators, particularly in cases where arbitrators have close ties to one of the parties or have served as arbitrators in related disputes.

Reforms aimed at improving transparency in the arbitrator selection process and enhancing arbitrator training, particularly in specialized fields, could help address these concerns.

7.3. Cost and Duration of Arbitration

While arbitration is often promoted as a faster and more cost-effective alternative to litigation, costs and delays remain significant challenges in Turkish arbitration. In some cases, arbitration proceedings can become lengthy and expensive, particularly when multiple rounds of submissions, complex expert testimony, or procedural challenges arise.

- **Expensive Arbitration Fees:** The costs associated with arbitration, including arbitrators' fees, institutional fees, and legal costs, can be prohibitive for some parties, particularly in smaller disputes. Although institutions like ISTAC offer expedited arbitration procedures, these are not always suitable for more complex cases.
- **Delays in Proceedings:** While Turkish law imposes time limits on the issuance of arbitral awards, parties can extend these time limits by mutual agreement or by court intervention. This can result in prolonged proceedings, undermining the key advantage of arbitration – swift resolution (T. C. Cumhurbaşkanlığı, 2021).

Efforts to address these challenges could include promoting the use of expedited arbitration for smaller disputes, adopting procedural innovations such as online dispute resolution (ODR), and encouraging parties to agree on stricter time limits for arbitration proceedings (T. C. Cumhurbaşkanlığı, 2021).

7.4. Awareness and Trust in Arbitration

Despite the significant strides made in developing Türkiye's arbitration framework, awareness and trust in arbitration remain relatively low compared to litigation. Many businesses, particularly small and medium-sized enterprises (SMEs), are more accustomed to resolving disputes through the Turkish courts, and may be unfamiliar with the benefits of arbitration.

- **Lack of Awareness:** Some parties, particularly domestic businesses, may be reluctant to use arbitration due to a lack of understanding of the process or concerns about its perceived complexity or cost. This is especially true for parties outside of major commercial hubs like Istanbul (T. C. Cumhurbaşkanlığı, 2021).
- **Preference for Litigation:** In some sectors, there is still a strong preference for litigation over arbitration, particularly where the parties believe that the courts will offer more predictable outcomes or better protection of their rights. This preference can be attributed to cultural and historical factors, as well as a perception that courts may be more neutral or less costly than arbitration (T. C. Cumhurbaşkanlığı, 2021).

Awareness campaigns and providing resources to educate businesses about arbitration, especially in regions outside major cities, could help improve trust and reliance on arbitration as a viable dispute resolution method.

7.5. Ongoing Reforms

In response to these challenges, Türkiye has undertaken several reforms aimed at improving its arbitration framework and making it more attractive to both domestic and international parties. Key initiatives include:

- **Promoting ISTAC:** The Turkish government has actively promoted the Istanbul Arbitration Centre (ISTAC) as a world-class arbitration institution. Efforts to increase ISTAC's visibility and improve its procedural offerings, such as expedited arbitration and mediation services, are designed to position Istanbul as a regional arbitration hub (T. C. Cumhurbaşkanlığı, 2021).
- **Judicial Training:** Ongoing efforts to train Turkish judges on arbitration-related issues, including the limits of judicial intervention and the enforcement

of arbitral awards, are critical to reducing inconsistencies in court decisions and improving the overall efficiency of the arbitration process (T. C. Cumhurbaşkanlığı, 2021).

- Arbitrator Training and Certification: There are also initiatives to improve the training and certification of arbitrators in Türkiye, particularly in specialized fields. These efforts are intended to expand the pool of qualified arbitrators and ensure that arbitrators are equipped to handle complex disputes (T. C. Cumhurbaşkanlığı, 2021).

The continued implementation of these reforms, coupled with increased use of arbitration by businesses, will likely enhance the role of arbitration in Türkiye's dispute resolution landscape.

8. Conclusion

The development of arbitration in the Turkish legal system reflects the country's broader efforts to align its dispute resolution mechanisms with international standards while addressing domestic needs. With the adoption of the Turkish International Arbitration Law (IAL) and significant reforms to the Turkish Code of Civil Procedure (TCCP), Türkiye has established a solid legal framework for both domestic and international arbitration.

The Istanbul Arbitration Centre (ISTAC), along with other institutional arbitration bodies like the TOBB Arbitration Court, provides the necessary infrastructure to support arbitration, particularly in commercial disputes. These institutions offer flexible and efficient procedures, making arbitration an attractive alternative to litigation in the Turkish courts.

However, challenges remain. Judicial intervention, costs, delays, and awareness issues continue to affect the widespread adoption and effectiveness of arbitration in Türkiye. Judicial inconsistency, particularly in the annulment of awards and the application of public policy, undermines confidence in arbitration's finality. Meanwhile, the cost and duration of proceedings, as well as the need for more qualified arbitrators, particularly in specialized sectors, are ongoing concerns.

Efforts to promote arbitration through institutions like ISTAC, combined with judicial training and legislative reforms, are critical to addressing these challenges. By continuing to enhance the arbitration framework and promoting Istanbul as a global arbitration hub, Türkiye has the potential to become a leading arbitration jurisdiction in the region.

Ultimately, arbitration offers significant advantages over traditional litigation, including greater flexibility, confidentiality, and the ability to resolve disputes swiftly and efficiently. For Türkiye to fully realize the potential of arbitration, ongoing reforms and increased awareness are essential. With the right measures in place, arbitration could become the preferred method of dispute resolution for both domestic and international parties, reinforcing Türkiye's position as an attractive destination for investment and commerce.

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