

## Arbitration - Turkey

### Competent Authority to Decide on Validity of Arbitration Agreements

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Objections to arbitral proceedings on the basis of invalid arbitration agreements are common in international arbitration proceedings. In such cases it is necessary to address which competent authority will decide on the validity of the arbitration agreement. In Turkey, the answer to this question depends on the law applicable to the dispute. If the applicable law is the Civil Procedure Law,<sup>(1)</sup> the Turkish courts are the competent authority. If the International Arbitration Law<sup>(2)</sup> is the applicable law, the arbitral tribunals are the competent authority.

In the event of a domestic arbitration, the dispute is subject to the Civil Procedure Law.<sup>(3)</sup> Article 519 of the Civil Procedure Law is applicable to the validity of arbitration agreements and states that "disputes arising out of whether a dispute may be resolved by arbitrators or not shall be resolved by the court". According to Article 519, the courts may decide on the scope, validity and interpretation of the arbitration clause, as well as the arbitrability of the subject matter of the dispute under the mandatory provisions.

According to Article 2 of the International Arbitration Law, in the event that the dispute involves a foreign element and the seat of arbitration is designated as Turkey, or the parties, the arbitrator or the arbitral tribunal have chosen the provisions of the International Arbitration Law, the International Arbitration Law is applicable.<sup>(4)</sup> Article 7/H of this law states that "the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement".

The 15th Chamber of the Court of Appeals dealt with the difference between the aforesaid provisions in a decision dated June 27 2007 (E 2007/2145, K 2007/4389).

The dispute that was the subject matter of the decision arose out of an agreement executed between an employer and a contractor, which included the following arbitration clause:

*"In all cases other than the ones stated under sub-paragraph 1 of paragraph 1 of Article 2 of the International Arbitration Law, the courts and execution offices of Ankara shall have jurisdiction for the resolution of all sorts of disputes, which may arise in the application of this agreement and its annexes.*

*... In cases stated under sub-paragraph 1 of paragraph 1 of Article 2 of the International Arbitration Law, the dispute shall be resolved... pursuant to the provisions of the International Arbitration Law dated 21.06.2001 and numbered 4686."*

When the contractor initiated arbitral proceedings for the resolution of a dispute arising out of the agreement, the employer objected before the Turkish courts to the validity of the arbitration clause due to its ambiguous wording and requested that the dispute be reviewed by the courts. In response to such objection, the contractor stated that the arbitration clause was valid.

In reviewing the file, the court of first instance regarded itself as the competent authority to decide on the validity of the arbitration clause and decided that the arbitration clause was invalid since it was not a definite clause.

Upon the contractor's request for an appeal, the court of appeals annulled the first instance court's decision.

In its decision the court of appeals held that since the conditions set forth by Article 2 of the International Arbitration Law were fulfilled and the agreement between the parties was executed on September 23 2005, which was subsequent to the entry into force of the International Arbitration Law, the applicable law to the agreement was the International Arbitration Law and the arbitral tribunal was the competent authority to evaluate the validity of the arbitration agreement.

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## Endnotes

(1) The Civil Procedure Law (1086/1927) was published in the *Official Gazette* on July 2 1927, July 3 1927 and July 4 1927 (Numbers 622, 623, 624). It entered into force three months after its publication.

(2) The International Arbitration Law (4686/2001) entered into force on July 5 2001 with the announcement in the *Official Gazette* (Number 24453).

(3) Disputes which fall outside the scope of the International Arbitration Law are subject to the Civil Procedure Law.

(4) For further details about the applicability of the International Arbitration Law please see "[Statutory Mechanisms for Arbitration](#)".