

Arbitration & ADR - Turkey

Change in competent court for arbitration-related disputes

Contributed by **Cerrahoğlu Law Firm**

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Background
Current status
Comment

Following an amendment introduced by Article 45 of the Law on the Amendment of the Turkish Criminal Code and Some Other Laws,⁽¹⁾ the following lawsuits should now be brought before the Commercial Court of First Instance:

- Those pertaining to objections to arbitration clauses, the setting aside of final awards and the appointment and dismissal of arbitrators within the scope of arbitral proceedings conducted under the Code on Civil Procedures⁽²⁾ and the International Arbitration Law;⁽³⁾ and
- Those pertaining to the recognition and enforcement of foreign arbitral awards.⁽⁴⁾

Background

Before the amendment, the Court of First Instance was competent to hear disputes arising from arbitral proceedings conducted under the Code on Civil Procedures⁽⁵⁾ and the International Arbitration Law.⁽⁶⁾ The same court was competent for lawsuits pertaining to the enforcement of foreign arbitral awards under the Code on International Private and Procedural Law.⁽⁷⁾

Current status

Law 6545 did not directly amend the Code on Civil Procedures, the International Arbitration Law or the Code on International Private and Procedural Law. However, it did amend Article 5 of the Law on the Formation, Authority and Competence of the Court of First Instance and the Regional Courts of Justice.⁽⁸⁾ Therefore, lawsuits pertaining to objections to arbitration clauses, the setting aside of final awards, the appointment and dismissal of arbitrators and the recognition and enforcement of foreign arbitral awards should be brought before the Commercial Court instead of the Court of First Instance as set forth in the Code on Civil Procedures, the International Arbitration Law and the Code on International Private and Procedural Law.

The relationship between the Commercial Court and Court of First Instance used to be a "judicial division of work", which meant that the court receiving the claim would resolve the dispute if the respondent did not object in its statement of defence that the matter was not within the division of labour of such court. However, following the Turkish Commercial Code amendment,⁽⁹⁾ the relationship between these courts has been altered as "subject matter jurisdiction". Accordingly, the court receiving the claim should evaluate *ex officio* whether the subject matter is within its jurisdiction and should rule on the lack of jurisdiction if it is not.

Comment

The recent amendments should be taken into consideration before filing a lawsuit before the courts with regard to arbitral proceedings conducted under the Code on Civil Procedures and the International Arbitration Law, as well as requests for recognition and enforcement. Failure to file such a lawsuit before the competent court would result in loss of time as the court will render a decision on lack of jurisdiction which is subject to appeal. If no appeal is initiated against such a decision, the plaintiff receiving the decision on lack of jurisdiction should make an additional application to the court within two weeks of the lapse of the statutory period for the appeal – that is, after the decision on lack of jurisdiction becomes final – in order for the court to send the file to the competent court. This process usually takes two to three weeks. If an appeal is initiated, the process will take six to nine months.

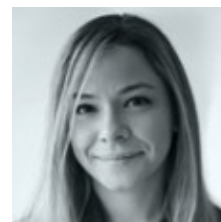
For further information on this topic please contact [Emine Eda Cerrahoğlu Balssen](#) or [Defne Zeynep Sirakaya](#) at Cerrahoğlu Law Firm by telephone (+90 212 355 3000), fax (+90 212 266 3900) or email (eda.cerrahoglu@cerrahoglu.av.tr or defne.sirakaya@cerrahoglu.av.tr). The Cerrahoğlu Law Firm website can be accessed at www.cerrahoglu.av.tr.

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Endnotes

- (1) The Law on Amendment of Turkish Criminal Code and Some Other Laws 6545, published in the *Official Gazette* (June 28 2014).
- (2) The Code of Civil Procedure 6100, published in the *Official Gazette* (February 4 2011).
- (3) The International Arbitration Law 4686, published in the *Official Gazette* (July 5 2001).
- (4) Enforcement and recognition of foreign arbitral awards in Turkey is subject to the Code on International Private and Procedural Law 5718, published in the *Official Gazette* (December 12 2007) and if the award is rendered in a contracting state, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards will apply.
- (5) Article 410 of the Code of Civil Procedure 6100, published in the *Official Gazette* (February 4 2011). Although Article 410 refers to the Regional Courts of Justice, since they have not yet been formed, the competent courts according to the Code of Civil Procedure are the Courts of First Instance.
- (6) Article 3 of the International Arbitration Law numbered 4686, published in the *Official Gazette* (June 6 2001).
- (7) Article 60(2) of the Code on International Private and Procedural Law 5718, published in the *Official Gazette* (December 12 2007).
- (8) The Law on Formation, Authority and Competence of Courts of First Instance and Regional Courts of Justice 5235, published in the *Official Gazette* (September 26 2004).
- (9) Article 5 of the Turkish Commercial Code 6102, published in the *Official Gazette* (January 13 2011) and amended by the Law on Amendment of Turkish Commercial Code and Some Other Laws 6545, published in the *Official Gazette* (June 18 2014).

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