

Arbitration - Turkey

Bilateral investment treaties and international arbitration

Contributed by **Cerrahoğlu Law Firm**

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To date, Turkey has signed treaties on mutual encouragement and protection of investments with 82 countries, with the purpose of increasing capital and technology flow with the signatory states and determining the terms of conduct to be applied to the foreign investments in the host states.⁽¹⁾ Of these bilateral investment treaties (BITs), 74 have been approved by the Grand National Assembly and are thus in force.

BITs signed by Turkey primarily provide for two international arbitration mechanisms for dispute resolution - those governed by the UN Commission on International Trade Law and those governed by the International Centre for Settlement of Investment Disputes (ICSID). ICSID arbitration has been included in all BITs signed after June 24 1987 (ie, the date on which Turkey signed the Washington Convention).

On February 23 1989 Turkey notified the Secretary General of ICSID of which disputes may be referred to ICSID arbitration against Turkey. Accordingly, only those disputes arising directly out of investment activities, and which have obtained the necessary permissions in conformity with the relevant Turkish legislation on foreign capital and have effectively started, shall be subject to ICSID jurisdiction. However, disputes related to immovables and *in rem* rights therein are exclusively within the jurisdiction of the Turkish courts, and therefore cannot be submitted to ICSID arbitration. The above-mentioned conditions are also included in the articles on dispute resolution in some of the BITs signed by Turkey.

According to data obtained from the General Directorate of Incentive Implementation and Foreign Investment of the Ministry of Finance, there are 21 ICSID cases in which Turkey or Turkish investors are (or were) a party and which are based on the BITs signed by Turkey. Thirteen of the cases were registered by Turkish investors against foreign states and eight were registered against Turkey by foreign investors.

Five out of eight ICSID cases registered against Turkey were concluded in favour of Turkey - in one, the parties reached a settlement; in another, Turkey was ordered to pay \$9 million in compensation and \$13.5 million in arbitration costs. One remaining case, which was registered in 2012, is pending.

Four out of 13 ICSID cases registered by Turkish investors against foreign states were concluded and the remaining nine cases are pending. Two out of the four cases that have been concluded were in favour and one was against Turkish investors; in the one remaining case, the parties reached a settlement. Turkish investors registered most arbitration cases arising from the BITs against Turkmenistan (five ICSID cases in total). Turkmenistan is followed by Kazakhstan with two ICSID cases.

Most arbitration cases registered against Turkey have arisen from disputes in the energy, mobile communications and construction sectors, whereas cases registered by Turkish investors against foreign states have generally arisen from disputes in the construction and telecommunications sectors.

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Endnotes

(1) Turkey has signed BITs with all EU countries, except for Ireland and Southern Cyprus, as well as with all countries that are members of the Organisation for Economic Cooperation and Development, except for Ireland, Iceland, Canada, Norway, Mexico and New Zealand.