

## Arbitration - Turkey

### Court of Appeals issues view on objections on standing in arbitral proceedings

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In a decision the 11th Chamber of the Court of Appeals ruled that a party's objection on standing as to whether it was a party to the arbitration agreement in question was an issue which needed to be resolved by the arbitral tribunal, together with the merits of the case.<sup>(1)</sup>

The claimant filed a lawsuit before the Istanbul First Instance Commercial Court, requesting that the arbitration proceedings initiated by the respondent against the claimant at the Istanbul Chamber of Commerce Arbitration Institution be declared null and void. According to the claimant, the proceedings should be cancelled under Article 519 of the Code of Civil Procedure because it was not a party to the arbitration agreement and the dispute brought to arbitration was not within the scope of the arbitration agreement. The first instance court accepted the claimant's request on the grounds that the claimant was not a party to the arbitration agreement.

The respondent appealed the decision. On appeal, the claimant requested that the Court of Appeals approve the first instance court's decision on the following grounds: (i) the claimant was not a party to the arbitration agreement in question; and (ii) the dispute between the parties was not within the scope of the arbitration agreement.

The Court of Appeals rejected the first instance decision and ruled that the claimant's objection on standing was an issue relating to the merits of the case and should therefore be resolved by the arbitral tribunal together with the merits of the case, according to the arbitration clause in the agreement in question. In its decision the Court of Appeals specifically distinguished between the claimant's objection on standing and its objection that the dispute was not within the scope of the arbitration agreement:

*"The provision under Article 519 of the Turkish Code of Civil Procedure covers circumstances where it is argued whether or not the dispute, which is the subject matter of the lawsuit, in fact, is covered by a specific existing arbitration agreement or the arbitration clause in an agreement, or whether it is valid or fraudulent or whether or not the arbitration or the agreement is valid (see, Prof. Dr. B. Kuru, Code of Civil Procedure, Istanbul, 1991, volume 4, p. 4020). As can be seen from these examples, issues that are stipulated to be resolved by the court under Article 519 of the Code of Turkish Civil Procedure are in fact with respect to problems regarding the interpretation of the arbitration agreement and whether or not the intent to arbitrate is in compliance with the mandatory provisions of law such as the scope, the validity of an existing arbitration agreement and its compliance with legislation.*

*Claimant's objection as to its standing in the arbitration in which it is shown as respondent is not a problem to be resolved by the court under Article 519 of the Code of Turkish Civil Procedure but it is to be resolved by the arbitral tribunal since it is with respect to resolution of the merits of the lawsuit. Accordingly, it is not correct for the court to resolve the objection on standing, which related to the core of the dispute, and decide in a way to resolve the merits of the case despite the intention of the parties to execute an arbitration agreement.*

*Then, the court should take into account that the objection on standing by the claimant in the arbitration, in which it is shown as respondent, be resolved by the arbitral tribunal as part of the merits of the case."*

The Court of Appeals clearly set out that the objection that one is not a party to an existing arbitration agreement relates to the merits of the case, and that such an objection should be resolved by the arbitral tribunal and not the courts, together with the merits of the case as stipulated under the arbitration agreement.

This decision is a significant development because it may make it possible to extend the application of arbitration agreements to third parties. The court did not categorically reject the idea of including a third party as a

respondent in an arbitration proceeding and left such issue to the consideration of the tribunal, together with the merits of the case, in light of criteria under Turkish law for the extension of arbitration agreements to third parties.

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#### **Endnotes**

(1) February 1 2005, E 2004/4057, K 2005/599.