

Arbitration - Turkey

Enforcement of Foreign Arbitral Awards

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Two legislative sources apply to the enforcement and recognition of international arbitral awards in Turkey. They are Articles 60 to 63 of the Code of International Private and Procedural Law⁽¹⁾ (Law 5718) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.⁽²⁾

The Turkish Constitution provides that international agreements, which have been duly put into force, will have the force of law. This means that the provisions of the convention will be regarded as having the same force as the Turkish statutory provisions within the domestic legal system. Given that the convention is a more specific regulation than the code - where the issues of international private law are regulated in a general manner - its application takes precedence over the code for the enforcement of foreign arbitral awards. Furthermore, the final paragraph of Article 1 of the code gives precedence to the application of the convention by stating that the code will be applicable, provided that the provisions of the international treaties to which Turkey is a contracting party are reserved. As such, the code will apply solely to the enforcement of awards falling outside the scope of the convention.

While enacting the convention, Turkey made a reservation based on the principle of reciprocity by limiting its scope of application to awards which have been made in the territory of another contracting state. Awards made in non-contracting states will be enforced pursuant to the provisions of the code. All awards made in a contracting state to the convention other than Turkey will be enforced in Turkey as per the provisions of the convention.

In its decision dated December 25 1997 the Court of Appeals gave a ruling which determined the court's understanding of the scope of the application of the convention in Turkey.⁽³⁾ The plaintiff sought enforcement of an award pursuant to the provisions of the convention, whereby the award had been made within the framework of the International Chamber of Commerce (ICC) Arbitration Rules and the seat of arbitration was in Zurich as established under the arbitration clause of the main contract. The defendant objected to such enforcement by arguing that the award did not qualify as a foreign award since the arbitration clause in the contract provided that the arbitration was subject to "Turkish laws in force", including the Turkish procedural laws, and thus Turkish procedural laws should be applied to the dispute. In determining whether the convention or the code applied to the enforcement of such award, the court emphasized that an award made in Zurich (ie, in a state other than Turkey where the enforcement is sought) by an arbitration tribunal set up in accordance with the provisions of the ICC Arbitration Rules is deemed as a foreign award. Therefore, the convention is applicable to the enforcement of such award in Turkey. In its ruling, the court established that the fact that Turkish procedural laws apply to a dispute will not change the nature of the award. Such award will be deemed to be a foreign award under the convention, provided that it was awarded in a state other than Turkey.

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Endnotes

(1) Entered into force on December 12 2007.

(2) Ratified on July 2 1992 by Act 3731. Entered into force on September 30 1992.

(3) Decision E.1997/4213 K.1997/5603.