



## **Use Extreme Caution: Recent Judgment of the Turkish Court of Cassation Emphasizes the Importance of Clear Wording of the Arbitration Clauses**

*Judgment of the Court Once More Verifies Turkish Practice of Interpretation of Arbitration Agreements: A Clear and Unhindered Will for Arbitration Must be Present*

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In a recent decision of Turkish Court of Cassation<sup>1</sup> ("Court) dated 23 January 2017; the Court held that an arbitration clause should clearly express the absolute intention to arbitrate.

The case was regarding a construction agreement between a contractor and a sub-contractor; whereby the contractor, Defendant, requested the dismissal of the case by raising a preliminary objection as to the arbitration. The local court accepted Defendant's claim and dismissed the case.

Upon Plaintiff's appeal of the decision, the Court reversed the decision of the local court by declaring that the arbitration clause in question failed to reflect parties' clear and absolute intention to arbitrate. The clause in question states that:

*"Any dispute between the company and the contractor that may arise from the execution of this contract shall be settled by arbitration. The arbitrators selected by the parties shall appoint the 3<sup>rd</sup> arbitrator and the decision rendered by this tribunal shall be valid. The arbitrators shall be a member of ... and the arbitration costs shall be borne by the contractor. Parties shall resort to Istanbul Courts and Execution Offices for the matters that are not arbitrable and in cases stipulated under the contract and its appendices."*

The Court stated that although the parties may choose to submit all or certain disputes to arbitration in respect of a defined legal relationship, the arbitration clause in question conferred jurisdiction to national courts regarding the matters relating to the contract and

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<sup>1</sup> 15<sup>th</sup> Civil Chamber, 2016/4735 E., 2017/259 K.

its appendices, after expressing parties' intention to submit to arbitration all disputes in relation to the contract. Hence the statement in relation to the national courts called parties' absolute and unconditional intention to arbitration in question; therefore rendered the arbitration agreement invalid.

The dissenting opinion stated that the arbitration clause in question expressed parties' intention to submit all their disputes in relation to the contract to arbitration, provided that the dispute in question is arbitrable. As per disputes that are non-arbitrable, parties agreed to bring their dispute before Istanbul courts; stressing that such statement does not affect parties' absolute intention to arbitrate.

The decision reveals yet again the significance in drafting an arbitration agreement with clear wording, leaving no point for interpretation that may possibly call parties' intention to arbitrate in question.

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