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Bakı Arbitraj Hüququ Jurnalı (bundan sonra – “Jurnal”) Azərbaycan Respublikasının qanunvericiliyinə uyğun olaraq yaradılmış Bakı Arbitraj Mərkəzinin (bundan sonra – “Mərkəz”) rəsmi nəşridir. Mərkəz Jurnalın, həmçinin onun müvafiq say, buraxılış və versiyalarının nəşr və yayımı üzrə müstəsna hüquqa malikdir. Jurnalın kommersiya məqsədləri ilə yayılması, nəşri və ya digər formada istifadəsi yalnız Jurnalın Baş redaktorunun razılığı ilə mümkündür.

FOREWORD

We are proud to present the inaugural edition of the Baku Arbitration Law Journal, launched alongside the establishment of the Baku Arbitration Centre. This biannual publication, edited in both English and Azerbaijani, is founded and edited by Professor Kamalia Mehtiyeva, and this first edition was organized in addition by Mansur Samadov, Executive Editor, Azhdar Allahverdiyev and Leyla Hasanzada, Assistant Editors. It represents a landmark step in advancing arbitration scholarship and practice in Azerbaijan and the wider region.

The Journal addresses a pressing need: the scarcity of comprehensive legal literature on arbitration in Azerbaijani and English, particularly regarding both academic and practical perspectives. It is designed to serve not only scholars but also practitioners, judges, and policymakers, providing authoritative analyses, insights, and guidance on arbitration principles, procedures, and sector-specific developments.

Each issue will feature special sections, including “Recent Developments,” “Case Commentary,” “Sector Focus” (covering areas such as energy, construction, transport, and logistics), and “Focus on Careers in Arbitration”. The first edition highlights the professional journeys and insights of Nurlan Mustafayev (Head of the Corporate Law Department at the State Oil Company of the Republic of Azerbaijan (SOCAR), Professor Pierre Tercier (former President of the ICC International Arbitration Court) and Mansur Samadov (LL.M. Candidate in International Arbitration and Dispute Resolution, National University of Singapore).

The Journal will also foster international collaboration, inviting contributions from leading arbitration experts and institutions worldwide, ensuring a dialogue between local and global perspectives.

All issues will be published on the Baku Arbitration Centre’s website, offering digital access to researchers, practitioners, and the wider arbitration community. By combining accessibility with rigor, the Journal aspires to be a central reference point for arbitration in Azerbaijan and the region.

Expressions of interest to contribute may be sent to: k.mehtiyeva@bakuarbitrationcentre.org and contact@bakuarbitrationcentre.org. We warmly encourage scholars, practitioners, and all professionals engaged in dispute resolution to participate in this initiative, helping to shape the evolving discourse on arbitration and to contribute to its continued development both nationally and internationally.

ÖN SÖZ

Bakı Arbitraj Mərkəzinin təsis edilməsi ilə eyni vaxtda işıq üzü görən Bakı Arbitraj Hüququ Jurnalının ilk buraxılışını təqdim etməkdən qürur duyuruq. Professor Kəmalə Mehdiyeva tərəfindən təsis edilib və redaktə olunacaq bu nəşr Azərbaycan və İngilis dillərində hazırlanaraq ildə iki dəfə nəşr olunacaq. Birinci buraxılışın təşkilinə əlavə olaraq İcraçı Redaktor Mansur Səmədov, Köməkçi Redaktorlar Əjdər Allahverdiyev və Leyla Həsənzadə töhfə veriblər. Jurnal Azərbaycanda və daha geniş regionda arbitraj elminin və praktikasının inkişafı baxımından mühüm bir mərhələdən xəbər verir.

Həm Azərbaycan, həm də İngilis dillərində arbitraja dair hərtərəfli hüquqi ədəbiyyatın azlığı, xüsusilə akademik və praktik baxış bucaqlarını əhatə edən mənbələrin çatışmazlığını nəzərə almaqla, jurnal mövcud olan tələbləri qarşılamağı hədəfləyir. Nəşr arbitrajın prinsipləri, prosedurları və sahələr üzrə inkişafı barədə etibarlı təhlillər, dərin baxışlar və istiqamətləndirici materiallar təqdim etməklə, təkcə alimlər üçün deyil, həm də praktikantlar, hakimlər və siyasətçilər üçün nəzərdə tutulmuşdur.

Hər buraxılışda “Son yeniliklər”, “Qərarlar üzrə rəylər”, “Spesifik sahələr üzrə” (enerji, tikinti, nəqliyyat və logistika kimi sahələri əhatə etməklə) və “Arbitrajda karyera” adlı xüsusi bölmələr yer alacaq. İlk buraxılış Nurlan Mustafayevin (Azərbaycan Respublikası Dövlət Neft Şirkətinin (SOCAR) Korporativ Hüquq Departamentinin rəhbəri), professor Pierre Tercierin (Beynəlxalq Ticarət Palatası nəzdində Beynəlxalq Arbitraj Məhkəməsinin keçmiş sədri) və Mansur Səmədovun (Beynəlxalq arbitraj və mübahisələrin həlli ixtisası, Sinqapur Milli Universiteti, magistr tələbəsi) peşəkar inkişaf yolu və baxışlarını işıqlandırır.

Jurnal həmçinin dünyanın aparıcı arbitraj mütəxəssislərini və institutlarını töhfə verməyə dəvət edərək və yerli və qlobal baxış bucaqları arasında dialoqun qurulmasını təmin edərək beynəlxalq əməkdaşlığı təşviq edəcək.

Bütün buraxılışlar Bakı Arbitraj Mərkəzinin veb-saytı vasitəsilə dərc olunacaq və tədqiqatçılar, praktikantlar, eləcə də geniş arbitraj ictimaiyyəti üçün rəqəmsal çıxış imkanı yaradacaq. Əlçatanlığı elmi dəqiqliklə birləşdirərək, Jurnal Azərbaycanın və regionun arbitraj sahəsində əsas istinad mənbələrindən birinə çevrilməyi hədəfləyir.

Jurnala hər hansı töhfə vermək üçün k.mehtiyeva@bakuarbitrationcentre.org və contact@bakuarbitrationcentre.org elektron ünvanlarına müraciət etməklə marağınızı bildirə bilərsiniz. Mübahisələrin həlli ilə məşğul olan alimləri, praktikantları və bütün peşəkarları bu təşəbbüsə qoşulmağa səmimiyyətlə dəvət edirik. Sizin iştirakınız arbitraj sahəsində formalaşmaqda olan diskursun istiqamətləndirilməsinə, həmçinin bu sahənin həm milli, həm də beynəlxalq səviyyədə davamlı inkişafına töhfə verəcək.

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SPOTLIGHT ON PROF. DR. ROLF KNIEPER: A STORY OF A LIFETIME ACHIEVEMENT

Dr. Rolf Knieper has been nominated as an arbitrator for the first time in 1990, in a dispute under ICC auspices between Kenyan and Austrian state enterprises. Thereafter he has served as arbitrator in four further ICC cases of which in one as president and one as sole arbitrator, four LCIA cases, twenty-eight ICSID cases of which in six as president and in twelve as member of an annulment committee, six PCA cases of which one as president, two SCC cases and one *ad hoc* case under UNCITRAL Rules.

In eleven international disputes, he has served as expert witness, seven times on Georgian, three times on Turkmen and once on Azerbaijani law. On one occasion, he was chosen as mediator between a Central Asian State and a European export company.

He is listed on the Panel of Arbitrators of ICSID, on the Panel of Arbitrators for International Investment Arbitration of Beijing Arbitration Commission/Beijing International Arbitration Center (BAC/BIAC), on the Panel of Arbitrators of the Shenzhen Court of International Arbitration (SCIA), and of the Kazakhstan International Arbitrage (KIA). He is a member of the German Arbitration Institute (DIS).

He has gained his practical experience of legal, economic and social problems and developments by actively contributing to legal and judicial reform of many countries in different parts of the world (each time on leave from his university):

- as legal advisor to the government of Chad from 1978 to 1979 and to the government of the Central African Republic from 1981 to 1988 in technical assistance projects, financed by the World Bank and by German bilateral co-operation services where major topics were legislation on investment, on mining, on forestry, on debt management;
- as senior special fellow for UNITAR from 1991 to 1995 to advise African (Kenya, Zimbabwe, Uganda, Tanzania) and Asian (India, Pakistan, Bangladesh) States on legal aspects of debt management;
- as head of a project of legal and judicial reform of the newly independent Central Asian and Caucasian States from 1993 to 2006, financed by German bilateral co-operation, where major topics were the drafting of Civil Codes, Civil Procedure Codes, Company Codes, Commercial Codes, laws on bankruptcy, on intellectual property, on international and national arbitration, on court organisation and on legal professions (advocates, notaries) as well as the practical implementation of these laws;
- equally during this period: advising Moldova, Mongolia and Ukraine on the Civil Code; the PRChina on the Law on Contracts;
- as head of a project on the introduction of commercial and of investment arbitration in Turkmenistan from 2007 to 2008 by drafting national

legislation and prepare the accession to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, financed by the European Union;

- as advisor to the Ministry of Justice of Lower Saxony/Germany from 2002 to 2004 on judicial reform in Germany, and to the German Bundesnotarkammer (Federal Chamber of Notaries) on the future of civil law notaries.

In academics, Rolf Knieper has been visiting scholar at Harvard Law School from 1972 to 1973, professor of law at the University of Bremen from 1973 until his retirement in 2006, visiting researcher at the IMF and the World Bank from 1977 to 1978. From 1990 to 1994, he was dean of law at Bremen University. He holds the title of Doctor Iuris from the University of Frankfurt am Main/Germany. In November/December 2010, he has taught comparative contract law as 'distinguished chair professor' at National Taiwan University.

In his different capacities, he has been co-author of or contributor to the following codes, laws and other legal texts: Législation minière de la République Centrafricaine; Code Forestier de la République Centrafricaine, Code des Investissements de la République Centrafricaine, The law on sovereign borrowing of the Central African Republic, La Convention d'Établissement Type en République Centrafricaine; Civil Codes of: Albania, Azerbaijan, Georgia, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan; Law on Contracts of the PRChina, Law on Entrepreneurs of Georgia; Joint Stock Company Law and Law on Companies with Limited Liability of Ukraine; Laws on Arbitration of: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Uzbekistan, Turkmenistan; Model Law "On Joint Stock Companies" for CIS Member States and Commentary, for the CIS Interparliamentary Assembly.

His more than 230 publications cover a wide range of legal topics. A selection:

- a) on international public law: Nationale Souveränität – Versuch über Ende und Anfang einer Weltordnung, 1991;
- b) on theory of law and codification: Gesetz und Geschichte, 1996 (also in Chinese and Russian);
- c) on judicial and legal reform in Germany: (with Eylmann, Kirchner, Kramer und Mayen), Zukunftsfähige Justiz, expert report for the Ministry of Justice of Lower Saxony, Hannover 2004; An Economic Analysis of the Law and Practise of the Notary (in German, English and Russian), 2009;
- d) on legal reform in general: Legal Co-operation: Universality and Context, 2004 (also in Russian and German); Rechtsreformen entlang der Seidenstrasse, 2006; (with Chanturia and Schramm (eds.)), Probleme des Vertragsrechts und der Vertragssicherung in den Staaten des Kaukasus und Zentralasiens, 2009 (also in Russian); The Economic Relevance of Notarial Authentic Instruments (Study for the UINL, 2017 (in Chinese, English, French, Russian, Serbo-Croatian)
- e) on arbitration: (with Galkanow, Titow, Nedwediewa (ed.)), Textbook on International Arbitration (Russian), Ashgabad, 2008, electronic version under

www.cac-civillaw.org and www.science.gov.tm; The Not-So-Silky Road to Commercial Arbitration in Post-Soviet Countries, in: ICC Publication 693 (liber amicorum Robert Briner), 2005, pp. 463 ss; L'Arbitrage des Différends Relatifs aux Investissements en Afrique Francophone au Sud du Sahara: L'OHADA et le CIRDI in: Geimer/Schütze (Hrsg.), Festschrift für Athanassios Kaissis, 2012, pp. 487- 496; (with Diora Ziyaeva), Turkmenistan, in: K. Hober/Y.Kryvoi, Law and practice of International Arbitration in the CIS Region; Rethinking Investment Arbitration, in: German Arbitration Journal (SchiedsVZ), 2015, pp. 25 ss.; Anpassungen in Kontinuität: Zu den neuen ICSID Arbitration Rules bei bleibenden Herausforderungen für die Zukunft der Investitionsschiedsgerichtsbarkeit, SchiedsVZ 2025, S.65-73

f) on the interrelation of public and private law: Der Staat im Zivilrecht, in: Wirtschaft und Recht in Osteuropa 2008, S. 193 ff; Die Geltung der Verfassung in Privatrechtlichen Beziehungen, in: Wirtschaft und Recht in Osteuropa 2009, S. 129 ff.

In the course of his work Rolf Knieper has been awarded with the following honours: 1988 Officier de la Médaille de la Reconnaissance Centrafricaine; 1999 Doctor Honoris Causa, University of Tbilissi, Georgia, 1999; 1999 "GAIRAT" of Turkmenistan; 2001 Honorary Citizen of Georgia; 2001 "Merited Lawyer" of Mongolia; 2002 Doctor Honoris Causa of Turkmenistan; 2001 Honorary Citizen of Georgia; 2001 "Merited Lawyer" of Mongolia; 2002 "Merited Lawyer" of Mongolia; 2002 Doctor Honoris Causa, University of Chisinau, Moldova; 2004 Honorary Professor of the Kazakh Humanitarian Law University; 2006 Order of Merit of the Federal Republic of Germany; 2010 Order of Kazakhstan "Dostyk"; 2014 Honorary Professor of the Caspian Social University of Kazakhstan; 2021 Gold Medal of the Ivane Javakhishvili Tbilisi State University.

He is listed on the Panels of Arbitrators of ICSID, BAC/BIAC, SCIA, and the Kazakhstan International Arbitrage, and is a member of the German Arbitration Institute (DIS).

Beyond arbitration, he has decades of experience in legal reform projects worldwide, advising governments in Africa, Central Asia, and Eastern Europe on civil codes, commercial laws, investment and arbitration legislation, and judicial reforms, often under World Bank, EU, and German cooperation programs.

Academically, Dr. Knieper was professor of law at the University of Bremen (1973–2006), visiting scholar at Harvard Law School, and visiting researcher at the IMF and World Bank. He has authored or co-authored numerous civil codes, arbitration laws, and over 230 publications on international law, codification, legal reform, and arbitration.

His working languages are German, English, and French. He has received multiple national and international honors, including the Order of Merit of the Federal Republic of Germany (2006), honorary doctorates from universities in Georgia and Moldova, and awards from Turkmenistan, Mongolia, Kazakhstan, and others.

KEYNOTE ADDRESS: APPROACHES TO ARBITRATION IN TURKIC STATES

Prof. Dr. Rolf Knieper

It is a real privilege and pleasure for me to introduce Global Arbitration Review's event on arbitration in the Turkic States. In the last thirty years or so I had the honour to assist the Central Asian of them in introducing and then modernizing arbitration, and I remember well, how difficult it was to convey the very concept in countries where the term arbitration was understood as meaning State arbitration courts which played an important role in deciding conflicts in the course of the execution of soviet five-year economic plans. Still, I needed help to be up-to-date in the fast developing legislative and institutional setting, and found it immediately when I asked Elchin Usub from Azerbaijan, Assel Duissenova from Kazakhstan, Shamil Asyanov and Ilkhom Azizov from Uzbekistan, and for a different region Selim Dündar und Ali Gürsel from Türkiye. I thank them all sincerely not without underlining that the responsibility for my paper and possible shortcomings are mine, both for investment and for commercial arbitration.

When the Soviet Union imploded in 1989, most of the newly independent Turkic States that had been part of it were fast to adhere to ICSID as the most important system for administering investment arbitration proceedings: Azerbaijan and Turkmenistan ratified the ICSID Convention as early as 1992, followed by Uzbekistan in 1995, while it took Kazakhstan until 2000 Kyrgyzstan until 2002 to ratify. At that period and without any connection to the developments in the post-soviet world, also Türkiye had embarked on comprehensive reforms of its legal system, and its adherence to the ICSID Convention in 1989 can be considered part of this reform.

As to the substantive international law of investment protection, the Turkic States were also fast to conclude dozens of investment treaties and to adhere to the Energy Charter Treaty. No pattern of preference for concluding such treaties among themselves can be distinguished. It is true that Azerbaijan, Türkiye and Uzbekistan have BITs in force with all other Turkic States, the first ones dating back to the year 1996 but that is also true for the BITs with for instance China, Germany and a great number of other States, whereby the one between Germany and Türkiye of 1965 seems to be the earliest one. I was unable to identify a BIT in force between Turkmenistan and Kazakhstan and between Turkmenistan and Kyrgyzstan. As to the Russian Federation, the Turkic States, seemingly with the exception of Kyrgyzstan, have put BITs into force as from the year 2000. The BITs refer to a variety of arbitration institutions.

Over the years, all Turkic States were exposed to claims against them brought by a variety of investors from a variety of regions. Apparently, they defended

themselves successfully in a small majority of cases.¹ No preponderance of inner-Turkic disputes is discernible.

Things were less straightforward for commercial arbitration. While Türkiye had ratified the New York Convention in 1992 and enacted a Law on International Commercial Arbitration, based on the UNCITRAL Model, in 2001, post-soviet Turkic States, not unlike many other newly independent States, started a process which I have called “*The not-so-silky road to commercial arbitration*” in an article of 2005 for a *liber amicorum* of late Robert Briner, then president of the ICC ICA,² with whom I have worked in more than one country to assist in the process.

Since that time, legislative and institutional reforms have undoubtedly gained momentum. By now, all Turkic States are members of the New York Convention, with Turkmenistan having joined in 2022. These were very important steps for the finality of at least foreign arbitral awards, as all Constitutions of the Turkic States recognize the supremacy of treaties of international law over national procedural codes and statutes. Therefore, the risk of non-recognition or non-enforcement of arbitral awards for parochial reasons such as the non-compliance with national law or non-arbitrability has been greatly reduced.

Further, Turkmenistan (in 2016), Uzbekistan (in 2021) and Azerbaijan (in 2024) have enacted laws which are considered by UNCITRAL as conforming to the UNCITRAL Model Law. The Law of Kazakhstan “On Arbitration”, dated 8 April 2016, as well as the Law of Kyrgyzstan “On Arbitration Courts”, dated 30 July 2002, are also inspired to a great deal by and based on the UNCITRAL Model Law. However, due to a number of deviations and flaws, concerning institutional issues and limiting the autonomy of parties, these two laws are not recognized as being in conformity with the Model. Discussions on a national level are under way in view to making the countries more arbitration-friendly.³

The discussions include the question whether the legislative and institutional frame should include both national and international arbitration. Overall, no harmonized approach is discernible. Türkiye introduced modern national arbitration as early as 1927, in Book 8 of the Civil Procedure Code (Art. 516-536) and added a specific Law on International Arbitration in 2001. Similarly, Turkmenistan provides for national arbitration as part of the Civil Procedure Code of 2016 (Attachment No.1) and for international arbitration in the Law “On

¹ G. Karimov, Azerbaijan, in *Law and Practice of International Arbitration in the CIS Region* 117 (K. Hober & Y. Kryvoi eds., 2017); A. Duissenova & M. Karaketov, Kazakhstan, in *Law and Practice of International Arbitration in the CIS Region* 206 (K. Hober & Y. Kryvoi eds., 2017); R. Knieper & D. Ziyaeva, Turkmenistan, in *Law and Practice of International Arbitration in the CIS Region* 376 (K. Hober & Y. Kryvoi eds., 2017); F. Otakhonov & A. Umirdinov, Uzbekistan, in *Law and Practice of International Arbitration in the CIS Region* 481 (K. Hober & Y. Kryvoi eds., 2017).

² R. Knieper, *The Not-So-Silky Road to Commercial Arbitration in Post-Soviet Countries*, in *International Law, Commerce and Dispute Resolution—Liber Amicorum in Honour of Robert Briner* 463 (G. Aksen et al. eds., 2005).

³ Duissenova & M. Karaketov, Kazakhstan, in *Law and Practice of International Arbitration in the CIS Region* 169 (K. Hober & Y. Kryvoi eds., 2017); A. Korbeinikov & A. Inshakova, Kyrgyzstan, *Baker McKenzie Int'l Arbitration Yearbook 2023–2024*, Global Arbitration News, <https://www.globalarbitrationnews.com/2024/01/01/baker-mckenzie-international-arbitration-yearbook-2023-2024-kyrgyzstan/> (last visited Aug. 16, 2025).

International Commercial Arbitration”, equally of 2016. Kazakhstan enacted separate laws “On Arbitration Courts” and “On International Commercial Arbitration” in 2004, which were replaced in 2016 by one Law “On Arbitration”, encompassing both national and international disputes. Uzbekistan still maintains two laws for both spheres, the “Law on Arbitration Courts” of 2007 for national cases, and the “Law on International Commercial Arbitration” of 2021. Azerbaijan overhauled its Law on International Arbitration of 1999 and enacted a new “Law on Arbitration” in 2024, which covers both national and international disputes. Finally, Kyrgyzstan opted from the beginning to merge national and international arbitration in its “Law on Arbitration Courts” of 2002.

Based on these different legislative acts, a great diversity of institutions emerged in all States. They range between the situation in Uzbekistan, where hundreds of arbitration courts were created, often linked to professional institutions or even individual law firms, of which around 60 in Tashkent alone, while in Azerbaijan a first institution, the ‘Baku Arbitration Centre’ was registered in early 2025. In Uzbekistan, many of these courts remained ephemeral, although quite an impressive number of purely national cases were handled as from 2008, ranging between 5000 and 7000 cases per year until 2023. It seems, however, that a consolidation is underway.

A look into the statistics of well-established institutions documents a clear potential. I have chosen the examples of the ‘Kazakhstan International Arbitrage’ (KMA), established in 2005 as a limited liability partnership, and the Istanbul Arbitration Centre (ISTAC), which was established in 2014 by law as an independent and impartial institution.

On average, KMA considers 50 to 60 cases annually, of which around 50% concern domestic disputes, while – in 2023 – at least one of the parties was from a foreign State, China leading the way with 7 cases, followed by Russia, the Netherlands, the USA and Afghanistan with 3 cases each, Türkiye 2 and Kyrgyzstan and Uzbekistan 1 case each, as well as six other countries with 1 case each.⁴

ISTAC statistics do not provide numbers but discloses that in 2023 and 2024, 83% and 87% of the cases respectively were domestic, and the remaining 17% and 13% concerned disputes with parties from the USA, United Arab Emirates, Russia, PR China, Germany, Kazakhstan, Kyrgyzstan, Uzbekistan and eight other countries. Apparently, no pattern of frequency of intra-Turkic States disputes emerges.⁵

The evolution of modern investment and commercial arbitration is linked to the general evolution of the rule of law based on the separation of a public and a private sphere or the pursuit of general social interests by the State, financed primarily by public revenues, and the legitimate pursuit of private interests in market relations, framed by law. In principle, this concept of a political economy emerged gradually as from the middle of the 19th century in Türkiye but also – partly influenced by Russia – in Central Asia, reducing the preponderance of law inspired by religion. In

⁴ Statistics provided by KMA (A. Duissenova).

⁵ Istanbul Arbitration Centre (ISTAC), <https://istac.org.tr/en> (last visited Aug. 16, 2025).

Türkiye, one of the central pieces of modernization and secularization was the reception of Swiss law – the Civil Code and the Law of Obligations – in 1926, while the Central Asian Turkic States oriented themselves, under Russian influence, towards pandects of the German type. Of course, this evolution was deviated both in Russia and Central Asia by the Soviet system, only to emerge again after the implosion of the Soviet Union. Today, private property, the freedom of contract, market relations are recognized in Civil Codes, Civil Procedure Codes and even embedded in Constitutions both in post-soviet (Turkic) States and in Türkiye. It is equally recognized that the State has a double vocation. It has the legitimate monopoly of public power, of *puissance publique*, and the duty to create and maintain public infrastructure as common goods in accordance with constitutional and other public law, and may at the same time participate in market relations in accordance with private law. When it chooses to do the latter, it is treated like any other actor on the market.

After having assisted in drafting Civil Codes in the Central Asian States and after having given expert opinions on Azeri and Turkmen law in international disputes, I can confirm that the Codes provide for an appropriate legal base for contracts in general and for contracts of sale, of construction, of work, of services and others.

In investment arbitration, an investor may hold the State responsible for an asserted illegal exercise of public, sovereign power and internationally wrongful acts; and in commercial arbitration, parties in market relations may convene – as part of their overall party autonomy – to bring their disputes before a privately established panel of arbitrators, whose decisions are recognized and enforceable under public international law such as the New York Convention, as well as under respective national laws of procedure. As the State may participate in market relations, it may be a party in both investment and commercial arbitration.

I feel compelled to say this in impermissible brevity, firstly, because these fundamentals, which were and are so crucial for the dynamics of modern societies, seem to be endangered by a new species of politicians/businesspeople who blur the lines to their private benefit and to the detriment of the public good, and, secondly, because they allow to identify a certain number of issues, which remain problematic in the substantive and procedural codification of some of the Turkic States despite their general quality, with important repercussions for the functioning of arbitration. These problems are mostly due to the heritage of the soviet system with its omnipresent and totalitarian State.

In this tradition, some Central Asian States limit arbitrability and the exercise of party autonomy when a presumed State interest is concerned, also in the sphere of commercial transactions, where – in accordance with substantive civil and commercial law – the State acts and should be treated like any other actor on the market. Of course, the time has passed when the Constitutional Court of Kyrgyzstan considered arbitration anti-constitutional because encroaching upon the authority of the State judiciary, and arbitration is generally recognized as being constitutional. In this perspective, I recommend to reform the existing legislation and to generalize the procedural party autonomy by extending the possibility of the choice of law to the choice of arbitrators, of the seat and of language without restriction. I hasten to add that this has nothing to do with restrictions of arbitrability in consumer

contracts, as might be insinuated, because consumer protection is outside purely commercial dealings.

Further, Central Asian States except Turkmenistan still distinguish several forms of property, with so-called public property reserved for the State and other territorial public bodies. Again, I believe that in market economies one single form of property should exist. When the State or the municipalities act in their capacity as holder of sovereign power, their property should be dedicated and earmarked for the public purpose.

The issue leads to another controversial topic, which is of considerable practical relevance in international relations and arbitral proceedings. In accordance with their ideology, soviet States insisted on absolute immunity of States, both for *acta iure imperii* and *iure actionis*, and of their property. With the practical emergence and theoretical recognition of the double vocation of the State as holder of *puissance publique* and as actor on the market, it was only consequential to distinguish between the two types of “*acta*” attached to them and to relativize immunity. After first efforts of national legislation the “UN Convention on Jurisdictional Immunities of States and Their Property” was adopted in 2004.⁶ Of the Turkic States, only Kazakhstan has ratified the Convention and has translated its content into national law, as Chapter 46 of the Civil Procedure Code. Türkiye has incorporated the concept of relative immunity into Article 49 of its Law on International Private Law, and Turkmenistan has adopted it in Chapter 45 of the Civil Procedure Code. In contrast, Article 362 of the Civil Procedure Code of Uzbekistan still reads (in unofficial English translation): “*Filing a claim to a foreign State, securing a claim, and foreclosure on the property of a foreign State located in the Republic of Uzbekistan may be allowed only with the consent of the competent authorities of the corresponding State.*” I believe it would be beneficial for the cause of arbitration as well as for the integration of global commercial relations and investment to align national legislation to the UN Convention.

Finally, I want to point to an issue that has caused considerable problems both in investment and in commercial disputes: The Central Asian Turkic States, not unlike many other post-soviet States, have adopted legislation on different forms of economic entities which correspond, broadly speaking, to globally used concepts of legal persons such as Joint Stock Companies, Limited Liability Companies, Cooperatives, and others. In addition, Azerbaijan has enacted a special law on legal entities of public law, which establishes a clear structure and separation from the State.

It would have been consistent with these legislative approaches to terminate the soviet tradition and evacuate the soviet-type State Enterprises, State Companies and State Concerns either by liquidation or by reorganization. Unfortunately, that has not been done. On the contrary, more such State Companies have been established, particularly in sectors such as extraction industries, which are commercial but at the same time considered as being of strategic interest. Obviously, such sectors attract foreign investors and are naturally destined to do business globally.

⁶ R. Knieper, Reforms in the International Law by the Way of State Immunity Example, *Democracy & Law*, no. 1, 2009, at 143 (English) (also Turkmen at 34; Russian at 102).

Unsurprisingly, both investment and commercial disputes arise in such constellations. They are vastly complicated and exposed to legal uncertainty by the facts of the structure of the State Companies, their close relations to the State, and their creation by decree: While there is no doubt that in their countries of origin, they are considered separate legal persons in their own right, international principles such as 'alter ego' and/or 'piercing the corporate veil' have been tried out to construe direct State liability. Both States and investors or commercial partners would profit from legal-political decisions to leave the soviet heritage behind and to reorganize these State Companies in line with modern types of legal persons, which are by now provided for in all Central Asian and Turkic States.

I will stop here, and hope to have been able to convey the fascinating reality and potential of investment, commerce and dispute resolution in all Turkic States, their shortcomings and achievements. I believe, however, that the driving forces in the region are less nourished by ethnic bonds but by a peaceful integration into global markets and the emerging global law of investment and commercial arbitration such as the ICSID Convention and the models and conventions of UNCITRAL.

NEW ARBITRATION LAW: CAN THE SPRING RISE HIGHER THAN THE SOURCE?

*Prof. Kamalia Mehtiyeva**

The author expresses her gratitude to the Presidential Administration for their trust in consulting her on the draft Law on Arbitration and to Rustam Gasimov and Araz Poladov, both from the Department of Legislation and Legal Policy of the Presidential Administration, as well as to Samir Mahmudov, the Executive Director of the Center for Legal Examination and Legislative Initiatives (HEQT) for the fruitful brainstorming sessions and cooperative approach in preparing the law.

The new Azerbaijani law on arbitration was promulgated on 25 January 2024 and is largely based on the UNCITRAL Model Law. This article, which does not intend to make an inventory of the provisions of the Law, will rather focus on the genesis of the new law (1), which is necessary to understand the scope of the law (2) and will then attempt to highlight and explain its existing deviations from the UNCITRAL Model Law (3).

I. Genesis of the Law

It comes as no surprise that the new Azerbaijani Law on Arbitration (the 'Law')¹ is based on the UNCITRAL Model Law.² What does surprise however is such belated birth of the law or, more accurately said, belated renewal of the legislation (as the new Law on Arbitration abrogates legislation adopted in 1999). Indeed, neighboring countries with whom Azerbaijan shares a historical past, sometimes coupled with a common cultural heritage and geopolitical vision, have been ahead of the game in aligning their legislation on arbitration to the UNCITRAL Model Law.³

Azerbaijan chose to let the Law see the light of day when the law had reached maturity. As a result, the Law was forged by recent economic developments and the metamorphosis of the energy industry, including the transition to the green economy. The rise of international arbitration in the region, both as a dispute resolution mechanism and as a field of law, has also been a conducive factor to reform the legislation on arbitration.

The importance of these considerations is not to be taken for granted as they mark a paradigm shift in the country's perception of arbitration and of the place of

* Professor of Law, University Paris-Est Créteil, France; President of the Azerbaijan Arbitration Association.

¹ Law on Arbitration, No. 1077-VIQ (Jan. 25, 2024), https://heqt.gov.az/uploads/reports/1707134994_Law%20on%20Arbitration_%20certified_25.01.2024.pdf.

² UNCITRAL Model Law on International Commercial Arbitration (1985), *with amendments as adopted in 2006*.

³ For example: The Turkish International Arbitration Law (Law No. 4686), based on the UNCITRAL Model Law, was adopted on 21 June 2001. The law on arbitration courts in Kyrgyzstan enacted on 30 July 2002, is mostly based on the UNCITRAL Model Law. Kazakhstan adopted an arbitration law based on the UNCITRAL Model Law (Law No. 488-V) on 8 April 2016.

arbitration in the legal landscape both for domestic and international arbitration cases, which is emphasised by the scope of the Law and its deviations from the UNCITRAL Model Law.

II. Scope of the Law

The renewed perception of arbitration is reflected in the ambit of the Law, which encompasses both domestic and international arbitration in addition to distinguishing *ad hoc* and institutional arbitration. More than the distinctions themselves, it is their interaction that arouses legal curiosity and deserves a critical analysis.

The first distinction is between *ad hoc* and institutional arbitration which undoubtedly echoes the pedagogical virtue of the new law.⁴ Indeed, given the limited development of arbitration in Azerbaijan until now, the lawmaker deemed it necessary to explicit this distinction. Since there are no arbitral institutions in Azerbaijan, the Law, in the part on institutional arbitration, addresses the future. In other words, the Law applies to both *ad hoc* and institutional arbitration, except where there is an explicit derogation in favor of future institutional rules on arbitration. This is the case for all the ancillary measures regarding the appointment and recusation of arbitrators (Arts. 22.4, 23.2, and 25.4). The Law thus serves as a fundamental pillar for the forthcoming novelties in the field of arbitration, namely the establishment of arbitral institutions in Azerbaijan on one hand, and a better understanding and encouragement to resort to foreign arbitral institutions, on the other. In this respect, the Law provides detailed procedural modalities for *ad hoc* arbitration and leaves it to arbitral institutions to foresee such modalities in their rules.

Concerned however that the *ad hoc* arbitration would lose attractiveness compared to institutional arbitrations (as institutions may update and improve their arbitration rules more easily than a legislator), the Law has demonstrated its modernity as it allows the parties to an *ad hoc* arbitration 'to apply expedited arbitration rules to the arbitral proceedings' (Art.12.4). In the absence of a different agreement between the parties in respect of the applicable rules, the 'expedited arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) shall apply'.⁵

However, modernity is not without precautions, which the Law has manifested in explicitly excluding *ad hoc* arbitration for domestic disputes. This is where the distinction between *ad hoc* and institutional arbitration interacts with the second distinction within the Law, which is between domestic and international arbitration. In that respect, Article 12.2 clearly states that '*ad hoc* arbitration can only be organised in relation to international arbitration'. Such exclusion is based on pragmatic considerations. The resolution of domestic commercial disputes via arbitration certainly carries two advantages:

⁴ The term is a tribute to two giant legal minds: Jean Carbonnier, *Sur la loi pédagogue*, in FLEXIBLE DROIT, POUR UNE SOCIOLOGIE DU DROIT SANS RIGUEUR 155 (10th ed. 2001); Philippe Malaurie, *L'effet prophylactique du droit civil*, in MÉLANGES J. CALAIS-AULOIS 669 (2004).

⁵ U.N. Comm'n on Int'l Trade L., UNCITRAL Expedited Arbitration Rules (2021).

- Intrinsically, it benefits the users of arbitration and arbitration as a system of justice, which is the level of specialisation of arbitrators.
- Extrinsically, it benefits State courts which see their workload ease with the development of arbitration as an alternative to the State justice.

The exclusion of *ad hoc* arbitrations for domestic disputes is part of a policy of small steps and is aimed at not leaving domestic arbitration without an institutional framework and guidance as long as arbitration is not fully anchored in the legal system of the country and in the perception of litigants as an alternative to State justice.

III. Deviations from the UNCITRAL Model Law

'Modernity is sliding towards the East'.⁶

While based on the UNCITRAL Model Law, the Law is inspired by the most modern and progressive trends in international arbitration, essentially those ensuring that arbitrators have priority in examining their jurisdiction and in assessing the validity and scope of the arbitration agreement. Other deviations driven by national peculiarities are also worth noting.

A. Enhanced protection of the negative effect of the competence-competence principle

With respect to the priority of arbitrators to rule on their jurisdiction, the Law enshrines the competence-competence principle acknowledging, in a classical way, the 'competence of the arbitral tribunal to rule on its jurisdiction' (Art. 25 of the Law).

As to the negative effect of the competence-competence principle,⁷ the Law opts for an enhanced protection of the principle. While the UNCITRAL Model Law provides for the State court's obligation to refer the parties to arbitration 'unless it finds that the agreement is null and void, inoperative or incapable of being performed' (Art. 8, UNCITRAL Model Law), the Law enlarges the scope of the exception to cases where the arbitration agreement is 'manifestly void' and 'manifestly inoperable or incapable of being performed' (Art. 17.1 of the Law). Thus, the rule of priority in favor of arbitration is unambiguously and largely recognised.⁸

⁶ The Washington College of Law Center on International Commercial Arbitration Annal Lecture by Emmanuel Gaillard, *Seven dirty tricks to disrupt an arbitration and the responses of international arbitration law*, 39 ARB. INT'L 361 (2023): *'Seven dirty tricks to disrupt an arbitration and the responses of international arbitration law'*.

⁷ On the negative effect of the competence-competence principle, see Emmanuel Gaillard, *L'effet négatif de la compétence-compétence*, in *ÉTUDES DE PROCÉDURE ET D'ARBITRAGE EN L'HONNEUR DE JEAN-FRANÇOIS POUDRET* 387 (J. Haldy et al. eds., 1999); EMMANUEL GAILLARD, *LEGAL THEORY OF INTERNATIONAL ARBITRATION* ¶¶ 72-81 (2010).

⁸ On the 'manifest' requirement, see Emmanuel Gaillard & Yas Banifatemi, *Negative Effect of Competence-Competence: The Rule of Priority in Favour of the Arbitrators*, in *ENFORCEMENT OF ARBITRATION AGREEMENTS AND INTERNATIONAL ARBITRAL AWARDS – THE NEW YORK CONVENTION PRACTICE* 257 (Emmanuel Gaillard & Domenico Di Pietro eds., 2008).

B. Law applicable to the arbitration agreement

Consistent with the UNCITRAL Model Law (Art. 16.1), the Law also affirms the independence of the arbitration agreement,⁹ which ‘should be construed as an agreement independent of the other terms of the contract’ (Art. 25.1 of the Law).

Devoted to the full autonomy of the arbitration agreement, the Law emancipates the arbitration agreement from specific national laws. Indeed, Article 25.5 of the Law states:

[I]n the absence of the agreement by the parties on the law applicable to the arbitration agreement, ... the law applicable to the arbitration agreement shall be determined by the arbitral tribunal.

This provision calls for two observations.

- From a conceptual point of view, the Law adopts a similar approach to the one sometimes used with respect to the law applicable to the merits of the dispute, *e.g.* such provision may be found in national laws such as in the French Code of Civil Procedure (Art. 1511),¹⁰ as well as institutional rules, in the ICC Rules (Art. 21) which allow arbitral tribunals, in the absence of an agreement between the parties upon the rules of law to be applied to the merits of the dispute, to ‘apply the rules of law which it determines to be appropriate’.
- From a pragmatic point of view, the clause is imbued with a spirit favorable to arbitration. Based on a legitimate premise that arbitral tribunals would likely rule in favor of their competence, the Law frees arbitrators from a nexus either to the law of the seat or the law of the main contract.¹¹ Arbitrators remain free to rule on the validity or the scope of the arbitration agreement by applying one of the two laws, whichever leads to a more favorable outcome, without however being bound by any of them. Arbitrators may also rule on the questions related to the arbitration agreement by applying the substantive rules method, as in the famous *Dow Chemical* arbitral award.¹² Cutting the nexus with the law of the seat or the law of the contract when considering the law applicable to the arbitration

⁹ GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION 396 (3d ed. 2021).

¹⁰ On the meaning of this provision under French law, see *e.g.* Eric Loquin, *L'application par les tribunaux arbitraux internationaux des règles de droit qu'ils estiment appropriées*, in MÉLANGES EN L'HONNEUR DU PROFESSEUR PIERRE MAYER 533 (2015).

¹¹ The autonomy of the arbitration agreement from the main contract is a well-established principle since the French Court of Cassation ruling in the *Gosset* case in 1963, also recognised in England in the *Harbour v Kansa* case.

¹² In deciding whether or not to extend the arbitration agreement to a third party, the court stated, in view of the law chosen by the parties in the substantive contract, that ‘while this law and these rules of law may, in certain cases, concern both the substance of the dispute and the arbitration clause, it is perfectly possible that in other cases the latter, by virtue of its autonomy - which concerns not only its validity, but also its scope and effects - is governed by its own sources of law, distinct from those governing the substance of the dispute’: ICC Award n° 4131 (1982). One of the fundamental cases on the application of substantive rules on validity, termination and efficiency of arbitration agreement is *Dalico* rendered by the French Court of Cassation (first civil chamber), 20 Dec. 1993: “by virtue of a substantive rule of international arbitration, the arbitration agreement is legally independent of the main contract containing or referring to it, and the existence and effectiveness of the arbitration agreement are to be assessed, subject to the mandatory rules of French law and international public policy, on the basis of the parties’ common intention, there being no need to refer to any national law”.

agreement, the Law on Arbitration seeks to prevent signatories of arbitration agreements from relying on domestic law to challenge the validity of the arbitration agreement when they have freely accepted it.

C. Grounds for setting aside the award

The core vital element of the arbitral process lies in post-arbitral procedures. In that respect, under the UNCITRAL Model Law, one of the grounds to set aside arbitral awards is the conflict with the public policy of the seat of the arbitration (Article 34.2.b(ii)). The public policy motive is formulated differently in the Law encompassing not only the public policy of the country, which is confined to the 'fundamental legal principles that are inherently imperative, universal and of significant societal importance, underpinning the political, economic and legal framework of the Republic of Azerbaijan', but also the Constitution of the Republic of Azerbaijan (Art. 54.2.2.2 of the Law). The letter of the Law, albeit different from the Model Law, does not deviate from its spirit. The different wording is easily explained by the fact that public policy is not a clear-cut concept in Azerbaijani law. In essence, the definition given by the Law reveals the components of the international public order of the State where setting aside is being sought.¹³ Such detailed definition manifests the prudence of the authors of the Law determined to avoid that the setting aside procedure becomes an 'appellate court' to revise the merits of the case.

This is consistent with the spirit of the Law which, throughout its provisions, emphasises the two functions of State courts in arbitral justice, which are assistance and supervision (Art. 10 of the Law). Such intent is also echoed in the way these functions are allocated, as the recognition, enforcement of foreign arbitral awards as well as the setting aside of domestic awards belong to the exclusive competence of the Supreme Court (Arts. 10.4, 55.1, 56.1.1, 56.1.2, 56.2, 56.3 of the Law). This has a double justification:

- Concentrating the post-award litigation in the hands of the Supreme Court corresponds to a pragmatic approach consisting of not grasping everything at once, as it is unrealistic to expect a sufficient level of specialisation of judges facing requests to enforce or set aside arbitral awards.
- Allocating these functions to the Supreme Court allows to reduce the length of the post-award proceedings as the decisions of the Supreme Court on recognition or setting aside are not appealable. This second feature certainly carries the disadvantage that the litigants are in fact deprived of an opportunity to challenge the Supreme Court's decision. This disadvantage is however mitigated by the intention to achieve a high level of specialisation by the Supreme Court judges, which will allow to implement the law consistently with the spirit of the UNCITRAL Model Law.

Conclusion

The law expresses a genuine awareness on the part of the public authorities of the role of arbitration in resolving both transnational and domestic commercial

¹³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, para. 2(b), June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.

disputes. For the former, making this dispute resolution mode available to transnational litigants may play a favorable role in attracting foreign investors. As for the latter, development of domestic arbitration is expected to lighten the workload of commercial courts, in addition to offering an alternative justice specialized on commercial disputes.

This awareness is also expressed through the immersion of the Law into the institutional landscape of the country not only regarding the post-award procedures discussed above, but also with respect to the provisional measures,¹⁴ thus expressing another pre-existing concern within the legal and business community as to the lack of available mechanisms to recognize provisional measures issued by arbitral tribunals seated outside of Azerbaijan. The Law strives to promote the effectiveness of interim measures issued in connection with arbitration proceedings by concentrating the two poles of litigation on provisional measures – on one hand granting provisional measures by State courts in aid of arbitration, whether prior the constitution of arbitral tribunal or during the arbitral process and, on the other hand, recognition by State courts of provisional measures taken by arbitral tribunals – in the hands of only two courts: the commercial court and the appellate court of Baku.¹⁵

These expectations, of a legal and economic nature, are thus crystallized not only in this law but also, more prospectively, in the imminent intention to create an arbitration institution in the country.

¹⁴ On the same date as the Law on Arbitration, the legislator adopted a law amending certain provisions of the Civil Procedure Code to adjust the latter to the changes made by the Law, namely regarding provisional measures. <https://president.az/az/articles/view/63312>

¹⁵ The ‘commercial court the jurisdiction of which covers the city of Baku’ (Arts. 10.1, 18 of the Law) is competent to order provisional measures. As to the recognition and enforcement of interim measures issued by arbitral tribunals, the competent court is, irrespective of the place of arbitration the ‘appellate court the jurisdiction of which covers the city of Baku’ (Arts. 10.3, 32 of the Law).

THE STRATEGIC ROLE OF CONSTRUCTION LAW IN TÜRKİYE: DISPUTE RESOLUTION, PUBLIC PROJECTS, AND INVESTMENT ARBITRATION

*Assoc. Prof. Dr. A. Eda Manav Özdemir**

Abstract

This article explores the multifaceted strategic role of construction law in Türkiye, emphasizing its critical function in supporting national connectivity, economic development, and international investment. As Türkiye continues to expand its transportation infrastructure through ambitious public projects, a robust legal and regulatory framework has become essential to ensure compliance, safety, and effective governance. This study offers a comprehensive view of how construction law functions to facilitate sustainable development and to safeguard investment interests in Türkiye and beyond.

Introduction

The Ministry of Transport and Infrastructure of the Republic of Türkiye has spearheaded the implementation of globally scaled transportation and communication projects across the country as part of its vision for a strong and prosperous nation. With a focus on logistics, mobility, and digitalization, Türkiye is committed to developing a scientifically grounded, environmentally conscious, sustainable, and culturally sensitive infrastructure network.¹

A cornerstone of this strategic vision is the **Transport and Logistics Master Plan**, finalized in April 2022. This plan provides a comprehensive roadmap for infrastructure investment and policy planning up to the year 2053. It introduces rational prioritization tools based on mathematical modelling and serves as a guiding framework for institutions and stakeholders in the sector, reflecting a participatory and forward-looking approach.²

Over the past two decades, consistent and large-scale investments in the transport sector have significantly enhanced the quality of life for citizens and positioned Türkiye as a key regional and global transit hub. Within this long-term framework, regulatory and investment priorities have been clearly defined to support continued development.³

Guided by the belief that stability is the foundation of development and growth, Türkiye remains firmly committed to expanding and modernizing its transport and infrastructure network. The country aims not only to improve internal connectivity but also to strengthen its integration with international networks—thereby

* eda_manav@hotmail.com

¹ T.C. Ulaştırma ve Altyapı Bakanlığı [Ministry of Transport & Infrastructure], *2053 Ulaştırma ve Lojistik Ana Planı* (Oct. 25, 2022), <https://www.uab.gov.tr/uploads/pages/bakanlik-yayinlari/20221025-2053-ulastirma-ve-lojistik-ana-plani-tr.pdf>.

² Ibid.

³ Ibid.

reinforcing its established legacy in infrastructure development and solidifying its role in global logistics and construction.⁴

Foreign investments are of great importance for the economic and stable development of countries. In this context, investments in construction and infrastructure projects are vital for accessing emerging markets and contribute to long-term economic growth. As part of the investment protection regime, bilateral and multilateral treaties provide the foreign investors the possibility of resorting to arbitration in case of disputes, thereby safeguarding investments and serving as a key mechanism for mitigating potential risks associated with such investments.⁵

Construction disputes typically involve a high degree of technical complexity that is specific to the construction sector. Familiarity with commonly used contract types, the expert disciplines frequently relied upon in construction disputes, and the relevant terminology can be a significant advantage. As the rise of construction disputes within the framework of public international law is a relatively recent development, there currently exists a relatively small pool of arbitrators with specialized expertise in this area. Selecting the appropriate arbitral tribunal is always crucial; in this context, the tribunal should possess experience both in public international law and in resolving construction-related disputes.⁶

This study first analyzes the strategic importance of construction law in Türkiye, then domestic legislative structure governing construction, including planning regulations, environmental and building inspection requirements, and occupational safety norms. It then provides a legal perspective on dispute resolution mechanisms, particularly arbitration, which plays an increasingly prominent role in both domestic and international construction conflicts. Special attention is paid to the role of the state in shaping arbitration practices, enhancing institutional capacity, and ensuring procedural fairness. Finally, the article assesses Türkiye's growing presence in international construction arbitration and underscores the importance of developing legal infrastructure and institutional expertise to support complex, cross-border construction investments.

I. The Strategic Importance of Construction Law In Türkiye

Construction law in Türkiye represents not only a technical legal discipline but a strategic pillar of national growth. The construction sector has long stood as a cornerstone of the economic development, consistently contributing to national output, creating employment, and fostering innovation across industries. From transport infrastructure to renewable energy, from public housing to urban regeneration, construction is the language through which Türkiye expresses its development vision.

⁴ Ibid.

⁵ Martin J. Valase & Matthew Buckle, *Investment Disputes in Construction and Infrastructure: A Look at Recent Cases*, Norton Rose Fulbright, <https://www.nortonrosefulbright.com/en/knowledge/publications/36fb04c8/investment-disputes-in-construction-and-infrastructure> (last visited Aug. 16, 2025). A. Eda Manav Özdemir, *Yatırım Tahkiminde İnşaat Hukukuna İlişkin Esaslar*, in *Uygulama ve Öğretide İnşaat Hukuku*, Prof. Dr. Fikret Eren'e Armağan 414 (Onikilevha, July 2023).

⁶ Manav Özdemir, *supra* note 5, at 417.

The construction sector is one of the most critical industries in Türkiye's national economy. It encompasses not only the construction of buildings such as housing, workplaces, and factories, but also infrastructure works such as roads, bridges, airports, and dams. Following the rural-to-urban migration in the 1950s, the rising demand for housing led to widespread residential development. One of the most longstanding contractual models used in housing construction has been the revenue-sharing construction agreements based on land share. In recent years, especially in projects led by Housing Development Administration of the Republic of Türkiye (TOKİ)⁷ and Emlak Konut Real Estate Investment Company,⁸ income-sharing construction agreements have also become highly prevalent.

The rapid growth of the global population in recent decades has significantly intensified the demand for infrastructure, particularly in urban areas. This demographic surge has placed immense pressure on existing infrastructure systems, raising concerns about their capacity to meet future needs. In many developing and underdeveloped countries, traditional financing mechanisms are increasingly inadequate to meet these infrastructure demands. As a result, there has been a marked shift toward exploring alternative and sustainable financial models. Among these, public-private partnerships (PPPs) have emerged as a widely adopted approach, allowing governments to leverage private sector investment and operational expertise in delivering large-scale infrastructure projects. PPPs enable the more efficient allocation of public resources while ensuring the continued provision of essential services.⁹

In countries like Türkiye, an emerging economy, PPP models have become instrumental in advancing infrastructure development. In order to meet the country's infrastructure needs swiftly, PPP model has played a significant role in the construction of airports, highways, hospitals, tunnels, and energy plants. This dynamic evolution of construction contracts in response to changing demands highlights the need for ongoing analysis and evaluation of new developments in the field. These models are supported by tailored legal frameworks and are adapted to the specific characteristics of each sector. In Türkiye, PPP arrangements are actively employed in sectors such as transportation, healthcare, energy, and telecommunications. Each project is structured in accordance with its technical and financial requirements, offering flexible and sector-specific implementation strategies. As such, PPPs not only facilitate infrastructure development but also contribute to economic resilience and long-term sustainability.¹⁰

⁷ Housing Development Administration of Turkey (TOKİ), <https://www.toki.gov.tr/en/> (last visited Aug. 16, 2025).

⁸ TOKİ, [Brochure] (Jan. 16, 2017), <https://www.toki.gov.tr/content/images/main-page-slider/16012017212815-pdf.pdf> (last visited Aug. 16, 2025).

⁹ Tayfun Varnalı, Kamu-Özel İşbirliği Modellerinin Altyapı Yatırımlarındaki Rolü: Küresel Analiz, Türkiye Örneği ve Başarılı Uygulama Örnekleri, 4(2) *Int'l J. Soc., Pol. & Fin. Researches* 99, 100 (2024), <https://dergipark.org.tr/en/download/article-file/3772569>. A Eyüp Kul, Kamu Özel İşbirliği Sözleşmelerinde Yükleniciye Verilen Projeye İlişkin Taahhütlerin Hukuki Niteliği, in *Uygulama ve Öğretide İnşaat Hukuku*, Prof. Dr. Fikret Eren'e Armağan 83 (Onikilevha, July 2023).

¹⁰ Varnalı, *supra* note 9, at 100.

PPP model aims to alleviate the financial and operational burdens traditionally borne by the public sector through shared responsibility. This collaborative framework enables the realization of public infrastructure projects—such as railway lines, hospitals, bridges, and highways—by leveraging both public and private sector capacities. The application of PPPs varies depending on the nature and type of the project within a given country, requiring context-specific structuring to address technical, financial, and legal considerations effectively.¹¹

Türkiye has implemented an ambitious infrastructure program that has transformed the country's connectivity, public services, and economic potential. Investments made during this period have become cornerstones of the country's strategic vision. Infrastructure has been positioned as a key driver of economic growth, employment generation, and national production. This strategy reflects a long-term vision in which core investments are viewed as catalysts for widespread prosperity, and Türkiye's strong infrastructure capital has increased the appeal of the country for international investors. Türkiye's mega-projects have even served as inspiration for other countries.

The National Transport and Logistics Master Plan 2053 has been announced by Ministry of Transport and Infrastructure, which not only addresses current infrastructure needs but also integrates the requirements of the future, including digitalization, new market trends, reduced logistics costs in production, green energy, and zero emissions. This planning illustrates that Türkiye's infrastructure strategy is dynamic and resilient to external shocks. Infrastructure development is viewed as a tool to ensure continuity of trade and services, even in periods of global instability, thereby reinforcing the country's strategic autonomy.¹²

This vision also reflects Türkiye's positioning not merely as a builder of large-scale projects, but also as an innovator in sustainable and technologically advanced infrastructure. By attracting investment in green technologies and smart city solutions, this forward-looking strategy contributes to the creation of a more sustainable and competitive economy.

II. Connecting the Nation and Beyond: Transportation Infrastructure

Transportation projects have formed the backbone of Türkiye's infrastructure agenda, creating transformative impacts on domestic and international connectivity. In aviation, Türkiye has taken significant steps toward becoming a global hub through its large-scale projects. In land transport, it has strengthened its network with massive bridge and highway projects connecting continents and cities. In maritime trade, Türkiye has invested in strategic port infrastructure to boost logistics capacity.

Investments in transportation and communication infrastructure play a critical role in promoting regional development by lowering transaction costs, enhancing competitiveness, and attracting private investment. In Türkiye, such expenditures have been shown to positively impact regional income and help reduce disparities

¹¹ Ibid.

¹² 2053 Ulaştırma ve Lojistik Ana Planı, *supra* note 1.

between developed and underdeveloped areas. Particularly, railway investments improve freight efficiency and interregional connectivity, contributing to balanced economic growth across regions.¹³

Türkiye's policy of turning its geographic position into a strategic advantage is most clearly seen in the Istanbul Airport, Marmaray Tunnel, and the 1915 Çanakkale Bridge.¹⁴ These projects position Türkiye as a global logistics and trade hub, enhance its geopolitical impact, and enable significant revenue generation from transit trade.

The "Development Road" project is a major infrastructure initiative designed to connect the Al Faw Port on the Persian Gulf to Türkiye and subsequently to Europe through an integrated railway and highway corridor. This large-scale project aims to boost regional trade, promote economic development, and reduce transportation costs. By modernizing Iraq's outdated railway systems and establishing efficient transit routes, it seeks to position Iraq as a key transit hub linking Asia, Europe, and the Middle East. Moreover, the integration of communication infrastructure along the corridor will enhance regional connectivity, support digital transformation, and contribute to Türkiye's goal of becoming a regional data and digital hub.¹⁵

This infrastructure leap has firmly positioned Türkiye as a global logistics and transit center. Projects such as the Istanbul Airport, Marmaray, Eurasia Tunnel, Osmangazi Bridge, and the 1915 Çanakkale Bridge have consolidated Türkiye's role as a vital link between Asia and Europe, facilitated global trade flows, and increased its geopolitical influence. Overcoming complex engineering challenges—constructing airports on the sea, digging underwater tunnels, and building one of the world's longest suspension bridges—has highlighted the advanced capabilities of Turkish engineering and opened doors for international collaboration.¹⁶

The recent decades a renaissance in Türkiye's infrastructure development, transforming not only its physical landscape but also its economic and social fabric. Through these visionary projects, Türkiye has reinforced its status as a regional and global power and has emerged as an inspiring model on the international stage. Türkiye provides support to Turkish companies working in the construction sector outside Türkiye's borders - especially on the basis of bilateral investment agreements - both before, during and at the end of the project.

As of June 2025, Türkiye has signed Bilateral Investment Treaties (BITs) with 115 countries, of which the agreements with 89 countries have entered into force.¹⁷ The

¹³ Ömer Faruk Sayan, "Development Road" and Impact on Communication, *Ulaştırma ve Altyapı Dergisi, Kalkınma Yolu*, no. 1 (2024), <https://dergipark.org.tr/tr/download/article-file/4305225>, at 18-19.

¹⁴ Anadolu Ajansı, *Bakan Karaismailoğlu: Bölgemizi Yükselen Avrasya ve Afrika Coğrafyasının Ticari Kavşak Noktası Haline Getireceğiz*, <https://www.aa.com.tr/tr/ekonomi/bakan-karaismailoglu-bolgemizi-yukselen-avrasya-ve-afrika-cografyasinin-ticari-kavsak-noktasi-haline-getirecegiz/2196105> (last visited Aug. 16, 2025).

¹⁵ Sayan, *supra* note 13, at 1.

¹⁶ T.C. Ulaştırma ve Altyapı Bakanlığı, *Ulaştırma ve Altyapı Bakanı Karaismailoğlu Medya Temsilcileri ile Bir Araya Geldi*, <https://www.uab.gov.tr/haberler/ulastirma-ve-altyapi-bakani-karaismailoglu-medya-temsilcileri-ile-bir-araya-geldi> (last visited Aug. 16, 2025).

¹⁷ T.C. Sanayi ve Teknoloji Bakanlığı, <https://www.sanayi.gov.tr/anlasmalar/ykttk> (last visited Aug. 16, 2025).

core provisions of Türkiye's BITs include the definition of investment in line with the global practice, the exclusion of short-term portfolio investments, the assurance of fair and equitable treatment and full protection and security under customary international law, the application of most-favoured-nation and national treatment standards for established investments, safeguards against illegal expropriation with prompt, adequate and effective compensation, the guarantee of free transfer of returns and profits, and the right of foreign investors to access international arbitration, including ICSID, ICC, *ad hoc* arbitration under UNCITRAL rules, or other international fora.

III. Regulatory and Dispute Resolution Frameworks in Turkish Construction Law

A. In General

The legal framework governing construction projects in Türkiye is both comprehensive and multi-faceted, encompassing planning, zoning, safety, environmental, and occupational regulations.¹⁸ At the heart of this framework lies Turkish Construction Law No. 3194,¹⁹ which regulates urban planning, zoning permissions, and construction permits through local municipalities. Chapter Four of Law No. 3194 outlines the fundamental requirements for constructing buildings, including the conditions under which construction may be carried out on private or publicly allocated land (Article 20), the obligation to obtain a construction permit from the relevant municipality or governorate for all buildings subject to the law (Article 21), and the necessary documentation required for permit applications, such as title deeds, architectural and technical project plans (Article 22). Complementing this is the Building Inspection Law No. 4708,²⁰ mandating rigorous oversight by independent inspection bodies to ensure safety and compliance with technical standards. The purpose of this Law is to ensure the safety of life and property by establishing project and building inspection procedures that guarantee the construction of high-quality buildings in compliance with zoning plans, scientific, technical, and health regulations, and relevant standards, and to regulate the principles and procedures related to building inspection. (Article 1).

Environmental considerations are addressed through the Environmental Law No. 2872 and its associated Environmental Impact Assessment (EIA) Regulation,²¹ which require certain projects to undergo thorough environmental reviews.

¹⁸ Karanfiloğlu Law Office, *Understanding Turkish Construction Laws*, <https://www.karanfiloglu.av.tr/en/understanding-turkish-construction-laws/> (last visited Aug. 16, 2025).

¹⁹ İmar Kanunu [Zoning Law], Law No. 3194 (Turk.), <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=3194&MevzuatTur=1&MevzuatTertip=5>

²⁰ Yapı Denetimi Hakkında Kanun [Law on Building Inspection], Law No. 4708 (Turk.), <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=4708&MevzuatTur=1&MevzuatTertip=5>.

²¹ Çevresel Etki Değerlendirmesi Yönetmeliği [Environmental Impact Assessment Regulation], Resmî Gazete, 29 July 2022, No. 31907 (Türkiye), <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=39647&MevzuatTur=7&MevzuatTertip=5>.

Moreover, Administrative Procedure Law No. 2577²² offers a legal basis for appealing administrative decisions, enabling individuals or entities to pursue judicial remedies where appropriate. Another important piece of legislation that must be addressed in the context of construction law is the Public Procurement Law No.4734.²³ According to Article 1 of this Law, its purpose is to determine the principles and procedures to be applied in tenders conducted by public institutions and organizations that are subject to public law, under public control, or utilizing public funds.

In terms of workplace safety, the Occupational Health and Safety Law No. 6331²⁴ obligates employers to adopt preventive measures, provide safety training, and conduct risk assessments to safeguard workers on construction sites. Each of these statutes imposes legal responsibilities on construction actors—ranging from project developers to supervisors—and non-compliance may result in administrative penalties, civil liability, or even criminal sanctions. Türkiye is located on a seismic fault line, which has led to stricter-than-average construction laws. In particular, following the 2023 earthquake, these regulations served as the foundation for a successful rebuilding effort in the affected regions, ensuring compliance with enhanced safety and resilience standards.²⁵

Dispute resolution in construction matters is supported by a dual regime of judicial and alternative mechanisms. The Turkish Code of Obligations No. 6098²⁶ and the Code of Civil Procedure No. 6100²⁷ govern contractual and procedural aspects of court litigation. However, recent reforms and policy initiatives have strongly encouraged the use of alternative dispute resolution (ADR) mechanisms such as mediation, governed by Law No. 6325²⁸, and arbitration, regulated by International Arbitration Law No. 4686²⁹ and Code of Civil Procedure No. 6100. Both the Turkish Code of Civil Procedure and the International Arbitration Law were drafted with reference to the UNCITRAL Model Law on International Commercial Arbitration, reflecting its core principles to ensure consistency with international arbitration standards. In addition, Act on International Private and Procedural Law

²² İdari Yargılama Usulü Kanunu [Administrative Jurisdiction Procedure Law], Law No. 2577 (Turk.), <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.2577.pdf>.

²³ Kamu İhale Kanunu [Public Procurement Law], Law No. 4734 (Turk.), <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=4734&MevzuatTur=1&MevzuatTertip=5>.

²⁴ İş Sağlığı ve Güvenliği Kanunu [Occupational Health & Safety Law], Law No. 6331 (Turk.), <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6331&MevzuatTur=1&MevzuatTertip=5>.

²⁵ T.C. Ulaştırma ve Altyapı Bakanlığı, *Deprem Bölgesine 51.1 Milyar Lira Ulaşım Yatırımı*, <https://www.uab.gov.tr/haberler/deprem-bolgesine-51-1-milyar-lira-ulasim-yatirimi> (last visited Aug. 16, 2025).

²⁶ Türk Borçlar Kanunu [Turkish Code of Obligations], Law No. 6098 (Turk.), <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6098&MevzuatTur=1&MevzuatTertip=5>.

²⁷ Hukuk Muhakemeleri Kanunu [Code of Civil Procedure], Law No. 6100 (Turk.), <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6100.pdf>.

²⁸ Hukuk Uyuşmazlıklarında Arabuluculuk Kanunu [Mediation in Civil Disputes], Law No. 6325 (Turk.),

<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6325&MevzuatTur=1&MevzuatTertip=5>.

²⁹ Milletlerarası Tahkim Kanunu [International Arbitration Law], Law No. 4686 (Turk.), <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=4686&MevzuatTur=1&MevzuatTertip=5>.

No 5718³⁰ includes provisions regarding the recognition and enforcement of arbitral awards.

In particular, Türkiye's increasing reliance on PPP models for infrastructure investment has heightened the importance of efficient, confidential, and expert-driven dispute resolution.³¹ Türkiye provides a supportive legal and economic framework for PPP projects, combining favorable investment legislation, internationally recognized arbitration mechanisms, and robust public finance management, particularly for projects involving guaranteed purchase schemes.³² Since 1986, Türkiye has effectively utilized the PPP model across a range of sectors. The adoption of the Realization of Certain Investments and Services within the Framework of the Build-Operate-Transfer Model Law No. 3996³³ in 1994 significantly expanded its use, leading to successful applications in areas such as highways, airports, marinas, and customs facilities.³⁴ In the 1990s, the Build-Operate (BO) model was widely employed, particularly for electricity generation projects. As many of these projects reached the end of their operation periods in the early 2000s, they were transferred back to the state and subsequently re-concessed to the private sector, generating substantial revenue through Transfer of Operating Rights (ToR) fees while maintaining the efficiency and dynamism of private management.³⁵ The enactment of Law No. 6428 in 2013 introduced the Build-Lease-Transfer (BLT) model, particularly for large-scale city hospital projects, and later extended to education and dormitory facilities. By the end of 2022, Türkiye had implemented 265 PPP projects under the four main models: Build – Operate – Transfer (BOT), Build -Operate (BO), Build-Lease-Transfer (BLT), and Transfer of Operating Rights (ToR).³⁶ Building on this extensive experience, Türkiye aims to

³⁰ Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun [Private International Law], Law No. 5718 (Turk.), <https://mevzuat.gov.tr/MevzuatMetin/1.5.5718.pdf>.

³¹ Suat Teker & Dilek Teker, An Overview on Public-Private-Partnership Projects: A Case of Turkey, *Istanbul Finance Congress* (Nov. 1, 2019), <https://dergipark.org.tr/tr/download/article-file/907159>, at 80–84; Sariibrahimoğlu Law Office (Betül Arslan Aydın & İrem Firuze Küçük eds.), *Public Private Partnership Model in Turkey and Europe* (2020), <https://www.bcct.org.tr/wp-content/uploads/202005-Sariibrahimoglu-Law-Office-PPP-in-Turkey-and-Europe-2019-2020.pdf>; Berkay Ayhan & Yılmaz Üstüner, Turkey's Public-Private Partnership Experience: A Political Economy Perspective, 23 *J. Southeast Eur. & Black Sea Stud.* 1–24 (Apr. 2022).

³² Presidency of the Republic of Türkiye Investment Office, *Investing in Infrastructure & Public Private Partnership (PPP) in Turkey* (May 2019), <https://investturkey.or.jp/wp-content/uploads/2021/03/infrastructure-industry.pdf>.

³³ Bazı Yatırım ve Hizmetlerin Yap-İşlet-Devret Modeli Çerçevesinde Yaptırılması Hakkında Kanun [Law No. 3996 on BOT], <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.3996.pdf>.

³⁴ Kul, *supra* note 9, at 84.

³⁵ Presidency of the Republic of Türkiye Investment Office, *Public Private Partnerships Q&A and Legislation in Türkiye*, <https://www.invest.gov.tr/en/library/publications/lists/investpublications/public-private-partnerships-qa-and-legislation-in-turkiye.pdf>.

³⁶ Id. "Four main models have been used in PPP Projects in Türkiye. Build – Operate – Transfer ("BOT") was the first and most used PPP model in Türkiye in the energy (for the construction of power plants) and motorway sectors (for highway constructions) since 1980s. In BOT model a facility is built, financed and operated by the private parties and accordingly the subject facility is transferred to the relevant public authority after expiration of such private party's operation term. Transfer of Operating Rights ("ToR"), as the second most used PPP model in which the public authority transfers the operating right

continue using the PPP model as a complementary tool to public investment, with numerous upcoming projects open to private sector participation.³⁷

B. Legal Perspective on Dispute Resolution: Arbitration and the State's Role

Among the fundamental public services delivered by states, justice holds a unique place. While traditionally dispensed by independent judiciary institutions, the need for efficient and specialized dispute resolution has led to the adoption of alternative mechanisms, notably arbitration. In Turkish law, arbitration has a deep-rooted history dating back to 1850. Arbitration, a mechanism with deep-rooted foundations in Turkish law, was first formally regulated in 1850. Subsequently, national arbitration procedures were codified in the Code of Civil Procedure enacted in 1927. Türkiye became a Contracting State to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) in 1988. In 1991, Türkiye ratified both the 1961 European Convention on International Commercial Arbitration (Geneva Convention) and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). The Energy Charter Treaty was signed by Türkiye in 2000.³⁸

Comprehensive provisions on international arbitration later introduced with the enactment of the International Arbitration Law No. 4686, which entered into force in 2001. The institutionalisation and modernization of arbitration in Türkiye have gained momentum. Under the new presidential governance model, International Arbitration and Alternative Solutions Department was established under the Directorate General of Law and Legislation at the Secretariat General of the Presidency of the Republic of Türkiye.³⁹ The duties of the Department of International Arbitration and Alternative Solutions include representing the state in investment arbitration cases against Republic of Türkiye. The Department is also responsible for managing affairs related to institutions and organizations operating in the field of international arbitration, obtaining opinions and information from

of a certain infrastructure facility to the private sector for a certain period, in return for an agreed price. This PPP model is commonly preferred in power plant facilities, airports and ports. Build – Lease – Transfer (“BLT”) was introduced in Turkish PPP practice in 2013 with the Law No. 6428 on the Construction of Facility, Renewal and Service Provided by the Ministry of Health with Public Private Partnership Model, and Amendments in Some Laws and Decrees (aka. ‘City Hospitals Law’). In this PPP model, a hospital is constructed by a private party on a land of Treasury in consideration of a right of construction (‘üst hakkı’) granted to such private party for up to 30 years and accordingly the private sector leases the hospital to the Treasury for up to 30 years and also operates such hospital during this period. At the end of agreed term, the hospital (all facility) will be transferred to the Treasury. Build – Operate (“BO”) model is generally preferred in the power plant facilities where the private sector built and operate the facility without the obligation of the transfer of the ownership to the public authority.”

³⁷ Ibid.

³⁸ Metin Kıratlı, Hakkı Susmaz, A. Eda Manav Özdemir, Açelya Şahin & Güray Özsu, *Tahkime İlişkin Temel Kavramlar, Düzenlemeler ve Güncel Gelişmeler* (Güncellenmiş ve Genişletilmiş 2. Baskı) (Cumhurbaşkanlığı Yayınları 139; Hukuk ve Mevzuat Genel Müdürlüğü Yayınları 9, Ankara, Feb. 2024),

[https://www.mevzuat.gov.tr/MevzuatMetin/Publications/TAHK%C4%B0M%20K%C4%B0TABI/TAHK%C4%B0ME%20%C4%B0L%C4%B0%C5%9EK%C4%B0N%20TEMEL%20KAVRAMLAR,%20D%C3%9CZENLEMELER%20VE%20G%C3%9CNCEL%20GEL%C4%B0%C5%9EMELER%20\(G%C3%BCncellenmi%C5%9F%20ve%20Geni%C5%9Fletilmi%C5%9F%202.%20Bask%C4%B1\).pdf](https://www.mevzuat.gov.tr/MevzuatMetin/Publications/TAHK%C4%B0M%20K%C4%B0TABI/TAHK%C4%B0ME%20%C4%B0L%C4%B0%C5%9EK%C4%B0N%20TEMEL%20KAVRAMLAR,%20D%C3%9CZENLEMELER%20VE%20G%C3%9CNCEL%20GEL%C4%B0%C5%9EMELER%20(G%C3%BCncellenmi%C5%9F%20ve%20Geni%C5%9Fletilmi%C5%9F%202.%20Bask%C4%B1).pdf)

³⁹ Kıratlı et al., *supra* note 38, at iv; Id. at 15–23.

relevant institutions and entities recent developments and ongoing work on arbitration when needed, and monitoring current developments in international arbitration while participating in relevant studies and initiatives.⁴⁰

With this institutional framework, Türkiye aims to increase capacity, share knowledge, and ensure coordination across public bodies engaged in arbitration. In this regard, an inter-agency arbitration working group has been formed and continues to convene regularly to foster experience-sharing and to discuss reform strategies.⁴¹

The Secretariat General of the Presidency of the Republic of Türkiye, Ibn Haldun University and Istanbul Commerce University signed a cooperation protocol to train arbitrators and arbitration lawyers in the developing field of national and international arbitration in Türkiye. With this protocol, the “Turkish Arbitration Academy” was established to contribute to the development of the arbitration in the country and aims to train researchers and practitioners who can conduct qualified research in the field of arbitration and contribute to the practice.⁴²

IV. Türkiye’s Role in International Construction Arbitration

Construction disputes typically involve complex issues of time, cost, and quality, requiring comprehensive schedule analyses and expert evaluations, particularly in cases involving design defects, quantum assessments, or delays—reflecting the sector’s high technical and legal demands, as well as its inherent susceptibility to conflict due to the scale and intricacy of its projects.⁴³ Effective resolution of these disputes is essential to preserving project schedules, controlling costs, and sustaining cooperative relationships among stakeholders.⁴⁴ Construction projects are inherently multifaceted, involving numerous stakeholders and significant technical and financial complexities, which often give rise to disputes over delays, costs, or contract ambiguities.⁴⁵

While litigation was once the dominant resolution method, its adversarial nature, public exposure, and procedural inefficiencies have led the industry to favor arbitration. Arbitration offers confidentiality, flexibility, and the advantage of appointing arbitrators with construction-specific expertise. It operates under the terms of an arbitration clause within the contract, which governs procedural rules and arbitrator selection, making it a more efficient and tailored mechanism for

⁴⁰ Id. at iv.

⁴¹ Id. at iv–v.

⁴² Turkish Arbitration Academy, <https://turkisharbitrationacademy.com/tr/> (last visited Aug. 16, 2025).

⁴³ Rhema Amlogu & Brown Klinton, *Dispute Resolution in Construction Contracts: The Role of Arbitration*, *Law* (Jan. 2025), https://www.researchgate.net/profile/Brown-Klinton/publication/387723777_DISPUTE_RESOLUTION_IN_CONSTRUCTION_CONTRACTS_THE_ROLE_OF_ARBITRATION/links/6779562800aa3770e0d72649/DISPUTE_RESOLUTION_IN_CONSTRUCTION_CONTRACTS_THE_ROLE_OF_ARBITRATION.pdf (last visited Aug. 16, 2025); David Kiefer, *Suitability of Arbitration Rules for Construction Disputes*, *Global Arbitration Review* (Oct. 12, 2023), <https://globalarbitrationreview.com/guide/the-guide-construction-arbitration/fifth-edition/article/suitability-of-arbitration-rules-construction-disputes>.

⁴⁴ Amlogu & Klinton, *supra* note 43.

⁴⁵ *Ibid.*

resolving construction disputes. Arbitration is increasingly favored in this context due to its procedural flexibility, confidentiality, and the specialized expertise arbitrators bring to construction-related issues.⁴⁶ Expert witnesses play a crucial role in the resolution of construction disputes, offering critical insights into complex technical and financial issues. Their analyses can address engineering standards, delay causation, forensic accounting, and design defects, while also extending to ancillary matters such as market trends or weather conditions in force majeure claims. Persuasive and well-founded expert testimony often proves decisive in determining liability and quantum in construction arbitration.⁴⁷

The widespread use of The International Federation of Consulting Engineers (FIDIC) contracts,⁴⁸ with their structured dispute resolution pathways, is a testament to the global trend towards proactive dispute management. FIDIC contracts, widely adopted as international standards in the construction and consulting industries, are valued for their balanced allocation of roles and risks among contracting parties. While the General Conditions are designed for broad applicability, FIDIC also provides for tailored Particular Conditions to address project-specific needs. However, substantial deviations from the recommended framework can disrupt this balance, often resulting in increased costs, delays, and disputes—sometimes escalating to arbitration or contract termination.⁴⁹ Arbitration has become increasingly prominent in construction contracts, with standard forms like those from various FIDIC contracts often including arbitration clauses. This trend is driven by the benefits of appointing arbitrators with sector-specific expertise, the relative speed and confidentiality of arbitration, and the procedural flexibility it affords. Nonetheless, challenges remain, such as high costs in complex cases and limited avenues for appealing arbitral awards, which underscore the need for careful procedural design and arbitrator selection.⁵⁰

Turkish construction companies play a significant role in the global construction sector.⁵¹ In Turkish law, construction-related disputes are not governed by a distinct set of arbitration rules; rather, they are addressed under the general provisions of arbitration law. As arbitration is a dynamic and evolving field, past procedural shortcomings have been addressed over time, yet complex, multi-party disputes continue to present new challenges. Arbitration continues to develop through each case, advancing both institutionally and normatively.⁵²

⁴⁶ Ibid.

⁴⁷ Kiefer, *supra* note 43.

⁴⁸ For more detailed information see Erman Eroğlu, *Turkish Construction Arbitration: An International Perspective* 130–32 (Ankara 2021); Mayer Brown, *Introduction to FIDIC Contracts*, https://www.mayerbrown.com/-/media/files/news/2012/12/introduction-to-fidic-contracts/files/lexisnexis_2012_intro-to-fidic-contracts/fileattachment/lexisnexis_2012_intro-to-fidic-contracts.pdf (last visited Aug. 16, 2025).

⁴⁹ FIDIC, *What Are the FIDIC Standard Forms/Contracts?*, <https://fidic.org/node/7089> (last visited Aug. 16, 2025).

⁵⁰ Amlogu & Klinton, *supra* note 43.

⁵¹ Ceren Ak Güngör, *Construction Arbitration in Turkey*, *Global Arbitration Review*, <https://globalarbitrationreview.com/guide/the-guide-construction-arbitration/fifth-edition/article/construction-arbitration-in-turkey> (last visited Aug. 16, 2025).

⁵² Eroğlu, *supra* note 48, at 140–45.

In this context, turning to institutional arbitration, reference to ICSID statistics provides valuable insights into recent trends and developments. As of December 31, 2024, there were 1022 arbitration and conciliation cases registered under the ICSID Convention and Additional Facility Rules. As of 2024, ICSID statistics reveal that construction disputes constitute 10% and electric power and other energy disputes 17% of all investment arbitration cases by economic sector, while construction disputes make up 5% and energy disputes 24% of newly registered cases in 2024 alone.⁵³ Although this is the ratio reflected in the data, a closer look at the statistics reveals that some of the energy-related disputes are, in fact, construction disputes — for instance, two *Lotus* cases filed in ICSID.⁵⁴ In the construction industry, arbitration plays a critical role in resolving disputes that are often technically complex, document-intensive, and time-sensitive. As a reflection of this trend, Turkish companies have actively utilized international arbitration mechanisms to resolve their cross-border disputes. As of today, in ICSID, there have been 19 construction-related arbitration cases, four of them pending, involving Turkish firms as claimants, and one with the Republic of Türkiye as respondent, which ultimately resulted in a decision in favor of Türkiye.⁵⁵ Turkish companies, active in diverse geographies such as Pakistan, Kazakhstan, Turkmenistan, Saudi Arabia, and Uzbekistan, have become key players in cross-border construction.

*Turkish companies as claimants in ICSID in construction project disputes:*⁵⁶

Case No	Claimant(s)	Respondent (s)	Status
ARB/24/13	Lotus Proje Akaryakıt Enerji Madencilik Telekomünikasyon İnşaat Sanayi Taah. ve Tic. A.Ş.	Turkmenistan	Pending
<u>ARB/23/36</u>	Güriş İnşaat ve Mühendislik Anonim Şirketi	Kingdom of Saudi Arabia	Pending

⁵³ Int'l Ctr. for Settlement of Inv. Disputes (ICSID), *The ICSID Caseload—Statistics (Issue 2025-1)* (2025), <https://icsid.worldbank.org/sites/default/files/publications/2025-1%20ENG%20-%20The%20ICSID%20Caseload%20Statistics%20%28Issue%202025-1%29.pdf>.

⁵⁴ ICSID, Case Details, ICSID Case No. ARB/24/13, <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/24/13> (last visited Aug. 16, 2025); ICSID Case No. ARB/17/30, <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/17/30> (last visited Aug. 16, 2025).

⁵⁵ For further information, see Diora Ziyayeva & Doğan Eymirlioğlu, *Construction and Investment Arbitration Trends—Türkiye, Central Asia, and MENA*, DailyJus (Apr. 13, 2024), <https://dailyjus.com/world/2024/04/construction-and-investment-arbitration-trends-turkiye-central-asia-and-mena>.

⁵⁶ ICSID, *Case Database*, <https://icsid.worldbank.org/cases/case-database> (last visited Aug. 16, 2025).

ARB/ 21/4 8	Bayındır İnşaat Turizm Ticaret ve Sanayi A.Ş.	Islamic Republic of Pakistan	Pen ding
ARB/ 21/2 3	İmeks İnşaat Makina Elektrik Konstrüksiyon Sanayi Limited Şirketi	Turkmenistan	Pen ding
ARB/ 21/2 0	Visor Mühendislik İnşaat Turizm Gıda ve Mekanik Elektrik Taahhüt Ticaret Limited Şirketi and Gökhan Araslı	Turkmenistan	Conc lude d
ARB/ 20/3 2	Setta Insaat Taahhüt Turz. Tekstil Gıda San. Ve Tic. AS	Turkmenistan	Conc lude d
ARB/ 19/3 2	DSG Yapi Sanayi Ticaret Anonim Sirketi	Kingdom of Saudi Arabia	Conc lude d
<u>ARB/ 18/3 4</u>	SECE İnşaat ve Ticaret A.Ş.	Turkmenistan	Conc lude d
ARB/ 18/6	Cem Selçuk Ersoy	Republic of Azerbaijan	Conc lude d
<u>ARB/ 17/3 0</u>	Lotus Holding Anonim Şirketi	Turkmenistan	Conc lude d
ARB/ 17/2 0	BM Mühendislik ve İnşaat A.Ş.	United Arab Emirates	Conc lude d
<u>ARB/ 16/3 0</u>	Görkem İnşaat Sanayi ve Ticaret Limited Şirketi	Turkmenistan	Conc lude d
<u>ARB/ 16/7</u>	Attila Doğan Construction & Installation Co. Inc.	Sultanate of Oman	Conc lude d

ARB/ 12/6	Muhammet ap & Bankrupt Sehil İnřaat Endustri ve Ticaret Ltd. Sti.	Turkmenistan	Conc lude d
ARB/ 10/2 4	İkale İnřaat Limited řirketi	Turkmenistan	Conc lude d
ARB/ 10/1	Kılı İnřaat İthalat İhracat Sanayi ve Ticaret Anonim řirketi	Turkmenistan	Conc lude d
ARB/ 08/1 9	Karmer Marble Tourism Construction Industry and Commerce Limited Liability Company	Georgia	Conc lude d
ARB/ 08/2	ATA Construction, Industrial and Trading Company	Hashemite Kingdom of Jordan	Conc lude d
<u>ARB/ 03/2 9</u>	Bayındır İnřaat Turizm Ticaret ve Sanayi A.ř.	Islamic Republic of Pakistan	Conc lude

Türkiye as respondent in ICSID in construction project disputes:⁵⁷

Case No	Claimant(s)	Responde nt(s)	Status
ARB/ 11/2 8	Tulip Real Estate and Development Netherlands B.V.	Republic of Türkiye	Conclu ded

The reasons for construction arbitration under BITs vary and can be for unlawful expropriation, cancellation of licenses or legal uncertainty, breaches of contract or payment defaults. Most of these cases have arisen from alleged breaches of contract, and since the relevant bilateral investment treaties often lack umbrella clauses,

⁵⁷ Ibid.

arbitral tribunals have generally classified them as contractual rather than treaty-based disputes.

Turkish contractors are increasingly invoking protections under bilateral investment treaties and multilateral trade agreements. This highlights the importance of clear procurement laws, transparent public decision-making, and effective contract enforcement mechanisms.

In 2024, the number of new cases remained strong, with 831 cases filed under the ICC Arbitration Rules (of which 17 began with Emergency Arbitrator applications) and 10 cases under the ICC Appointing Authority Rules.⁵⁸ In 2024, parties from 136 jurisdictions engaged in ICC arbitrations. Among the top 10 countries of origin were the United States, Brazil, Spain, Mexico, Italy, China (including Hong Kong), Germany, Türkiye, France, and the United Arab Emirates. Notably, parties from Türkiye accounted for approximately 7% of all participants.⁵⁹ In the ICC context, construction and energy disputes together represented nearly 46% of newly registered cases in 2023. Disputes arising from the construction/engineering and energy sectors, which traditionally generate the largest number of ICC cases, represented 44% of all new cases registered in 2024. The highest demand for requests related to expert service came from the construction and energy sectors. Although this rate appears significant, it is largely due to the global popularity of the FIDIC model, which typically designates the ICC as the arbitral institution—hence the high proportion of cases. Turkish companies also often refer to ICC as an arbitration institution.⁶⁰

In addition to ICSID and ICC, another institution encountered in the resolution of construction disputes is the Permanent Court of Arbitration (PCA). It plays a significant role in the administration of complex international investment and commercial arbitrations. In 2024, Permanent Court of Arbitration (PCA)-administered arbitrations covered a wide range of economic sectors, including, inter alia, mining and quarrying, oil and gas, construction, financial and insurance, electricity and power, real estate, telecommunications, agriculture, forestry and fishing, and transportation and storage. During 2024, the PCA administered 243 cases, comprising: 7 inter-State arbitrations; 1 other inter-State proceeding; 114 investor-State arbitrations arising under bilateral/multilateral investment treaties or national investment laws; 114 arbitrations arising under contracts involving a State, intergovernmental organization, or other State entity; 7 other proceedings.⁶¹ According to data from 2024, construction and infrastructure disputes represented the largest share of PCA-administered cases, 54 proceedings, surpassing all other

⁵⁸ Int'l Chamber of Commerce (ICC), *Unveiled: 2024 ICC Arbitration and ADR Preliminary Statistics*, <https://iccwbo.org/news-publications/news/unveiled-2024-icc-arbitration-and-adr-preliminary-statistics/> (last visited Aug. 16, 2025).

⁵⁹ HSF Kramer, *ICC 2024 Arbitration and ADR—Preliminary Statistics Published*, <https://www.hsfkramer.com/notes/arbitration/2025-02/ICC-2024-arbitration-and-ADR-preliminary-statistics-published> (last visited Aug. 16, 2025).

⁶⁰ Eroğlu, *supra* note 48, at 133.

⁶¹ Permanent Court of Arbitration (PCA), *Annual Report 2024*, <https://docs.pca-cpa.org/2025/05/d93d726f-pca-annual-report-2024.pdf>.

economic sectors. This was followed by oil and gas (44 cases), electricity and power (26 cases), and mining and quarrying (23 cases).⁶²

Arbitration plays a decisive role in resolving disputes in the construction and energy sectors. Many tribunals have affirmed that projects such as highway, bridge, airport, and power plant construction fall within the scope of investment protection. Key treaty standards often invoked in such disputes include: fair and equitable treatment, protection from expropriation, umbrella clauses, and access to justice and due process.

In this context, Türkiye's unique geopolitical position and growing institutional capacity make it a natural forum for resolving such cross-border infrastructure disputes. Türkiye aims to strengthen its status as a hub for international arbitration and draw a wider range of international disputes to be settled inside its borders. Due to its geographical location, Türkiye is referred to as the closest Western state to the East and the closest Eastern state to the West.⁶³ Therefore, Türkiye reflects the features of both West and East. As such, Türkiye seems to be of great importance, especially for dispute settlements between Eastern states and Western states. This geographical advantage of Türkiye as a bridge between Asia and Europe could be significant for the success of an international arbitration Centre.⁶⁴

Development of special arbitration organizations and centers is a further important factor. There are several arbitration centers in Türkiye,⁶⁵ the most prominent of which is the Istanbul Arbitration Centre (ISTAC), established as an independent and impartial institution.⁶⁶ Istanbul Arbitration Centre has great potential to make Istanbul a promising venue for international arbitration. ISTAC provides expeditious and cost-effective arbitration and mediation services, and its fast-track arbitration rules are particularly well-suited to resolving construction disputes.⁶⁷ According to its 2025 statistics, 35 out of 133 cases relate to the construction sector.

There are other institutional arbitration centres with their own domestic arbitration rules, such as the Union of Chambers and Commodity Exchanges of Türkiye "TOBB".⁶⁸ Business parties may choose to resolve domestic or international disputes through arbitration by including a clause such as: "*Any dispute arising out of or in connection with this contract shall be resolved under the Union of Chambers and Commodity Exchanges of Türkiye (TOBB) Arbitration Rules.*" They may also sign a separate arbitration agreement specifying the number and appointment of arbitrators, and the procedure for applying to the TOBB Arbitration Council if a

⁶² Ibid.

⁶³ Ziya Akıncı, Neden İstanbul Tahkim Merkezi? Why Center for Arbitration in İstanbul?, 8 *J. Yaşar U.* 79, 92 (2013), <https://dergipark.org.tr/tr/pub/iyasar/issue/19146/203159>.

⁶⁴ Id., at 92.

⁶⁵ For more detailed information on arbitration centers in Türkiye, see Kiratlı et al., *supra* note 44, at 35-42.

⁶⁶ ISTAC, *About Us*, <https://istac.org.tr/en/about-us/> (last visited Aug. 16, 2025).

⁶⁷ ISTAC, *Arbitration*, <https://istac.org.tr/en/dispute-resolution/arbitration/> (last visited Aug. 16, 2025). For more detailed information, see Akıncı, *supra* note 69, 79-94.

⁶⁸ Union of Chambers and Commodity Exchanges of Türkiye (TOBB), *Arbitration*, <https://www.tobb.org.tr/HukukMusavirligi/Sayfalar/Eng/Arbitration.php> (last visited Aug. 16, 2025).

dispute arises.⁶⁹ As of 2025, the Union of Chambers and Commodity Exchanges of Türkiye (TOBB) is handling approximately 30 to 35 arbitration cases, eight of which arise from construction-related disputes.

The Istanbul Chamber of Commerce Arbitration and Mediation Centre“ ITOTAM”, which promotes the resolution of commercial disputes through arbitration and mediation, and plays an active role in the development of these alternative dispute resolution methods. To provide arbitration services in line with international practices and comparable institutions abroad, the Istanbul Chamber of Commerce established the Istanbul Chamber of Commerce Arbitration and Mediation Center (ITOTAM), building on its arbitration services that have been offered since 1979.⁷⁰ Over the past three years, the construction sector has consistently ranked among the most prominent areas in terms of the number of arbitration cases filed at ITOTAM: In 2023, construction disputes accounted for **13%** of all cases filed. In 2024, this ratio increased to **17%**, making construction one of the leading sectors in dispute volume. In 2025, construction cases represented **10%** of total filings. From 2023 to 2025, construction disputes constituted an average of **12%** of all arbitration proceedings, affirming the sector’s significant role in ITOTAM’s caseload. Over the past five years, the **average duration of construction arbitration proceedings** concluded at ITOTAM has been **13 months**.

There are also other arbitration centers such as The Organization of Islamic Cooperation Arbitration Center (OIC-AC), which has been established as per its Statute and the Host Country Agreement between Türkiye and the Islamic Chamber of Commerce, Industry and Agriculture (ICCIA).⁷¹ The OIC-AC fosters global business development by supporting the resolution of commercial and investment disputes through effective alternative dispute resolution (ADR) mechanisms. The Centre aspires to become a leading authority and the premier international hub for ADR.⁷² Energy Disputes Arbitration Center (EDAC),⁷³ Türkiye Bar Association Arbitration Center⁷⁴ and TOBBUYUM Dispute Resolution Center⁷⁵ are other institutional centers.

Conclusion

Türkiye has made significant efforts to align its legal infrastructure with international standards. Recent developments include legislative reforms to promote alternative dispute resolution, the emergence of reliable arbitral institutions, and training programs for engineers, and legal professionals in

⁶⁹ Ibid.

⁷⁰ İstanbul Ticaret Odası Tahkim ve Arabuluculuk Merkezi (İTOTAM), <https://www.ito.org.tr/tr/kurumsal/ito-tahkim-ve-arabuluculuk-merkezi-itotam> (last visited Aug. 16, 2025).

⁷¹Organisation of Islamic Cooperation Arbitration Centre (OIC-AC), <https://www.oic-ac.org/> (last visited Aug. 16, 2025).

⁷² Ibid.

⁷³ Arbitration Center, *Kurumsal*, <https://arbitrationcenter.org/kurumsal/> (last visited Aug. 16, 2025).

⁷⁴ Türkiye Barolar Birliği Tahkim Merkezi, *Hakkımızda*, <https://tahkim.barobirlik.org.tr/Hakkimizda> (last visited Aug. 16, 2025).

⁷⁵ TOBB Uyuşmazlık Çözüm Merkezi (TOBB UYUM), *Hakkımızda*, <https://tobbuyum.com.tr/hakkimizda/> (last visited Aug. 16, 2025).

construction law. Furthermore, as construction law becomes more interdisciplinary, legal education and continuing professional development must keep pace with the technical and regulatory complexity of modern infrastructure.

Arbitration has rightly emerged as the preferred method for resolving construction disputes, offering the procedural flexibility and institutional frameworks necessary to address their distinctive complexities while upholding efficiency and cost-effectiveness.⁷⁶ While construction arbitrations generally follow the same procedural framework as other commercial arbitration cases, they are often distinguished by their heightened complexity and technical demands. Effective case management is therefore considered particularly crucial in the context of construction disputes.⁷⁷

In conclusion, construction law is not merely about legal rules—it is about structuring trust between stakeholders, managing public resources wisely, and enabling long-term development. The regulatory and dispute resolution structures applicable to construction in Türkiye reflect a growing alignment with international standards, while also emphasizing procedural integrity, investor protection, and sustainable development goals. These legal instruments collectively aim to ensure that construction activities contribute not only to physical infrastructure but also to legal certainty, safety, and economic stability. As Türkiye move forward in a rapidly changing world, may Turkish legal frameworks continue to support resilient infrastructure, sustainable growth, and international partnership.

⁷⁶ Kiefer, *supra* note 43.

⁷⁷ Mehveş Erdem Kamiloğlu, *Arbitration in Construction Industry*, Erdem & Erdem (Oct. 2019), <https://www.erdem-erdem.av.tr/en/insights/arbitration-in-construction-industry>.

INTERVIEW WITH PROF. PIERRE TERCIER

Prof. Dr. Pierre Tercier is a senior counsel at Peter & Kim in Geneva. He is an Emeritus Professor of the University of Fribourg, a Doctor honoris causa of the University of Paris II Panthéon-Assas, the honorary President of the ICC International Court of Arbitration, and a prominent international arbitrator with extensive experience in international commercial and investment arbitration. Prof. Tercier has served as party-appointed arbitrator and president in over 150 arbitrations under various rules (ICC, ICSID, LCIA, SIAC, CRCICA, SCC, UNCITRAL) covering a broad range of sectors. He chaired such seminal cases, such as Abaclat and others v. Argentine Republic (ICSID Case No. ARB/07/5) and Desert Line Projects LLC v. Republic of Yemen (ICSID Case No. ARB/05/17). In addition to his arbitrator practice, Prof. Tercier gives lectures on arbitration in several Universities around the world. He has authored numerous articles on international arbitration as well as authoritative treatises, notably on contract law. He is well-known in Switzerland for his contribution to the study and development of contract, tort, construction and competition law.

Prof. Pierre Tercier also supported the Inaugural Azerbaijan Arbitration Day (AzAD) in 2023 and delivered a keynote speech at the event.

1. The evolution of international arbitration: *Professor Tercier, over the course of your distinguished career, you have observed the profound evolution of international arbitration as both a practice and an institution. How would you characterize the key phases of this development, and in what ways have these transformations influenced the balance between party autonomy and institutional oversight?*

I would start by mentioning the fact that I have had not a distinguished career as you said. I was a professor, still am, that had the privilege of being more active in the field of arbitration.

Turning to your question, it is evident that things have changed considerably. I started my career over 40 years ago with small cases.

I would say that four points are remarkable. First, it is the fact that arbitration was, at the beginning, a rather exceptional system, more or less limited to large enterprises and conducted by arbitrators who were not necessarily professionals. This was a sort of, if I may use the word, a vandalization of arbitration. But arbitration is now becoming a normal way of dispute resolution. It is now, if I may use the word, banalized.

Secondly, the system has also been largely influenced by the evolution of technology, in particular in the context proceedings against a State. It is clear that technology and, in particular, new methods, have influenced the way arbitration is

now conducted. What was at the beginning a, more or less, tailored process, is becoming more and more standardized.

My third point is the fact that, during the first decades, arbitration was largely concentrated in Western Europe. This has changed significantly. First, with increased involvement of US counsels, and now with interventions spanning across whole continents. This is the internationalization of arbitration.

My fourth and last point is the fact that, in the beginning, arbitration was a pro bono activity, but now it is becoming a real business, a real commercial activity, in which large firms have occupied a significant spot.

Moreover, this has also been accompanied by the increasing role of institutions, but I will come to it in a moment.

2. Institutional Role and Systemic Reform: *As former President of the ICC International Court of Arbitration, you have had a unique vantage point from which to assess the institutional dimension of arbitration. In your opinion, how have arbitral institutions adapted to contemporary demands for efficiency, transparency, and legitimacy, and what further reforms may be necessary to sustain confidence in institutional arbitration?*

The evolution that I have mentioned was, in fact, accompanied by legal reform and, of course, by the growing role of institutions.

It is evident that the main document in that regard is the New York Convention: those who drafted it, along with the Geneva Convention in 1927, were indeed visionaries, for they were able to imagine the dispute resolution system in a globalized world, even if the economy had not caught up with that idea at the time. But, of course, there were other developments happening in parallel: first, the evolution of arbitration legislation, then the evolution of institutional rules and, interestingly enough, the increased role that soft law plays in the modern world, for instance, the UNCITRAL laws and rules, as well as rules prepared by other important associations, such as the IBA.

All of this has had an important influence on the way arbitration is practiced nowadays.

3. Regional Development and Emerging Arbitration Hubs: *In recent years, new regional centers—particularly in the Caucasus, Central Asia, and the broader Eurasian region—have demonstrated growing interest in establishing credible arbitration frameworks. From your perspective, what are the essential elements for such jurisdictions, including Azerbaijan, to cultivate a sustainable and internationally respected arbitration culture?*

I am also deeply convinced that, as I said before, the internationalization of arbitration is increasingly apparent.

It is absolutely evident that arbitration has now expanded, in line with the world economy, into the East, including, of course, Asia, but also into our own jurisdictions,

that are, if I may say so, in between. And I am also convinced, and this is my hope, that the dispute system will also expand towards the South, where there is a need to develop it further.

That being said, I believe that national institutions have an important role to play: procedure is deeply rooted in culture. The way a person may make judgments, the way a person evaluates evidence, in particular witness testimony, the way a person writes their decisions, depends largely on their culture. Of course, high quality is required to have an international system that is acceptable to everybody, but the solution does not need to be the same in every case. Is it really necessary and convenient to impose production of documents or witness statements in the way that it is practiced in several parts of the world on other parts to which these solutions are completely alien? It is also possible to envisage other solutions, and they are as worthy of respect as the ones currently accepted as default.

It is important, of course, that the system that is used corresponds to and is compatible with the deep convictions and customs of those persons who are directly concerned. Therefore, I still believe that regional institutions have a big role to play. This applies of course for the Baku Arbitration Centre, whose creation I very much celebrate.

What is interesting is the fact that arbitration was, and remains, largely in the hands of the parties, but the arbitrators are more and more regulated, not only by legislation but also by institutions. The role of the institution as a mixed entity is crucial nowadays: not only for the administration of the cases, but also for the better understanding of the institutions and the education of the practitioners. However, the risk is that they intervene too much in proceedings, thus depriving the parties of the freedom that they must have to be satisfied with the method of dispute resolution.

4. The future of Arbitration and the Next Generation: *Looking forward, what principal challenges and opportunities do you foresee for the next generation of arbitrators and arbitration practitioners? What guiding principles, in your view, should underpin their approach to dispute resolution in an increasingly complex and globalized legal environment?*

I have been asked what is the evolution that has happened during the last 40 to 50 years. I would be very curious to know who will now tell us how it will be in 50 years, not to mention the next 5 to 10 years. It is evident that things will change and develop over and over again.

Coming back to my first answer, I reckon that arbitration will develop in four directions: first, it will clearly become a system that is more and more generalized, although I still believe that we should keep the idea of the consent as much as it is required still.

My second point is that the fact that technology will change the makeup of arbitration to an extent that we are, so far, absolutely unable to imagine: in

particular, AI will certainly deeply change the system. It is certainly beneficial, but it could also be a very risky evolution. It is important that the human side of this incredible activity remains.

Third, the internationalization is clear and, as I said, it will go further: with this, I hope that there will be better understanding of all possible solutions, with sensitivity to cultural differences.

Finally, and this is a bit of a concern for me, arbitration must not become a business: it is really wrong to think of dispute resolution and administration of justice as simply a business. If it takes this turn, the real risk is that individuals and entities will be deprived of access to justice. The evolution and revolution that we are now observing shows, more than ever, the importance of protecting the rule of law, and it is also our responsibility as arbitrators and practitioners to uphold it. The administration of justice is an absolutely necessary activity, but it is also one of the more difficult ones.

I very much hope that the young generation, in which I very much have faith, will understand this, and I am happy to see that the creation of new institutions contains promises of such convictions.

INTERVIEW WITH NURLAN MUSTAFAYEV*

1. *Professional trajectory in arbitration:* *Could you describe your career path leading to your current position at SOCAR? What factors initially drew you to the field of international arbitration, and what are your principal responsibilities—both in the ordinary course of your work and when managing disputes that arise?*

My interest in international arbitration goes back to my student years at Baku State University (1999-2003). As part of the university team, we twice competed in the Philip C. Jessup International Law Moot Court Competition in Washington, D.C. That experience exposed me to interstate arbitration and what it takes for lawyers to succeed in such cases.

As a SOCAR scholar, I earned an LL.M. in Oil and Gas Law from the University of Dundee (UK), focusing on petroleum agreements and investment arbitration. Interestingly, when I joined SOCAR in 2008 as a senior in-house counsel, my first assignment was a major international commercial arbitration arising from an upstream production-sharing agreement before the Stockholm Chamber of Commerce. That case taught me a great deal and deepened my interest in arbitration. Since then, as a legal manager on international transactions, I was also privileged to work on a range of complex international commercial and investment arbitration matters before the SCC, PCA, and LCIA, as well as interstate cases, for example, before the European Court of Human Rights against the Republic of Armenia concerning large-scale human rights violations against more than a million Azerbaijani displaced persons under the European Convention on Human Rights, which is still ongoing. These experiences broadened my skills in international dispute resolution.

I am currently the Head of the Corporate Law Department at SOCAR. Our department supports transactional work in oil and gas projects and handles international arbitration matters of SOCAR group of companies. I still see myself primarily as a transactional energy lawyer, while continuing to strengthen my arbitration expertise and learn from specialists in the field and institutions such as CIARB and ICC.

2. *Rosserlane Consultants and Zaur Leshkasheli v. Republic of Azerbaijan case*¹: *Could you elaborate on SOCAR's role in this arbitration and on your own involvement in the proceedings? What strategic considerations informed the*

* Head of Corporate Law Department, State Oil Company of the Republic of Azerbaijan (SOCAR).

¹ Leshkasheli and Rosserlane Consultants Ltd. v. Republic of Azerbaijan, ICSID Case No. ARB/20/20, Award, 21 March 2025. The Tribunal dismissed the Claimants' claims (alleging interference in an oil and gas joint venture), with one Claimant's claims found inadmissible.

formulation of your defence, and how were these priorities reflected in the overall case strategy?

This investment arbitration case began against the State (not SOCAR) in 2020 under the Azerbaijan-Georgia BIT and the Energy Charter Treaty (ECT) before the International Centre for Settlement of Investment Disputes (ICSID). It is the largest arbitration in Azerbaijan's legal history in terms of claim value (over USD 1 billion), historical scope (spanning more than 20 years), and legal complexity (involving multiple domestic laws, public and private international law, and investment law and case law), with thousands of pages of submissions. In March 2025, the ICSID Tribunal ruled in favor of the Republic of Azerbaijan, awarding us full costs—a complete victory and a rare instance in ICSID's practice.

As the dispute stemmed from a 1994 joint venture agreement between SOCAR and the claimant's affiliate to establish the Shirvan Oil Company in Azerbaijan — aimed at attracting long-term foreign investment to rehabilitate the Kurovdag onshore oil field in operation since the Soviet times — the Cabinet of Ministers of the Republic of Azerbaijan by decree tasked SOCAR to coordinate this arbitral proceeding for this specific, limited purpose. As SOCAR is not a state organ but a commercial entity, it does not represent the State as such. Together with the State's international legal adviser, Herbert Smith law firm, we provided the successful defense of the Republic.

Over 5 years, my colleague at SOCAR Ms. Lala Khudiyeva (special counsel at that time) and I liaised with relevant state organs, collected relevant evidence, advised on domestic and international law issues, helped draft submissions, shaped the case strategy, and managed external counsels. Our core strategy was to continuously show the Tribunal that the claimants' allegations and evidence did not support any viable treaty legal claims, supported by thorough evidence and expert evaluations, which eventually resulted in a complete victory for the State.

It was demanding but rewarding work, which eventually made a real difference for the Republic's defense after such a long process. Most importantly, we, as Azerbaijani lawyers, are proud to have defended the legitimate interests of our State successfully in an international dispute-resolution forum like ICSID.

3. Procedural and evidentiary reflections: *In retrospect, which procedural or evidentiary development do you consider to have been most decisive in shaping the tribunal's assessment of the case, and what factors contributed to its significance?*

This case raised many interesting procedural and evidence-related issues. Because the dispute spanned about 20 years, evidence collection was a major challenge indeed. Retention periods had long passed, so many potentially helpful documents were either no longer available or hard to locate, considering procedural deadlines. As a result, witness statements from people with first-hand knowledge of the alleged facts were crucial. Using publicly available information also mattered significantly in this case. The claimant was a vexatious litigator with a history of a

series of litigations and had kept records useful to its case, whereas we were not in the same position. We spent significant time in archives locating some historical documents and reports (which the claimants alleged did not exist) and submitted them as evidence.

In addition to evidence collection, what ultimately made the difference was our approach to international law issues. As publicly reported, the Republic of Azerbaijan prevailed based on the timely invocation of the Energy Charter Treaty's denial-of-benefits clause—despite a long stream of earlier ECT cases (such as *Yukos v. Russia* and *Plama v. Bulgaria*) being viewed as “precedent.” Despite such earlier cases, however, Azerbaijan's legal argument in this context eventually prevailed. As a result, the Azerbaijani case cardinally departs from the existing case-law and adds a new dimension in international law in terms of interpretation of the denial-of-benefits clauses either in ECT or BITs that will likely attract future legal research.

Arbitration is an evolving field; lawyers should be ready to test the limits of existing treaty frameworks and argue for well-reasoned alternative interpretations, an approach which we adopted in our case. In arbitration, every detail matters—facts and legal arguments alike. Even a “small” piece of evidence or a “secondary” argument can affect the outcome in an unpredictable way. Therefore, from my perspective, lawyers should be exhaustive in their approach and not shy away from advancing new arguments even when they depart from conventional views or so-called “settled law.”

4. Lessons learned and guidance for practitioners: *What practical lessons emerging from *Leshkasheli v. Azerbaijan* could you highlight as particularly relevant for mitigating disputes in future energy projects in Azerbaijan? In addition, what guidance would you offer to young practitioners seeking to establish a career in investment or energy arbitration?*

Prevention or mitigation of such arbitration risks involves both legislative and contractual aspects. First, domestic investment laws should clearly define “foreign investment” and set procedural requirements such as “real business activity” in the investor's place of incorporation or operation. These safeguards ensure that a long-term foreign capital must be committed for a project to qualify as an investment. To curb forum shopping, the law should also require a genuine link between a company and its place of incorporation, so an entity cannot claim BIT or ECT protection while in reality being owned or controlled by nationals of non-treaty states. This would likely deter speculative claims by vexatious litigants and give certainty to genuine investors.

Second, it starts with drafting. Lawyers need a clear legal and policy vision when negotiating bilateral investment treaties and key commercial agreements—such as production-sharing and joint-venture agreements. To prevent disputes in the first place, transactional lawyers should draft contracts with a view to not leaving “gaps” and preventing a likelihood of a future dispute. Strategic energy contracts should

clearly include specific foreign-capital requirements, work commitments, schedules, and explicit limitation periods for bringing investment claims, no consequential damages under any circumstance. Absence of clarity on such key provisions could lead to conflicting interpretations during the execution phase and eventually to arbitration.

My general advice to young arbitration students and practitioners in Azerbaijan is that energy and investment industry is a very interesting and rewarding career path, offering exposure to working in large-scale projects and working with highly capable and experienced professionals to learn from. But they need a solid grasp of oil-and-gas and investment transactions to build toward international arbitration, alongside strong grounding in international and investment law. This takes years of sustained drafting to develop the ability to read between the lines. As a transactional lawyer, young practitioners should develop a “disputes angle” when drafting and negotiating major oil and gas deals, where the risks are high. They should also master the theory and the case law, and learn to distinguish your case from “precedent” so a tribunal can view it afresh. Because outcomes depend on context, they should have a proactive mindset, research deeply and build clear factual and legal distinctions that set your case apart.

5. Institutional approach and policy considerations: How does SOCAR’s approach to dispute resolution reflect broader trends in state-owned enterprises’ participation in international arbitration? In your view, what institutional or policy measures are most effective in aligning corporate dispute management with national interests and international best practices?

State-owned enterprises (SOEs) in Azerbaijan, including SOCAR, are commercial legal entities and counterparties to numerous contracts with private parties as ongoing business. As long as international arbitration is concerned, I would not distinguish between an SOE and a private company: tribunals and enforcement courts treat them equally and do not grant immunity. Although SOEs are founded by states, they retain independent legal personality and a commercial function—both essential for participation in international commerce.

Disputes sometimes arise from complex transactions that cannot be resolved amicably, making arbitration necessary. In my general experience with Azerbaijani SOEs and observations, the priority is always peaceful negotiation, because arbitration is costly, lengthy, and uncertain. In principle, what differs about SOEs is that they are generally not litigious, unlike some private companies, because their mission and accountability structures are different. It is not accident that they more often appear as respondents rather than claimants, and only in rare cases proceed after all amicable options are exhausted. Fortunately, SOCAR has been involved in relatively few international arbitrations, which reflects the company’s respect for the sanctity of contracts and preference for negotiated outcomes. At the same time, to safeguard SOEs’ interests in complex commercial transactions, adopting contract

guidelines applicable to all SOEs in Azerbaijan in the future —covering key provisions of international commercial agreements—would help minimize the risk of such claims.

6. *Evolution of energy arbitration and future outlook:* *From your perspective, how is the landscape of energy arbitration evolving—particularly in relation to the energy transition, environmental regulation, and emerging investment frameworks? How does SOCAR adapt its dispute management strategies to address these developments?*

I recently took part in Paris Arbitration Week 2025, where these issues were discussed across multiple panels by leading arbitrators. Based on their judgments, my personal experience and perspective is that we are likely to see more disputes tied to renewable-energy projects and the environmental phase-out of oil and gas operations around the world. As states enter long, complex deals for renewables—PPAs, JVs, and lender financing—future changes in subsidy policy, a stricter environmental or climate change policy may alter project economics and investment cases (as seen in the Spanish and Italian renewables cases). Commercial arbitration may remain largely unaffected, but investment arbitration is shifting: many states are currently revising BITs, withdrawing from the ECT, tightening rules on investment and offshore jurisdictions, and excluding arbitration as dispute-resolution frameworks (the EU is a prominent example). These developments will reshape the arbitration landscape, resulting probably in fewer investment cases, but with different legal demands and frameworks.

INAUGURATION OF BAKU ARBITRATION CENTRE AND LAUNCH OF BAKU ARBITRATION LAW JOURNAL

Rubric: Building the Future

The purpose of this rubric is to discover young talents in law by conducting an interview with them.

Interview with Mr Mansur Samadov, graduate of Baku State University, currently student at National University of Singapore.

1. Mansur bey, why did you chose to study law?

I remember this question was asked every year in each new class during my bachelor's degree. Since childhood, I have always been interested in humanitarian fields. Among disciplines like philosophy and philology, law stood out as the most engaging and impressive to me. The child in me was captivated by the prestige and influence of law and lawyers in society. I also remember myself to be a very peaceful child avoiding trouble. Thus, being drawn to the important role of lawyers in our society, and following this profession, I would have the tools to be more influential and contribute positively to my community.

2. Today you are studying at Master of Laws in International Arbitration and Dispute Resolution at the National University of Singapore. Why did you chose international arbitration and what brought you to Singapore?

My interest in international arbitration began with moot competitions. In 2022, I applied to the Baku State University team for the Willem C. Vis International Commercial Arbitration Moot. At eighteen, I was one of the youngest participants. As I explored the procedural issues of the case, my passion for international arbitration deepened. Additionally, arbitration was considered an unconventional path for a legal career in Azerbaijan, as modern national arbitration laws had yet to be adopted.

During my university years, I aimed to contribute to the arbitration culture and raise awareness about alternative dispute resolution in Azerbaijan. To achieve this, I participated in translating key documents related to the field into Azerbaijani, enriching arbitration literature, and I continued my involvement in the Vis Moot to help other young students sustain this tradition.

I realized that to make a meaningful impact on the local arbitration landscape, I needed more international exposure and to refine my practical and academic skills. At that point, the specialized arbitration program at NUS caught my attention. Besides the opportunity to learn from prominent professors and practitioners, Singapore's reputation as a leading arbitration seat was a significant factor in my decision. With arbitration-friendly legislation and the presence of the Singapore International Arbitration Centre (SIAC), Singapore stands out as a preferred location

for arbitration. In addition to the ICC and ICSID, the ICC also has local offices there. It is impressive how quickly Singapore has established itself compared to other arbitration hubs like Paris, New York, London, and Hong Kong.

Furthermore, I realized I would be among the first Azerbaijani law students at NUS. This unique opportunity would allow me to bring Singapore's valuable experiences back to my country, potentially paving the way for future Azerbaijani law students.

3. Mansur bey, in 2023 you participated at the very first inaugural edition of Azerbaijan Arbitration Day which was held at the Cultural Centre of the Republic of Azerbaijan. What were your impressions? What role did that event play in your choice to pursue the career in international arbitration?

I remember it like yesterday; I was an editor at the Baku State University Law Review in 2023. Professor Kamalia Mehtiyeva noticed our activities at the Law Review and invited our team to come to Paris and publish the transcript of the event. This event was a crucial element that increased my interest and ambition in international arbitration. I got the chance to meet prominent arbitration practitioners. More importantly, even getting the chance and trust of the chairperson of the Azerbaijan Arbitration Association, with considerable experience in major arbitration cases and an impressive academic background, to be a part of the conference gave huge confidence to the editorial board and me.

4. Today you are also Executive Editor of Baku Arbitration Law Journal. You have extensive experience in the field of scientific publishing as you were editor for three years. Why did you feel it as important to carry the heavy load of editorial work despite busy academic years in law school?

Main reason would be the coinciding values of mine and Baku State University Law Review: contributing to our society. At Law Review, our goal has been to contribute to the legal academy of Azerbaijan. We view the journal as a platform for discussing both local and international legal issues. Given our readership and citation numbers, the journal continues to stimulate legal discourse in the country, ultimately contributing to the enhancement of legislation in Azerbaijan.

Additionally, we recognized that fulfilling our primary mission requires us to improve the legal writing and research skills of law students. To address this, we organized legal writing workshops, and in 2024, I led the publication of an academic legal writing handbook in Azerbaijani. This handbook outlines the process of crafting a legal article in clear, accessible language. Our workshops and handbook have resulted in a growing number of law student authors.

I recall the intense days of blueline editing the journal, during which we endured countless sleepless nights reviewing the final version in extended online meetings. These moments prompted us to reflect on our motivation for enduring this demanding process, for which we received no grades or credits, in addition to managing a heavy academic workload. As the editor-in-chief of a prestigious law

review in Azerbaijan, I believed that I was contributing to a significant goal for my country, even as a law student. This motivation has kept me energized and continually encouraged my personal growth.

5. What are your plans upon your return from Singapore and how would like to pursue your career within the following seven years?

In the upcoming year, my primary motivation is to understand the philosophy of alternative dispute resolution in Singapore. Being here provides me the opportunity to analyze the background of the Singapore International Arbitration Centre (SIAC) and how Singapore has evolved into a major arbitration hub. Additionally, I aim to enhance my legal writing and advocacy skills while studying Singapore's arbitration mechanism. I have observed that in an arbitration career, individuals in their twenties and even thirties are considered quite young. Therefore, as a 21-year-old law student, I want to gain experience in international arbitration, focusing on arbitration cases and exploring complex theoretical issues from various roles.

Meanwhile, I will pursue my ambition to contribute to the arbitration landscape in Azerbaijan. In this regard, I want to increase the awareness of alternative dispute resolution in my country by starting to teach students and also authoring the first textbook on international arbitration in Azerbaijani. I will create interest in alternative dispute resolution in younger lawyers and students so that institutional arbitration will have a great foundation for the next decades.

6. Picture meeting yourself a decade from now — someone who's lived through everything you are still about to face. What do you hope future you would thank you for doing today?

Over the past ten years, I have not been afraid of taking any risks or making any mistakes. I have always wanted to take the unconventional path and to be creative. For the past years, I was the youngest moot participant, the youngest lawyer at the company, and the youngest LL.M. student at the university. Regardless of my age, I have always wanted to push my limits and improve myself. Therefore, again after ten years, I would still be grateful to myself for consistently creating my own path and learning from my mistakes. I would also appreciate my hard work and my refusal to surrender to any challenges or difficulties in my life.

