MARIF

Dispute Resolution Quarterly

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Court of Cassation 3rd Civil Chamber Confirmed Validity of Med-Arb Clauses and Reversed Its Previous Case Law

Date: 15 January 2026

Summary

The 3rd Civil Chamber of the Court of Cassation has ruled that dispute resolution clauses providing for mediation followed by arbitration (Med-Arb), which are frequently used in attorney fee agreements, are valid and enforceable. Reversing its previous position, the Chamber concluded that such clauses clearly reflect the parties' arbitration intent and do not create uncertainty. The decision marks a significant shift in case law and strengthens the legal certainty of dispute resolution clauses combining mediation and arbitration under Turkish law.

Details

The dispute arose from an attorney fee agreement dated 1 March 2022, which provided that disputes would first be resolved through mediation and, failing settlement, referred to arbitration before the Bar Arbitration Board under the Union of Turkish Bar Associations Arbitration Rules. Following an unsuccessful mediation process, the dispute was submitted to arbitration and an award was rendered.

The claimant sought annulment of the award, arguing that the arbitration clause was invalid and raising objections regarding the arbitrator's impartiality, the arbitration period and procedural conduct. The Regional Court of Appeal rejected these claims and upheld the validity of the arbitration agreement.

On appeal, the Court of Cassation confirmed this approach, emphasising that mediation and arbitration may be used in combination as part of a recognised Med-Arb mechanism. It held that the clause clearly reflects the parties' intention to proceed to arbitration if mediation fails and does not render the arbitration agreement conditional or ambiguous.

The Chamber further noted that Turkish law permits recourse to arbitration following unsuccessful mediation and that such arrangements are compatible with party autonomy and public policy. All procedural objections were dismissed, and the Court concluded that no grounds existed for annulment of the arbitral award.

Importantly, with this decision, the Chamber departed from its earlier decision dated 15 April 2025, in which it had found similar Med-Arb clauses to be invalid, and thereby effected a clear shift in its case law by recognising the validity of such clauses.

Conclusion

This decision represents a clear shift in the Court of Cassation's approach and provides clarity regarding the validity of Med-Arb clauses under Turkish law. By confirming that mediation followed by arbitration does not undermine the existence of a valid arbitration agreement, the Court has reinforced the principle of party autonomy.

From a practical standpoint, the decision is likely to strengthen confidence in Med-Arb clauses widely used in attorney fee agreements and commercial contracts, while significantly reducing the risk of annulment of arbitral awards based on similar provisions.

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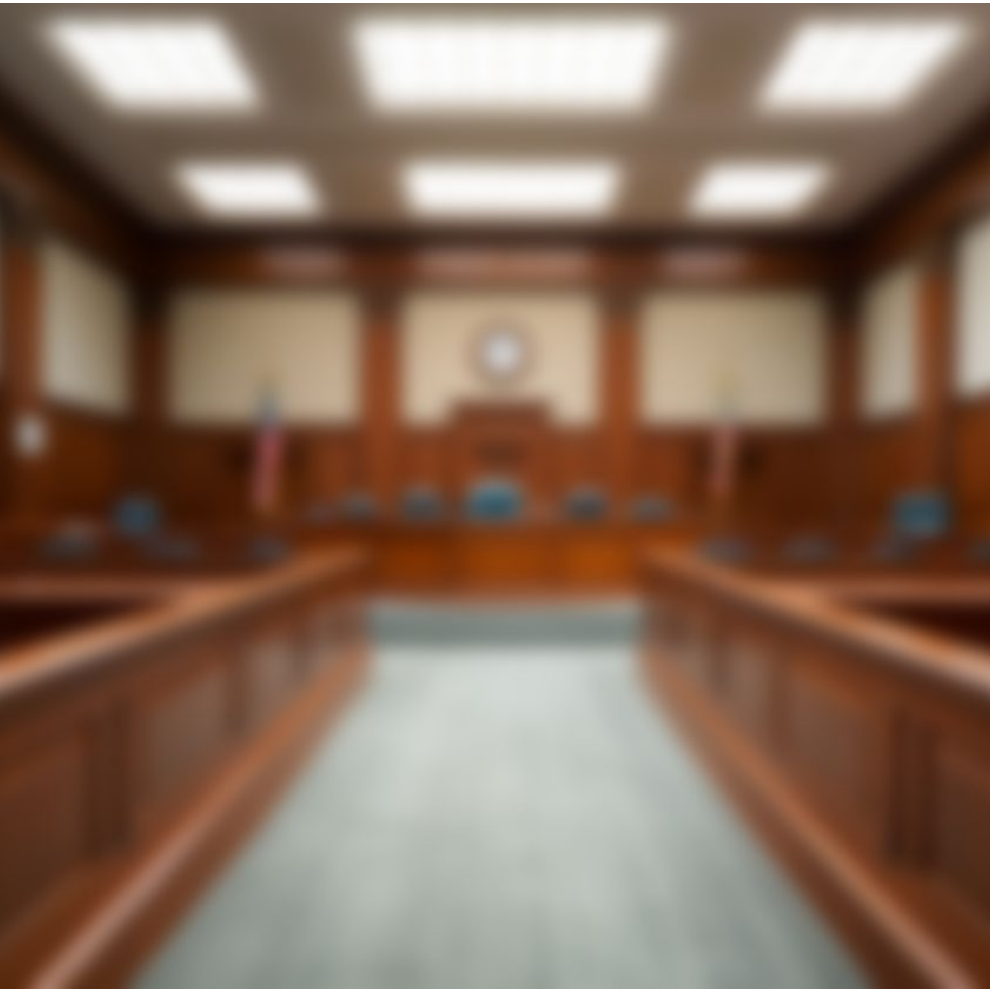
The Constitutional Court Annulled Statutory Interest Provision for Non-Contractual Obligations

Date: 1 December 2025



Summary

In its decision dated 22 July 2025 (2024/24 E., 2025/164 K.), published in the Official Gazette on 1 December 2025, the Constitutional Court annulled Article 1 of Law No. 3095 on Statutory Interest and Default Interest governing statutory interest as it applies to obligations not arising from a contract. The annulment will enter into force nine months after publication, on 1 September 2026.

Article 1 of Law No. 3095 provides that where interest is payable under the Turkish Code of Obligations or the Turkish Commercial Code and the applicable rate has not been agreed by the parties, statutory interest applies at an annual rate of 12%. The President is authorized to adjust this rate, including increasing it up to twofold. Pursuant to Presidential Decision No. 8485, the statutory interest rate has been applied at 24% per annum since 1 June 2024.

Details

The constitutional review arose from a compensation action filed in relation to damage caused by the destruction of immovable property following the earthquake. The referring administrative court argued that the statutory interest mechanism did not adequately preserve the economic value of monetary claims in an inflationary environment and therefore failed to provide sufficient protection for creditors.
The Constitutional Court emphasised that monetary claims, including interest claims attached to principal receivables, fall within the scope of the constitutional protection of property. It further noted that where a creditor is deprived of a sum of money for a period of time, the legal framework should provide a mechanism capable of compensating for the erosion in value caused by inflation.

Against that background, the Court found that the statutory interest regime applicable to non-contractual obligations did not ensure compensation at a level sufficient to offset substantial loss in value. It also considered that the legal framework did not provide an effective remedy capable of adequately protecting the creditor's property right in such cases. On that basis, the Court held that the rule was incompatible with Articles 35 and 40 of the Constitution.

You may access the full text of the decision here.

Conclusion

The decision highlights the need for a statutory interest regime that reflects economic conditions and adequately protects creditors. Until the annulment takes effect, the current framework will remain in force, and the Turkish Grand National Assembly is expected to introduce new legislation in the interim.

Presidential Circular No. 2026/3 on the OIC Arbitration Centre

Date: 17 April 2026

Summary

Presidential Circular No. 2026/3, published in the Official Gazette dated 17 April 2026, encourages public institutions and organisations to consider the use of the Organisation of Islamic Cooperation (OIC) Arbitration Centre in both domestic and international contracts. The Circular highlights the Centre's role as an international dispute resolution forum based in Istanbul and its capacity to resolve commercial and investment disputes through arbitration and alternative dispute resolution methods.

Details

The OIC Arbitration Centre was established in Istanbul pursuant to the agreement approved by Presidential Decision No. 2064 dated 24 January 2020. It is the first arbitration centre established in Türkiye through an international agreement and is open to disputes involving both OIC member and non-member states, as well as private parties.

The Centre provides arbitration and alternative dispute resolution services for commercial and investment disputes. Its proceedings are conducted by independent and impartial experts under confidentiality principles. The Centre operates under arbitration and mediation rules aligned with international standards, offering an efficient and cost-effective dispute resolution framework.

In addition to administering proceedings, the Centre provides secretariat services, acts as an appointing authority for arbitrators and mediators, and offers training and guidance on arbitration practices.

The Circular further notes that, in order to benefit from these services, it is sufficient for the parties to agree that their disputes will be resolved under the OIC Arbitration Centre's rules and to include such provisions in their contracts or tender documents.

Within this framework, public institutions and organisations are invited to take this option into account when concluding agreements.

You may access the full text of the Presidential Circular here.

International Arbitration Fee Tariff Published

Date: 26 March 2026

Summary

The Communiqué on the International Arbitration Fee Tariff was published in the Official Gazette dated 26 March 2026. The Communiqué introduces a tariff applicable to arbitration proceedings where the arbitrators' fees have not been agreed by the parties. It establishes a structured and value-based fee framework, aiming to ensure predictability in the determination of arbitrators' remuneration.

Details

The Communiqué regulates the fees payable to arbitrators in international arbitration proceedings conducted in Türkiye where the parties have not agreed on the applicable fees. In such cases, the tariff will apply by default.

The tariff adopts a tiered, value-based structure, under which arbitrators' fees are calculated based on the amount in dispute. The applicable rates are as follows:

Amount in Dispute	Sole Arbitrator Fee	Tribunal Fee (3 or more arbitrators)
For the first TRY 500,000	5%	8%
For the next TRY 500,000	4%	7%
For the next TRY 1,000,000	3%	6%
For the next TRY 3,000,000	2%	4%
For the next TRY 5,000,000	1%	2%
For amounts exceeding TRY 10,000,000	0.1%	0.2%

The Communiqué also clarifies that these fees cover the arbitration process from commencement to the final award. It further distinguishes between sole arbitrator and tribunal structures and sets out how fees are to be allocated in multi-member tribunals.

You may access the full text of the Communiqué here.

Council of Judges and Prosecutors Assigned Certain Administrative Disputes to Specialised Courts

Date: 22 April 2026

Summary

With its decision dated 22 April 2026 and numbered 890, the First Chamber of the Council of Judges and Prosecutors ("**HSK**") designated specific administrative courts in Ankara to hear disputes arising from the regulatory and supervisory activities of certain independent administrative authorities. The decision was published in the Official Gazette dated 22 April 2026.

Details

The decision concerns disputes arising from the regulatory and supervisory activities of independent administrative authorities listed under Schedule (III) of the Public Financial Management and Control Law No. 5018. These include, among others, the Capital Markets Board, the Competition Authority, the Information and Communication Technologies Authority, the Energy Market Regulatory Authority, the Nuclear Regulatory Authority, the Personal Data Protection Authority and the Radio and Television Supreme Council.

The HSK noted that disputes involving these authorities often require sector-specific expertise and involve technically complex assessments in areas such as competition, finance, energy, communications and data protection. It further emphasised that concentrating such disputes before designated courts would contribute to procedural efficiency, consistency of case law and legal predictability.

Within this framework, the Ankara 10th, 13th and 25th Administrative Courts were assigned jurisdiction over:

- disputes arising from board decisions adopted within the scope of the regulatory and supervisory powers of the Capital Markets Board, the Competition Authority and the Public Oversight, Accounting and Auditing Standards Authority;
- tender-related acts and transactions falling under Article 20/A(1)(a) of the Administrative Procedure Law No. 2577, excluding debarment decisions; and
- disputes arising from board decisions of the Public Procurement Authority issued under the Public Procurement Law No. 4734 and the Public Procurement Contracts Law No. 4735.

The Ankara 12th, 14th and 15th Administrative Courts were assigned jurisdiction over:

- disputes arising from board decisions adopted within the scope of the regulatory and supervisory powers of the Radio and Television Supreme Council, the Information and Communication Technologies Authority, the Energy Market Regulatory Authority, the Nuclear Regulatory Authority and the Personal Data Protection Board.

The decision further provides that pending cases will continue to be heard by the courts currently seized of those matters, whereas lawsuits filed as of 1 June 2026 will be allocated to the designated specialised courts.

The decision also underlines that the concentration of similar disputes before specialised courts is intended to strengthen expertise and improve the quality and consistency of judicial review in administrative proceedings involving sectoral regulators.

You may access the full text of the decision here.

Draft Law on Compulsory Enforcement Published by the Ministry of Justice

Date: 14 August 2025

Summary

The Ministry of Justice published the Draft Law on Compulsory Enforcement ("Draft Law") for public consultation on 14 August 2025. The Draft Law is intended to replace the current Enforcement and Bankruptcy Law No. 2004 and introduces a comprehensive restructuring of Turkish enforcement law. The draft aims to simplify the existing framework, strengthen legal certainty and improve the efficiency of enforcement proceedings.

Details

The Draft Law was prepared by the Scientific Commission on Enforcement and Bankruptcy Law established within the Ministry of Justice. According to the explanatory notes accompanying the draft, the reform seeks to address structural issues arising from the fragmented structure and extensive amendments of the current enforcement regime.

The Draft Law introduces substantial amendments across various aspects of enforcement proceedings, including attachment procedures, valuation mechanisms, remedies against enforcement measures, sale procedures and procedural timelines. It also places significant emphasis on digitalisation, procedural efficiency and the acceleration of enforcement proceedings.

Among the notable proposals, the Draft Law provides that where no objection is raised against an asset valuation conducted during enforcement proceedings, a new valuation request may not be made for one year from the date of the valuation or expert report, unless exceptional circumstances significantly affecting the value of the asset arise, such as natural disasters, zoning changes or major economic fluctuations.

The Draft Law also removes the special enforcement procedures applicable to negotiable instruments and bank receivables. Under the proposed framework, such claims would become subject to the general rules governing non-judgment enforcement proceedings.

In addition, the Draft Law abolishes the "removal of objection" mechanism previously available before enforcement courts in non-judgment enforcement proceedings. This amendment constitutes a significant change to the current objection system applicable in enforcement practice.

The draft further contains revisions intended to accelerate judicial review in enforcement disputes and to establish a more structured framework for complaints and remedies specific to enforcement proceedings. The reform also seeks to reduce the workload of enforcement offices and courts through procedural simplification and wider use of digital tools.

The publication of the Draft Law prompted extensive discussions among practitioners and academics, particularly regarding procedural safeguards, creditor-debtor balance and the practical implications of the proposed system. The deadline for judges, attorneys at law and other relevant stakeholders to submit comments and recommendations on the Draft Law was set as 31 January 2026.

You may access the full text of the Draft Law here.

Conclusion

The Draft Law represents a comprehensive reform initiative concerning Turkish enforcement law. A final version of the draft has not yet been published. Once finalised, the proposed framework is expected to be submitted to the Turkish Grand National Assembly for legislative deliberation and enactment.

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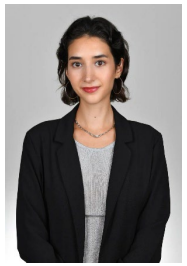

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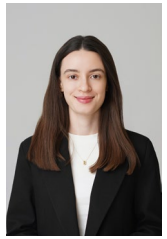

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