Seperability of the Arbitration Agreement in International Arbitration

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I-INTRODUCTION

Today, international trade is growing rapidly. However, there isn't any international court to resolve disputes between the parties to international commercial contracts. The lack of international courts makes international arbitration an excellent path to follow. Arbitration is an alternative to national courts. Specialization, informality, flexibility and speed are the advantages of international arbitration. The international arbitration agreement is the main element of international arbitration. The arbitration agreement gives the arbitrator the power to resolve disputes. The subject of the required attributes of an arbitration agreement is controversial. There are four theories about it: the contractual theory, the jurisdictional theory (the procedural theory), the mixed theory (the hybrid theory) and the independent theory (the autonomous theory). It is an undeniable fact that an arbitration agreement has both contractual and procedural characteristics. There are four elements of an international arbitration agreement: a legal relationship between the contract sides, a mutual understanding, arbitrability and a foreign element. An international arbitration agreement must be in written form. The written form is a must for validity but can appear in different ways. One of them is to make an international arbitration agreement by changing telecommunication tools. It has also the same effect if there is a reference to standard contract terms which contains an international arbitration clause. Everybody who has the capacity for legal transaction and the power of discernment can make an international arbitration agreement. However, an agent must have the specific power to make an arbitration agreement. There are three types of international arbitration agreements: a stand-alone arbitration agreement, an arbitration clause and a unilateral international arbitration agreement. An international arbitration agreement and the main agreement are two different types

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of agreements. The invalidity of an international arbitration agreement is independent of the main agreement. That is called the "separability of the international arbitration agreement" in doctrine. However, in some cases the nullity of the main agreement may effect the arbitration agreement. The separability doctrine is contained within the Turkish International Arbitration Act, too. When the contracting parties make an international arbitration agreement, the arbiters have the authority to settle the dispute and the courts do not. Making an international arbitration agreement has two effects: first is the positive effect and the second one is the negative effect. International arbitration ends when there is a compromise or when the legal relationship ends.

II-SEPARABILITY DOCTRINE

In line with article 4/IV of Turkish International Arbitration Act (MTK-IAA), an objection cannot be made to an Arbitration Agreement to the effect that the main contract is not valid or the arbitration agreement is related to a disagreement that has not emerged yet. In the same sense, in line with Article 7/H of the MTK, the arbitrator or Arbitration Tribunal can make a decision regarding its own jurisdiction, including objections regarding the existence or validity of the arbitration agreement and in the decision-making process, an arbitration clause that is included in a contract is evaluated separately from the other conditions of the contract. The decision made by the arbitrator or the arbitrator committee to annul the main contract does not make the arbitration contract invalid automatically. This means that the arbitration contract should be considered separately from the main contract. It should be underlined that, despite the mention of "arbitration agreement" by the legislature, usually arbitration agreements is an arbitration clause that is part of the main contract and together with the main contracts is defined as the "separability principle." The separability principle started to be discussed in Swiss courts after the Federal Court decision in 1931 which held that the invalidity of the main contract has no affect on the arbitration clause under Swiss Law.[1]

The objective of the arbitration agreement is to solve disputes that emerge from privity of contract; indeed however, the objective of the main agreement is to set the obligations between the parties involved.[2] Furthermore, according to one approach, the main contract is a contract of law of obligations in the full sense; however, an arbitration agreement which has a double-sided nature is a substantial law contract whose judgment and consequences are directly related to procedural law.[3] In other words, the arbitration clause does not have an accessory nature so there are two independent contracts.[4]

Another approach defends the independency of the arbitration contract from the main contract, originating from the fact that the arbitration contract is a procedural contract.[5] According to this approach, arbitration contract has the characteristics of a procedural nature and this separates the contract from the main contract which has substantial law nature[6]. The results of the differences between the two contracts on separability principle are that the mutual rights and obligations of the parties imposed by the arbitration contract and the

[1] Samuel, A., Separability of Arbitration Clauses-Some Awkward Questions About The Law on Contracts, Conflict of Laws And The Administration of Justice, ADRLJ, Part 1, March 2000, s. 36 vd., p. 40. for the development process in Anglo-Saxon Law, see the same author p. 41.; for the cases that are special in respect with the separability doctrine vis avis the specific situations in respect with the Private Internation Law see. same author, p. 37 vd.

[2] Kalpsüz, T., Tahkim Anlaşması, Bilgi Toplumunda Hukuk, Ünal Tekinalp'e Armağan, C.II, İstanbul 2003, s. 1027 vd. (Kalpsüz,Agreement).p. 1042.

[3] Kalpsüz, Agreement, p. 1042; Kalpsüz, T., İnşaat Sözleşmelerinde Tahkimin Genel Esasları, İnşaat Sözleşmeleri, Yönetici-İşletmeci Mühendis ve Hukukçular İçin Ortak Seminer (Ankara, 18-29 Mart 1996), Ankara 2001, s. 361-53 vd (Kalpsüz, Construction); Dayınlarlı, **K.** , Milletlerarası Tahkim Sözleşmesine Uygulanacak Hukuk, YD, 1988/4, s. 415 vd. (Dayınlarlı, Applicaple Law), p. 418; Nomer, E., Milletlerarası Hakemlik Sözleşmelerinde Kanunlar İhtilafı, IV.Ticaret ve Banka Hukuku Haftası, 29 Kasım-4 Aralık 1965, Bildiriler-Tartışmalar, Ankara 1965, s. 501 vd. p. 506; Taşkın, A., Hakem Sözleşmesi, Ankara 2000 p. 116; karş. Şanlı, Contract, p. 292; furthermore, see above § 2.III.D; Y. 13. HD 22.4.1993 T., 2051/3488: "The Main Agreement is a substantial contract however, arbitration agreement is a procedural law contract. Thus, two contracts are completely independent of each other....main contract is valid...arbitration clause is legally invalid as the attorney has no special power of signing an arbitration in attorney's proxy .. This is observed ex officcio" (Kuru, B., Hukuk Muhakemeleri Usulü, C.VI, İstanbul 2001, p. 5952).

[4] Kalpsüz**,** Construction, p. 363.

[5] Yeğengil, R., Tahkim (L'Arbitrage), İstanbul 1974, p. 176.

[6] Yoshida, I., Interpretation of Separability of an Arbitration Agreement and its Practical Effects on Rules of Conflict of Laws in Arbitration in Russia, AI, Vol. 19, No.1, 2003, p. 105.

arbitrator's or the arbitrator committee's ability to decide on its own jurisdiction (competency).[7]

According to other approaches, despite the fact that the arbitration contract is not an additional right to guarantee the main contract, like warranty and guarantee contracts do, and is independent of the main contract, the annulment of the main contract should annul the arbitration contract as well in cases when it coincides with the invalidity of will, since this invalidity situation does not have the power of discrimination.[8] In accordance with this approach, if the reason for invalidity is in the nature of lack of capacity to discriminate the reason for the invalidity or failure of the will or for being unconscionable, all of which have the capacity to affect both contracts, the invalidity of one contract may invalidate the other; under circumstances other than these, like when an arbitration contract was signed for a legal relationship that cannot be subject to arbitration, its invalidity will not invalidate the main contract, so invalidation of one will not affect the other.[9] However, in all of the conditions listed above, the invalidity will not have an adverse effect on the independence of the main contract and arbitration contract since the arbitration clause, for the same invalidity reason, will lead to independent results for both contracts.[10] It should be further noted that the invalidity of the main contract or invalidity of both contracts simultaneously has no connection whatsoever with the condition involved in Article 20/II of Law of Obligations.[11] Some authors defend the idea that the important point here to dwell upon is the fact that the parties involved included the arbitration agreement in the main contract as the arbitration clause, and even if they knew that the main contract was to be invalid for sure whether they will use the arbitration clause or not.[12] In line with this approach, if the parties involved delegate to the arbitrators the power to examine the main contract, the invalidity of the arbitration clause will not be talked about.[13] However it should be underlined that this approach has no meaning at all before the arbitral award, to the effect that the arbitrator or the arbitrator committee can reach a judgment on whether it is within their power or not to decide on the existence and validity of the arbitration contract included in the objections as stipulated by the Article 7/H of International Arbitration Law. Besides, as it is discussed sagaciously by Kalpsüz, actually Article 20 of the Law of Obligations deals with whether the contract will be invalid or not when one of the articles of the contract is invalid; however, in this case, the main question is what will be the fate of the arbitration clause, which is independent of the main contract but also included in it, when the main contract is invalid.[14]

In the meantime, in some cases, the main contract became invalid for the reason that making a reconciliation agreement for the subject contract becomes almost impossible for the parties and so the arbitration agreement becomes invalid as well.[15] The invalidity of the main contract because of unconscionability, which can be considered among these situations, is a conflict as to whether the arbitration contract will be affected or not. Some argue that this will have no effect

[7] Yoshida, p. 105. however, in the doctrine related to the separability principle, a new idea has started to be dwelt upon recently. According to this idea, the separability doctrine should be interpreted in two ways, "The Presumption Theory" and "The Positive Legal Norm Theory" in other word, the severability of arbitration agreement should be evaluated within the context of these two theories. This new opinion defends the idea that focusing on the legal character of the arbitration agreement has no meaning at all, instead it is required to focus on the general conditions and requirements caused the signing of the arbitration contract; see. same author, p. 106

[8] Yeğengil, p. 177 and the authors listed there; Kalpsüz, Agreement, p. 1044;; Şanlı, Contract, p. 293; Üstündağ, S.,Yabancı Hakem Kararı Kavramı,Yabancı Hakem Kararlarının Türkiye'de Tanınması ve Tenfizi, Bildiriler-Tartışmalar, II.Tahkim Haftası, (Ankara,25-26 Kasım 1983), Ankara 1984, p. 946; Muşul, T., Medeni Usul Hukuku Bilgisi, İstanbul 2002, p. 309.

[9] Yeğengil, p. 179; Kalpsüz, Agreement, p. 1044.

[10] Muşul, p. 309.

[11] In Article 20/II of the Law of Obligations, the lawmaker arranges the conditions and its consequences in a record of the contract made in the contract; however, here the situations is totally contrary to this and it is a matter of the impact of a condition in the contract on another condition included although independent; see. Kalpsüz, Construction, p. 362 vd.; same author, Agreement, p. 1045; for partial invalidity concept see. Eren, p. 303 vd.; Kılıçoğlu, A. M., Borçlar Hukuku Genel Hükümler, Ankara 2003 (Kılıçoğlu, Obligations) p. 58; İnan, p. 144.

[12] Üstündağ, p. 947; Ertekin, E./ Karataş, İ., Uygulamada İhtiyari Tahkim Ve Yabancı Hakem Kararlarının Tenfizi Tanınması, Ankara 1997 p. 79.

[13] *Ibid*.

[14] Kalpsüz, Agreement, p. 1045.

[15] Kalpsüz, Construction, p. 362; same author, Agreement, p. 1044.

on the arbitration contract, however, some others who think to the contrary, argue that a main contract, which is unconscionable or contrary to public order, will invalidate the arbitration clause.[16]

We can face the independency principle in various forms. The most important consequence of the independency principle is to consider the arbitration clause not to be a condition for the main contract—that is that the validity of the main contract cannot make the arbitration clause valid and the validity of the arbitration clause cannot make the main contract valid, in other words, the validity of these two should be considered separately and invalidity of one of them cannot affect the validity of other.[17] For instance,[18] let us consider a main contract which is not subject to a required legal form. The parties to the contract may decide to finalize the contract at a Notary office. However, if the contract is made in a simple written form contrary to the oral agreement of the parties, the invalidity of this contract does not affect the validity of the arbitration contract. Now let us consider that the parties make a purchase contract (sale of goods) based on a verbal agreement. The validity of the sales contract will not prevent the invalidity of the arbitration contract which was made verbally. Meanwhile, when a person signs a contract with another person, despite not having the requisite representation authority, and the contracting parties later on accept the conditions of the main contract and fulfill them, this will not make the arbitration clause valid, in other words, the arbitration clause remains invalid.[19]

When deciding on, after performing the acts, whether claiming the invalidity of the arbitration contract is a misuse of the right or not (Civil Code, Article 2/II, prohibition of the misuse of right), the most proper approach with respect to the independency principle, is to look whether the performance of the application serving the objective of the arbitration contract has been committed or not, instead of looking whether the performances for the fulfillment of the main contract have been completed.[20]

Another consequence of accepting this principle is that when the arbitrators decide that the main contract is invalid, since the arbitration clause is considered to be separate from the main contract, the judgment regarding the invalidity of the main contract affects the validity of the arbitration contract and naturally the validity of the arbitrator judgment.[21]

Whether an arbitration clause will be valid for the assignee in the case of assignment of a claim, and the relationship with the independence principle, has been started to be debated recently, based on decisions recently reached by the French Supreme Court. It should be mentioned that the adoption of the opinion that the arbitration clause will be transferred with the assignment of the claim is clearly contradictory to the independence principle of the arbitration contract, because, after accepting the ideas of the independence of the arbitration contract from the main contract, it will be totally contradictory to the independency principle to consider that the arbitration contract automatically transferred in case of turnover of the main contract. In spite

[16] Yeğengil, p. 177; Karş. Kalpsüz, Agreement, p. 1044; Ertekin/Karataş, p. 79 vd.; Ansay, S. Ş., Hukuk Yargılama Usulleri, Ankara 1960, p. 409.

[17] Akıncı, International, p. 78; Yeğengil, p. 176; Kalpsüz, Agreement, p. 1042 vd.; Şanlı, Contract, p. 293; Y. 4. HD 25.3.1971 T., 2152/2829: "As the arbitration clause between the parties involved constituted the accessory of the invalid main contract, the validity of the arbitration clause cannot be talked about." (Kuru, p. 5942 vd.); It is impossible to accept this decision as against the separability theory of the arbitration contract.

[18] For examples see Kalpsüz, Agreement, p. 1044; Yeğengil, p. 178; For similar examples see Şanlı, Contract, p. 293 vd.

[19] Y. 13. HD 22.4.1993 T., E: 1993/2051, K: 3488: ".in accordance with the proxy statement extended by the corporation dated.19.3.1980 and the he was delegated with the powers mentioned in the proxy statement when signing the contract dated 31.5.1982 as the authorized representative of the corporation, the main contract is valid however, the arbitration contract is not valid because of the fact that attorney has no special authority." (Şanlı, Contract, p. 295 vd.); Y. 19. HD 15.11.1995 T., E: 1995/9108, K: 9685: "A valid sale contract existed as the Litigant firm perform the act by delivering the goods subject to the contract to the defendant. However, since the arbitration contract is independent of the sale contract, its validity should be further examined." (Şanlı, Contract, p. 294 vd.); it is reached on the base of a sale contract conducted by an unauthorized attorney; see. Şanlı, Contract, p. 294 vd.

[20] İstanbul 6th Commercial Court of First Instance, 27.1.1989 T., E: 1988/715, K: 34: "the litigant did not object the articles other than Article 43 related to the transferred arbitration contract, and the contract was actually put into operation. In case the persons who sign the contract are not authorized, all of the articles in the contract are invalid. It is against Article 2 of the Civil Code to claim the invalidity only of the article related to the arbitration and to accept the validity of all other articles." This judgment was criticized on the basis of the rationale explained above; see Şanlı, Contract, p. 296 vd.

[21] Kalpsüz, Agreement, p. 1043; Şanlı, Contract, p. 297; Akıncı, Z., Milletlerarası Tahkim, Ankara 2003, p. 79.

of this, both in doctrine and in practice, it is generally accepted that the arbitration clause is assigned as well. However, the reasons of this assignment are different. According to one approach, this assignment originates from the economic dependence that exists between the arbitration clause and the main contract. In another approach, the reason for this is based on the fact that the arbitration clause is considered to be an accessory right. Here, we first explain the economic dependency approach, then the accessory right approach and finally we will explain our own approach towards the issue.

In accordance with the economic dependency approach, the reason for assignment of the arbitration clause, along with the assignment of a claim, is the economic connection between the arbitration clause and the main contract. French Courts frequently based their judgments to the effect that in case a claim is assigned, the arbitration clause included in the main contract related to this, should be assigned together with the claim, based on the economic dependence between the main contract and the arbitration clause; therefore, the person taking over the claim should get benefit of the mechanism to resolve it that was provided by the arbitration clause. However, this would only be an indirect usage.[22]

I think the opinions of Şanlı, who defends the economic dependency approach should be mentioned at this point. According to the author, under the separability principle in arbitration law, two contracts of a completely different nature from each other exist separately in spite of the fact that one is considered to be the continuation of the other in substance.[23] Under the circumstances, this unique nature given to the arbitration contract, and in particular only to the arbitration clause, by the separability principle, rejects the idea that the claim can be transferred to the one who takes over, because the arbitration clause is considered to be attached to the main claim and interpreted as an accessory to the main claim.[24] In other words, the arbitration contract cannot qualify as a dependent part of the main contract.[25] However, for the author,[26] in spite of these opinions, the relationship between the arbitration clause and the claim transferred cannot be denied. Accordingly, after the actual transfer of the claim, the arbitration clause will have no legal meaning for the one who transfers the claim, because the objective of the arbitration clause is to resolve disputes that emerge from the legal relationship and the disagreements that emerge are the transferred claims. In other words, the existence of a legal relationship is a prerequisite for the existence of the arbitration clause. Besides, French Courts also have accepted that the arbitration clause is not the accessory of the main contract. However, French Courts acted on the basis of the economic dependence criteria that existed between the arbitration clause and the main contract to solve the issue. Consequently, the opinion that the arbitration clause is transferred to the one who possesses the claim, together with the claim and other accessory rights, was adopted. The author maintains that this should be valid also in Turkish law and there is no reason against this view. In other words, the author argues that, in Turkish Law, the ar-

[22] Uluocak, N., Milletlerarası Tahkim Şartının Alacağın Temliki İle İntikali – Fransız İçtihadı, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni, Prof. Dr. Aysel Çelikel'e Armağan, Y.19-20, S.1-2, 1999-2000, p. 996; Şanlı, Obligations, p. 784; for representation of the receivable in French Law see. Dayınlarlı, K., Borçlar Kanununa Göre Alacağın Temliki, Ankara 1993 (Dayınlarlı, Assignment of Claims), p. 14 vd.; for assignment of receivable concept see.same author, aynı eser, p. 43 vd.; Eren, p. 1176 vd.; Kılıçoğlu, Obligations, p. 585 vd.; İnan, p. 381 vd.

[23] Şanlı, C., Konişmentonun Devri, Alacağın Temliki ve "Perdeyi Kaldırma Teorisi" Uygulamasında Sözleşmede Yer Alan Tahkim Şartının Konişmentoyu Devralan, Alacağı Temellük Eden ve Perdenin Arkasında Kalan Bakımından Geçerliliği Sorunu, Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni, Prof.Dr.Ergin Nomer'e Armağan, Y.22, S.2, 2002, s. 773 vd. (Şanlı, Obligations) p. 783.

[24] *Ibid.*

[25] *Ibid,* p. 784.

[26] *Ibid.*

bitration clause can be assigned to the one who possesses the claim. The author further argued that this legal result can be just like the judgments reached by the French Courts.[27]

In accordance with the accessory right approach, the reason for the transfer of the arbitration clause upon assignment of the claim is that the arbitration clause is an accessory right. According to French doctrine, there exists a strong complementary connection between the main contract and the arbitration clause; the reason for considering the arbitration clause independent of the main contract is because of this complementary status (being the accessory).[28] The validity of the arbitration clause is not affected by this connection but since it is an accessory of the main contract, it is assigned along with the claim; in other words, because of this connection, the arbitration clause is considered to be one of the characteristics of the claim.[29] According to the author, since the arbitration clause shows the authority who will resolve the disagreement in case the assignee did not fulfill its obligations, it becomes a characteristic of the claim and should be transferred to the one who is assigned with the claim.[30] The French Court based their decisions on this approach; a statement was made to this effect that "since the arbitration clause is an accessory of the relations covered by the contract, it is transferred in the course of assignment of the claim" but also decided in this case that the arbitration clause in the claim could not be transferred since it was made despite a prohibition against assignment in the contract.[31] In line with this judgment, some authors argued that there might be two issues involved within the context of Article 178 of International Private Law Act (IPRG): first, the approach that the arbitration clause be considered as the integral part of the claim, and second, that the arbitration clause is considered as a secondary characteristic.[32]

Berber defended the idea that the arbitration clause is an accessory right within the context of Article 168/I of Code of Obligations, and by this token, the assignee of the claim will be subject to this condition[33].

Eren argued that in case of transfer of the claim, the rights of suing, undertaking and execution are considered to be accessory rights and are transferred to the assignee.[34]

According to our approach, a concrete result cannot be achieved without examining the result of the acceptance of the separability principle. As a matter of fact, the reason here to accept the principle related to the independence of the arbitration clause (and in general sense, the arbitration contract as a whole) from the main contract, is to keep the possibility of arbitration open by keeping the main contract and arbitration contract independent of each other. Otherwise, in many cases, the arbitration contract may become invalid and resolution of any dispute through arbitration will be performed only in a very limited area of application. Thus, despite the fact that this characteristic of the separability principle requires us to keep it independent of the main contract with respect to the validity, this will not change the fact that it is a part of the main contract, and will not contradict the sepa-

[27] Şanlı, Obligations, p. 784 vd.

[28] For the opinions of the subject French author Mayer, see. Uluocak, p. 997; as a matter of fact, in France, the approach to the effect that the arbitration clauses are to be considered transfered together with the assignment of the claims, is started to be criticized. Becaue in accordance with this approach, the separability principle is not compatible with this situation; Ekşi, p. 126.

[29] Uluocak, p. 997. Accessory rights are divided to two as enlarging and guaranteeing the claims; for accessory rights, see Eren, F. , Borçlar Hukuku Genel Hükümler, İstanbul 2003, p. 29 vd; İnan, A.N., Borçlar Hukuku Genel Hükümler, Ankara 1984.p. 35.

[30] Uluocak, p. 997.

[31] Jdt 1978 71-76, 25.01.1977 T. (Uluocak, p. 998); Rev.arb., 1991, 709, 9.4.1991, Swiss Federal Court 1. HD resolution (Uluocak, p. 998 vd.); furthermore, see Ekşi, N, Milletlerarası Deniz Ticareti Alanında "Incorporation" Yoluyla Yapılan Tahkim Anlaşmaları, İstanbul 2004 p. 127. Similar approach prevails in German Law. However, in accordance with German Laws, if transfer is prohibited by the parties involved or the indetity of the parties involved is of importance in concluding the contract, the assignment of claims cannot secure the transfer of arbitration clause as well ; see, Ekşi, same book, p. 127.

[32] "...arbitration clause is either a characteristic of a claim transferred (modalité), or an accessory right similar as Article 170/1 of the Swiss Law of Obligations. This characteristic of being accessory, in general sense, is compatible with the will of the parties involved...In short, the Federal Court adopts the approach of considering the arbitration clause as an accessory of this right in the transfer of claims case and accepts the transfer of it together ."; see Uluocak, p. 1000 vd.

[33] Berber, L. K., Uluslararası Ekonomik Tahkimde Çok Taraflı Tahkim Sorunu, İstanbul 199, p.222.

[34] Eren, p. 1192; In return, Kalpsüz argues that arbitration clause cannot be considered as the accessory of the main contract because of the fact that being included in the main contract will not change its nature of being an independent contract; see. Kalpsüz, Agreement, p. 1044 vd.

rability of the arbitration clause if it is a separate contract to accept the transfer of the arbitration clause in partial or total succession and the natural transfer of the claim.[35] In other words, the arbitration clause, included in the main contract, is legally an accessory of the main contract. Despite this, the main contract and the arbitration contract, as the arbitration clause, are considered separate from each other in line with the separability principle. Within this context, this independence should be interpreted to mean that individual reconciliations should be considered for both (Article I, Law of Obligations). Furthermore, it would be a proper solution to accept the fact that when the main contract is transferred, the arbitration contract is transferred together with it as a material part of the main contract.[36] This will not change the fact that the arbitration contract and the main contract are contracts of a different nature and, most important of all, the arbitration contract is an individual contract as a whole.[37] In other words, despite the fact that the arbitration clause is considered independent of the main contract, it is considered to be a part of the main contract, so the transfer of the main contract must result in the transfer of the arbitration agreement as well.[38] In short, it is possible to transfer the arbitration contract to the one whom the claim was assigned.[39] For this reason, in case of the assignment of the claim and transfer of the debts, the arbitration clause in the contract or the stand-alone arbitration contract is considered to be transferred to the successors in interest.[40] Although the arbitration contract is independent from the main contract, the reason for the transfer to the successor, because of the elementary succession that existed, is that the nature of the impact of the succession is involved as well.[41] In fact, Kılıçoğlu argued that when authorization or arbitration contracts exist, both in assignment of the claim and legal succession cases, these are all valid for the successor as well.[42]

[35] Gélinas defended an opinion similar to that of us. According to the author, arbitration clause is an integral part of the main contract. Thus, it is normal to have the rights comprised by the main contract. The existence of the separability principle will not change this. As a matter of fact, the only reason of adopting the separability principle is to open the arbitraiton way for the parties involved; see Ekşi, at p. 128.

[36] Kalpsüz, Construction, p. 360; same author, Agreement, p. 1042.

[37] Kalpsüz, Construction, p. 360 vd.

[38] Kalpsüz, Construction, p. 360.

[39] Kuru, p. 5982; Balcı, p. 184; Akıncı, Construction, p. 212; Ansay, p. 408.

[40] Ertekin /Karataş, p. 48.

[41] Akıncı, Construction, p. 212.

[42] Kılıçoğlu, A. M., Türk Borçlar Hukukunda Kanuni Halefiyet, Ankara 1979, p. 115.