

LAW ON INTERNATIONAL ARBITRATION*

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PART ONE

General Provisions

Aim and scope

ARTICLE 1.- The aim of this Law is to stipulate the rules and procedure pertaining to international arbitration. This Law shall apply in cases where Turkey is determined as the place of arbitration to disputes bearing a foreign element and in cases where Turkey is determined as the place of arbitration or where the provisions of this Law are chosen by the parties, the arbitrator or the arbitral tribunal.

The provisions of articles 5 and 6 of this Law shall also apply in cases where a place of arbitration outside Turkey is determined.

This law shall not apply to disputes relating to rights *in rem* on immovable property and to disputes not subject to the will of the parties.

Pursuant to the Law on the Principles To Be Abided By in cases of

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** Erciyes Üniversitesi İktisadi İdari Bilimler Fakültesi Öğretim Üyesi.

Arbitration Relating to Disputes Arising From Concession Agreements and Contracts on Public Services dated 21 January 2000, with number 4501, the settlement of disputes bearing a foreign element -arising from concession agreements and contracts relating to public services- by way of international arbitration shall also be subject to this Law.

The provisions of international conventions to which the Republic of Turkey is a party shall be reserved.

Foreign element

ARTICLE 2.- The existence of any of the situations below indicates that the dispute bears a foreign element and in that case, the arbitration assumes an international nature.

1. The domicile, the place of habitual residence or the business place of the parties to the arbitration agreement being in different states.
2. The domicile, the place of habitual residence or the business place of the parties being in a state other than;
 - a) the place of arbitration in cases where this place is stipulated in the arbitration agreement or determined pursuant to this agreement,
 - b) the place where a substantial part of the obligations arising from the principal contract shall be executed or the place which the subject of the dispute is mostly related with.
3. The existence of a situation where at least one of the partners of the company party to the principal agreement on which the arbitration agreement is based, has brought in foreign capital, pursuant to the legislation on the encouragement of foreign investment or the existence of a necessity to conclude credit and/or warranty agreements in order to provide capital from abroad for the execution of this (principal) agreement.
4. The existence of a situation where the principal agreement or the legal relationship on which the arbitration agreement is based, causes a flow of capital or of goods from one country to another.

The provisions of the Law dated 21 January 2000, with number 4501 are reserved.

The assigned and authorised court in arbitration; restriction on intervention

ARTICLE 3-As regards the tasks that are stipulated in this Law as tasks to be conducted by the court, the civil court of first instance at the domicile or the place of habitual residence or the business place of the defendant shall be authorised; and Istanbul Civil Court of First Instance shall be authorised in cases where the defendant does not have a domicile or a place of habitual residence or a business place in Turkey.

The courts may intervene regarding problems arising from international arbitration pursuant to the provisions of this Law only.

PART TWO

The Arbitration Agreement

Definition and form

ARTICLE 4- The arbitration agreement is an agreement where the parties agree on the settlement of all or some of the disputes that has arisen or may arise from an existing legal relationship between them –irrespective of whether this relationship arises from a contract or not- by way of arbitration. The arbitration agreement may be concluded by an arbitration clause inserted in the principal agreement or by a separate agreement.

The arbitration agreement shall be in writing. In order for this condition to be regarded as having been fulfilled, the arbitration agreement should have been transferred on to a written document signed by parties or on to a communication device such as a letter, telegram, telex, fax exchanged between parties or on to an electronic medium or the claim towards the existence of a written arbitration agreement within a petition should not have been objected to in the

responding petition submitted by the defendant. In case a reference is made to a document including an arbitration clause in order to transform this document into a part of the principal agreement, it shall also be accepted that a valid arbitration agreement is concluded.

The arbitration agreement shall be valid if it is in conformity with the law that the parties have chosen as the law applicable to the arbitration agreement or with Turkish law if there is no such choice of law.

No objections may be raised against the arbitration agreement on the grounds that the principal agreement is invalid or that the arbitration agreement pertains to a dispute that has not yet arisen.

The arbitration objection and agreement before the court

ARTICLE 5. – In the case where a suit has been brought before the court regarding a dispute constituting the subject of an arbitration agreement; the other party may raise an arbitration objection. Raising an arbitration objection and the settlement of disputes pertaining to the validity of the arbitration agreement shall be subject to the provisions of the Law on Civil Procedure that relate to initial objections. In the case where the arbitration objection is accepted, the court shall reject the case on procedural grounds.

In the case where the parties agree on going to arbitration during the suit, the case shall be referred to the relevant arbitrator or the arbitration tribunal by the court.

Interim injunction or provisional distraint

ARTICLE 6. – The claim for an interim injunction or provisional distraint by one of the parties before or during the arbitration process and the decision by the court on such interim injunction or provisional distraint shall not be contrary to the arbitration agreement.

Unless provided otherwise, the arbitrator or the arbitration tribunal may order an interim injunction or a provisional distraint upon demand by one of the parties, during the arbitration process. The arbitrator or the arbitration tribunal may hold the ordering of an

interim injunction or a provisional distraint subject to to the provision of an appropriate guarantee. The arbitrator or the arbitration tribunal may not order an interim injunction or a provisional distraint that requires execution by execution organs or by other official authorities, nor may she order an interim injunction or a provisional distraint binding third parties.

In case one of the parties does not execute the interim injunction order or provisional distraint issued by the arbitrator or the arbitration tribunal; the other party may request the assistance of the authorised court, demanding for an (judicial) interim injunction or provisional distraint order to be issued. The authorised court may, if necessary, may forward a rogatory commission to another court.

The rights of the parties to assert demands pursuant to the Law on Civil Procedure and the Law on Execution and Bankruptcy are reserved.

The interim injunction or provisional distraint order issued by the court upon demand by one of the parties before or during the arbitration process shall be automatically annulled in the case where the decision of the arbitrator or the arbitration tribunal becomes executable or where the case is rejected by the arbitrator or the arbitration tribunal.

PART THREE

The Election, Rejection, Responsibility, Termination of Office and the Authority of the Arbitrator or the Arbitration Tribunal

The number, election, rejection, responsibility, termination of office and the authority of the arbitrators

ARTICLE 7. – A) The parties may freely determine the number of arbitrators. However, this number should be an odd number.

In case the number of the arbitrators has not been determined by parties, three arbitrators shall be elected.

B) Unless otherwise provided by the parties, the following rules shall apply regarding the election of arbitrators:

1. Only natural persons may be elected as arbitrators.
2. In case only one arbitrator is to be elected and the parties can not agree in the election of the arbitrator, the arbitrator shall be determined by the civil court of first instance, upon the demand of one of the parties.
3. In case three arbitrators are to be elected, each of the parties shall elect an arbitrator; two arbitrators elected in this way, shall determine the third arbitrator. In case one of the parties does not elect an arbitrator within thirty days after receipt of the other party's demand to that effect, or where the two arbitrators elected by the parties do not determine the third arbitrator within thirty days after their election, the arbitrator shall be elected by the civil court of first instance upon request of one of the parties. The third arbitrator shall act as the president.
4. In case more than three arbitrators are to be elected, the arbitrators who shall determine the final arbitrator shall be determined in equal numbers by the parties, pursuant to the procedure described in the paragraph above.

Despite the fact that the parties have already determined the election procedure of the arbitrators, the election of the arbitrator or the arbitration tribunal shall be conducted by the civil court of first instance -upon the request of one of the parties- in the case where;

1. One of the parties does not abide by the agreement,
2. The parties may not come to an agreement where the parties or the arbitrators elected by the parties have to decide together on the election of the arbitrator, pursuant to the envisaged procedure,
3. The third person, authority or the institution authorised to elect the arbitrator does not elect the arbitrator.

The judgments of the civil court of first instance, delivered -after hearing the parties where necessary- pursuant to the provisions of this paragraph, shall be final. The civil court of first instance shall watch for the principles of the mutual agreement of parties in the election of arbitrators, the election of an arbitrator from a different nationality than that of the parties' in the case where one arbitrator

is to be elected by parties from different nationalities, the election of arbitrators in such a way so that two of the three arbitrators are not from the nationality of one of the parties in the case where three arbitrators are to be elected. The same procedure shall apply in cases where more than three arbitrators are to be elected.

C) The person to whom arbitratorship is offered shall be required to disclose –before she accepts this duty- the situations and conditions which righteously raise doubts regarding her objectiveness and independence. In the case where the parties are not informed beforehand, the arbitrator shall inform the parties of the situations that arise subsequently, without delay.

The arbitrator may be rejected in the case where she does not bear the qualities determined by the parties, where there exists a ground of rejection envisaged in the arbitration procedure envisaged by the parties, where situations and conditions arise which righteously raise doubts regarding her objectiveness.

D) The parties may freely determine the procedure for the rejection of the arbitrator.

The party that desires to reject the arbitrator may demand rejection within thirty days starting from either the election date of the arbitrator or of the arbitration tribunal or from the date she becomes aware that a situation has arisen which enables her to demand the rejection of the arbitrator and she shall notify the other party of this demand in writing.

The party that demands the rejection of one or more than one arbitrator from the arbitration tribunal, shall notify the arbitration tribunal of her rejection demand and its ground. The party who is informed that her rejection demand is not accepted, may appeal against this decision to the civil court of first instance within thirty days, claiming the rejection of this decision and the ordering of the rejection of the arbitrator or the arbitrators.

The rejection of the elected¹ arbitrator or the whole of the arbitration tribunal or such a number of arbitrators that will make the majority vote impossible, may only be demanded from the civil court of first

¹ I.e. “sole” or “single” arbitrator.

instance. The judgments passed by the civil court of first instance pursuant to this paragraph shall be final.

The arbitration shall terminate in the case where the rejection of the elected arbitrator² or the whole of the arbitration tribunal or such a number of arbitrators that will make the majority vote impossible, is ordered by the civil court of first instance. However, in the case where the name of the arbitrator or the arbitrators is not designated in the arbitration agreement, the arbitrator(s) shall be re-elected.

E) Unless decided otherwise by the parties, the arbitrator who has accepted to take up duty in arbitration shall be obliged to compensate the loss of the parties thus caused, in the case where she refrains from carrying out her duty without any objective justification.

F) In the case where an arbitrator is not able to fulfill her duty at all or on time, due to legal or actual reasons, the authority of arbitration shall terminate upon the withdrawal of the arbitrator or the agreement of the parties to that effect.

Each of the parties may demand from the civil court of first instance, an order towards the termination of the authority of the arbitrator in the case where a dispute arises between them, pertaining to the existence of grounds requiring the withdrawal of the arbitrator. The decision of the civil court of first instance shall be final.

The withdrawal of the arbitrator or the consent of the other party to the termination of the authority of the arbitrator shall not imply the acceptance of the existence of the grounds for the rejection of the arbitrator.

G) In case the duty of one of the arbitrators terminates for any reason, a new arbitrator shall be elected in her place by applying the procedure of election applied to the former.

The proceeding of the duration of arbitration shall not be suspended due to the replacement of one or more than one arbitrator.

However, in case the name and the surname of the arbitrator or the arbitrators constituting the arbitral tribunal are stated in the

² Ibid.

arbitration agreement, the arbitration shall terminate when the duty of the arbitrator³, the arbitration tribunal or a number of the arbitrators that will make majority voting impossible, is terminated for any reason.

H) The arbitrator or the arbitration tribunal may decide on her own authority including objections pertaining to the existence or the validity of the arbitration agreement. An arbitration clause in an agreement shall be interpreted independent of the other provisions of the agreement when this decision is being taken. The decision of the arbitrator or the arbitration tribunal on the invalidity of the principal agreement shall not automatically result in the invalidity of the arbitration agreement.

The objection pertaining to the lack of authority of the arbitrator or the arbitration tribunal should be raised in the first petition of response at the latest.

The fact that the parties have elected the arbitrators themselves or that they have participated in the election of the arbitrators, shall not prevent them from objecting to the authority of the arbitrator or the group of arbitrators.

The objection pertaining to the overriding of authority by the arbitrator or the group of arbitrators shall not be valid unless raised immediately.

In both cases described above, the arbitrator or the arbitration tribunal may accept the objection raised subsequently if she reaches the conclusion that the delay is objectively justified.

The arbitrator or the arbitration tribunal shall examine the objection pertaining to the lack of authority as a preliminary question and come to a decision; in the case where she decides that she is authorised, she shall proceed with the arbitration and decide on the case.

3 Ibid.

PART FOUR

Arbitration Procedure

Determining the rules of procedure, the equality and the representation of the parties

ARTICLE 8 - A) The parties may, without prejudice to the mandatory provisions of this Law, freely decide on the procedural rules to be applied by the arbitrator or the arbitration tribunal or determine these rules by making a reference to a law or international or institutional arbitration rules.

In the case where there is no such agreement between the parties, the arbitrator or the arbitration tribunal shall proceed with arbitration pursuant to the provisions of this Law.

B) The parties shall have equal rights and authority during arbitration. The parties shall be provided with the opportunity to assert their claims and defences.

During the arbitration, the parties may be represented by foreign natural or legal persons as well. This provision shall not apply to demands relating to arbitration that are submitted to the courts.

Place of arbitration

ARTICLE 9 - The place of arbitration shall be determined freely by parties or by an institution of arbitration determined by them. In case there is no agreement on this matter, the place of arbitration shall be determined by the arbitrator or the arbitration tribunal subject to the characteristics of the case at hand.

The arbitrator or the arbitration tribunal may convene at another place in the case where the arbitration process so requires, provided that they notify the parties beforehand.

The date of commencement, duration and language of arbitration, the initial petition and the petition of response, certificate of duty

ARTICLE 10 - A) Unless decided otherwise by the parties, the arbitration shall be deemed to commence on the date when the civil court of first instance or the person, authority or the institution that will elect the arbitrator pursuant to the agreement of the parties is applied to for the election of the arbitrator, or on the date when the plaintiff, after electing her arbitrator, notifies the other party, demanding the election of her own arbitrator in case the arbitrators are to be elected by both parties, or on the date when the notice pertaining to the demand for the resolving of the dispute by arbitration is received by the opposite party in case the arbitrator or the arbitrators constituting the arbitration tribunal are stated in the agreement.

In case one of the parties has obtained an interim injunction or a provisional distraint order from the court, that party shall be required to file an arbitration suit within thirty days. Otherwise, the interim injunction or the provisional distraint order shall be automatically revoked.

B) Unless decided otherwise by the parties, the arbitrator or the arbitration tribunal shall decide on the case within one year starting from the date of election of the arbitrator, or in cases where there is more than one arbitrator, from the date of the preparation of the first minute of the meeting of the arbitration tribunal.

The duration of the arbitration may be extended by the agreement of the parties and in case they disagree, by the civil court of first instance, upon the application by one of the parties. In case the application is rejected, the arbitration shall terminate at the expiry of arbitration. The decision of the court shall be final.

C) The arbitration may be conducted either in Turkish or in the official language of one of the countries recognised by the Republic of Turkey. In case the language or the languages to be used in the arbitration has not been mutually determined by the parties, they shall be determined by the arbitrator or the arbitration tribunal.

Unless decided otherwise in the agreement of the parties or in the interim order of the arbitrators pertaining to the issue, this language or these languages shall be used in all the written statements of the parties, trials, interim orders, the final judgment and the written notices of the arbitrator or the arbitration tribunal.

The arbitrator or the arbitration tribunal may order the submission of the documents presented by the parties, together with their translation in the language or the languages used in the arbitration.

D) Within the period determined by the parties or by the arbitrator or the arbitration tribunal, the plaintiff shall submit the initial petition including the names, titles, addresses and the representatives of the parties, the arbitration clause or the agreement, the agreement or the legal relationship to which the dispute pertains, the events on which her claim is based, the subject and the amount of the dispute and her claim; the defendant on the other hand, shall submit her petition of response including her defences, to the arbitrator or the arbitration tribunal. The parties may add their written evidence to their petition and may refer to the evidence they will submit subsequently.

Unless they have decided otherwise, the parties may amend or extend their claims and defenses during the arbitration. However, the arbitrator or the arbitration tribunal may not permit such amendments or extensions, taking into consideration that this action is taken with delay or unjustly causes substantial hardship for the other party and other circumstances and conditions. It shall not be possible to amend or extend the claim or the defence in such a way so as to fall outside the scope of the arbitration agreement.

E) Unless decided otherwise by the parties, the arbitrator or the arbitration tribunal shall prepare a certificate of duty after the initial petition and the petition of response are submitted.

The duty of certificate shall comprise the names, titles, qualification of the parties, their valid notification address during the arbitration, the summary of their claims and defences, their demands, the explanation of the dispute, the names and surnames of the arbitrators, their qualifications and addresses, the place and duration of arbitration, the date of commencement of arbitration, the explanation regarding the procedural rules applicable to the dispute

and issues such as whether the arbitrators are authorised to amicable mediation.

The duty of certificate shall be signed by the arbitrators and by the parties.

The trials, written adjudication, loss of capacity, failure to participate in the adjudication

ARTICLE 11. – A) The arbitrator or the arbitration tribunal may decide on holding a trial on grounds such as the submission of evidence, making of oral statements or demanding of explanation from experts, or may decide on proceeding the arbitration on the file. As long as the parties do not agree on not holding any trials, the arbitrator or the arbitration tribunal shall hold a trial at an appropriate phase of the adjudication upon demand by one of the parties.

The arbitrator or the arbitration tribunal shall notify the parties beforehand in due course, on the dates of all on-site investigations, of expert examinations or of the meetings or trials to be held for the examination of other evidence and the consequences of non-participation by the parties.

The petitions, data and other documents submitted to the arbitrator or the arbitration tribunal shall be notified to the parties.

B) In case one of the parties to the arbitration loses the capacity as a party, the arbitration shall be postponed by the arbitrator or the arbitration tribunal and the persons concerned shall be notified in order to proceed with the arbitration. The duration of the arbitration shall be suspended in this case.

In case no notification is made within six months or where the notified persons do not notify the other party or the arbitrator or the arbitration tribunal explicitly that they will pursue with the arbitration, the arbitration shall terminate.

C) The provisions below shall apply in the case where one of the parties does not participate in the adjudication:

1. The arbitrator or the arbitration tribunal shall terminate the arbitration in case the plaintiff fails to submit the initial petition on no objective grounds.
2. The arbitrator or the arbitration tribunal shall terminate the arbitration in case the initial petition is not in conformity with the first paragraph of article 10(D) and where the deficiencies are not remedied within the period granted by the arbitrator or the arbitration tribunal.
3. In case the defendant does not submit a petition of response, this situation shall not be regarded as the acceptance of the plaintiff's claims and the adjudication proceeds.
4. In case one of the parties fails to attend the trial on no objective grounds or refrains from submitting her evidence, the arbitrator or the arbitration tribunal may proceed with the arbitration and decide pursuant to the evidence at hand.

The appointment of experts by the arbitrator or the arbitration tribunal, collection of evidence, the applicable substantive rules and peaceful settlement

ARTICLE 12.- A) The arbitrator or the arbitration tribunal may order;

1. the appointment of one or more than one experts in order for them to submit reports on subjects determined by the arbitrator or the arbitration tribunal,
2. the provision of necessary explanations, relevant documents and data to the experts by the parties,
3. an on-site investigation regarding the case.

Unless decided otherwise, the experts shall attend the trial they are summoned to, held after the submission of their written or oral report, upon demand by one of the parties or in case the arbitrator or the arbitration tribunal deems as necessary. At this trial, the parties may forward their queries to the experts and they may have the special experts selected by them heard.

B) The parties shall submit their evidence within the period determined by the arbitrator or the arbitration tribunal. The arbitrator or the arbitration tribunal may request the assistance of the civil court of first instance for the collection of evidence. In this case, the court shall apply the provisions of the Law on Civil Procedure.

C) The arbitrator or the arbitration tribunal shall rule pursuant to the provisions of the agreement between the parties and the law that the parties have determined as the law applicable to the substance of the dispute. The commercial customs and traditions pertaining to this law shall also be taken into consideration in the interpretation and complementation of the provisions of the agreement. Unless stated otherwise, the choice of the law of a particular state shall be understood as the direct choice of the substantive law of that state and not its choice of law rules or its rules of procedure.

In case the parties have not determined the substantive law applicable to the dispute, the arbitrator or the arbitration tribunal shall rule pursuant to the substantive law of the state which she has concluded as having the closest connection with the dispute.

The arbitrator or the arbitration tribunal may decide pursuant to equity or as a friendly mediator only when the parties have explicitly authorised them to do so.

D) In case the parties reach a peaceful settlement during the arbitration, the arbitration shall terminate. The peaceful settlement shall be recorded as the arbitration judgment by the arbitrator or the arbitration tribunal that deems the demand of the parties as appropriate.

The ruling procedure of the arbitration tribunal and the termination of arbitration

ARTICLE 13.- A) Unless decided otherwise by the parties, the arbitration tribunal shall decide by a majority vote. In case authorised by the parties or the other members of the arbitration tribunal, the president of the arbitration tribunal may decide solely on certain subjects pertaining to the arbitration procedure.

B) The arbitration shall terminate by the passing of the final arbitration judgment or by the realisation of one of the events below:

1. Withdrawal by the plaintiff of her suit, except in the case where, upon the objection of the defendant, the arbitrator or the arbitration tribunal decides that the defendant has a legal interest in the final settlement of the dispute.
2. The mutual agreement of the parties on the termination of arbitration.
3. The consideration by the arbitrator or the arbitration tribunal as to the futility or the impossibility of pursuing with the arbitration, due to another reason.
4. The rejection by the court of the demand pertaining to the extension of the duration of arbitration pursuant to the second paragraph of article 10(B).
5. The failure in achieving an unanimous vote by the arbitration tribunal in the case where it has been envisaged by the parties that the decision shall be taken by an unanimous vote.
6. The discontinuity of the arbitration pursuant to the second paragraph of article 11(B).
7. The failure to deposit the advance payments pertaining to the adjudication costs pursuant to the second paragraph of article 16(C).

Without prejudice to the provisions of article 14(B), the authority of the arbitrator or the arbitration tribunal shall be revoked with the termination of arbitration.

The form and content of the decision, its correction, interpretation and complementation, the receipt of written notifications

ARTICLE 14.- A) The arbitration judgments shall comprise,

1. The names and surnames, titles and addresses of the parties and if any, their representatives and agents,

2. The legal grounds of the decision and the statement of reasons and the amount of compensation ordered, regarding demands on compensation,
3. The place of arbitration and the date of the decision,
4. The names and surnames, signatures and dissenting votes of the arbitrator or the arbitration tribunal that has passed the judgment,
5. The fact that the judgment may be appealed against.

Unless decided otherwise, the arbitrator or the arbitration tribunal may pass partial judgments.

The arbitration judgment shall be notified to the parties by the arbitrator or the president of the arbitration tribunal.

The parties, on the condition that they pay the costs, may demand the delivery of the arbitration judgment to the civil court of first instance. In this case, the judgment and the case file shall be submitted to the civil court of first instance by the arbitrator or the arbitration tribunal and kept at the court registry by the court.

B) Provided that she informs the other party as well, each of the parties may apply to the arbitrator or the arbitral tribunal within thirty days of notification of the arbitration judgment to themselves and demand;

1. The correction of the material mistakes in the arbitration judgment pertaining to calculations, typing etc.,
2. The interpretation of the whole or part of the judgment.

The arbitrator or the arbitration tribunal, after obtaining the opinion of the other party, shall correct the material mistake in the judgment or interpret the judgment within thirty days, upon the condition that the demand is considered as justifiable.

The arbitrator or the arbitration tribunal may correct the material mistakes in the judgment within thirty days upon her own initiative as well.

Each of the parties, within thirty days after the arbitration date is

notified to them, may demand the passing of a complementary arbitration judgment as regards issues that have not been decided on, although they have been brought up during the arbitration. The arbitrator or the arbitration tribunal shall pass a complementary arbitration judgment within sixty days, provided that she considers the demand as justifiable.

The correction, interpretation and complementary judgments shall be notified to the parties and constitute a part of the arbitration judgment.

C) Unless decided otherwise by the parties, any written notification shall be deemed as having been received once delivered to the addressee in person or to the domicile, habitual residence, place of business or postal address of the addressee.

In case none of the notification venues above may be found in spite of the fact that the necessary investigation has been conducted, the written notification sent to the last known domicile, habitual residence, place of business or postal address of the addressee with registered mail or with any other medium where the delivery attempt is documented, shall be deemed as having been received.

The written notification shall be deemed as having been received on the date it has been delivered by the envisaged procedures.

The provisions of this paragraph shall not apply to notifications addressed by courts.

PART FIVE

Appeal Against Arbitration Judgments

Action for annulment and the enforceability of arbitration judgments

ARTICLE 15.- A) Only an action for annulment may be filed against an arbitration judgment. The action for annulment shall be brought before the authorised civil court of first instance and heard with priority and immediacy.

The arbitration judgment may be annulled in the following situations:

1. The party applying for annulment proves that;

a) one of the parties to the arbitration agreement does not have legal capacity or that the agreement is invalid pursuant to the law the agreement is subject to or pursuant to Turkish law if there is no such choice of law,

b) the procedure determined in the agreement of the parties or in this Law has not been adhered to, in the election of the arbitrator or the arbitration tribunal,

c) the judgment has not been passed within the duration of arbitration,

d) the arbitrator or the arbitration tribunal has decided on the existence or the lack of her authority in a manner contrary to law,

e) the arbitrator or the arbitration tribunal has decided on a matter falling outside the scope of the arbitration agreement or that she has not decided on the whole of the claim or that she overrode her authority,

f) the arbitration has not been conducted in conformity with the agreement of the parties, or if there is no such agreement, with the provisions of this Law, as regards procedure and that this situation has impacted the substance of the judgment,

g) that the principle of equality between the parties has not been adhered to, or

2. It is determined by the court that;

a) the dispute subject to the decision of the arbitrator or the arbitration tribunal is not appropriate for arbitration pursuant to Turkish law,

b) the judgment is contrary to *ordre public*.

In an annulment action filed with the claim that the arbitrator or the arbitration tribunal has decided on an issue falling outside the scope of the arbitration agreement, only the section of the arbitration judgment that comprises the issues outside the scope of the

arbitration agreement may be annulled, provided that this section may be severed from the issues within the scope of the arbitration agreement.

The action for annulment may be filed within thirty days. This period shall start running from the date on which the arbitration judgment or the correction, interpretation or the complementary judgment is notified to the parties. The filing of the annulment action shall automatically suspend the execution of the arbitration judgment.

The parties may surrender the right to file an annulment action in whole or in part. The parties whose domicile or habitual residence are outside Turkey may surrender their right to an annulment action in whole by an explicit declaration in the arbitration agreement or by subsequent written agreement; or they may surrender the right to an annulment action due to one or more reasons stated above.

The demand for annulment shall be assessed on the file⁴ unless decided otherwise by the court hearing the case.

Although it shall be possible to appeal against judgments pertaining to the annulment action under the provisions of the Law on Civil Procedure, it shall not be possible to seek correction of judgment⁵. On appeal, the case shall be heard and decided with priority and immediacy, the examination being limited to the grounds for annulment stated in this article.

Where the annulment action is upheld, the parties –unless they have decided otherwise– may redetermine the arbitrators and the arbitration period in case this upholding decision is not appealed against or where the action is upheld due to the existence of the situations stated in sub-paragraphs (b), (d), (e), (f), (g) of paragraph 1 and sub-paragraph (b) of paragraph 2.

If they wish so, the parties may appoint the former arbitrators.

B) After the judgment rejecting the annulment claim becomes final, the civil court of first instance shall provide the demanding party with

⁴ I.e. without any trials being held.

⁵ I.e. from the Court of Appeals.

a document stating that the arbitration judgment is enforceable. The provision of this document shall not be subject to any fees. The provisions of the Law on Fees shall be applicable in the case where the arbitration judgment is enforced.

As the document pertaining to the enforceability of the arbitration judgment is being provided, the provisions of sub-paragraphs (a) and (b) of the second paragraph of (A) shall be *ex officio* taken into consideration by the court, in cases where the period for filing an action for annulment expires or where the parties surrender the right of filing an annulment action. In this case, the examination shall be conducted on the file unless decided otherwise by the court.

PART SIX

Arbitration Costs

The arbitrator's fee, arbitration costs, depositing advance payments and the payment of the expenses

ARTICLE 16.- A) Unless decided otherwise by the parties, the arbitrators' fees shall be mutually determined between the arbitrators or the arbitration tribunal and the parties, by taking into consideration the amount of the disputed claim, the nature of the dispute and the duration of the arbitration.

The parties may determine the fees of the arbitrator or the arbitrators by referring to established international law or institutional rules of arbitration.

In case an agreement regarding the determination of the fees may not be reached between the parties and the arbitrator or the arbitration tribunal or where there are no provisions pertaining to the determination of the fees in the arbitration agreement or where no reference has been made by the parties to established international law or institutional rules of arbitration on this issue, the fee of the arbitrator or the arbitral tribunal shall be determined pursuant to the fee tariff prepared by the Ministry of Justice after obtaining the opinions of the concerned chambers that are public institutions.

Unless decided otherwise by the parties, the fee of the president shall be calculated as ten per cent more than the fees payable to each arbitrator.

No extra arbitrator's fees shall be paid for the correction, interpretation or the complementation of the arbitration judgment.

B) The arbitration costs shall be stated in the judgment of the arbitrator or the arbitration tribunal.

The arbitration costs cover;

1. The arbitrators' fees,
2. The travel costs and other expenses incurred by the arbitrators,
3. The fees paid to the experts appointed by the arbitrator or the arbitration tribunal and to other persons whose assistance has been sought and the on-site investigation expenses,
4. The travel costs and other expenses incurred by the witnesses to the extent that they are approved of by the arbitrator or the arbitration tribunal,
5. The attorney's fees of the attorney –if any- of the winning party, determined by the arbitrator or the arbitration tribunal pursuant to the attorneys' minimum wage tariff,
6. The adjudication duties collected in respect of applications made to the court pursuant to this Law,
7. The notification costs pertaining to the arbitration.

C) The arbitrator or the arbitration tribunal may order the plaintiff to deposit an advance payment for the arbitration costs.

In case the advance payment is not deposited within the period envisaged in the decision of the arbitrator or the arbitration tribunal, the arbitrator or the arbitration tribunal may suspend the arbitration. In case the advance payment is deposited within thirty days after the parties are notified that the arbitration is suspended, the arbitration shall be resumed, otherwise the arbitration shall terminate.

The arbitrator or the arbitration tribunal, after passing her judgment,

shall provide a document to the parties showing the items and amounts of expenditure and shall return any remaining advance payment back to the paying party.

D) Unless decided otherwise by the parties, the arbitration costs shall be borne by the losing party. In case it is ruled that both parties are partially right, the arbitration costs shall be proportionately divided between the parties.

The arbitration costs shall also be shown in the decision of the arbitrator or the arbitration tribunal terminating the arbitration or determining the peaceful settlement between the parties.

PART SEVEN

Final Provisions

Inapplicable and annulled provisions

ARTICLE 17.-The provisions of the Law on Civil Procedure shall not apply to the issues envisaged by this Law, unless there is a provision to the contrary.

Article 5 of the Law on the Principles To Be Abided By in cases of Arbitration Relating to Disputes Arising From Concession Agreements and Contracts on Public Services dated 21 January 2000, with number 4501 is hereby annulled.

PROVISIONAL ARTICLE 1.- In case an agreement regarding the determination of the fees can not be reached between the parties and the arbitrator or the arbitration tribunal or where there are no provisions pertaining to the determination of the fees in the arbitration agreement or where no reference is made by the parties to established international law or institutional rules of arbitration on this issue, the fee of the arbitrator or the arbitral tribunal shall be determined by the civil court of first instance, by taking into account the nature of the dispute and the duration of the arbitration, until a fee tariff is prepared by the Ministry of Justice.

The rules and procedure pertaining to the preparation of the fee tariff

shall be stated in the regulation to be promulgated by the Ministry of Justice within six months following the publication of the Law.

Entry into force

ARTICLE 18.- This Law shall enter into force on the date of its publication.

Execution

ARTICLE 19.- The provisions of this Law shall be executed by the Council of Ministers.