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## Arbitration in Türkiye (Turkey) by T. Cole

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# **Arbitration in Türkiye (Türkiye)**

Tony Cole<sup>1</sup>

## **1. The Interviews**

The interviews on which this report is based were performed as part of a research project funded by the United Kingdom's Economic and Social Research Council. Interviews were performed in 47 countries, including 127 cities and 1,042 interviewees.<sup>2</sup> Further information on the project is available on the project website (<https://commercialarbitrationineurope.wordpress.com>).

Six interviews were performed in Türkiye,<sup>3</sup> involving 12 participants, with four interviews performed in Istanbul on 16 May 2023, and two interviews performed in Ankara on 22 May 2023. All interviews were performed by the author. Interviews were recorded and then professionally transcribed. Interviewees were identified through a combination of legal guides (WhosWhoLegal, Chambers, Legal500), recommendations, and internet research. A list of interviewees who have chosen to be publicly identified is available on the project website.

Interviews lasted approximately 90 minutes and were semi-structured, drawing from a list of topics but guided by the discussion as it evolved. In addition to this discussion, during the interviews participants were asked to name three “leaders” of arbitration in Türkiye (domestic or international) and three “leaders” of arbitration internationally (whether or not Turkish), and to discuss what characteristics qualified them as “leaders”. Finally, interviewees were also asked to respond to up to three hypothetical situations, describing how they believed the situation should be addressed, with each situation being altered by the interviewer as discussion progressed.

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<sup>2</sup> As of 14 March 2025. A limited number of additional interviews will be performed prior to conclusion of the research in August 2025.

<sup>3</sup> In line with the decision of the Turkish government to ask that the name Türkiye be used, rather than Turkey, that will be the name used in this article. For a discussion of the rationale behind the request, see [https://www.cjr.org/the\\_media\\_today/turkey\\_turkiye\\_erdogan\\_us\\_media.php](https://www.cjr.org/the_media_today/turkey_turkiye_erdogan_us_media.php). However, the adjective “Turkish” will still be used in this article, as it remains in common use, and does not invoke the same potential negative connotations that are connected with the requested name change.

## 2. The Arbitration Market

One of the consistent features of these Reports has been the degree to which local social, political and economic considerations impact the form and size of local arbitration markets, and Türkiye provides a particularly strong example of this impact. Sitting geographically on both the Asian and European continents, Türkiye is also well-known for the social and political divisions in its society, which is roughly equally balanced between what might be referred to as a liberal and outward-looking component and a more conservative and domestic-focused component. As will be described below, arbitration practice in Türkiye has traditionally been firmly situated in the first of these two components, with arbitration seen predominantly as a mechanism for resolving cross-border disputes and as connected to a long-standing vision of Türkiye's ability to serve as a "bridge" between Europe and Asia. Nonetheless, while these underlying social-political currents have thereby created some impetus towards the development of a Turkish arbitration market and of Türkiye as a seat for arbitrations involving foreign parties, the interviews made clear that those same currents also continue to impose obstacles that limit the achievability of those goals. As a result, Türkiye remains a clear example of a jurisdiction with strong arbitration potential, but still limited arbitration reality.

Interviewees consistently described arbitration in Türkiye as fundamentally evolving as a significant practice over the past 10-15 years. Not that there had been no arbitration in Türkiye prior to this period, but that it was limited, with one interviewee noting that prior to that period he would only have been able to identify 1 or 2 firms that focused strongly on arbitration, while he could now identify 5 or 6.

Interviewees described arbitration prior to this recent period of development as overwhelmingly focused on international transactions, with arbitration adopted at the instigation of the foreign party to a transaction as a means of avoiding litigation in Turkish courts. Nonetheless, while externally imposed, this foundation in arbitration provided Turkish companies and lawyers with experience in arbitration that facilitated further developments, the most impactful being the 1999 incorporation into the Turkish Constitution of an acknowledgement that arbitration could be adopted "[i]n concession, conditions and contracts concerning public services",<sup>4</sup> and the adoption in 2001 of an International Arbitration Law based on the 1985 UNCITRAL Model Law on International Commercial Arbitration.<sup>5</sup>

However, while both of these changes provided an important foundation for the development of arbitration in Türkiye, interviewees consistently highlighted the real engine of the subsequent development of Türkiye's arbitration market as being the

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<sup>4</sup> Article 125, Constitution of the Republic of Türkiye.

<sup>5</sup> By contrast, domestic arbitration in Türkiye remains subject to Türkiye's Civil Procedure Code, Law No. 6100 of January 12, 2001 on Civil Procedure.

substantial growth in Türkiye's economy that was seen after policy changes following a major recession in 2001<sup>6</sup> and the commencement of EU accession negotiations.<sup>7</sup> As described by interviewees, this resulted both in an increase in foreign investment in Türkiye, with a consequent use of arbitration for disputes that arose from those investments, and also an increasing engagement of Turkish businesses abroad, particularly by construction companies and in the former CIS States and Africa, with arbitration again being incorporated into these contracts.<sup>8</sup> In turn, interviewees highlighted the parallel substantial growth of the Turkish legal profession across this same period,<sup>9</sup> and in particular the growth in significant full-service law firms, arguing that this latter development in particular facilitated the development of arbitration by creating an environment in which it was possible for law firms to have a focused group of people working on arbitration, even if individually they were not exclusively doing arbitration.

This point highlighted by interviewees of the importance of the growth of full-service law firms in Türkiye to the growth of arbitration in Türkiye is particularly worth highlighting, as it connects with one of the less-commonly addressed requirements of the development of an arbitration market, namely the ability of lawyers to spend significant time and effort developing arbitration practices. It is in the nature of smaller firms, as will usually be found in smaller legal markets,<sup>10</sup> that the lawyers in those firms need to engage in a broad range of work rather than specialising in a particular field, in order to ensure sufficient workflow to support the firm. As firms become larger, that same breadth of workflow can then be spread across a larger number of individuals, thereby allowing greater specialisation of individuals within the firm, while the firm as a whole remains generalist.<sup>11</sup>

This situation is, however, further complicated in an arbitration market such as Türkiye's, in which the amount of arbitration work available remains limited. Specifically, interviewees noted that the specialised nature of international arbitration

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<sup>6</sup> See *generally* Daron Acemoglu & Murat Ucer, "The Ups and Downs of Turkish Growth, 2002-2015: Political Dynamics, the European Union and the Institutional Slide", NBER Working Paper No. w21608 (2015).

<sup>7</sup> [https://enlargement.ec.europa.eu/enlargement-policy/turkiye\\_en](https://enlargement.ec.europa.eu/enlargement-policy/turkiye_en) (last visited 14 March 2025).

<sup>8</sup> See *similarly* Orçun Çetinkaya, "Turkish Construction Companies: Considerations for International Projects and Regional Disputes" (2016), *available at* <https://chambers.com/articles/turkish-construction-companies-considerations-for-international-projects-and-regional-disputes> (last visited 14 March 2025).

<sup>9</sup> In 2000 there were 41,427 lawyers in Türkiye, while by 2022 this had increased to 174,533. Elyesa Koytak, "Elite Lawyers in Türkiye: Educational capital, status hierarchies, and feminization", 11 *Journal of Professions and Organization* 231, 233 (2024).

<sup>10</sup> Francisco J. Buera, Siddhartha Sanghi & Yongseok Shin, "The Rule of Law, Firm Size, and Family Firms", *Economic Synopses* 19 (2022).

<sup>11</sup> See *similarly*, John M. Westcott, *The Law Firm of the Future: Adapting to a Changed Legal Marketplace* (2018), at 7 ("The growth of firms permitted them to attain the size necessary to organize themselves into professional departments and practice areas; lawyers tended to concentrate on narrower areas because, with larger firm size, there was a greater critical mass of work on which a specialist could focus.")

practice, which requires an understanding of concepts and procedures that are often at odds with those used in domestic legal practice, means that for a firm to develop a focused international arbitration practice, it has to hire individuals with knowledge of and/or experience in international arbitration prior to having sufficient arbitration casework to justify a specialised practice group. As a result, there is little justification for firms to hire individuals specifically because of their international arbitration knowledge/experience, and a “preparatory” stage is required, in which arbitration knowledge/experience is a factor in hiring, but the individuals actually hired are those able to work in non-arbitration fields in which casework already exists at the firm. Moreover, even if individuals are hired who have knowledge/experience in arbitration, so that arbitration work can be actively pursued by the firm, the small size of Türkiye’s arbitration market means that it is far from certain that a level of arbitration work will be generated that justifies the investment that was made. In essence, firms require a dedication to entering the arbitration market, without any assurance of success, that outweighs the strong rationale to just remain focused on the markets in which the firm can already compete. A gamble of this nature is easier to make for a larger firm, as the consequences of a “failed investment” will be less significant than they would be for a smaller firm.

This dynamic, in which the growth of law firms supports the growth of arbitration expertise within law firms notably contrasts with the contemporary increasing development of arbitration-focused boutique firms in the most successful arbitration markets, the latter reflecting the broader availability of arbitration work and so the possibility of a smaller firm to focus exclusively or primarily on this market.<sup>12</sup> In essence, these contrasting dynamics suggest that there is form of “bell curve”<sup>13</sup> relating to law firm size that is evident in the growth of arbitration markets, with the development of larger law firms being important to the development of local arbitration expertise, and so the growth of the local arbitration market, but then the success of the local market supporting the growth of smaller specialised firms. Interviewees were clear that Türkiye remains on the “upwards” left-hand slope of this bell curve.

While acknowledging the limitations to Türkiye’s current arbitration market, interviewees were consistent in their description of that market as being active and growing. In addition, while domestic arbitration was described as having increased since the establishment in 2015 of the Istanbul Arbitration Centre (ISTAC), Türkiye’s leading arbitral institution, roughly two-thirds of ISTAC’s caseload now consisting of domestic arbitration, arbitration practice was described as still primarily focused international arbitration.

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<sup>12</sup> For a number of examples, see <https://globalarbitrationreview.com/topic/boutiques>.

<sup>13</sup> [https://en.wikipedia.org/wiki/Normal\\_distribution](https://en.wikipedia.org/wiki/Normal_distribution) (last visited 14 March 2025).

Interviewees also consistently confirmed that only a small number of individuals are able to focus exclusively on arbitration, with one interviewee estimating that roughly a dozen law firms handle 90% of the arbitration cases in the Turkish market. However, this lack of specialisation in arbitration was also described as to some degree reflecting the relatively recent growth in Türkiye's arbitration market, with interviewees stating that younger practitioners are more likely to specialise in arbitration than older practitioners. The former will have entered legal practice with an interest in arbitration and a focus on developing that part of their work, while older attorneys will have based their careers on other fields, and so have less incentive to move to a focus exclusively on arbitration.

Geographically, interviewees in both Istanbul and Ankara agreed that Istanbul dominates arbitration in Türkiye, this dominance being tied by interviewees to the importance of Istanbul within Türkiye both economically and legally. A city of around 15 million people, Istanbul is responsible for roughly one-third of the Gross Domestic Product of Türkiye,<sup>14</sup> and in parallel roughly one-third of all Turkish lawyers are registered with the Istanbul Bar Association.<sup>15</sup>

Notably, however, while Ankara is both Türkiye's second-largest city and its second-most important economically, one interviewee commented that Ankara is actually third in terms of the origin of arbitrations administered by ISTAC, with the second-most common city being Gaziantep, a city of 2 million people in Central/Eastern Türkiye near the Syrian border. Interviewees in Ankara also confirmed their own familiarity with the use of arbitration in Gaziantep. Significantly, while interviewees described some degree of connection between the arbitration markets in Istanbul and Ankara, with firms from each city able to generate work in the other, Gaziantep was described as a fundamentally separate and organic local arbitration market, arising from the focus of the local economy on manufacture for shipment elsewhere and on word-of-mouth in the local business community regarding the effectiveness of arbitration for resolving disputes.

In addition, interviewees also highlighted substantive differences in the arbitration markets of the three cities just mentioned. As already noted, Gaziantep's arbitrations were described as arising from the activities of local manufacturers. Ankara's, by contrast, were described as predominantly relating to government contracts, due to Ankara's status as Türkiye's capital. Istanbul, in turn, was described as having a more generalist arbitration market, reflecting the broad range of commercial

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<sup>14</sup> Gross Domestic Product by Provinces, 2023, at <https://data.tuik.gov.tr/Bulten/Index?p=Gross-Domestic-Product-by-Provinces-2023-53575&dil=2> (last visited 14 March 2025). By contrast, the next largest contribution was from Ankara, at roughly 10%.

<sup>15</sup> Recent Changes on Turkish Attorneyship Law, at <https://www.bicakhukuk.com/en/draft-bill-changing-turkish-attorneyship-law/> (last visited 14 March 2025).

activities undertaken in Istanbul, its priority in Turkish international business, and the prominence of its legal community.

Arbitration was described by interviewees as rarely used outside major centres such as the cities just discussed, due primarily its cost in comparison to court litigation. There are still substantial regional inequalities in Türkiye, broadly reflecting higher incomes in the West and lower incomes in the East,<sup>16</sup> and interviewees described it as difficult to make a case for arbitration in the country's less well-off areas given that cost comparison. Moreover, interviewees reported that Türkiye's recent economic difficulties have made arbitration less attractive even in the wealthier parts of the country, particularly in the context of the international transactions that substantially underlie Türkiye's arbitration market, as the collapse of the exchange rate for the Turkish lira has significantly increased the cost to Turkish parties of involvement in arbitrations abroad and of arbitrations in Türkiye involving foreign arbitrators.<sup>17</sup>

In terms of the subject matter of Turkish arbitrations, interviewees repeatedly emphasised the centrality of construction disputes to the Turkish arbitration market, both in terms of private disputes and government contracts. In addition, interviewees also noted an increased use by domestic parties of arbitration under ISTAC's fast-track process, which is aimed at resolving smaller disputes (less than TRY 5,000,000, or approximately US\$140,000) within 3 months of the case file being received by the sole arbitrator, indicating a willingness of domestic parties to balance an aversion to arbitration's cost against a desire for a faster dispute resolution process than is available from Turkish courts.

Finally, *ad hoc* arbitration was described as an ongoing presence in domestic arbitration in Türkiye, although interviewees differed regarding how commonly it is used. This practice was described as reflecting again concerns about cost, with parties choosing *ad hoc* arbitration to avoid the need to pay an institution, but also as reflecting the relative newness of ISTAC, which was only founded in 2015. Although numerous arbitral institutions existed in Türkiye before ISTAC was founded, none achieved a substantial reputation, and a practice was described as having developed of *ad hoc* arbitration with arbitrators being predominantly academics with relevant subject matter expertise.

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<sup>16</sup> Ulaş Karakoç, Sevket Pamuk & Gunes Asik, "Regional inequalities and the West-East divide in Turkey since 1880", available at <https://cepr.org/voxeu/columns/regional-inequalities-and-west-east-divide-türkiye-1880> (last visited 14 March 2025) ("East-West income inequalities in Türkiye today are still amongst the largest anywhere in the world").

<sup>17</sup> The exchange rate of the Lira against the U.S. Dollar declined by more than 80% from 2018-2023. Rumeysa Koç, "Why is the Turkish lira's value still falling?" (2023), available at <https://www.aljazeera.com/news/2023/6/18/why-is-the-turkish-lira-still-falling-in-value>. See also Refet Gürkaynak, Burçin Kısacıkoğlu & Sang Seok Lee, "Consequences of weak monetary policy: Learning from the Turkish experience" (2023), available at <https://cepr.org/voxeu/columns/consequences-weak-monetary-policy-learning-turkish-experience> (last visited 14 March 2025).

Overall, while the preceding describes a relatively limited contemporary market for arbitration in Türkiye, interviewees were consistent in their optimism for the future. They highlighted the Turkish government's support for arbitration, most prominently reflected in the establishment of ISTAC, and the clear role that arbitration stands to play in the Turkish government's conception of Türkiye as a "bridge" between East and West. Nonetheless, interviewees also repeatedly acknowledged the obstacles to the fulfilment of that goal that arise from Türkiye's current legal and political structures, with foreign parties often deterred from seating arbitrations in Türkiye by concerns about the effectiveness and impartiality of Turkish courts. Indeed, these concerns were directly reflected in interviews performed by the author in countries surrounding Türkiye, and so those countries most likely to use Türkiye as a "bridge" between East and West, with practitioners in those countries often noting Türkiye as a possible foreign seat for an arbitration, but also often describing this as a future option, rather than a present one. Indeed, the same concerns are directly reflected in a common practice of Turkish parties themselves, as described by interviewees, in which Turkish parties will themselves choose to seat an arbitration abroad, with Switzerland as the most common choice, rather than seating it in Türkiye, even though Turkish substantive law was applicable and in some cases the language of the arbitration was Turkish.

### 3. Courts and Arbitration

Interviewees presented an interestingly two-sided perspective of the impact of Turkish courts on arbitration in Türkiye, although both positive and negative aspects ultimately derived from the problematic nature of those courts.

Positively, interviewees acknowledged the support for the development of arbitration that indirectly arose, and continues to arise, from concerns held by foreign parties about the Turkish court system. These concerns have provided a central motivation for foreign parties to insist on arbitration when entering into a transaction with a Turkish party. Interviewees emphasised that Turkish courts have improved considerably over the past decade in their handling of arbitration, but also acknowledged that the desire to avoid Turkish courts continues to be a significant support for the Turkish arbitration market.

Less positively, while interviewees were consistent in their description of Turkish judges as no longer hostile to arbitration, they also acknowledged that the understanding of arbitration on the part of judges remains low, generally not extending far beyond a general familiarity with the concept of arbitration. This is then worsened by the substantial caseload that Turkish judges must currently handle, which limits the time they have available to learn a new topic, particularly one that remains a small proportion of their overall workload.



The most negative comments by some interviewees related to concerns about the impartiality of judges when the Turkish State is a party to a case, a situation that was worsened by the 2016 mass-dismissal of judges by the current Turkish government, which has been in power in one form or another for the past two decades.<sup>18</sup> A 2020 report noted that as of that date, 45% of Türkiye's judges and prosecutors had three years of experience or less.<sup>19</sup> Most directly relating to arbitration, this political influence on Turkish courts is arguably seen in the approach of Türkiye's highest court for civil cases, the Court of Cassation, to the application of public policy in the context of arbitration, the Court at one point holding that an award should be set aside on public policy grounds simply because it would lead to a reduction in the State's income.<sup>20</sup> Interviewees emphasised that the Court has now stepped back from such an expansive interpretation of public policy, but it nonetheless remains a point of concern.<sup>21</sup>

Perhaps unsurprisingly given the preceding, interviewees reported no tradition of active or retired judges serving as arbitrators, although individual cases were noted.

#### 4. Arbitration Institutions

Arbitration in Türkiye was described by interviewees as traditionally operating through a combination of the use of foreign institutions for international disputes, and the use of *ad hoc* arbitration with a tribunal of academics for domestic disputes. An important change to this structure occurred with the establishment by statute in 2015 of the Istanbul Arbitration Centre (ISTAC).<sup>22</sup> While ISTAC was consistently described by interviewees as still developing and to a large extent untested, it was seen as providing a credible domestic institution aiming to operate in accordance with international standards, something that had previously been missing in the Turkish arbitration market.

Nonetheless, despite the founding of ISTAC, interviewees consistently described the ICC International Court of Arbitration ("ICC") as the most important institution for

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<sup>18</sup> For additional detail on these dismissals, see "Mass Dismissals of Judges and Prosecutors in Turkey of Post-Coup Period" (2022), *available at* <https://turkeytribunal.org/actuality/mass-dismissals-of-judges-and-prosecutors-in-turkey-of-post-coup-period/> (last visited 17 March 2025).

<sup>19</sup> "How Turkey's courts turned on Erdogan's foes" (2020), *available at* <https://www.reuters.com/investigates/special-report/turkey-judges/> (last visited 17 March 2025).

<sup>20</sup> See generally, Pelin Baysal & Bilge Kağan Çevik, "Could a Reduction in a State's Income Violate Public Policy – A View on Turkey?" (2019), *available at* <https://arbitrationblog.kluwerarbitration.com/2019/02/10/could-a-reduction-in-a-states-income-violate-public-policy-a-view-on-turkey/> (last visited 17 March 2025).

<sup>21</sup> See e.g., Asena Aytuğ Keser & Kardelen Dorken, "Turkish Court of Cassation's Recent Approach to Public Policy in Enforcement and Setting-Aside of Foreign Arbitral Awards" (2024), *available at* <https://gun.av.tr/insights/articles/turkish-court-of-cassation-s-recent-approach-to-public-policy-in-enforcement-and-setting-aside-of-foreign-arbitral-awards> (last visited 17 March 2025).

<sup>22</sup> Law on the Istanbul Arbitration Centre No. 6570 (passed 20 November 2014), entered into force 1 January 2015).

Turkish arbitration. The ICC was not described as having the centrality to arbitration in Türkiye as in some other jurisdictions, such as Romania, and interviewees notably described their career development as primarily tied to the development of local connections rather than to the ICC. Similarly, while the ICC does host arbitration-related events in Türkiye, and those events were described positively, interviewees did not describe either participation in those Türkiye-based events or attendance at ICC events abroad as central to career development. Ultimately, while it was never expressly described in these terms, interviewees consistently discussed the ICC as an important foreign institution, rather than an institution that had established a firm foundation domestically.

In addition to the ICC, the London Court of International Arbitration (LCIA) was also described as a notable presence in Turkish arbitration, but as used significantly less often than the ICC.

Rather than the LCIA, interviewees consistently identified ISTAC as the clear “second” arbitral institution in Türkiye. Multiple interviewees qualified their positive comments about ISTAC with an acknowledgement that they had little direct experience of its administration of cases, as it remains a “developing” alternative, with the ICC still indisputably the “go to” institution in any transaction of significant size. However, ISTAC was consistently described positively, with a view to its future development, and as a current option for smaller or medium-sized disputes.

Importantly, in distinction to the more qualified statements made about the ICC, interviewees were consistent in their description of ISTAC as central to the future of arbitration in Türkiye. It was viewed as still attempting to find its feet, particularly with respect to efforts to support the development of an active Turkish arbitration community, but the availability of a genuinely “local” alternative to the dominant use of foreign institutions was seen as unquestionably essential for the future development of Turkish arbitration.

One of the most notable aspects of the discussion of ISTAC in interviews was the clear commitment of interviewees to the development of arbitration in Türkiye, rather than to the connection of Turkish practitioners to foreign arbitration practice. That is, interviewees were clearly and uniformly committed to adhering to conventional international arbitration practices, and to engaging in international arbitration, but were also clearly committed to the idea of Türkiye’s potential as an arbitral seat, with the success of ISTAC being seen as an essential component of that goal. This commitment is particularly notable given, as discussed below, the absence of any cohesive arbitration community in Türkiye, which might otherwise explain the consistency of goal and vision that interviewees displayed. Instead, arguably the best explanation for this consistency is the traditional and often-expressed (both by interviewees and across Türkiye more broadly) view of Türkiye’s potential as a “bridge” between cultures, which

when adapted to the context of arbitration supports a conception of Türkiye's innate potential as an arbitral seat for cross-border disputes. As noted above, interviewees were clear-eyed about the obstacles to the attainment of this goal, but nonetheless consistently embraced the underlying conception. In this way, Türkiye presents a further interesting example of the inter-weaving of cultural self-conceptions with the form of arbitral development, as seen also in the Faroe Islands where arbitration could be understood as functioning as a means of "localising" disputes in the context of a small community with a strong self-conception that is nonetheless also part of a larger nation.<sup>23</sup>

Consistent with this conception of ISTAC as essential to the future development of Turkish arbitration, interviewees also highlighted that despite the presence of "Istanbul" in ISTAC's name, ISTAC is making deliberate efforts to avoid being conceived as an Istanbul-focused institution. Indeed, not only do a significant number of ISTAC's cases arise from outside Istanbul, as discussed above with respect to Ankara and Gaziantep, but ISTAC facilitates the hearing of those arbitrations in their local region, rather than encouraging all hearings to take place in Istanbul. This was described as an attempt to make practitioners outside Istanbul comfortable with using ISTAC's services, an important step if ISTAC is to be a genuinely national institution given the considerable socio-economic differences between Istanbul and much of the rest of Türkiye.

To be clear, ISTAC is far from Türkiye's only arbitral institution, and one interviewee commented on there being more than 100 arbitration institutions across Türkiye, with one located in almost every city or town of any significant size.<sup>24</sup> This was described as a consequence of prior government promotion of arbitration, resulting in local chambers of commerce setting up arbitral institutions in response to that promotion rather than in response to market demand. It was noted, however, that in most cases these institutions exist only formally, often administering no arbitrations and being poorly equipped to do so. To be clear, this is not an accurate description of every Turkish arbitral institution other than ISTAC, and one interviewee specifically highlighted the role in domestic arbitration of the Turkish Union of Chambers and Exchange Commodities (TOBB), which is the local partner of the International Chamber of Commerce<sup>25</sup> and is headquartered in Ankara. However, while institutions other than

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<sup>23</sup> Report on Arbitration in the Faroe Islands, *available at* [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5125737](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5125737) (last visited 17 March 2025).

<sup>24</sup> See *similarly* "Baker McKenzie International Arbitration Yearbook 2022-2023 – Türkiye" (2023) (discussing several Turkish arbitration institutions), *available at* <https://www.globalarbitrationnews.com/2023/01/01/baker-mckenzie-international-arbitration-yearbook-2022-2023-Turkiye/#page=1> (last visited 17 March 2025).

<sup>25</sup> That is, the International Chamber of Commerce itself, not the Court of Arbitration.

ISTAC do administer arbitrations, none was seen by interviewees as a serious domestic competitor to ISTAC.

## 5. Language and Arbitration

One of the most interesting things to come out of the interviews was the distinctively central place of English within Turkish arbitration. At first glance, that English has a central role in arbitration in Türkiye might be unsurprising, as this is true in many jurisdictions given the dominance of English in international arbitration. However, interviewees in Türkiye emphasised the central role that fluency in English plays in the broader Turkish social context, and thereby its central role in arbitration.

At a practical level, fluency in English has traditionally been a pre-requisite for a career in arbitration in Türkiye for the simple reason that arbitration in Türkiye was dominated by cross-border disputes, and as the foreign party was unlikely to agree to arbitrate in Turkish, English emerged as the default language for arbitrations. Interviewees confirmed that it remains the case that most Türkiye-connected arbitrations are in English, although the number of Turkish-language arbitrations has increased since the establishment of ISTAC, the caseload of which is roughly two-thirds domestic arbitrations.

Interviewees emphasised, however, that fluency in English also plays a broader “signalling” role in Türkiye, indicating that the speaker has a sophisticated educational background and is more likely to have an “international” perspective that is particularly appropriate to arbitration.

Moreover, fluency in English was described as having played an important constitutive role in the structure of Turkish arbitration practice. In most jurisdictions in which interviews have been performed, arbitration practitioners standardly also practice something other than arbitration, as the limited amount of arbitration work makes a complete focus on arbitration impossible. This is also true in Türkiye, but whereas in most jurisdictions arbitration practitioners usually also engage in litigation, given that both litigation and arbitration are forms of dispute resolution, interviewees confirmed that this is rare, although not unknown, in Türkiye. Instead, arbitration practitioners in Türkiye standardly work in corporate/transactional fields, as these are fields that similarly require fluent English, given the regularity with which transactions will involve foreign parties. As a result, while not themselves expressly describing it in this way, interviewees consistently displayed evidence of a cultural division between arbitration practitioners and litigators, the latter being respected for their abilities but nonetheless discussed as reflecting a more inwardly-focused aspect of Türkiye, in comparison with the outward-focused aspect characterised by arbitration.

## 6. Gender and Arbitration

The impact of the variations within Turkish society was also highlighted by interviewees when discussing gender and arbitration in Türkiye. Female interviewees consistently stated that they did not see gender as an issue amongst other arbitration practitioners, and this was directly tied by some interviewees to the dominance of English in Turkish arbitration - specifically, that fluency in English indicated a sophisticated educational background, a comparatively economically advantaged upbringing, and more broadly an international outlook. As a result, that arbitration practice effectively requires fluent English entails that arbitration practitioners are less likely to come from social contexts reflecting the more conservative aspects of Turkish society. Indeed, one interviewee speculated that female Turkish lawyers may gravitate to arbitration and corporate/transactional work, the latter also requiring strong English, precisely because these fields are more likely to be populated by men comfortable with ideas of gender equality.

However, broader changes in the Turkish legal world should also be acknowledged, resulting to a significant degree from the increasing number of women attending Turkish law schools. Indeed, in 2024 the International Bar Association published a study of gender representation in the Turkish legal profession, which noted that approximately 60% of law students at that time were female, along with approximately half of judges and lawyers.<sup>26</sup> Nonetheless, the Report also noted that the proportion of female judges in Türkiye's higher courts remains at a lower level,<sup>27</sup> and interviewees noted that the same is true of leadership in law firms, which remains dominated by men.

This latter question of the ability of women to move from merely being present to holding leadership positions was also reflected in observations made by interviewees regarding the difference between gender representation in counsel work and in arbitrator work. While the former was seen as relatively free of unequal treatment on the basis of gender, arbitrator work was confirmed to be dominated by men. Female Turkish arbitrators certainly exist, but actual appointments were described as overwhelmingly being given to men.

Two explanations were offered by interviewees for this situation, the first simply reflecting that while arbitration practitioners might be comfortable with female arbitrators, Turkish clients were often less so. Indeed, interviewees confirmed that even with respect to counsel work, client interaction could, depending on the client, be more

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<sup>26</sup> International Bar Association Legal Policy & Research Unit, "50:50 by 2030: A longitudinal study into gender disparity in law" (2024).

<sup>27</sup> *Id.*

challenging for female counsel than male counsel, including examples of clients looking to male counsel for confirmation of the correctness of comments a (potentially more senior) female counsel has made.

The second explanation offered by interviewees related less directly to gender than to the dynamics of arbitrator work in Türkiye. Specifically, multiple interviewees noted that arbitrator work is dominated by a relatively small group of men, predominantly academics, who function to a significant degree as a “closed circle”. This creates an obstacle to entry to all newer arbitrators, of course, regardless of gender, but women are known to face particular difficulties succeeding in fields with “closed” networks dominated by men even without intentional discrimination by network members.<sup>28</sup>

## 7. The Arbitration Community

Interviewees consistently confirmed that they did not believe that there is a Turkish arbitration “community”, in the sense of a recognisable group of arbitration practitioners that connects with some regularity and coordinates towards shared goals. Nonetheless, as the preceding sections of this Report might indicate, there was a clear self-identification by interviewees as being an “arbitration practitioner”, rather than as merely being a lawyer who does some arbitration. In addition, interviewees confirmed an awareness of who else regularly practiced arbitration in Türkiye, and the comments discussed above about the fundamental differences between arbitration practitioners and litigators reflects a shared and valued identity as “arbitration practitioner”.

There is, therefore, a clear foundation for the development of an active and cohesive community of arbitration practitioners in Türkiye. Nonetheless, interviewees did not express a view that such a community was actively “in process”, but rather a hope that it would soon emerge.

One explanation offered by interviewees for this failure in community development was the relative newness of ISTAC, which was seen as indisputably Türkiye’s leading arbitral institution, but also as not yet significant enough, either in caseload or networking/training activities, that it serves as the core around which a community might develop. Optimism was expressed about the creation by ISTAC of Istanbul Arbitration Days, but its newness (it first took place in 2024), along with mixed views on the success of its first edition, qualified that optimism.

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<sup>28</sup> Mark Lutter, “Do Women Suffer from Network Closure? The Moderating Effect of Social Capital on Gender Inequality in a Project-Based Labor Market, 1929 to 2010”, 80 *American Sociological Review* 329 (2015).

In turn, while interviewees also referenced both Global Arbitration Review's GAR Live Istanbul events and the ICC's Arbitration Day, this was with a recognition that these were events staged by "external" organisations. As a result, while these events were described as useful for education and for networking, they were not seen as themselves significantly contributing to the development of a local arbitration community.

A second explanation offered by interviewees related to the dominance at the higher levels of arbitration practice in Türkiye of a relatively small and cohesive group of individuals, as discussed previously with respect to arbitrator appointments. Some concern was expressed that this situation dampens efforts that might otherwise be made to actively develop an arbitral community, because those leading individuals will almost unavoidably have a leadership role in arbitral institutions and in arbitration organisations – but also have a vested interest in not supporting actions/activities that will increase competition for themselves. Potentially reflecting this dynamic, optimism was most commonly expressed about efforts being made by younger practitioners to develop an active arbitration-focused community.

Interviewees in Ankara noted an even less developed situation there, with few arbitration-focused events occurring at all, and Ankara-based practitioners needing to travel to Istanbul for events and networking. Nonetheless, those interviewees also stated that they did not believe they were perceived as "outsiders" at such events, as an Ankara-based practitioner in Istanbul, with arbitration practice in Türkiye being described as fundamentally nationwide, rather than Istanbul-focused.

## 8. Arbitration Procedure

Perhaps the most distinctive feature of Turkish arbitral procedure, as described by interviewees, is the degree to which it consciously conforms to the procedures common in international arbitration. To some degree, of course, this reflects that traditionally most Turkish arbitration practice has been focused on cross-border disputes, so that use of Turkish litigation procedures was unlikely to be acceptable. However, it also clearly reflects the previously-discussed dominance in Turkish arbitration of corporate/transactional lawyers rather than court litigators, and of the self-conception of Turkish arbitration practitioners as part of the more Westernised and outward-looking element of Türkiye.

Particularly notable, however, is that interviewees reported that the growth of domestic arbitration since the founding of ISTAC has not resulted in a substantial incorporation of Turkish litigation practice into arbitration in Türkiye, even though domestic cases may involve litigation attorneys. Rather, interviewees described even domestic arbitration as functioning largely in accordance with the practices adopted in international arbitrations. This likely reflects in part the absence of a strong division

between “domestic arbitration practitioners” and “international arbitration practitioners”, with the individuals who engage in international arbitration also engaging in domestic arbitration, and bringing international arbitration practices with them. However, it also likely reflects a traditional conception in Türkiye, as described by interviewees, of arbitration as something reserved for international transactions, resulting in a situation in which even domestic litigators taking on an arbitration case see themselves as entering a field in which procedures will be significantly different from those in Turkish court.

Interviewees did, however, note a negative aspect of this incorporation of international arbitration practices into domestic arbitration, precisely because domestic arbitration will often involve litigators unfamiliar with those practices. Such individuals encounter a very steep “learning curve”, particularly with respect to oral advocacy, which interviewees described as effectively absent from Turkish litigation even if formally there are “hearings”.<sup>29</sup> Unavoidably, that unfamiliarity with the procedures being adopted can lead to difficulties, and a less smooth and efficient procedure than desirable.

One further prominent element of Turkish arbitration practice, as previously noted, is the dominance of arbitral appointments by academics. While Türkiye is certainly not the only country in which academics have an important role as arbitrators, the reasons for this role can vary from jurisdiction to another. In the case of Türkiye, interviewees described the use of academics as arbitrators as primarily relating to the academic’s expertise in relevant questions of substantive law. As already noted, however, this practice has created a situation in which a relatively limited group of individuals dominates arbitrator appointments, unavoidably creating a risk of “trades” being made between cases, even if only implicitly acknowledged rather than explicitly agreed. That is, that A might agree to support B’s stance in one case in which both are on the tribunal, based on an implicit understanding that B will then support A’s stance on a second case, in which both again are on the tribunal. One interviewee specifically referenced concerns of this nature.

Consistent with the strong emphasis when making arbitrator appointments on the expertise of arbitrators in the applicable substantive law, as just described, interviewees also displayed a strong embrace of *iura novit arbiter*, and the idea that an arbitrator’s primary obligation is to apply the law correctly. Importantly, this was overwhelmingly described as the correct approach for an arbitrator to adopt even if it meant delivering an award that adopted a different interpretation of the applicable law than had been advanced by the parties. Interviewees noted that in this situation they

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<sup>29</sup> As described by one interviewee, a Turkish court hearing might consist of the lawyers on both sides effectively just confirming that they stand by their written submissions, with no further oral argument made.



might, depending on the circumstances, go back to the parties before issuing their decision, in order to give the parties a chance to comment on the arbitrator's preferred interpretation of the law. However, they also overwhelmingly confirmed that once that opportunity had been provided, they would then apply the law as they believed it should be applied, even if that interpretation had been expressly rejected by both parties. Interviewees expressed the view that this was what both lawyers and parties would expect in a Turkish arbitration.

Finally, reflecting again the differences that exist in Turkish society, as well as the endorsement by Turkish arbitration practitioners of international arbitration practices, interviewees reported a difference between their own views on the relationship between a party-appointed arbitrator and their appointing party, and what was standardly seen in Turkish arbitration. Interviewees themselves consistently emphasised their view that even as a party-appointed arbitrator they had a strong obligation of impartiality between the parties, and no obligation to assist their party to win the dispute. Indeed, one interviewee expressly connected this self-conception with Türkiye's broader socio-political situation, arguing that they saw themselves as trying to ensure fairness in this one area in which they had power to do so, given the realities faced in other aspects of Turkish life. Nonetheless, interviewees also emphasised that the practical reality experienced in Turkish arbitration was often very different, with party-appointed arbitrators commonly advocating for their appointing party, and unanimous awards uncommon, because the party-appointed arbitrator of the losing party was expected to dissent.

## 9. Arbitration Education and Entry into Arbitration Practice

Interviewees confirmed that it remains rare for arbitration to be taught in Turkish law schools, at least as an independent subject, although it might be referenced in broader classes, such as on civil procedure. This was, though, described as varying significantly between universities, with at least some law schools now offering a dedicated arbitration course to LLB students.

However, while this unavoidably limits the knowledge of arbitration of graduating LLB students, interviewees reported LLM study as being a common feature of a Turkish legal education. Possession of an LLM was not seen as a prerequisite for entry into the profession, and some interviewees had obtained an LLM after practicing law for several years, but interviewees described an expectation that an LLM would be obtained at some point. This expectation of LLM study is significant for arbitration because although LLM study in Türkiye is certainly available, and was described as an acceptable option, most interviewees reported having studied for an LLM abroad, and as having substantively encountered arbitration for the first time during this study, or

even having chosen an LLM programme specifically with a view to learning about arbitration.

Nonetheless, while emphasis was placed by interviewees on the opportunity a foreign LLM could provide to learn about arbitration, they most commonly described the primary benefit of a foreign LLM as being the broader personal benefits that could be gained from such an experience, whether in terms of improved English, making connections with individuals from other countries, or just generally gaining broader experience of the world outside Türkiye. In this respect, interviewees emphasised the particular desirability of gaining an LLM from an English-speaking university, most commonly in the U.K. or U.S.A., as this would both help in developing English fluency and expose the student to common law legal reasoning and practice, the impact of the latter on contemporary international arbitration practice being substantial.