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The Decision of the General Assembly of Civil Chambers on Unification of Judgments Regarding Domestic Arbitral Awards Being Subjected to Setting Aside:

1. Introduction

The Civil Procedure Law numbered 6100 ("**CPL**") entered into force on 1.10.2011. Court of Cassation's (*Please be advised that we referred to "Yargıtay" as "Court of Appeals" before. After the change in the appeals system, we take the terminology published by the Ministry of Foreign Affairs and use the term "Court of Cassation"*) General Assembly of Civil Chambers on Unification of Judgments rendered a decision[1] to determine if the **domestic/ national** arbitral proceedings performed as to the arbitration agreements concluded before CPL's effective date and the arbitral awards rendered subsequent to CPL's effective date could be subject to the appeal mechanism under Article 533 of the former Civil Procedure Law numbered 1086 or to setting aside under Article 439 of the CPL numbered 6100.

"**Domestic arbitration**" is regulated under Article 407 of CPL as the arbitration procedure on the disputes that do not contain any foreign elements and where Turkey is chosen as the place of arbitration. In this case the provisions of CPL relating to arbitration shall be applied to these disputes.

2. Brief Summary of the Decision

The subject matter of the said decision was evaluated on different grounds and thus has been concluded by differing outcomes by other Civil Chambers of the Court of Cassation. That gave rise to the need of resorting to the unification of judgments procedure. We will briefly summarize these differing opinions below:

1st Opinion: An agreement containing an arbitration clause or a separate arbitration agreement that was executed at the time when the Former CPL numbered 1086 was in force have the characteristics of an agency contract (also referred to as the contract of mandate) regulated under the Turkish Code of Obligations. Therefore, the existence and validity of these agreements can be specified in accordance with substantive law rules.

[1] See the Official Gazette dated 18.09.2018 and numbered 30359- Court of Cassation's General Assembly of Civil Chambers on Unification of Judgments 2016/2 E. 2018/4 K.

According to the justification of Article 439 of the CPL, setting aside is not an option in cases where there is a concern on the correct application of the law by an arbitrator or a tribunal. Arbitration is a contractual concept and if a party sees a material risk on this issue, then they have the chance to refrain from choosing arbitration as their designated dispute resolution method.

Application of the setting aside mechanism as per the new CPL would violate the vested rights and the expected outcomes of the parties' agreement who have relied on the former CPL provisions. Retroactive effect of procedural provisions cannot be applied to the agreements to arbitrate relying on parties' free will.

2nd Opinion:

Arbitration agreements are of procedural nature. Article 448 of the CPL numbered 6100 clearly sets forth that the provisions of CPL shall be applied immediately with the exception of effecting the completed proceedings.

As CPL has immediate effect, then setting aside will be the correct mechanism against the domestic arbitration proceedings that relies on arbitration agreements executed before the effective date of the new CPL.

3. Conclusion

As per the Decision of the Court of Cassation's General Assembly of Civil Chambers on Unification of Judgments, the arbitration agreements are regarded as procedural agreements. Furthermore, there is no specific transition provisions for domestic arbitration matters. Bearing this in mind, it was concluded that the appeal procedures determined in the Former CPL do not apply to arbitral awards rendered after 1 October 2011. Instead, these awards can only be subject to setting aside under Article 439 of the CPL.