

## Constitutional Court Rejects Claim That Establishing Legislation for Istanbul Arbitration Center is Unconstitutional

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123 deputies of the Turkish Grand National Assembly asked the Constitutional Court to annul and suspend execution of certain expressions from Article 6(1)(b) of the Law on the Istanbul Arbitration Center numbered 6570 ("**Law**"). After examining the claim's merits, the Constitutional Court held that the claim was not an obstacle to establishing the Istanbul Arbitration Center ("**Center**"), or electing the General Assembly.

The Center will have a 25-member General Assembly. Four members of the General Assembly will be lawyers, each registered with a bar association and elected by bar presidents (Article 6(1)(b) of the Law).

The deputies argued that the phrases "bar presidents" and "to be elected" are contrary to Article 2 of the Constitution. The deputies claimed that election of the lawyers by bar presidents:

- Aims to establish a politically-aligned General Assembly.
- Damages the Center's independence and impartiality.
- Runs contrary to public interests.

The deputies claimed that election by the executive organ of the Turkish Bar Union is a more appropriate method.

The Constitutional Court examined the merits of the application and ultimately rejected the request to annul and suspend the Center's execution. The Constitutional Court's summarized reasoning is as follows:

- The Turkish Republic is a state of law, as per Article 2 of the Constitution.
- A "state of law" is a state which:
  - Undertakes legal acts and transactions.
  - Respects human rights.
  - Protects and strengthens fundamental rights and liberties.
  - Establishes, develops and maintains a fair legal system in all areas.
  - Refrains from unconstitutional acts and transactions.
  - Deems itself bound to the rule of law principle.
  - Is subject to judicial control.
- Laws support realization of public interests and cannot have any other objectives. "Public interest" is taken to mean general social utility, rather than individual or private profits.

- A law's objective will be deemed contrary to the Constitution if, following review of the legislative documents and its objective purpose, it is clearly understood to serve purposes other than public interests.
- Legislators are empowered to stipulate rules and decide whether these comply with public interests, provided the rules are not contrary to the Constitution and general legal principles.
- The Constitutional Court does not evaluate whether legislation reflects general public interests. Rather, it considers whether in a given fact situation, specific individual or group interests exist, as opposed to general public interests.
- The Center has a legal personality and is subject to civil law. It was legislatively established to resolve disputes by arbitration and alternative dispute resolution ("ADR") methods, as well as to encourage adoption and advancement of these methods.
- The Center's legislative objectives include (Article 4 of the Law):
  - Promoting, publishing and supporting scientific studies about arbitration and ADR methods.
  - Cooperating with foreign authorities about arbitration and ADR methods.
  - Performing services in relation to arbitration and ADR methods.
- The Center is made up of the General Assembly, Board of Directors, Auditor, Consultative Board, National and International Arbitration Council and General Secretary (Article 5 of the Law).
- Legislators can regulate any area, provided this is done in accordance with the generality of legislation principle and the area is not regulated by the Constitution.
- Legislators have discretion to create legal regulations to procure development of arbitration and ADR methods, increase their use, to establish autonomous institutions and organizations, as well as to determine their organizational structure, mission and authorities.
- The Center is not a constitutional institution. Therefore, determining the Center's organizational structure is within legislators' discretion, provided the legislators do not exceed constitutional limits.
- The Report of the Justice Commission of Turkish Grand National Assembly states that the phrase relating to bar presidents electing lawyers to be members of the Center is intended to ensure political pluralism since bar presidents themselves are elected to office and have publicly known political allegiances.
- The Constitutional Court could not detect any private or individual interests served by the provision. Therefore, it held that legislators cannot be deemed to be pursuing purposes contrary to public interests by including a provision in the establishing legislation which requires bar presidents to elect lawyers to the Center.
- Therefore, the Constitutional Court held that the reasons asserted in the application were not contrary to Article 2 of the Constitution and rejected the request to annul and suspend the Center's execution.

With this decision, the Constitutional Court refused allegations that the Center will be inherently partial and biased due the way in which it is constructed. However, it remains to be seen whether the Center will operate independently and impartially regarding issues related to public order or the Turkish state.

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