

## THE CRUCIAL ROLE OF UNAMBIGUOUS JURISDICTION CLAUSES IN REINSURANCE AGREEMENTS

*Pelin Baysal & Ilgaz Önder*

Court of Cassation (“CoC”), as the highest tier of the appellate reviews of civil law disputes, recently reminded the importance of incorporating an unambiguous jurisdiction clause to the reinsurance agreements.

The claim in question arises out of Industrial Reinsurance Policy issued for a thermal power plant, after the reinsurer denied the coverage although the local insurer compensated its insured for a mechanical breakdown. In its two subsequent rulings each relating to separate portions of a claim raised by the insurance company against its reinsurer, the CoC concluded that Turkish courts have no international jurisdiction to handle this claim. In this respect CoC endorsed the conforming conclusions of local court and regional appellate court that “the agreement between the parties doesn’t clearly specify the court having the jurisdiction” and “the jurisdiction clause is invalid”. [11th Civil Division, Case no. 2023/5957, Decision no. 2023/6685, 21.11.2023; 11th Civil Decision, Case no. 2023/5277, Decision no. 2023/5917, 17.10.2023]

In the absence of a valid jurisdiction clause, the courts referred to Art. 46 of the International Private and Procedural Law (“IPPL”) which states, in the manner of an exclusive jurisdiction rule relating to insurance disputes, that “In disputes arising from insurance contracts, the court having jurisdiction is the one located where the insurer’s main office or the branch or agency that concluded the insurance contract is situated in Turkey”. In the matter at hand, the reinsurer is situated in Vienna, Austria and the reinsurance agreement was executed by the reinsurer itself, but not through its branch or agency in Turkey. This is why, Turkish courts couldn’t find any jurisdiction rule that would enable them to handle the case and simply rejected the case due to the lack of jurisdiction.

These rulings first signify that the courts, in case Art 46 IPPL falls short of granting the jurisdiction, don’t bother themselves with seeking any alternative jurisdiction rules stemming from IPPL’s general jurisdiction rule (Art. 40).

By the extension of it, the courts, in such cases, require a jurisdiction clause that expressly vests them with the international jurisdiction. The requirements for a valid jurisdiction clause are shaped by local procedural rules and the CoC’s precedents. Accordingly; jurisdiction clauses need to be

- in written form,
- by and between commercial parties and/or public institutions,
- for the cases where procedural rules don't already assign a court with exclusive jurisdiction,
- with regards to identifiable legal relationships which are subject to the parties' free will and disposition powers and
- clearly indicative of the assigned court.

With respect to the last criteria, the required level of clarity is not well settled in Turkish practice. The CoC, according to its earlier decisions, is mostly satisfied with general wordings, such as "courts of Turkey". But the concerned decisions indicate that the clarity of jurisdiction clauses are now more significant than ever, and require the parties to be more specific by wordings such as "courts of Istanbul".

*For further information, please contact:*



**Pelin BAYSAL**  
[pelin@baysaldemir.com](mailto:pelin@baysaldemir.com)



**Ilgaz Önder**  
[ilgaz@baysaldemir.com](mailto:ilgaz@baysaldemir.com)