

New milestone in Turkish arbitration: Istanbul Arbitration Association's Code of Ethics for Arbitrators

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The Istanbul Arbitration Association (ISTA) is the only non-governmental organisation (NGO) in Turkey focused on transforming the country, and especially Istanbul, into a reputable, reliable and effective arbitration centre, fully recognised in the national and international arenas. It works to promote the advantages of using Istanbul as a seat of arbitration, to foster arbitration in Turkey, and to ensure that arbitration practices in Turkey are conducted in a fair, efficient and productive manner.

The ISTA advisory board – the High Advisory Council – is comprised of pioneers of arbitration in Turkey, enabling ISTA to be an expert association, bringing together jurists and non-jurists who are active in the field of arbitration. The ISTA also extends this approach through its cooperation with third-party actors.

The ISTA recently introduced the ISTA Code of Ethics for Arbitrators, to encourage the fair functioning of arbitration proceedings, and to emphasise the qualities of self-independence and impartiality of the arbitrator.

Importance of ethics in arbitration

Uncertainty over the ethics of arbitration is one of the most serious obstacles to the overall development of arbitration in Turkey. ISTA established its arbitrator ethics rules with this in mind.

Assuring that arbitration practices in Turkey advance in conformity with high ethical values is of major importance. One of the most practical reasons why parties choose arbitration over national courts is because they have faith that arbitrators will act with a certain level of independence, impartiality, and neutrality in the decision-making process.

Arbitrators are the main actors conducting arbitration proceedings from beginning to end and resolving disputes by rendering an award legally-binding upon the parties. Therefore, it can be argued that arbitration proceedings may only be perceived as fair if the arbitrator has a highly-developed sense of ethics and is impartial and independent.

In that regard, the establishment of ethics rules is the result of the need for confidence in arbitration. The reputation and credibility of arbitration as a whole can only be assured if the process is carried out by impartial and independent arbitrators. Therefore, ISTA has set its sights on resolving the subject of arbitration ethics from the ground up, establishing rules that arbitrators must comply with.

Launch of the ISTA Code of Ethics for Arbitrators

ISTA founding members commenced work on its code of ethics by comparing the ethics rules of all reputable arbitration institutions in the world, especially in terms of:

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➤ fair and swift proceedings in the arbitral process;

➤ arbitrators' independence, impartiality and duty of disclosure;

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- trust and confidentiality, and
- fairness in determining arbitration costs and fees.

Following this detailed study, the ISTA Code of Ethics for Arbitrators was published on 16 November 2018.

Additionally, ISTA worked on establishing a comprehensive list of arbitration practitioners in order to ensure visibility and credibility and announced arbitrators' required qualifications for inclusion in this list. This list offers convenience to the parties of disputes in terms of appointing arbitrators and brings qualified practitioners to the forefront.

ISTA has published its 'Arbitrator Qualification Criteria' for the purpose of choosing the arbitrators to be included on the ISTA 'List of Arbitration Practitioners'. Practitioners must comply with the mandatory criteria specified to be entered on the list, such as committing to abide by the ISTA Code of Ethics for Arbitrators.

A milestone for Turkish arbitration

The ISTA Code of Ethics for Arbitrators can be easily considered a major milestone in Turkish arbitration, as it is regulated by an NGO; in other words, by the arbitration practitioners themselves, with no intervention from the outside. Arbitrators are the focal point of the ISTA Code of Ethics for Arbitrators, stating that their ethical obligations start from the moment they receive a request to serve as an arbitrator and continue until the end of the proceedings, and sometimes even after they render the award. The arbitrator shall conduct every stage of the arbitration proceedings independently, impartially and in a fair and just manner, and shall recuse him or herself on his or her own initiative where such conduct is not possible.

These rules will apply under those circumstances where it has been expressly stated that this is the case. They serve as a guide to embodying the concepts of: impartiality, independence, fairness, honesty, competence, conscientiousness, discreetness and prudence in practice, having parallel provisions with the ethics rules of all reputable arbitration institutions. Even though these rules, which are referred to as soft law, are not in fact binding, they are of great importance to ensure reliability in arbitration. Therefore, their establishment by ISTA has been, and will be, deeply beneficial to the practice of Turkish arbitration.

Collaboration agreements

In accordance with its by-laws, ISTA may collaborate with national and international NGOs, public, quasi-public, or private institutions and agencies, arbitration and other alternative dispute resolution centres that are engaged in its areas of activity. This collaboration can be to exchange ideas, experience or knowledge with the purpose of enabling ISTA to achieve its goals.

One of ISTA's main collaborators in relation to fostering fair functioning arbitration proceedings in Turkey is the Istanbul Arbitration Center (ISTAC). Since its establishment, ISTAC has received more than 100 cases. The ISTAC Arbitration and Mediation Rules entered into force on 26 October 2015.

In line with the overlapping goals of the ISTA and the ISTAC, on 18 July 2018, these two actors signed a protocol in order to: establish collaboration in developing arbitration in Turkey; increase the professional qualifications required of arbitrators; expand membership and connection networks and, most importantly, implement ethics rules in arbitration.

With this protocol, which covers many aspects of cooperation, both institutions plan to develop joint projects in order to: establish Istanbul as a seat of arbitration; develop arbitration expertise in Turkey, and ensure that arbitration practices in Turkey are conducted in a fair, efficient and productive manner.

Conclusion

By becoming an expert association and bringing all arbitration practitioners and stakeholders under the same roof, ISTA has already taken one of the most important steps in the past few decades towards making Istanbul a leading seat of arbitration. Alongside promoting the advantages offered by Istanbul, by raising awareness of the subject of ethics with its recently launched Code of Ethics for Arbitrators, ISTA has also contributed to the international credibility of the arbitration system in Turkey.

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