

Kluwer Arbitration Blog

Interviews with our Editors: In Conversation with Mr. Süleyman Bo?ça, Chairman of the Energy Disputes Arbitration Center (EDAC)

Antoine Cottin (Assistant Editor for Europe) (Laborde Law) · Monday, June 5th, 2023



Mr. Süleyman Bo?ça is a Türkiye-based lawyer specialized in international arbitration and energy law, currently acting as Chairman of the Energy Disputes Arbitration Center (EDAC). Mr. Bo?ça is also the founder and managing partner of **Bosca Law Firm**. Among other professional activities, he is the Chairman of the Energy Law Research Institute and a member of the Turkish National Committee of the World Energy Council.

Mr. Süleyman Bo?ça, thank you so much for finding some time in your busy schedule to talk to us about the role of the EDAC in the changing arbitration landscape in Türkiye.

1. Based in Ankara, the EDAC is a sectoral arbitration center offering dispute resolution services for international disputes related to energy and energy infrastructure. Could you please explain this market positioning? What is the most important highlight of EDAC's services that sets it apart from other arbitration centers based in Turkey?

EDAC's positioning comes from the simple observation that energy issues have played an important role in the resolution of both commercial and investment disputes through arbitration. Today, energy is indispensable for human life, like food. The energy sector is developing rapidly all over the world and new investment opportunities are constantly increasing. In addition, there has been an increase in the number of disputes arising from energy investment and trade. EDAC, as the first and only arbitration center in the world that focuses on the energy sector and that has its own rules, considers the disputes that may arise in this area as an important market. You may

consider the [International Center for Energy Arbitration \(ICEA\)](#) in Scotland as such a center; but ICEA's mission is to be a center of excellence and a source for those involved in energy dispute resolution whereas EDAC is a center that resolves disputes. Their mission is to facilitate debate and promote best practice in international arbitration. However, EDAC has its own arbitration rules.

The most important feature that distinguishes EDAC from other arbitration centers based in Türkiye is that it is a sectoral arbitration center and targets markets all over the world. EDAC also does not consider itself to be in a competition in the market with big players such as ICC, LCIA, VIAC, because EDAC is the sole sectoral arbitration center that focuses on the energy sector. In addition, EDAC has distinguished itself from other arbitration centers with its organizational structure, which includes consultants for the global markets targeted by EDAC and representatives for different regions of the world.

2. Although very young (having been in operation since October 2020), EDAC has developed its own arbitration rules. Could you please explain the specific benefits of conducting an arbitration under the EDAC Rules?

Due to the structure of the energy sector, working in any part of this sector requires expertise. The presence of arbitrators who know the energy sector well and have expertise in this field will contribute to the resolution of disputes in a shorter time and in a fairer way. EDAC publishes its arbitrator list transparently on [the EDAC website](#), and we care about the experience of our arbitrators in the arbitration and energy sector. In accordance with Article 3.2 of the Rules, the EDAC is composed of two “impartial and independent” courts, the National Arbitration Court and the International Arbitration Court, that can both act as a default appointing authority.

Other specific benefits of conducting an arbitration under the EDAC Rules include features in line with best international practices. For instance, EDAC arbitration provides for terms of reference to be established at the start of the proceedings (see Article 16 of the Rules), the parties' capacity to request provisional measures (Article 24 of the Rules), and confidentiality of hearings as a principle (Article 26.5 of the Rules), which is particularly suitable for energy disputes. Finally, although EDAC is a Turkey-based arbitration center, the parties can freely determine the place of arbitration, according to Article 12(1) of the Rules. This shows that EDAC is actually a global arbitration center.

3. Please tell us more about your users and their disputes. What percentage of your arbitrations relate to international disputes?

When the EDAC foundation was launched, I said to our team in the EDAC Secretariat that “we are a new arbitration center and arbitration is above all a matter of trust. What we need to do in the next five years is introduce EDAC and explain how it is an arbitration center that focuses on the global energy sector. Afterwards, we will ensure that arbitration clauses in energy contracts more frequently refer to the EDAC Rules.” Only two years after its establishment, EDAC started to administer its first arbitration proceedings and act as a dispute resolution center in many international contracts performed in Turkey, Africa, Asia and America. In addition, many parties have applied to EDAC to administer disputes arising from contracts providing for *ad hoc*

arbitration regarding energy trade disputes in Turkey. Parties, who adopted ad hoc arbitration before EDAC was established, agreed to use the EDAC Arbitration Rules in dispute resolution through a new arbitration agreement after the establishment of EDAC.

4. For the first time, the Blog covered Istanbul Arbitration Week (ISTAW) last year (see [here](#) and [here](#)). ISTAW was organized by the EDAC and took place in mid-October 2022. What are the other initiatives that EDAC undertakes to promote the use of arbitration in Turkey and more generally in the region?

ISTAW has two important goals. The first was to introduce EDAC to the world, and the other goal was to have the opportunity to explain Türkiye's advantages in this area by encouraging the use of arbitration in the resolution of disputes. In 2021, we organized Turkey Arbitration Week (TAW) as a hybrid conference under epidemic circumstances and nearly a thousand people attended. In 2022, we decided to change the name and organize the event as ISTAW, and 770 people from nearly fifty countries attended in person. In addition, we received the support of 52 global arbitration centers and organizations, as well as worldwide recognition and international news coverage. Thus, ISTAW has created an important awareness about the use of arbitration, especially in Türkiye and in the region.

This year we will be joined by arbitration societies from all over the world for ISTAW 2023, which will be held from 2 to 6 October 2023 and will celebrate the 100th Anniversary of the Republic of Türkiye. In addition, we will fulfill an important social responsibility by donating 10% of the income that will be obtained from ISTAW 2023 to the families affected by the great earthquake disaster that took place in our country on 6 February 2023.

Other initiatives that EDAC undertakes to promote the use of arbitration in Türkiye and the region include (i) the sponsoring of other arbitration events such as, for example, most recently, the [annual ITA-ASIL conference](#) and (ii) signing cooperation agreements with other arbitral institutions, such as the [Institut International de Médiation et d'Arbitrage et de Conciliation \(IIMAC\)](#) in Gabon and the [Japan International Dispute Resolution Centre \(JIDRC\)](#). The aim of these cooperation agreements is to promote arbitration, as well as jointly organize conferences, seminars and trainings.

5. In recent years, the arbitration community has faced criticism for a lack of diversity. How are these issues addressed by the EDAC?

From Day One, diversity has been of great importance to EDAC. Nearly 50% of our staff at the EDAC Secretariat are women, including the most senior positions as Secretary General and Vice Secretary-General. The same holds true with regard to EDAC's regional representatives (4/9 members) and the ISTAW Organizing Committee (4/8 members). Our female board members are also members of EDAC's two arbitration courts.

Further, more than 30% of our arbitrator list consists of female arbitrators. In addition to gender diversity, we care about age and ethnic diversity. We fulfill an important mission in this regard with our arbitrators, consultants and board members being from all continents and all ages.

Of course, much remains to be done and there is always room for improvement. EDAC is committed to spreading best practices and will continue to showcase initiatives that reduce inequalities and the gender gap.

6. In recent weeks, many contracting states have announced their respective intention to withdraw from the Energy Charter Treaty (ECT). On the contrary, Turkey took a very active role during the negotiations and more generally in the modernization process of the ECT. In your view, what are the important challenges and opportunities for institutional arbitration in Turkey in the current context of the energy crisis?

The ECT has indeed started to be seen by a number of EU member States as an important obstacle in terms of reaching the climate targets set by the Paris Agreement and reducing the share of fossil-based energy production. Efforts to modernize ECT have been inconclusive, with some EU member states and then the EU Parliament formally declaring their intention to withdraw from ECT. If ECT reform efforts fail as a result of this unexpected development, it seems impossible to continue with the current ECT. Türkiye has chosen to advocate for ECT modernization rather than to withdraw from it.

This has to do with Türkiye's overall favorable stance towards international arbitration.

I should point out that Türkiye is one of the rare countries that has constitutional guarantees for international arbitration. In other words, the right to apply for international arbitration in commercial and economic disputes containing elements of foreign origin has been made a constitutional institution akin to some fundamental rights and freedoms. According to Article 125 of Turkish Constitution, "In concession, conditions and contracts concerning public services and national or international arbitration may be suggested to settle the disputes arising from them. Only those disputes involving an element of foreignness may be submitted to international arbitration." These sentences have been added to the Constitution of the Republic of Türkiye on August 13, 1999.

Further, Türkiye is a party to all of the key international arbitration conventions, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Washington Convention, and Türkiye has also signed Agreements on Reciprocal Protection and Promotion of Investments with 118 countries providing for arbitration as the settlement method for investment disputes that have arisen or will arise between the investor and the host state. In addition, Türkiye has enacted a pro-arbitration law.

Despite all these positive developments, we can say that the institutional arbitration experience of Türkiye remains for now at a low level. However, the interest in institutional arbitration in Türkiye has gradually increased in recent years. The work of institutional arbitration centers such as EDAC, the [Istanbul Arbitration Center \(ISTAC\)](#), and the [Istanbul Chamber of Commerce Arbitration and Mediation Center \(ITOTAM\)](#) have greatly increased the interest in institutional arbitration.

7. How has the arbitration landscape changed in Turkey this last decade, especially in the field of energy and infrastructure disputes?

With the liberalization that has started in the energy sector in Türkiye in 2001, energy investments have gained momentum. In addition, a significant part of the energy trade has started to be carried out by private legal entities. This has led to an increase in disputes in the energy sector.

However, expert witnesses appointed by local courts are not suitable to solve these disputes, and the judicial process takes longer than it should. In addition to this, the files in the local courts are open for examination by any lawyer, which may reveal confidential business information—a significant issue for such a strategic sector.

Arbitration, including under the EDAC Rules, overcomes these two obstacles to the resolution of disputes by allowing expert opinions and providing for the confidentiality of proceedings. Energy companies in Türkiye have recently started to use arbitration in the resolution of disputes. In fact, many companies that we met at EDAC later stated that they have started to prefer arbitration for resolving their disputes, and this shows that arbitration is developing rapidly.

Mr. Bo?ça, thank you for your time and perspectives – we wish you and the EDAC continued success!

This interview is part of Kluwer Arbitration Blog’s “Interviews with Our Editors” series. Past interviews are available [here](#).

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