

AGREEMENTS ON DETERMINING INTERNATIONAL JURISDICTION AS EXCLUSIVE OR DISCRETIONARY

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Abstract

International jurisdiction agreements, which have roots in Roman law, are recognized across various legal systems today, albeit with differences in their details. These agreements serve to designate courts—whether domestic or foreign—that lack jurisdiction over a dispute as competent, or to override the jurisdiction of courts that would otherwise have authority. According to international law, for such agreements to be valid, they must meet certain conditions.

While the classification of jurisdiction agreements within a specific branch of law remains a matter of debate, the prevailing view in many legal systems, including Turkish law, is that they should be addressed under procedural law. In cases where Turkish courts are designated as competent through a jurisdiction agreement, such agreements can only be made by public legal entities or merchants and are limited to matters over which the parties have the authority to dispose. In contrast, when foreign courts are designated as competent, the validity requirements under Turkish law do not apply. The validity of jurisdiction agreements is assessed in all legal systems based on the law of the forum (*lex fori*), which is the law of the country where the court is located.

Keywords: *International Jurisdiction Agreements, Procedural Law, Lex Fori, Dispute Resolution*

Introduction

Jurisdiction is defined as determining which court has jurisdiction to hear a case. However, when the dispute involves a foreign element, the concept of jurisdiction becomes a matter of determining which state's court has jurisdiction. In this context, international jurisdiction agreements stand out as a fundamental tool regulating the jurisdiction of courts in resolving international disputes. This study aims to assess jurisdiction, based on whether the dispute contains a foreign element, for Turkish and foreign courts and the status of the parties.

This study will examine in detail the validity conditions of jurisdiction agreements, the competent court, exclusive jurisdiction rules, and the legal nature of the agreements. Furthermore, where Turkish courts are granted jurisdiction by international jurisdiction agreements, the circumstances under which this jurisdiction may be exercised or denied will be examined. The assignment of jurisdiction agreements to foreign courts will be evaluated from a general perspective. These issues will be analyzed through a comparative approach, comparing Turkish law with the legal systems of other countries, particularly German law.

The focus of this study includes the perspectives of Turkish and other countries' legal doctrines on international jurisdiction agreements, their importance in drafting these agreements, their formal requirements, legal nature, required conditions, elements to be considered during their preparation, and their legal consequences. Furthermore, the effects of jurisdiction agreements on third parties will be examined in detail. In this context, the study aims to comprehensively examine the theoretical and practical aspects of international jurisdiction agreements within the framework of national and international law.

1. Concept Of Authority

The concept of jurisdiction is used with various meanings in different contexts. Therefore, it is important to clarify the meanings of this concept. The meaning of jurisdiction can be understood from relevant texts. Authority is a term used to represent power in the legislative, executive, and judicial spheres. For example, in civil procedure law, the determination of the court to hear a case is expressed through the concept of jurisdiction.¹

As a rule, the jurisdiction of a court is determined by the location of the parties to the case or the location where the action in question occurred. The concept of jurisdiction can be examined under two headings: international and domestic jurisdiction. We can briefly summarize it as follows: International jurisdiction is the rule that determines which court in which country can hear a case involving a foreign element. This jurisdiction is regulated within the framework of international law, and each state has the right to determine its own jurisdiction.² Domestic jurisdiction, on the other hand, refers to the determination of which court within a state's sovereignty has jurisdiction to hear a case. Domestic jurisdiction rules apply to all cases filed or to be filed within the country's borders, whether or not they contain a foreign element. In cases involving a foreign element, the territorial jurisdiction of the competent state court is determined by both international and domestic law. In Turkey, the territorial jurisdiction of the courts is the same as that of international and domestic law.³

1. 1. International Jurisdiction Rules: International jurisdiction is the jurisdiction of a specific country's court for the resolution of disputes arising from legal events or relationships involving a foreign element.⁴ Each state determines the types of disputes its courts will have international jurisdiction over. Therefore, there are no uniform international jurisdiction rules other than international treaties for establishing international jurisdiction rules.⁵ There may be more than one court in each country with international jurisdiction for each event or legal relationship in dispute.

This situation stems from the fact that the concept of international jurisdiction is national for each country and falls within its own jurisdiction.⁶ Therefore, each state alone regulates the international jurisdiction of its own courts.⁷ No state can establish the international jurisdiction of another country's court or attribute jurisdiction to another country's court. It should also be noted that "international jurisdiction" originates from national law; what is "international" is the event or relationship in dispute.⁸

The term "international" indicates that the dispute has a foreign element, thus distinguishing between disputes that contain a foreign element and disputes subject to domestic jurisdiction rules.⁹ International jurisdiction rules are examined in two categories: direct and indirect jurisdiction.

1. 1. 1. Direct International Jurisdiction Rules: The rule of direct international jurisdiction determines only whether the court of a country hearing the case possesses international

¹Sıdıka Ayşegül İSKENDERÖĞLU, International Jurisdiction of Turkish Courts, Gazi University, Institute of Social Sciences, Department of Private Law, Master's Thesis, Ankara, 2008 "*file:///C:/Users/Adm/initiator ator/Downloads/227903.pdf*", p.3, (Online: 11.7.2025)

²Ibid., p.3

³Ibid., p.4

⁴Ergin NOMER, "The Notion of International Jurisdiction in Private International Law", pp. 1-4, p.393.

⁵Vahit DOĞAN, Private International Law, Savaş Publishing House, 6th Edition, Ankara, 2020, p.38.

⁶Nuray EKŞİ, International Jurisdiction of Turkish Courts, Beta Publishing, Istanbul, 1996, p.15.

⁷Cemal ŞANLI, Emre ESEN, İnci ATAMAN and Figen MESE, Private International Law, 7th Edition, Vedat Kitapçılık, Istanbul, 2019, p.383.

⁸Nuray EKŞİ, *ibid.*, p.16.

⁹Zeynep İSTEMİ, International Jurisdiction in Turkish International Procedural Law, Çankaya University, Institute of Social Sciences, Department of Private Law, Master's Thesis, Ankara, September, 2020, p.4.

jurisdiction. For a dispute involving a foreign element to be heard by a court of a country, that court must possess international jurisdiction under the rules of direct international jurisdiction. Indeed, the international jurisdiction of a court of a country is established by the rules of direct international jurisdiction.¹⁰

1. 1. 2. Indirect International Jurisdiction Rules : This issue arises when a court in one country requests recognition or enforcement of a decision before a court in another country. ¹¹The enforcement court investigates the jurisdiction of the court in the country that issued the decision. If, upon investigation, the enforcement court determines that the court in the country that issued the decision lacks jurisdiction, it rejects the request for recognition or enforcement. Thus, by applying the rule of indirect international jurisdiction, the jurisdiction of the court in the country that issued the decision is investigated separately during the recognition or enforcement request.¹²

1. 2. Rules In Determining International Jurisdiction: Love's Authority Rules Excessive jurisdiction rules, on the other hand, can pose obstacles to the parties' legal security and the courts' ability to render objective decisions, particularly the principle of natural judge and the right to a fair trial. ¹³Excessive jurisdiction can be defined as jurisdiction rules established without a sufficient connection between the subject matter of the dispute, the parties, the location of the court, and the dispute itself.¹⁴ *Exclusive Jurisdiction Rules* In International Procedural Law, “exclusive jurisdiction” rules are introduced to ensure that a dispute is heard only by a certain state court.¹⁵

1.2 . 1. Forum Non Conveniens: This doctrine is a common law doctrine. The doctrine of forum non conveniens emerged to eliminate the need for the court of the jurisdiction where the case was filed to render a decision in cases where there was little or no contact between the court of the jurisdiction where the case was filed and the dispute, thus saving the defendant from having to resort to a court of a country that was not suitable for their defense. In such cases, the court may decline to hear the case, holding that the case should be heard by a court of a country with a closer connection to the dispute. ¹⁶In Turkish law, the international jurisdiction rules regulated by Articles 40-46 of the Civil Procedure Code (MÖHUK) are based on the connection between Turkish courts and the dispute, and on actual and sufficient points of contact, so the doctrine of forum non conveniens has no application. This doctrine is prevalent in English and American law.¹⁷

¹⁰Ibid., p.12.

¹¹Ibid., p.12.

¹²Nuray EKŞİ, ibid., p.64.

¹³Vahit DOĞAN, Private International Law, Savaş Publishing House, 4th Edition, Ankara, 2017, p.129.

¹⁴Esra DARDÖĞAN, The Concept of “Transcendent Authority” in International Procedural Law, Ankara, Siyasal Kitabevi, 2005, p.3.

¹⁵Ergin NOMER, “The Notion of International Jurisdiction in Private International Law”, p.523.

¹⁶ Ibid., p. 496.

¹⁷Cemal ŞANLI, Emre ESEN, İnci ATAMAN and Figen MESE, Private International Law, 7th Edition, Vedat Kitapçılık, İstanbul, 2019, p.387

2. Definition And Importance Of Jurisdiction Agreements In International Legal Relations

A jurisdiction agreement is defined as an agreement made by the parties for the purpose of authorizing a court that does not have jurisdiction under law.

Accordingly, a "jurisdiction agreement" refers to the parties' ability to authorize a specific court to resolve a dispute at their own discretion.¹⁸ However, it is not possible to deprive a court of jurisdiction through this process.

If the court chosen by the parties is already one of the competent courts, a jurisdictional agreement cannot truly exist, as the parties' will would be to choose one of the competent courts, not to authorize a non-competent court.¹⁹ Within the framework of the principle of freedom of contract, the parties to a contract are free to determine the content, terms, and form of the contract, provided that it does not violate mandatory provisions, public order, personal rights, or morality. This principle is reflected in the field of conflict of laws law, where the parties can determine the applicable law of the contract. In this context, if a dispute arises within the scope of the contract, the parties agree to determine the jurisdiction under which the dispute will be resolved.²⁰ As can be understood from this definition, the establishment of international jurisdiction and the determination of the applicable law are, as a rule, entirely based on the will of the parties. In the field of international procedural law, the parties are also granted freedom of choice in choosing the courts that will have jurisdiction to resolve disputes arising under the existing contract.²¹ A jurisdictional agreement can be made as a separate contract or by the parties stipulating a jurisdictional clause in a substantive law agreement between them.

In addition, the parties may authorize a court to decide on a dispute between them through a jurisdiction agreement, and if the defendant does not object to the jurisdiction of a court that does not actually have jurisdiction, that court may become competent.²²

2.1. Matters That Make Jurisdiction Agreements Important In International Relations: The growth of international trade relations has led to an increase in disputes arising from these relations, which in turn has led to the rise of dispute resolution methods. There are generally four different methods for resolving disputes arising from international trade relations.

These are amicable settlement, arbitration, expert arbitration, and state jurisdiction.²³ It is generally said that the following factors influence parties' decision to enter into jurisdiction agreements in disputes involving foreign elements:²⁴ In cases where the competent court is not specified, the plaintiff is likely to abuse his right to choose and act in a way that harms the defendant. This affects commercial stability and trust. Therefore, uncertainty must be eliminated.²⁵ The parties' desire to authorize a state court they believe is impartial and independent, offers low litigation costs, is quick, and avoids formalities, and is specialized in the specific subject matter of the dispute is also a result of their search for stability and trust. The fact that the authorized court has favorable procedural rules and that the parties want to authorize a court that will apply conflict of law rules that are favorable to them and their

¹⁸Nuray EKŞİ, *ibid.*, p.127.

¹⁹Ceyda SÜRAL, "The Effect of the Code of Civil Procedure on the International Jurisdiction of Turkish Courts" TBB Journal, Ankara, 2012, p.189.

²⁰Cemal ŞANLI, *Preparation of International Commercial Contracts and Dispute Resolution Methods*, 6th Edition, Beta, Istanbul 2016, p. 76

²¹Çiğdem İBİŞ, *International Jurisdiction Agreements*, Istanbul University Institute of Social Sciences, Master's Thesis, Istanbul, 2018, p.4

²²Baki KURU, Ramazan ARSLAN and Ejder YILMAZ, *Civil Procedure Law, Textbook, Rewritten According to the HMK No. 6100*, 24th Edition, Ankara 2013, p.554.

²³Çiğdem İBİŞ, *ibid.*, p.8.

²⁴Nuray EKŞİ, *ibid.*, p.124.

²⁵*Ibid.*, p.124.

relationship also reflects the belief that a decision from a specific state court will be easily enforced in the potential defendant's country.²⁶

2.3. Basis Of The Authority Agreement : Private international law rules grant parties the authority to choose a specific court for the resolution of disputes arising or to arise from contracts containing a foreign element and a debt relationship.²⁷ The parties initially enter into a jurisdiction agreement that eliminates the jurisdiction of all other competent courts. In principle, this is possible. From this perspective, granting jurisdiction to another court through a jurisdiction agreement constitutes a renunciation of the legal protection of the courts of another jurisdiction. This is the most significant effect of Prorogation and Derogation.²⁸ With the jurisdiction agreement, the court of a particular country must examine the situation where the will of the authorizing party and the substantive law of that country may have been chosen.²⁹

3. Cases Of Jurisdiction Of Turkish Courts By Jurisdiction Agreement In Disputes Including A Foreign Element

Generally speaking, each country determines the international jurisdiction of its courts according to its own laws. Furthermore, parties may authorize Turkish courts through jurisdiction agreements in cases where Turkish courts lack jurisdiction over disputes arising from contractual obligations involving a foreign element.³⁰

The international jurisdiction of Turkish courts in international disputes is regulated in Law No. 5718 on Private International Law and Procedural Law (MÖHUK). However, MÖHUK does not contain any specific regulations regarding jurisdiction agreements authorizing Turkish courts in international disputes.³¹

For a case involving a foreign element to be heard in Türkiye, it must have a causal link to Turkey. If there is no causal link, the case cannot be heard in Turkish courts. While foreign courts may be authorized to hear disputes arising from contractual obligations that involve a foreign element, Turkish courts may also be authorized pursuant to the relevant articles of Law No. 5718 on Private International Law and Procedural Law.³²

The establishment of international jurisdiction of Turkish courts is not subject to the rules of substantive law. Furthermore, a jurisdiction agreement concluded in accordance with Law No. 5718 on Private International Law and Procedural Law is merely the exercise of a right granted to the parties, not an exclusive jurisdiction. Therefore, the selection of foreign courts for the hearing of a case with a foreign element does not eliminate the exclusive jurisdiction of Turkish courts. There are exceptions to the principle that countries generally determine the international jurisdiction of their own courts through domestic legal regulations in some areas. Contracts have been drawn up and entered into legal force on matters such as property violations, alimony, purchase and sale, and the recognition and enforcement of court and

²⁶Ibid. p.125.

²⁷Ayfer UYANIK, Jurisdiction Agreements in Turkish International Procedural Law, Istanbul University, Institute of Social Sciences, Master's Thesis, Istanbul, 1994, p. 12

²⁸Melis AVŞAR, Party Will in Determining the Competence of Courts in International Procedural Law, Istanbul University, Institute of Social Sciences, Department of Private Law, PhD Thesis, Istanbul, 2021, pp.229 - 231,258- 265; Ayfer UYANIK, Jurisdiction Agreements in Turkish International Procedural Law, Istanbul University, Institute of Social Sciences, Master Thesis, Istanbul, 1994, p. 16.

²⁹Zeynep Derya TARMAN, "Law Applicable to Employment Contracts Containing a Foreign Element", Ankara University Faculty of Law Journal, Volume 59, Issue 3, 2010, pp. 527-548,-Ayfer UYANIK, Jurisdiction Contracts in Turkish International Procedural Law, Istanbul University Institute of Social Sciences, Master's Thesis, Istanbul, 1994, p. 27

³⁰Ayfer UYANIK, *ibid.*, p.13

³¹Çiğdem İBİŞ, *ibid.*, p.14

³²Deniz Meraklı YAYLA, "Parties to Jurisdiction Agreements in Disputes Containing a Foreign Element and Extension of Jurisdiction Agreements to Third Parties within the Scope of HMK Article 17", Dokuz Eylül University Faculty of Law Journal, Vol. 16, Special Issue 2014, pp. 1987-2013,2014.

arbitration decisions. These contracts will be enforced primarily by the person who ratifies them.³³

The jurisdiction of Turkish courts regarding matters not covered by international agreements is regulated in Article 40 of Law No. 5718 on Private International Law and Procedural Law. This article introduces a general rule on this matter. According to Article 40, the local jurisdiction rules in domestic law are also applied as international jurisdiction rules. In other words, Article 40 of the MÖHUK, which is a general provision, states that the local jurisdiction rules of domestic law will determine the international jurisdiction of Turkish courts. Provisions regarding trial procedures and the jurisdiction of courts in Turkish domestic law are regulated by the Civil Procedure Code (HMK). Therefore, the relevant provisions of the HMK will apply to the parties' selection of Turkish courts in contracts containing a foreign element, and the provisions of the HMK will determine the conditions and form under which the jurisdiction agreement will be valid. Therefore, if the parties choose a Turkish court as the competent court through a jurisdiction agreement, the jurisdiction of this Turkish court, in terms of local jurisdiction, is as determined in domestic law. The Turkish court will evaluate whether the jurisdiction agreement regarding its authorization is valid or not according to the *lex fori*, which is the law of the judge, that is, according to Turkish procedural law.³⁴

If the parties choose Turkish courts as the jurisdiction, jurisdiction agreements are valid if they are executed in accordance with domestic law. Accordingly, if the parties to a dispute involving a foreign element are not merchants or public legal entities, Turkish courts cannot hear the case. Therefore, in such cases, Turkish courts should not be preferred; foreign courts should be preferred. In other words, foreign courts, not Turkish courts, should be preferred in such cases.³⁵

The civil law rules of that country are taken into account regarding the validity of the jurisdiction agreement to be made by the parties for the preference of a foreign state court for the resolution of the dispute.

4. Principles, Validity And Legal Nature Of The Authority Agreement

Turkish courts must lack exclusive jurisdiction and the relationship must possess a foreign element. Both international and domestic law recognize the principle of "freedom of contract" as a right, with some fundamental exceptions.

The situation where the will of the parties to the contracts creates a power contract rule for the benefit of the strong by oppressing the weak is contrary to the principle that "law is a set of rules that ensure justice and equality in society".³⁶ The contract must be drafted in a way that allows for the existence of a common will to be inferred in the contract's interpretation. However, parties cannot sign jurisdiction agreements for every matter. This matter is defined in Article 18 of Code of Civil Procedure No. 6100, titled "Conditions for Validity of Jurisdiction Agreements."³⁷

4.1. Determination of the Legal Transaction Subject to Authority: To conclude a jurisdiction agreement, the courts for which disputes will be filed must be clearly and explicitly stated in

³³ Ibid., pp. 1987-2013, 2014.

³⁴ Cemal ŞANLI, Emre ESEN, İnci ATAMAN and Figen MESE, Private International Law, 5th Edition, Vedat Kitapçılık, İstanbul, 2019, pp. 391, 392.

³⁵ Deniz Meraklı YAYLA, "Parties to Jurisdiction Agreements in Disputes Containing a Foreign Element and Extension of Jurisdiction Agreements to Third Parties within the Scope of HMK Article 17", Dokuz Eylül University Faculty of Law Journal, Vol. 16, Special Issue 2014, pp. 1987-2013, 2014.

³⁶ Deniz Meraklı YAYLA, "Parties to Jurisdiction Agreements in Disputes Containing a Foreign Element and Extension of Jurisdiction Agreements to Third Parties within the Scope of HMK Article 17", Dokuz Eylül University Faculty of Law Journal, Vol. 16, Special Issue 2014, pp. 1987-2013, 2014.

³⁷ Code of Civil Procedure No. 6100.

the jurisdiction agreement. A jurisdiction agreement cannot be concluded to resolve future issues that may arise between parties based on an unknown legal relationship.³⁸ A jurisdiction agreement granting general jurisdiction to Turkish courts is considered invalid. The jurisdiction agreement, which should be drafted for specific disputes, must also specify the court that will hear the cases. Even if the jurisdiction granted in the jurisdiction agreement includes the requirement for international jurisdiction for the case to be heard in Turkey, domestic law applies to cases to be heard in Turkey, so if the jurisdiction agreement does not specify the court to hear the case, the case will not be heard in any Turkish court.³⁹ The jurisdiction agreement must be clear and understandable. A jurisdiction agreement that specifies an unclear legal relationship cannot be considered clear.⁴⁰ For legal relationships that contain a foreign element, the norms of private international law are also valid. Jurisdiction agreements concluded under private international law must include a foreign element.⁴¹

A written requirement is a requirement for the validity of a jurisdiction agreement. The requirement for a jurisdiction agreement to be "in writing" is not a matter of form, but rather because it facilitates proof—in other words, because of the requirement of "proof."⁴² The form of the agreement is determined by the judge's law, the Latin word for "lex fori."

The judge will utilize the general provisions of the law of obligations in the determination process.⁴³ It is stipulated that jurisdiction agreements can only be made by merchants or public legal entities. Accordingly, legal entities qualified as merchants and public legal entities can be parties to a valid jurisdiction agreement. Furthermore, the subject matter of the jurisdiction agreement must be at the discretion of the parties. The legal entities that may be parties to the jurisdiction agreement and the subject matter of the jurisdiction agreement must be determined. It is limited in Turkish law.⁴⁴

4.2. Validity Conditions: According to the provisions of Article 17-18 of the Civil Procedure Code, the following conditions must be met for the authorization agreement to be valid;

- ✓ The authorization agreement must be made in writing,
- ✓ It must be concluded between merchants or public legal entities,
- ✓ The dispute is related to a matter on which the parties can dispose freely,
- ✓ The legal relationship from which the dispute arises must be specific or determinable,
- ✓ The competent court must be determined,
- ✓ No other Turkish court has final jurisdiction over the dispute.

Because a jurisdiction agreement imposes obligations on both parties, signing it by both parties is the correct way to ensure its validity. Considering that the rationale behind Article 17 of the Civil Procedure Code (HMK) is to protect those in vulnerable positions, the requirement that both parties to the jurisdiction agreement be merchants or public legal entities also applies to third parties if the agreement extends to third parties.⁴⁵ The absolute jurisdiction rule specifies

³⁸Deniz Meraklı YAYLA, Age., p.1987

³⁹Ayfer UYANIK, Jurisdiction Agreements in Turkish International Procedural Law, Istanbul University, Institute of Social Sciences, Master's Thesis, Istanbul, 1994

⁴⁰Deniz Meraklı YAYLA, ibid., p. 1987-2013

⁴¹"Jurisdiction Agreements in Private International Law", "<http://www.karayildizhukuk.com> ", p. 3, (Online: 19.7.2025)

⁴²Ibid., p.3

⁴³Age.

⁴⁴Çiğdem İBİŞ, International Jurisdiction Agreements, Istanbul University Institute of Social Sciences, unpublished Master's Thesis, Istanbul, 2018, p.75

⁴⁵Civil Procedure Code No. 6100, Articles 17-18, MÖHUK No. 5718, Article 47

⁴⁵Deniz Meraklı YAYLA, "Parties to Jurisdiction Agreements in Disputes Containing a Foreign Element and Extension of Jurisdiction Agreements to Third Parties within the Scope of HMK Article 17", Dokuz Eylül University Faculty of Law Journal, Vol. 16, Special Issue 2014, pp. 1987-2013, 2014.

rules that stipulate that lawsuits should only be filed in courts designated by law. ⁴⁶In the presence of absolute jurisdiction, it is not possible for the parties to enter into a jurisdiction agreement. The provision does not specifically specify the circumstances under which a dispute arises that the parties can freely dispose of. The contract or legal relationship from which the dispute arises must be specific or determinable.⁴⁷

5. Legal Nature Of Authority Agreements

The legal field within which jurisdictional agreements fall is a matter of debate in the doctrine . This applies to every country. In other words, the legal nature of jurisdictional agreements differs across the laws of many countries. There is no consensus in Turkish doctrine regarding the legal nature of jurisdictional agreements. As is well known, procedural law does not concern the rights and obligations of individuals. It only concerns how the judicial process will proceed upon the application of the rightful owner in the event of an attack on their rights and obligations. If we consider this definition from the perspective of jurisdictional agreements, procedural law does not concern the formation of jurisdictional agreements or the rights and obligations they may entail. However, if a dispute arises and this dispute is brought to court, procedural law comes into play regarding the admissibility and validity of the jurisdictional agreement. Procedural law does not contain any provisions regulating the creation of jurisdictional agreements.

Issues related to the formation of a jurisdiction agreement, like other contracts, are matters of substantive law. Those who argue that a jurisdiction agreement is subject to procedural law argue that the "lex fori" will prevail over the jurisdiction agreement . A jurisdiction agreement essentially means assigning a court to a specific matter. As a result, jurisdiction agreements are contracts that derive their authority from Code of Civil Procedure No. 6100 and entrust a court with duties and powers. The determination of a court's duties and powers falls within the purview of procedural law. ⁴⁸In cases concerning jurisdiction agreements, the Supreme Court of Appeals considers Article 47 of Code of International Private and Procedural Law No. 5718 and Articles 17 and 18 of Code of Civil Procedure No. 6100 in conjunction with Articles 17 and 18 of Code of Civil Procedure No. 6100 in its decisions.⁴⁹ According to the first paragraph of Article 11 of the Civil Procedure Code, the court of the deceased person's last place of residence has absolute jurisdiction over all cases regarding the division of the estate, the invalidity of the division agreement, the cancellation and reduction of testamentary dispositions, the right to claim rights due to inheritance, and cases arising from the management of the estate between the heirs, and all cases to be filed against the heirs until the final division of the estate.⁵⁰

The rule of absolute jurisdiction is regulated in the second paragraph of the provision. Accordingly, for lawsuits filed by private law legal entities against a partner or member, or by a partner or member against others in this capacity, limited to partnership or membership relationships, the court of the place where the legal entity's headquarters is located has absolute jurisdiction. This ⁵¹is stipulated in Article 15 of the Civil Procedure Code (HMK). According to the second paragraph of the provision, in life insurance cases, the court of the place of residence has absolute jurisdiction for lawsuits filed in favor of or against the policyholder, the insured, or the beneficiary.⁵² Protective legislation protects insurers, workers, and individuals

⁴⁶Hakan PEKCANITEZ, Oğuz ATALAY and Muhammet ÖZEKES, Civil Procedure Law Textbook, 5th Edition, Vedat Kitapçılık, İstanbul, 2017, p. 73

⁴⁷Çiğdem İBİŞ, *ibid.*, p.38.

⁴⁸of Civil Procedure No. 6100 , Articles 17, 18

⁴⁹of Civil Procedure No. 6100 , Article 59, 60 - MÖHUK No. 5718, Article 47

⁵⁰Baki KURU, Civil Procedure, Demir Publishing, 6th Edition, İstanbul, 2001, p. 549

⁵¹Hakan PEKCANITEZ, Oğuz ATALAY and Muhammet ÖZEKES, Civil Procedure Law Textbook, 5th Edition, Vedat Kitapçılık, İstanbul, 2017, p. 74

⁵²*Ibid.*, p. 74.

who deal with agencies representing domestic or foreign businesses in our domestic trade.⁵³ It states that jurisdiction agreements cannot be made for bankruptcy cases, and that bankruptcy proceedings must be filed in the commercial court where the debtor's principal place of business is located.⁵⁴

6. Effect Of Authority Agreements

Unless the parties stipulate otherwise in the jurisdiction agreement to eliminate exclusive jurisdiction, a negative jurisdiction agreement or exclusive jurisdiction agreement is considered.⁵⁵ Otherwise, the court will no longer have exclusive jurisdiction. The parties will then grant jurisdiction to legally authorized courts, and other general and special courts will retain jurisdiction. The court authorized by the jurisdiction agreement is obligated to hear the lawsuit filed before it and cannot refuse to hear the case. Even if the jurisdiction agreement is invalid, unless the defendant raises a jurisdictional objection, the court will not be able to investigate its jurisdiction or review the validity of the jurisdiction agreement *ex officio*.⁵⁶

For those who do not reside in Turkey, the court of their habitual residence has jurisdiction. As explained above, this matter is defined in Article 40 of Law No. 5718 on Private International Law and Procedural Law.⁵⁷ In domestic law, the competent court in terms of location is, in this order, the competent court in Turkey; if this is not the case, the court of the person concerned's place of residence; if the person is not a resident in Turkey, the court of their last place of residence in Turkey; if this is not the case, the courts of Ankara, Istanbul, or Izmir are the competent courts.⁵⁸ If Turkish courts are chosen through a jurisdiction agreement, a **causal link to Turkey** is not required for the subject matter of the case. This conclusion can be drawn from the interpretation of Code of Civil Procedure No. 6100 and Law No. 5718 on Private International Law. For a case subject to a jurisdiction agreement to be heard in Turkish courts within the scope of international jurisdiction, a causal link to Turkey is not required; the parties' will alone is sufficient for the case to be heard in Turkish courts.⁵⁹ As a rule, the parties also have the right to choose the law applicable to any legal dispute during the litigation process. Parties have the right to choose the law applicable to a legal dispute, even if there is no connection between the legal relationship in dispute and the chosen law. However, the applicable law and the competent court must be chosen within a specific framework of logic.⁶⁰

From a public policy perspective, it would not be contrary to public policy for a case with no causal connection to Turkey to be heard in Turkish courts. This situation is implemented differently in Swiss law.⁶¹ Just as a joint lawsuit is required for compulsory litigation, a joint lawsuit can be filed against compulsory litigants.

The court decision in such cases is unique and applies to all obligated co-plaintiffs, whether or not they appear in court, even⁶² if they are legally summoned to appear. In voluntary co-plaintiffs, the cases are independent of each other, so the co-plaintiffs act independently. In voluntary co-plaintiffs, the agreements are not binding on those who do not sign the agreement.⁶³ Procedural procedures undertaken by obligated co-plaintiffs are also valid for obligated co-

⁵³Vedat Raşit SEVİĞ, "The Privilege of Jurisdiction Agreement in the Field of Private International Law" Istanbul University Faculty of Law Journal, CLV S 3, 1997, pp. 179-190. Istanbul, 2011.

⁵⁴Hakan PEKCANITEZ, Oğuz ATALAY, Muhammet ÖZEKES, Mine AKKAN and Hülya Taş KORKMAZ, Civil Procedure Law (V I- III), 15th Edition, On İki Levha Publishing, March 2017, p. 300

⁵⁵Süha TANRIVER, Civil Procedure Law, Volume I, Basic Concepts and First Instance Trial, Yetki Publications, Ankara. 2016, pp. 248-249

⁵⁶Baki KURU, *ibid.*, p. 576.

⁵⁷Law No. 5718 on International Private Law and Procedural Law, Article 40

⁵⁸of Civil Procedure No. 6100 , Article 6.

⁵⁹Ayfer UYANIK, *ibid.*, p. 39

⁶⁰MÖHUK No. 5718, art. 24

⁶¹Ayfer UYANIK, *ibid.*, p.39

⁶²Civil Procedure Code No. 6100, Articles 59, 60

⁶³*Ibid.*, art. 57,58

plaintiffs who are legally summoned to participate in the case but do not participate.⁶⁴ States regulate the international jurisdiction of their courts. The authorized court determines whether an existing jurisdiction agreement between the parties establishes its jurisdiction according to the *lex fori*, that is, its own provisions of international procedural law. If a foreign court, having deemed itself competent through a jurisdiction agreement, issues a decision after reviewing the dispute on its merits, whether the decision has effect and consequences under Turkish law, whether the jurisdiction agreement is valid under Turkish law, or⁶⁵ whether the⁶⁶ foreign courts have jurisdiction, it will be of minor importance. According to Article 25/1 of Brussels I Regulation No. 1215/2012, for the jurisdiction agreement to be valid, it must be made in accordance with one of the three options listed below: If the jurisdiction agreement is made in writing or proven, If it is made in accordance with the customs between the parties, If it is made in accordance with international custom and usage and in a manner that is known or could be known by the parties or recognized or taken into account in such contractual relations.⁶⁷

6.1. Form of Authority Agreement : The MÖHUK does not impose any formal requirements on the preparation of a jurisdiction agreement. The dispute and the competent court subject to the jurisdiction agreement must be specific or determinable, and the jurisdiction agreement must be based on a valid declaration of intent.⁶⁸ Under Turkish law, the jurisdiction of a foreign court is not relevant for disputes arising from debt relationships that do not contain a foreign element.⁶⁹

While a court can be authorized through a jurisdiction agreement for disputes arising from a contract, a tort, or unjust enrichment, jurisdiction agreements cannot be concluded for disputes concerning the law of persons, family law, or inheritance law. However, there are some exceptions in cases concerning property regimes.⁷⁰ In cases concerning real rights over real property located in Turkey, parties cannot grant jurisdiction to a foreign court through a jurisdiction agreement unless they agree to fulfill all the requirements.⁷¹ Even if a jurisdiction agreement is drawn up, it is invalid under Turkish law. However, provided it favors the weaker party, a jurisdiction agreement can be drawn up for obligations arising from contracts of a social nature without waiving the exclusive jurisdiction of Turkish courts. In Turkish law, a jurisdiction agreement granting jurisdiction to foreign courts has a legal character similar to German law. The legal nature of a jurisdiction agreement is a matter of debate. There is no single, unified opinion. However, opinions have developed under three main headings.⁷²

Conclusion

In resolving legal disputes arising from contractual obligations and involving a foreign element, the parties are granted the freedom to agree on which court will have jurisdiction. Through this jurisdiction agreement, the parties can authorize Turkish courts with international jurisdiction or courts of foreign countries. At this point, the parties' autonomy of will is essential, and the court determined by mutual consent becomes the court of dispute resolution. This legal arrangement is called a "jurisdiction agreement." A jurisdiction agreement not only authorizes

⁶⁴ Age.,md .60,- Deniz Meraklı YAYLA, "Parties to Jurisdiction Agreements in Disputes Containing a Foreign Element and Extension of Jurisdiction Agreements to Third Parties within the Scope of HMK Article 17", Dokuz Eylül University Faculty of Law Journal, Vol. 16, Special Issue 2014, p.2004

⁶⁵Ergin NOMER , "Private International Law" Beta, 22nd Edition, Istanbul, 2017, p. 489

⁶⁶International Vision University Private International Law Lecture Notes, p.64

⁶⁷Nuray EKŞİ, *ibid.*, p. 78

⁶⁸International Vision University Private International Law Lecture Notes, *ibid.*, p.64

⁶⁹*Ibid.*, p. 62

⁷⁰*Ibid.*, p.63

⁷¹"Jurisdiction Agreements in Private International Law ", p. 11 "<http://www.karayildizhukuk.com> ," (Online: 19.7. 2025)

⁷²Age.p.11 (Online: 19.7.2025)

a court but also results in the elimination of the jurisdiction of other courts. In this respect, it is not merely a designation of duties but also an institution that alters the distribution of authority. While there are differing opinions in Turkish jurisprudence regarding the legal field in which a jurisdiction agreement falls, the prevailing view is that it should be evaluated within the scope of procedural law. Procedural law determines the duties and powers of courts and regulates the trial process. A jurisdiction agreement, in essence, performs a procedural function rather than substantive law.

For a jurisdictional agreement to be considered valid under private international law, the foreign element must be present. This element arises in situations such as when one of the parties is a foreigner, resides abroad, or the place of origin or performance of the obligation is in a foreign country. However, each state determines the international jurisdiction of its own courts; the legal system of one state cannot eliminate the jurisdiction of another. Therefore, the validity of jurisdictional agreements is subject to the procedural law, or *lex*, of the competent court. This is done by the court. If the parties authorize Turkish courts, certain conditions apply. The jurisdiction agreement must be in writing, the dispute must contain a foreign element, the parties must be merchants or public legal entities, and the authorized court and the subject matter must be clearly specified. Furthermore, the parties must freely express their will. However, under Turkish law, some cases fall under exclusive jurisdiction, and jurisdiction agreements cannot be concluded in these areas. This includes employment contracts, consumer contracts, and insurance contracts. In such cases, the jurisdiction of a foreign court will be legally invalid.

Parties are also given a wide range of choices regarding the substantive law applicable to jurisdictional agreements. Parties may determine the law applicable to all or part of the agreement. This choice can be made at the time of contract formation or later. However, a subsequent choice of law does not have retroactive effect. Furthermore, parties may choose a new law at any time, subject to the prejudice of third-party rights. In cases where a choice of law is not made, the law most closely related to the contract applies. The transfer of a jurisdictional agreement is also possible. However, this requires a three-way consent between the transferring party, the other party, and the transferee third party. If one party is not a merchant or public entity, it does not become a party to the lawsuit under international private law. In cases of compulsory litigation, if a jurisdictional agreement is made between compulsory litigants, the outcome is binding on all parties. Jurisdiction agreements are also a well-known institution in Roman law. In the classical period, parties could submit their disputes to a specific authority through the election of a praetor. In modern law, while there are differences between countries, the generally accepted *lex* The principle of "forum non" is used in the context of jurisdiction. While Turkish law requires a written form requirement, German law applies an implied jurisdiction agreement in some cases. Furthermore, in German law, the interests of the parties, the state, and the court are taken into account in jurisdictional control. In the Anglo-American legal system, the "forum non" is used in the context of jurisdiction. The doctrine of "conveniens" has been adopted. Accordingly, a judge may waive his or her jurisdiction if the case is more closely related to the court of another country and is more convenient to hear there. The English legal system similarly recognizes jurisdictional conventions, but in practice it converges with the Anglo-American line.

In cases where a foreign court is granted jurisdiction, jurisdictional review is entirely subject to that court's law. Turkish law is not decisive in this regard. However, for a foreign court's decision to be effective in Türkiye, an enforcement action must be filed and it must meet the conditions of validity in Turkish law. Therefore, it is important to additionally verify whether the jurisdiction agreement and the granted authority are also valid under Turkish law. In conclusion, jurisdiction agreements are an institution that, within the context of private international law, grants broad freedom to the parties' will and provides flexibility in dispute

resolution. However, validity is subject to the procedural law of the chosen court and the requirements of Turkish law at the enforcement stage. Therefore, from the perspective of both Turkish law and comparative law, jurisdiction agreements reflect the delicate balance between the autonomy of the will and the jurisdiction of states.

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