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Research Article

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Impact of Corruption on the Scope of Arbitration Agreements in International Commercial Arbitration

Kerem Kart [1] & Faruk Kerem Giray [2]

[1] Recep Tayyip Erdoğan University, Faculty of Law, Private International Law Department, Rize, Türkiye
[2] Istanbul University, Faculty of Law, Private International Law Department, Istanbul, Türkiye

Abstract

Corruption plagues international trade, often manifesting in contracts tainted by corruption in international commercial arbitration. These contracts include those obtained by corruption and those that provide for corruption. Contracts providing for corruption are mostly in the form of intermediary contracts. Contracts obtained by corruption generally include investment contracts concluded between investors and host states for the performance of public services.

The parties may refer disputes arising from their contracts tainted by corruption to international commercial arbitration. In this case, the following question arises: Are disputes tainted by corruption included within the scope of the arbitration agreement?

Disputes arising from corrupt intermediary contracts are not within the scope of the arbitration agreement, as the parties never intended to arbitrate disputes arising from their corrupt acts before arbitral tribunals. By contrast, disputes involving corruption do fall within the scope of the arbitration agreement when the underlying contract was obtained by corruption.

Keywords

International Commercial Arbitration · Bribery · Investment Contracts Obtained by Corruption · Corrupt Intermediary Contracts · Scope of the Arbitration Agreement

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Corresponding author: Kerem Kart kerem.kart@erdogan.edu.tr

I. Introduction

Corruption is one of the important problems in international trade today and has very serious negative effects on public welfare. As a natural consequence of the widespread occurrence of corruption in international trade, arbitrators are increasingly ruling on disputes involving corruption in international commercial arbitration cases.[1]

In international commercial arbitration, such disputes are encountered through contracts tainted by corruption. These contracts are divided into two categories: contracts obtained by corruption and contracts providing for corruption. Contracts providing for corruption are mostly in the form of intermediary contracts providing for influence peddling.[2] Contracts obtained by corruption generally include investment contracts concluded between investors and host states or public institutions for the performance of public services.[3]

In international trade, parties may refer disputes arising from corrupt intermediary contracts and investment contracts obtained by corruption to international commercial arbitration. In this case, the following question, which is the subject of our study, arises: Are disputes tainted by corruption included within the scope of the arbitration agreement? The answer to this question depends on whether the dispute arises from a corrupt intermediary contract or an investment contract obtained by corruption. Therefore, we will separately examine the inclusion of disputes tainted by corruption within the scope of the arbitration agreement for both types of contracts below.

II. Investment Contracts Obtained by Corruption

A. General Information

Contracts entered into for the procurement of goods and services or the execution of works required to meet a wide range of public needs—such as the exploitation of natural resources, including natural gas, oil, or precious metals; the distribution of gas and electricity; the provision of water supply and sewerage services; waste recycling; or the construction of highways and bridges—are collectively referred to as investment contracts. Such contracts may take the form of public procurement contracts, concession agreements, or public-private partnership agreements.[4]

In principle, investment contracts are concluded as a result of a public procurement procedure. At the beginning of the public procurement procedure, the host state or relevant public institution decides what type of goods or services need to be procured or which construction work needs to be carried out to provide the required public service. It determines the approximate cost of the project related to the procurement of goods or services or the construction work to be carried out and establishes the most appropriate tender procedure for the project. Next, it prepares the tender documents and publishes them. The tender is held

[1] Emmanuel Gaillard, 'The Emergence of Transnational Responses to Corruption in International Arbitration' (2019) 35 Arbitration International 1, 1.

[2] For the sake of clarity, we will refer to these contracts as "corrupt intermediary contracts" hereafter.

[3] Although we have addressed investment contracts subject to international commercial arbitration in our study, disputes arising from these agreements are generally settled in investment arbitration. The conversion of international commercial disputes into investment disputes is usually done through umbrella clauses drafted in bilateral agreements on investment promotion and protection. Since we narrowed the scope of our study to "the inclusion of disputes involving corruption within the scope of international commercial arbitration agreements," this study does not address the legal disputes arising from corruption in international investment arbitration. For detailed information on corruption in international investment arbitration, see: Aloysius P. Llamzon, *Corruption in International Investment Arbitration* (Oxford University Press 2014); Carsten Wendler, 'Corruption in Investment Treaty Arbitration - A Balanced Approach to Corruption Issues' (Universität zu Köln 2016) <http://www.uni-koeln.de/> accessed December 2, 2024; Adilbek Tussupov, *Corruption and Fraud in Investment Arbitration: Procedural and Substantive Challenges* (Springer Nature 2022).

[4] For general information on investment contracts, see: Chin Leng Lim, Jean Ho, and Martins Paparinskis, *International Investment Law and Arbitration: Commentary, Awards, and Other Materials* (2nd edn, Cambridge University Press 2021) ch 3.

on the announced date and time with the participation of the bidders. The bids received in the tender are opened and evaluated. In the first stage of the evaluation, the submitted bids are reviewed to ensure that they meet the commercial, legal, financial, technical, and contractual requirements specified in the tender documents. Bids that do not meet these requirements are excluded from the evaluation. In the second stage, the bids that meet the requirements specified in the tender documents are ranked in order of economic advantage, with the most advantageous bid ranked first. Following this, an investment contract is concluded between the legal representative of the first-ranked bid company and the official authorities of the host state or relevant public institution.[5]

Sometimes, investment contracts may be concluded as a result of public procurement procedures tainted by corrupt practices.[6] For example, it has been revealed that the Germany-based company Siemens Aktiengesellschaft (Siemens) has concluded investment contracts around the world by bribing public officials responsible for tenders. Accordingly, Siemens was found to have paid bribes to construct metro systems in Venezuela, power plants in Israel, high-voltage power lines in China, telecommunications networks in Bangladesh and Vietnam, traffic control systems in Russia, oil refineries in Mexico, and telecommunications projects in Nigeria, among other projects.[7]

In the cases mentioned above, the host state may claim that the investor bribed public officials to secure the investment contract. Therefore, the host state may argue that the contract is invalid. The host state may also argue that the investor cannot claim any rights under the contract, invoking the general legal principle of *"ex turpi causa non oritur actio"* (no action can arise from an illegal act). If the dispute is referred to arbitration, will non-contractual claims based on tortious acts constituting corruption be included within the scope of the arbitration agreement?

In the following section, we seek to answer this question by examining two landmark decisions. The first of these decisions is *Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV and Others,* whereas the second is *Fiona Trust & Holding Corp. v. Privalov.*

B. Landmark Case Law on Corruption

1. Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV and Others

a. General Information

Some opinions arguing that non-contractual claims should not be included within the scope of arbitration agreements are reflected in the European Union Court of Justice's ("ECJ") decision[8] in *Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV and Others,* which concerned a dispute arising from cartel damage claims. The precedent underlying the decision can be applied by analogy to the debate over whether claims based on corruption fall within the scope of the arbitration agreement in investment contracts. For this reason, we shall analyse the said decision in the further course of our study.

[5] For detailed information on the public procurement procedure, see: Naushad Khan, *Public Procurement Fundamentals: Lessons from and for the Field* (Emerald Group Publishing 2018), ch. 3.

[6] According to the Foreign Bribery Report prepared by the OECD in 2014, 57% of bribery cases identified between 1999 and 2013 were committed to obtain investment contracts awarded as a result of public procurement procedure. See: *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* (OECD 2014) 8 <https://www.oecd-ilibrary.org/governance/oecd-foreign-bribery-report_9789264226616-en> accessed 2 December 2024. For further information regarding corrupt practices in public procurement, see: Susan Rose-Ackerman and Bonnie J Palifka, *Corruption and Government: Causes, Consequences, and Reform* (2nd edn, Cambridge University Press 2016) 93 ff.

[7] See: 'SEC.Gov | Siemens Aktiengesellschaft' <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-20829> accessed October 29, 2025.

[8] For the decision, see: *Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel and Others* (Case C-352/13) EU:C:2015:335.Hereinafter, the decision will be referred to as the "CDC decision."

The background to the case is the European Commission's decision finding that several undertakings had engaged in a single and continuous cartel infringement in the hydrogen peroxide supply market, thereby acting in breach of Article 101 of the Treaty on the Functioning of the European Union (TFEU). Some companies claiming to be victims of the cartel have assigned their rights arising from this situation to the claimant Cartel Damage Claims (CDC) Hydrogen Peroxide SA[9]. CDC has filed a damages claim in the Dortmund Regional Court against six companies residing in various member states, based on the Commission's decision, on the grounds that one of the companies is based in Germany. The defendants objected to the court's jurisdiction, relying on the existence of a jurisdiction clause in certain sales contracts. The jurisdiction clause referred to all disputes arising from the contractual relationship between the parties.[10]

The Dortmund Regional Court has requested a preliminary ruling from the ECJ on whether the principle of effectiveness of EU law permits a national court with jurisdiction under the Brussels I Regulation[11] to consider arbitration or jurisdiction clauses that deprive that court of its jurisdiction in respect of all or some of the defendants or claims.[12]

b. Opinion of Advocate General Jääskinen

In the case, Advocate General Jaaskinen expressed his opinion that claims for cartel damages relating to a violation of Article 101 of the TFEU cannot be resolved by a tribunal authorised by an arbitration or jurisdiction clause.[13]

Advocate General Jaaskinen based his opinion on two main arguments.

First, he supported his opinion with the principle of effectiveness of prohibiting anti-competitive agreements in accordance with Article 101 of the TFEU.[14] Advocate General Jaaskinen emphasised that disputes related to cartels usually involve several parties. He stated that the implementation of the cartel through various contracts signed by different legal entities within the same group structure increases the number of parties and that the large number of supply contracts with different companies within the group forming the cartel leads to the cartel being applied more than once. According to Jaaskinen, in such cases, arbitration or jurisdiction clauses further complicate the ability of cartel victims to exercise their rights to damages.[15] Furthermore, if jurisdiction is conferred on an authority outside the EU through an arbitration or jurisdiction clause, EU competition law may not be applicable even through public policy.[16]

Second, a dispute arising from cartel damages should not be connected to the legal relationship in which the arbitration or jurisdiction clause was made. Therefore, such disputes do not fall within the scope of these clauses.[17] According to Advocate General Jaaskinen, the requirement that there be a close connection between the arbitration clause or jurisdiction clause invoked and a specific legal relationship is necessary

[9] Hereinafter referred to as "CDC" CDC is a company incorporated under Belgian law and based in Brussels, established for the purpose of pursuing compensation claims on behalf of undertakings affected by the cartel.See EU:C:2015:335, para 9.

[10] Ben Rayment, 'Agreements on Jurisdiction after CDC Hydrogen Peroxide' (2017) 16 Competition Law Journal 23, 23.

[11] For the Regulation, see: Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L 12/1.The aforementioned regulation has been repealed, and the Recast Brussels Regulation entered into force on 10 January 2015.For this regulation, see: Regulation (EU) No 1215/2012 of the European Parliament and of the Council of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L 351/1.

[12] EU:C:2015:335, para 14.

[13] For Advocate General Jaaskinen's opinion, see: Opinion of Advocate General Jääskinen in *Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel and Others* (Case C-352/13) ECLI:EU:C:2014:2443

[14] Renato Nazzini, 'Are Claims for Tortious Damages for Breach of the Antitrust Rules Arbitrable in the European Union? Some Reflections on the CDC Case in the Court of Justice' (2016) 3 Rivista Italiana di Antitrust / Italian Antitrust Review 77.See also: ECLI:EU:C:2014:2443, para 133.

[15] Nazzini (n 14) 77 ff.; ECLI:EU:C:2014:2443, paras 125 ve 126.

[16] Nazzini (n 14) 77; Katarzyna Sadrak, 'Arbitration Agreements and Actions for Antitrust Damages After the CDC Hydrogen Peroxide Judgement' (2017) 10 Yearbook of Antitrust and Regulatory Studies 77, 88.See also: ECLI:EU:C:2014:2443, para 100.

[17] Nazzini (n 14) 78; Sadrak (n 16) 91 ff.; ECLI:EU:C:2014:2443, para 127 ff.

to ensure the predictability of jurisdiction.[18] The claims brought before the German court arise from tortious acts resulting from a cartel agreement secretly arranged and implemented. Therefore, the dispute in the case concerns the consequences of the unlawful act, which is inherently different from the legal relationship created by the supply contracts containing the arbitration or jurisdiction clause. In such cases, it is not possible to accept the validity of an arbitration or jurisdiction clause entered into with persons who were unaware of the cartel agreement and the damage it caused.[19]

Advocate General Jaaskinen emphasised that the party against whom the arbitration or jurisdiction clause is invoked could not have foreseen that the arbitration or jurisdiction clause would apply to a claim for damages based on tortious acts arising from the cartel agreement, as it was unaware of that agreement at the time it entered into the supply contracts. In such cases, he concluded that recognising the validity of an arbitration or jurisdiction clause that would exclude the jurisdiction of the national court would be contrary to the principle of the effectiveness of prohibiting anti-competitive agreements.[20]

c. Judgement of the ECJ

Despite Advocate General Jaaskinen's opinion, the ECJ avoided the debate on whether cartel damages claims fall within the scope of the arbitration agreement and will not rule on this issue. The ECJ merely ruled that, unless expressly stated in the wording of the jurisdiction clause, it does not cover claims for damages arising from a violation of Article 101/1 of the TFEU. However, the Amsterdam Court of Appeal, in its decision in *Kemira Chemicals Oy v. CDC Project,* extended the existing case law to encompass arbitration agreements as well.[21]

According to the ECJ, a competent national court cannot, on the grounds that a court authorised by a jurisdiction clause conforming to Article 21 of the Brussels I Regulation would not ensure that the victim of a cartel receives full compensation, invalidate that jurisdiction clause without undermining the objectives of the Regulation, relying solely on the principle of the effectiveness of the prohibition of anti-competitive agreements. In fact, the preliminary ruling procedure provided for in Article 267 TFEU, together with the system of legal remedies in each Member State, provides individuals with sufficient guarantees in this regard.[22]

According to the ECJ, the competent national court must interpret the jurisdiction clause to determine which disputes fall within the scope of the jurisdiction clause.[23]

A jurisdiction clause only concerns disputes that have arisen or may arise in connection with a specific legal relationship; therefore, the scope of the jurisdiction agreement is limited to disputes arising from the legal relationship in which the agreement was made. The purpose of this interpretation is to prevent the surprise situation that would arise if the parties were compelled to submit to the court specified in the jurisdiction clause for all disputes arising from any relationship other than the legal relationship from which the jurisdiction clause originated.[24] To this end, the competent court must not recognise that a jurisdiction clause, which is stated to apply to all disputes arising from the contractual relationship between the parties in an abstract manner, covers disputes relating to alleged tortious acts suffered by one of the parties as a

[18] ECLI:EU:C:2014:2443, para 129.

[19] ECLI:EU:C:2014:2443, para 130.

[20] Nazzini (n 14) 77.; ECLI:EU:C:2014:2443, para 132.

[21] Nazzini (n 14) 72.

[22] EU:C:2015:335, para 63.

[23] EU:C:2015:335, para 67.

[24] EU:C:2015:335, para 68.

result of its participation in an unlawful cartel.[25]

According to the ECJ, since the injured party, who had no knowledge of the cartel at the time of consenting to the jurisdiction clause in the contract, could not reasonably have foreseen that a dispute relating to the cartel would arise, such disputes do not arise from the contractual relationship. Consequently, the ECJ ruled that a jurisdiction clause does not validly exclude the jurisdiction of a competent national court unless it expressly provides that disputes relating to tortious acts arising from a breach of competition law are covered by the jurisdiction clause.[26]

The significance of the CDC decision in relation to our topic stems from the uncertainty whether the parties to investment contracts have the intention to arbitrate disputes tainted by corruption. For example, a host state that is a party to an investment contract may claim that it did not express its intention to include corruption-related disputes in the arbitration agreement. The state may argue that it was unaware that its public officials had accepted bribes and therefore never foreseen that such disputes would be submitted to arbitration.[27] In short, the host state may say, *"We never considered resolving a dispute arising from fraud in arbitration with a party that defrauded us."*[28]

In the future, when disputes involving corruption are brought before national courts or arbitration tribunals, the parties are likely to often resort to this type of defence.[29] In such cases, some tribunals may adopt the view expressed in the CDC decision, concluding that the host state was unaware of the investor's corrupt acts at the time it entered into the arbitration agreement and therefore could not reasonably have foreseen such a dispute would arise, thereby determining that the dispute does not arise out of the contractual relationship. Unless disputes involving corruption are explicitly included within the scope of the arbitration clause in the contract, the court may hold that such a clause does not validly preclude an otherwise competent national court from exercising its jurisdiction.

Although not fully adopted by the ECJ, some tribunals may extend Advocate General Jaaskinen's view that cartel damages claims do not fall within the scope of the arbitration or jurisdiction clause to corruption-related disputes. In this regard, they may emphasise that, although the arbitration agreement only binds the investor and the host state, the nature of the corruption allegations may require the involvement of third parties in the arbitration proceedings. For example, in a case where an investor is alleged to have bribed public officials in the host state through an intermediary, both the bribing intermediary and bribed public officials may wish to intervene in the case on the side of the party whose success serves their legal interest. Alternatively, a party wishes to notify a third party to whom it will seek recourse in the event of losing the case. Thus, some tribunals may rule, in line with the opinion of Advocate General Jaaskinen, that the principle of procedural economy and the right to a fair trial preclude the arbitration agreement from validly excluding the jurisdiction of national courts.[30] In addition, some host state courts may argue that

[25] EU:C:2015:335, para 69.

[26] EU:C:2015:335, paras 70 and 71.

[27] In principle, the corrupt acts of public officials are not attributed to the host state.For detailed information on this subject, see: Richard H Kreindler, *Competence-Competence in the Face of Illegality in Contracts and Arbitration Agreements* (Brill 2013) 286 ff.

[28] Cf. *Corruption and Arbitration Proceedings: The Past, the Present, and the Future* (lectured by Stefan M. Kröll, Maharashtra National Law University Mumbai Centre For Arbitration and Research 2023) <https://www.youtube.com/watch?v=v37VcfMMJS8> accessed 29 October 2025.

[29] ibid.

[30] Indeed, a decision rendered by the Danish High Court in case UfR 2001.2392 VLK serves as an example of this situation.In this case, the contractor (C) was to carry out a residential construction project for the cooperative association (F).(C) entered into a consultancy agreement with the architect (A) for technical assistance and support related to the residential construction project, which also included an arbitration clause.The dispute arose after the buildings constructed were damaged due to a landslide.Since the buildings were covered by insurance, the Danish Building Damage Fund (B), which subrogated to the cooperative association (F), initiated arbitration proceedings against architect (A) and the other three technical consultants (H, I, and J).However, since only (A) was a party to the consultancy agreement and the arbitration clause therein, (B) had to drop the case against the other three defendants.Then, (B) filed the case against the same parties in a Danish High Court.(A) argued that the court had no jurisdiction over him because of the arbitration agreement and requested that the case be dismissed.However, the Danish

disputes involving corruption are not covered by the arbitration agreement on the grounds of public policy, stating that where a foreign law is to be applied to the investment contract, there is a risk that the law of the host state that has suffered damage from corruption would be ignored.

2. Fiona Trust & Holding Corp. v. Privalov

a. General Information

Fiona Trust & Holding Corp. v. Privalov is one of the most famous cases in which whether disputes involving corruption fall within the scope of an arbitration agreement was directly at the centre of the dispute. The facts of the case are as follows:

Sovcomflot was a company owned by the Russian State. Sovcomflot also owned Fiona Trust and Holding Corp. (Fiona), which in turn owned FML. Sovcomflot operated one of the world's largest shipping fleets through several one-ship companies owned by the group.[31]

Sovcomflot has filed a lawsuit before the English Court of First Instance against Mr. Nikitin himself, along with two other individuals named Primalov and Skarga, in addition to a number of one-ship companies owned by Mr. Nikitin. Sovcomflot alleges that Mr. Nikitin bribed Mr. Privalov, the president of FML, Mr. Skarga, who is acting as an official in all three companies (Sovcomflot, Fiona, and FML), and Mr. Borisenko, a senior executive at Sovcomflot, to charter ships belonging to the Sovcomflot group at preferential rates.[32]

The standard charterparties in question contained an arbitration clause.[33] Mr Nikitin, invoking the arbitration clause, had brought two disputes before the arbitral tribunal concerning the arrest of a vessel chartered under the standard charterparties. He had requested the arbitral tribunal to determine the validity of the charterparties.[34] Mr. Nikitin also requested a stay of the proceedings in the case brought against him before the English Court of First Instance pursuant to Section 9 of the English Arbitration Act 1996.[35]

Sovcomflot claimed that it had no intention to enter into charterparties because the charterparties were obtained by bribing its employees. The real or ostensible intention of the shipowners was undermined by the alleged bribery; therefore, there was no genuine consensus between the parties. The shipowners have argued that since they did not genuinely consent to the charterparties, they never entered into these agreements and were not bound by any of their provisions.[36]

b. Decision of the England and Wales High Court (Commercial Court)

Judge Morison, among other reasons, concluded that the question of whether the shipowners had validly entered into the charterparties was a dispute that is not “under” the contract and did not arise out of it. He ruled that arbitrators did not have the jurisdiction to decide on this matter, as such jurisdiction belonged solely to the court. In his view, there was no overlap between ordinary claims that are under the contract,

High Court rejected (A)'s request. The court emphasised the importance of having a single tribunal to assess and allocate liability among all four defendants, as they could be held jointly and severally liable for the damage in question.The court also noted that it would be more appropriate in terms of procedural economy for the case to be heard by a single tribunal.Furthermore, the court concluded that the claims against (A) were not within the scope of the arbitration agreement because they were based on tortious, non-contractual claims.In conclusion, the court rejected (A)'s arbitration objection, decided that the case must be heard in the Danish courts, and gave priority to the principle of procedural economy instead of recognising the arbitration agreement as valid.See: Mads Bryde Andersen and Torsten Iversen, ‘The Scope of Arbitration Agreements: Is It Time for a New Approach to the Interpretation of Arbitration Clauses?’ (2017) 63 Scandinavian Studies in Law 95, 108 ff.

[31] A Samuel, ‘Agora: Thoughts on Fiona Trust: Separability and Construing Arbitration Clauses: The House of Lords’ Decision in Premium Nafta and the Fiona Trust’ (2008) 24 Arbitration International 489, 489 ff.; [2006] EWHC 2583 (Comm), para 2.

[32] Samuel, (n 31) 489 ff.; [2006] EWHC 2583 (Comm), para 4.

[33] [2006] EWHC 2583 (Comm), para 9.

[34] Samuel, (n 31) 490; [2006] EWHC 2583 (Comm), para 10.

[35] [2006] EWHC 2583 (Comm), para 9.

[36] [2006] EWHC 2583 (Comm), para 21.

arising out of it, or related with the issue of bribery.[37] Claims based on alleged acts of bribery are purely tortious acts in nature, which do not overlap with the contract and therefore do not fall within the scope of the arbitration agreement.[38]

c. Decision of the Court of Appeal (Civil Division)

In its decision, the Court of Appeal held that the time has come to draw a line between the relatively subtle distinctions made between slightly different wording in the interpretation of arbitration agreements for cases arising in international commercial context and to make a new start.[39]

According to the Court of Appeal, ordinary businesspeople would be surprised at the time spent discussing the fine distinctions between the wording of arbitration agreements in these cases and whether a particular dispute falls under one or another very similar set of words. Businesspeople who go to the trouble of agreeing to have their disputes heard in arbitration when entering into a contract do not expect to spend time and money on lengthy discussions about whether a particular dispute falls within the wording they used when drafting the arbitration agreement. If any businessperson wishes to exclude a matter such as disputes about the validity of the contract from the arbitration agreement, it would be easier to do so explicitly.[40]

The Court of Appeal has emphasised that any arbitration clause in international commercial contracts must be interpreted broadly.[41] According to the court, one reason for this is the presumption in favour of one-stop arbitration. After all, no businessperson would be expected to knowingly create a system that requires them to first have a national court decide whether the contract is valid and, if the contract is found to be valid, then refer the dispute to arbitration for resolution.[42]

Consequently, the court held that a dispute concerning the invalidity of the main contract due to allegations of bribery fell within the scope of the arbitration agreement.[43]

d. Decision of the House of Lords

Following the Court of Appeal's decision to allow the appeal, the case of *Fiona Trust & Holding Corp. v. Privalov* was brought before the House of Lords under the name *Premium Nafta Products Limited v. Fili Shipping Company Limited*.[44]

In its decision, the House of Lords stated that what types of disputes the parties intended to submit to arbitration could only be understood from the arbitration agreement itself. However, the meaning that the parties intended to express with their words when concluding the arbitration agreement will be influenced by the commercial context and the understanding of the purpose for which the agreement was made. It is assumed that businesspeople enter into contracts to achieve certain rational commercial objectives, and understanding this objective will impact how the parties' words are interpreted.[45]

According to the House of Lords, the purpose of the parties entering into an arbitration agreement is to have their disputes resolved by an arbitral tribunal trusted for its impartiality, expertise, and confidentiality. In addition, the parties seek to benefit from the legal services available at the seat of arbitration and the

[37] [2006] EWHC 2583 (Comm), para 21.

[38] [2006] EWHC 2583 (Comm), para 36.

[39] [2007] EWCA Civ 20, para 17.

[40] [2007] EWCA Civ 20, para 17.

[41] [2007] EWCA Civ 20, para 18.

[42] [2007] EWCA Civ 20, para 19.

[43] [2007] EWCA Civ 20, para 21.

[44] [2007] UKHL 40, para 1.

[45] [2007] UKHL 40, para 5.

advantages offered by the law of that seat. Particularly, regarding international contracts, the parties want to avoid the risk of delays and favouritism that they might face in national courts and instead get a quick and efficient trial.[46]

According to the House of Lords, if it is accepted that the purpose of an arbitration clause is as stated above, it would be irrational to interpret that businesspeople have the intention that disputes concerning the validity of the contract should be decided by one tribunal and disputes concerning the performance of the contract by another. When interpreting the arbitration agreement, it is necessary to find very clear wording in the agreement to conclude that the parties have such an intention.[47]

The principle of separability of the arbitration clause, as stipulated in Section 7 of the English Arbitration Act 1996, demonstrates that the UK Parliament also recognises the intention of businesspeople to submit disputes regarding the validity of their contracts to arbitration and that the law should not impose conceptual obstacles on businesspeople in this regard.[48]

The House of Lords has stated that it is not important to examine the relatively subtle distinctions between slightly different wording in the interpretation of arbitration agreements in English law because these distinctions do not confer any authority on English commercial law. According to the House of Lords, judges who explain the effects of such subtle distinctions between various literal expressions in such detail may be greatly disappointed if they learn that the parties commonly use standard arbitration clauses. Therefore, the view expressed in the decision of the Court of Appeal that the time has come to draw a line under the relatively fine distinctions between slightly different wording in the interpretation of arbitration agreements and to make a fresh start is commendable. The need for a new beginning has been legitimised by developments in this area of law in recent years, particularly the adoption of the principle of separability in Section 7 of the English Arbitration 1966 Act. This principle aims to ensure that courts recognise the reasonable commercial expectations of the parties regarding matters they wish to resolve through arbitration. However, if courts adopt an interpretation approach that is likely to undermine these expectations in many cases, the purpose of the law will not be achieved.[49]

Consequently, the House of Lords recognised that the time had come to adopt a new approach to interpretation.[50] Under this new approach, the arbitration clause should be interpreted on the assumption that the parties, as rational businesspeople, intended for any dispute arising from their legal relationship to be resolved by a single tribunal. Unless it is clear from the wording of the arbitration clause that certain disputes are specifically excluded from the jurisdiction of the arbitrators, the clause should be interpreted in accordance with this presumption.[51]

On the other hand, the House of Lords did not accept Sovcomflot's defence that because Sovcomflot was unaware that the charterparties had been obtained by bribery at the time the arbitration agreement was concluded, the arbitration agreement did not cover this dispute. According to the House of Lords, the purpose of the arbitration agreement is to ensure the resolution of any dispute, whether it was foreseeable at the time the contract was concluded. Disputes regarding the validity of the contract are also appropriate for resolution by arbitrators, like other types of disputes that may arise.[52]

[46] [2007] UKHL 40, para 6.

[47] [2007] UKHL 40, para 7.

[48] [2007] UKHL 40, para 9-10.

[49] [2007] UKHL 40, para 12.

[50] [2007] UKHL 40, para 12.

[51] [2007] UKHL 40, para 13.

[52] [2007] UKHL 40, para 27.

The House of Lords also rejected Sovcomflot's argument that the extension to corruption-related disputes in the arbitration agreement violated the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR). According to the House of Lords, the parties may waive their right of access to a court by entering into an arbitration agreement. When the arbitration agreement is interpreted correctly, if it is understood that the parties have agreed to resolve a specific dispute through arbitration, there will be no violation of the rights set forth in the ECHR.[53]

Consequently, the House of Lords held that the standard arbitration clause in the present case covers any dispute concerning the invalidity of the contract allegedly obtained by fraud or bribery.[54]

C. Assessment and Evaluation of the Decision

The question of whether disputes involving corruption fall within the scope of the arbitration agreement in investment contracts should be examined from several perspectives in light of the court decisions discussed in this study. First, whether the wording of the arbitration agreement is important in determining whether disputes relating to corruption fall within the scope of the arbitration agreement. Second, whether including disputes involving corruption within the scope of the arbitration agreement is contrary to the procedural economy, the right to a fair trial, and public policy. Finally, whether weight should be given to the defence that a party, being unaware at the time of the conclusion of the arbitration agreement that the investment contract had been obtained by corruption, could not reasonably have foreseen a dispute arising from corruption and therefore cannot be deemed to have consented to arbitrate such disputes.

It is our contention that disputes involving corruption fall within the scope of the arbitration agreement in the investment contracts obtained by corruption, and such disputes may be resolved through arbitration.

Firstly, subtle distinctions made between the words used in the arbitration agreement are not justified.[55] The parties' purpose in concluding the arbitration agreement is to submit all disputes in connection with their contract to arbitration, regardless of how the arbitration agreement is formulated.

Secondly, it is inappropriate to prevent disputes involving corruption from being heard in arbitration on the grounds that it is contrary to the procedural economy, the right to a fair trial, or public policy. As the House of Lords has also stated, the parties may waive their right of access to a court by entering into an arbitration agreement. Indeed, correctly interpreting the arbitration agreement and finding that a particular dispute falls within the scope of the arbitration agreement does not constitute a violation of the parties' rights under the ECHR. On the other hand, we acknowledge that resolving certain disputes through arbitration may cause concerns in terms of procedural economy and public policy. However, modern international arbitration practice prioritises the public policy of recognising the parties' intention to resolve their disputes through arbitration over the objective of states preventing certain disputes from being referred to arbitration, on grounds of procedural economy and/or national public policy. More precisely, in the situations described, resolving disputes involving corruption through arbitration would be more in line with international public policy.

Finally, we disagree with the view that a party who was unaware that the contract was obtained by corruption at the time of concluding the arbitration agreement could not have foreseen the dispute arising from corruption and therefore did not have the intention to arbitrate such a dispute. This is because the primary purpose of arbitration agreements is to resolve all disputes that have not yet arisen and are

[53] [2007] UKHL 40, para 20.

[54] [2007] UKHL 40, para 15.

[55] Gary B Born, *International Commercial Arbitration: Three Volume Set* (3rd edn, Wolters Kluwer 2020) ch 9.02[E].

therefore unknown at the time of the contract but may arise in the future.[56] It should be accepted that the parties wish to resolve all disputes arising out of the contract in arbitration, including disputes arising from tortious acts, unless both parties do not have the intention to refer a specific dispute to arbitration, as in the case of corrupt intermediary contracts.

III. Corrupt Intermediary Contracts

A. General Information

Corrupt intermediary contracts may be encountered in two situations. First, public officials acting as tender authorities in the host state may send an intermediary to the investor wishing to conclude an investment contract as a result of a public procurement process and extort that investor to pay a certain fee to the intermediary for the contract to be signed. Second, to conclude an investment contract with the host state, the investor may request from a person to act as an intermediary in return for a certain fee.[57]

In both of the above situations, a corrupt intermediary contract is concluded between the investor and the third party. The parties may make these contracts in writing. There are primarily two reasons why the parties seek to make their corrupt intermediary contracts in writing. First, both parties wish to determine their rights and obligations with a legally enforceable instrument in the event of a dispute.[58] Second, it is our assertion that the parties, who skilfully combine influence peddling with lawful actions such as lobbying, thereby making it nearly impossible to distinguish the boundary between the two,[59] believe that the unlawful nature of their corrupt intermediary contracts cannot be identified by tribunals.

Indeed, parties seeking to conceal the true purpose and nature of their intermediary contracts present these contracts as ordinary commercial transactions.[60] Because some host states' public procurement laws may prohibit,[61] restrict,[62] or sanction the use of intermediaries in the conclusion of investment contracts, the parties purposefully avoid calling their contracts "intermediary contracts."[63] Therefore, they generally refer to these contracts as assistance, consultancy, brokerage, or sponsorship agreements.[64]

In the intermediary contracts, the intermediary undertakes to provide so-called services for the investor to win one or more contracts to be tendered by the host state.[65] The services specified in the contract may include market research, assistance in preparing the tender bid, organising meetings, providing information on the tendered project, reviewing the commercial, legal, technical, and contractual aspects of the project,

[56] Ibid 9.02[F][2].

[57] Antonio Crivellaro, 'Chapter 7. Arbitration Case Law on Bribery: Issues of Arbitrability, Contract Validity, Merits and Evidence' in Kristine Karsten and Andrew Berkeley (eds), *Arbitration: Money Laundering, Corruption and Fraud* (Kluwer Law International; ICC 2003) 109.

[58] ibid 110.

[59] Emmanuel Obiora Igbokwe, *Dealing with Bribery and Corruption in International Commercial Arbitration: To Probe or Not to Probe* (Kluwer Law International BV 2023) 17, para 24; Michael Joachim Bonell and Olaf Meyer, 'The Impact of Corruption on International Commercial Contracts – General Report' in Michael Joachim Bonell and Olaf Meyer (eds), *The Impact of Corruption on International Commercial Contracts* (Springer 2015) 12.

[60] Crivellaro (n 57) 109.

[61] In his 2004 book, which is one of the fundamental works on corruption in international commercial arbitration, Sayed cited Algeria, Libya, Syria, and Saudi Arabia (limited to contracts for the supply of military weapons and equipment) as examples of such countries.See: Abdulhay Sayed, *Corruption in International Trade and Commercial Arbitration* (Kluwer Law International BV 2004) 192 n 548.

[62] Sayed stated that Bahrain, the United Arab Emirates, Kuwait, Qatar, and Saudi Arabia (excluding military weapons and equipment supply contracts) only allow their citizens to engage in intermediary activities.See: ibid 192 n 544.Likewise, in Egypt and Kuwait, only consulting companies registered in the country can carry out intermediary activities.See: ibid. 193 n 548.

[63] Crivellaro (n 57) 109.

[64] ibid; Michael Hwang SC and Kevin Lim, 'Corruption in Arbitration Law and Reality', *Selected Essays On International Arbitration* (Academy Publishing 2013) 601, para 35.

[65] Bonell and Meyer (n 59) 7.

and advising on national legislation or regulations that may affect the project's cost—in short, any assistance deemed necessary to increase the investor's chances of winning the tender.[66]

In intermediary contracts, the intermediary's fee is determined as a percentage of the value of the investment contract to be granted to the investor by the host state.[67] This percentage may correspond to a significant amount that is disproportionate to the content and nature of the services to be provided by the intermediary under the ostensible terms of the contract. This is because part of this fee will be used to bribe public officials in the host country.[68] The intermediary determines the methods for distributing the proceeds of corruption based on their previous experience and customary practice in this area.[69]

Corrupt intermediary contracts often include an international commercial arbitration clause, with the seat located in a third country, distinct from both the place of performance of the intermediary contract and the home countries of the parties.[70]

B. Assessment and Evaluation

Where the parties enter into a consultancy agreement for concealing the corrupt intermediary contract, there are in fact two contracts between the parties. The first is the ostensible consultancy agreement, whereas the second is the concealed intermediary contract that constitutes an influence peddling (bribery) agreement. In this case, the consultancy agreement is null and void because of simulation. The corrupt intermediary contract is also null and void because it is contrary to morality and public policy.[71]

Although the consultancy agreement is null and void due to simulation, the arbitration clause contained therein will remain valid by virtue of the principle of separability[72]. However, as mentioned, there are two separate agreements between the parties, and the arbitration clause exists only in the ostensible consultancy agreement. The concealed intermediary contract does not contain any dispute resolution clause. Then, will the arbitration clause in the consultancy agreement also cover the intermediary contract? Have the parties, who in reality concluded a corrupt intermediary contract but ostensibly entered into a consultancy agreement, expressed their intention to arbitrate disputes arising from their corrupt intermediary contract through the arbitration clause in the consultancy agreement?

The first question raises the issue of whether an arbitration clause in one contract can be applied to multiple related contracts that do not contain such a dispute resolution clause.

International commercial contracts sometimes explicitly provide for a single, unified dispute resolution mechanism covering all parties' various contractual relationships. If there is a stand-alone arbitration

[66] Crivellaro (n 57) 110; See also: Hilmar Raeschke-Kessler and Dorothee Gottwald, 'Corruption', *The Oxford Handbook of International Investment Law* (Oxford University Press 2008) 593; *Typologies on the Role of Intermediaries in International Business Transactions: Final Report* (OECD 2009) 7, para 8 ff.

[67] Crivellaro (n 57) 111; Raeschke-Kessler and Gottwald (n 66) 593.

[68] Crivellaro (n 57) 112; Bonell and Meyer (n 59) 7 ff.; Igbokwe (n 59) 24 ff., para 42.

[69] Sayed (n 61) 317.

[70] Crivellaro (n 57) 112.

[71] Bonell and Meyer (n 59) 10; Olaf Meyer, 'The Formation of a Transnational Ordre Public against Corruption: Lessons for and from Arbitral Tribunals' in Susan Rose-Ackerman and Paul D Carrington (eds), *Anti-Corruption Policy* (Carolina Academic Press 2013) 237; Gaillard (n 1) 10; Lucinda A Low, 'Dealing with Allegations of Corruption in International Arbitration' (2019) 113 AJIL Unbound 341, 341 ff.; Raeschke-Kessler and Gottwald (n 66) 609; Christoph Müller, 'The Impact of Corruption on the Contract, Including the Issue of Applicable Law' in Andrea Meier and Christian Oetiker (eds), *Arbitration and Corruption*, vol 47 (Kluwer Law International 2021) 39.

[72] One of the most important consequences of the principle of separability is that, in principle, the arbitration clause in the contract survives in the event of non-existence or invalidity of the main contract.See: Born (n 55) ch 3.03[A]; Nigel Blackaby KC, Constantine Partasides KC, and Alan Redfern, *Redfern and Hunter On International Arbitration Student Version* (7th edn, Oxford University Press 2022) para 5.106; Julian DM Lew, Loukas A Mistelis, and Stefan M Kröll, *Comparative International Commercial Arbitration* (Kluwer law international 2003) 104; Philippe Fouchard, Emmanuel Gaillard, and Berthold Goldman, *Fouchard, Gaillard, Goldman on International Commercial Arbitration* (Emmanuel Gaillard and John Savage eds, Kluwer Law International 1999) 210, para 410.

agreement for disputes arising from multiple related contracts, or if an arbitration clause is included in a single umbrella or framework agreement, the arbitration agreement will also apply to disputes arising from multiple related contracts. Once the parties have agreed in this manner, the arbitration clause in one contract will cover disputes or claims arising from another contract. However, where the parties have not concluded an arbitration clause covering all their various contractual relationships, whether the arbitration clause in one contract extends to disputes arising from other contracts is controversial. This is a matter of the parties' intent. Tribunals have interpreted this issue as aiming, as far as possible, to provide a single and centralised dispute resolution mechanism for disputes arising from the parties' various contracts. Therefore, as long as all of the various contracts involve the same parties and belong to a single project or course of dealing, tribunals have generally accepted that an arbitration clause in one contract also extends to related contracts that lack such a clause.[73]

For the reasons stated above, we are of the opinion that the arbitration clause in the ostensible consultancy agreement will also be applied to the corrupt intermediary contract. However, this does not mean that the arbitration clause will also cover disputes arising from the corrupt intermediary contract. For this, we must also be able to answer the second question in a positive manner.

The second question requires us to discuss whether parties who in reality conclude a corrupt intermediary contract but ostensibly enter into a consultancy agreement intend to arbitrate disputes arising from their corrupt intermediary contract through the arbitration clause in the consultancy agreement.

It is our contention that it cannot be interpreted that the parties intended to arbitrate disputes arising from their concealed corrupt intermediary contract by including an arbitration clause in their ostensible consultancy agreement. Such contracts, which constitute a crime, are based on the confidence that the corrupt acts will never be revealed by a third party and that neither party will disclose them. This is because, either if a third party reveals it or one of the parties discloses it, both parties will eventually be subject to criminal liability for their corrupt acts. The parties who will be subject to criminal liability if their corrupt acts arising from the intermediary contracts are detected will naturally not want them to be revealed. Therefore, they have no intention of resolving any dispute arising from their corrupt acts before the tribunals.

Consequently, disputes arising from corrupt intermediary contracts are not within the scope of the arbitration agreement. These disputes must be resolved before national courts. Even if a lawsuit is filed before a national court, if one party raises an arbitration objection, the court must reject the objection by stating that the dispute is not within the scope of the arbitration agreement. There is also a difference between arbitration and criminal proceedings. In arbitration, arbitrators are bound by the evidence presented by the parties, whereas in criminal proceedings, the goal is to ascertain the material truth. Therefore, the principle of freedom of evidence applies provided it is obtained lawfully, which distinguishes it from arbitration proceedings.

Arbitrators should also decline jurisdiction by stating that disputes arising from corrupt intermediary contracts are not within the scope of the arbitration agreement. Otherwise, an arbitral award rendered on a matter not covered by the arbitration agreement may be set aside pursuant to Article 34/2-a(iii) of the UNCITRAL Model Law and Article IX/1-c of the European Convention on International Commercial Arbitration or equivalent provisions adopted by the law of the seat of arbitration, or the recognition and enforcement of the award may be refused pursuant to Article 36/1-a(iii) of the UNCITRAL Model Law and Article V/1-c of the New York Convention or equivalent provisions of the law of the place of enforcement.

[73] Born (n 55) ch 9.02[F][5].

The explanations provided above raise the question of why parties who do not wish to have disputes arising from their corrupt acts heard in arbitration conclude an arbitration clause in their ostensible consultancy agreement. We contend that there are several fundamental reasons for this.

First, the parties rely on the fact that the arbitrators will not be able to detect the concealed intermediary contract between them. Therefore, the parties wish to arbitrate disputes concerning the payment of bribes and commissions as if they arose from the ostensible consultancy contract.[74] The parties' confidence in this regard may stem from the fact that arbitrators do not have the same investigative powers as judges or that judges are more inclined to investigate the nature of the contract *ex officio.*[75] Indeed, it has been argued in doctrine that arbitration provides a safe haven for corrupt parties because arbitrators are not considered to have an obligation to investigate corruption *ex officio* and require a high standard of proof in proving corruption.[76]

Second, parties who anticipate that their omertà[77] may be broken prefer that their corrupt acts be revealed before an arbitral tribunal, which guarantees confidentiality, rather than before national courts conducting public proceedings.[78] One may argue that if arbitrators learn that a crime requiring public prosecution has been committed, they are obliged to report it to the competent authorities; otherwise, they too will be subject to criminal sanctions. Therefore, arbitrators will also share the parties' corrupt acts with the public. However, arbitrators' duty to report crimes is a matter of applicable law,[79] and some national laws do not impose a duty on arbitrators to report corruption.[80] It is argued that if such a duty does not exist under applicable law, arbitrators are not morally obligated to report crimes.[81] Indeed, even if arbitrators suspect corruption, it may be unlikely that they will report the crime to the competent authorities.[82] For example, it seems unlikely that a Finnish arbitrator hearing a dispute arising from a consultancy agreement between a Sudanese and a Chinese party would report the crime to the Sudanese and/or Chinese authorities if the

[74] Vladimir Khvalei, 'Using Red Flags to Prevent Arbitration from Becoming a Safe Harbour for Contracts That Disguise Corruption', *Tackling Corruption in Arbitration, ICC International Court of Arbitration Bulletin, Special Supplement* (International Chamber of Commerce 2013) 18.

[75] Crivellaro (n 57) 112.

[76] Khvalei (n 74) 17 ff.

[77] Omerta is a code of silence adopted primarily by the Southern Italian mafia. According to this code, no one should report a crime they know of, have witnessed, or have even been a victim of to the law enforcement authorities, nor should they intervene in the commission of any crime. See: 'Omertà' (*Wikipedia*, August 15, 2025) <https://en.wikipedia.org/w/index.php?title=Omert%C3%A0&oldid=1305966380> accessed November 2, 2025.

[78] See also: Crivellaro (n 57) 113; Llamzon (n 3) vii; Khvalei (n 74) 16; Igbokwe (n 59) 2.

[79] Bernardo M Cremades and David JA Cairns, 'Chapter 5. Trans-National Public Policy in International Arbitral Decisionmaking: The Cases of Bribery, Money Laundering and Fraud' in Kristine Karsten and Andrew Berkeley (eds), *Arbitration: Money Laundering, Corruption and Fraud* (Kluwer Law International; ICC 2003) 85; Hwang SC and Lim (n 64) 669, para 107.

[80] Whether arbitrators have a duty to report corruption under American, English, or Swiss law is highly controversial.Some authors have argued that arbitrators do not have a duty to report corruption under these national laws.See: Mark Pieth, 'Duty to Report Suspicion? Risk for Personal Liability (Aiding and Abetting)?' in Andrea Meier and Christian Oetiker (eds), *Arbitration and Corruption*, vol 47 (Kluwer Law International 2021) 84; Swee Yen Koh, 'Duty or Right of Arbitrators to Report Suspicion of Corruption to Authorities?' in Andrea Meier and Christian Oetiker (eds), *Arbitration and Corruption*, vol 47 (Kluwer Law International 2021) 89.On the other hand, arbitrators are considered public officials under Turkish law and have a duty to report crimes under Article 279 of the Turkish Criminal Code.For detailed information on this subject, see: Orhan Emre Konuralp, 'Hakemlerin Sır Saklama Yükümlülüğünün Suçu Bildirmeme Suçu ile İlişkisi' (2017) 13 Medenî Usûl ve İcra - İflâs Hukuku Dergisi 759, 759–781.

[81] Kreindler (n 27) 334.Some authors have even argued that obliging arbitrators to report crimes would constitute a violation of the parties' right to a fair trial as enshrined in Article 6 of the ECHR.See: Cremades and Cairns (n 79) 85.Similarly, another author argued that imposing a duty to report crimes on arbitrators would be entirely incompatible with the private nature of their duties and the trust placed in them by the parties.See: A Mourre, 'Arbitration and Criminal Law: Reflections on the Duties of the Arbitrator' (2006) 22 Arbitration International 95, 111.On the other hand, it is also noted that some authors consider arbitrators to be obliged to report crimes, as they are responsible for the administration of justice.See: Thomas K Sprange, 'Chapter 8: Corruption in Arbitration in Domitille Baizeau and Richard Kreindler (eds), *Addressing Issues of Corruption in Commercial and Investment Arbitration* (Kluwer Law International; ICC 2015) 137.

[82] Edoardo Marcenaro, 'Chapter 9: Arbitrators' Investigative and Reporting Rights and Duties on Corruption', *Addressing Issues of Corruption in Commercial and Investment Arbitration* (Kluwer Law International; ICC 2015) 148.See also: Khvalei (n 74) 16.The author emphasised that there have been cases in the past where arbitrators identified corruption but failed to report it to the competent authorities.

arbitrator suspected that the agreement, which was concluded in a country far from their own, amounted to corruption.

On the other hand, given that in such cases, the parties have already entered into a corrupt contract and that the arbitrators are appointed by those parties, it is quite likely that the parties may also believe that they can reach an agreement with the arbitrators not to report the crime underlying the dispute. However, even if the parties have agreed with the arbitrators not to report the crime, it may be argued that their corrupt contract will become public during the stages of annulment and/or enforcement of the arbitral award. Nevertheless, this may only be relevant in circumstances where the parties do not voluntarily comply with the arbitral award. If the parties who have agreed with the arbitrators not to report the crime voluntarily comply with the arbitral award, their corrupt acts will never be disclosed to the public.

For the reasons explained above, while we acknowledge that the arbitration clause in the ostensible consultancy agreement may be applicable to the concealed intermediary contract, we submit that disputes arising from corrupt intermediary contracts are not within the scope of the arbitration agreement, given the contrary intentions of the parties.

IV. Conclusion

Corruption plagues international trade and undermines public welfare, often manifesting in contracts tainted by corruption in international commercial arbitration. These contracts are divided into two categories: contracts obtained by corruption and contracts providing for corruption. Contracts providing for corruption are mostly in the form of intermediary contracts providing for influence peddling. Contracts obtained by corruption generally include investment contracts concluded between investors and host states or public institutions for the performance of public services.

In international trade, parties may refer disputes arising from corrupt intermediary contracts and investment contracts obtained by corruption to international commercial arbitration. In this case, the following question, which is the subject of our study, arises: Are disputes tainted by corruption included within the scope of the arbitration agreement? The answer to this question depends on whether the dispute arises from a corrupt intermediary contract or an investment contract obtained by corruption.

Disputes arising from corrupt intermediary contracts are not within the scope of the arbitration agreement, as the parties never intended to arbitrate disputes arising from their corrupt acts before arbitral tribunals. Such disputes must be brought before national courts, even if the contract contains an arbitration clause. By contrast, disputes involving corruption do fall within the scope of the arbitration agreement when the underlying contract was obtained by corruption, and these disputes may be resolved through arbitration.

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Author Details

Kerem Kart (Res. Asst.)

[1] Recep Tayyip Erdoğan University, Faculty of Law, Private International Law Department, Rize, Türkiye

0009-0009-8789-5882 kerem.kart@erdogan.edu.tr

Faruk Kerem Giray (Prof. Dr.)

[2] Istanbul University, Faculty of Law, Private International Law Department, Istanbul, Türkiye

0000-0003-1952-9644 fkerem@istanbul.edu.tr

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