IS THERE ANY ROLE FOR LINGUISTS AMONG LAWYERS IN ARBITRATION?

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ABSTRACT

In KILIÇ İNŞAAT İTHALAT İHRACAT SANAYI VE TICARET ANONIM ŞIRKETI (Claimant) v. TURKMENISTAN (Respondent) ICSID Case No. ARB/10/1 (Kilic), the tribunal was confronted with a conflict arising due to different wordings in two equally authentic texts (Russian and English) of a treaty. Because the language of arbitration was English and the tribunal was non-Russian and non-Turkish speaking, a linguistic expert was engaged to assist the tribunal. The tribunal relied on the linguistic expert to interpret the treaty and reach its decision in the case. However, the tribunal's reliance on this linguistic expert was challenged, unsuccessfully, in the later annulment proceeding.

In another similar case, which involved the same treaty between the same countries, MUHAMMET ÇAP, SEHIL INŞAAT ENDUSTRI VE TICARET LTD. STI. (Claimants) v. TURKMENISTAN (Respondent) ICSID Case No. ARB/12/6, decided on 13 February 2015 (Sehil), a total of 7 linguistic experts were used in the proceeding. This may have been the first arbitration in which the number of linguists was more than the number of lawyers used by parties. Moreover, 3 out of the 7 linguistic experts gave their opinion more than once in this case. However, all the resources, time and efforts of linguistic experts committed in this case were futile as the

tribunal reached its decision without relying on the expert opinion of linguists.

The use of unprecedented large number of linguists in the Sehil investment arbitration case may be seen as an example of the increasing role of linguists alongside lawyers in investment arbitration cases, mainly when the relevant treaty is drafted in more than one language. At the same time, reliance on linguistic experts in one case i.e.*, Kilic, and rejection of linguistic experts opinion in another case* i.e.*, Sehil, raises the critical question whether there is a crucial or complementary role for linguists alongside lawyers in investment arbitration and if so, how linguists could be used constructively and effectively in interpreting the text of investment treaties within the context of the Vienna Convention on the Law of Treaties (VCLT). This paper will explore these questions by examining the key exemplars of Kilic and Sehil. The aim of the paper is to develop an understanding of the importance of the dual role of law and language in the interpretation of multilingual texts of investment treaties, which can be better achieved by involving linguists alongside lawyers in arbitration.*