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Arbitration Award and its Annulment in UNCITRAL Model Law and Iran's Law

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Abstract: *International arbitration is a protocol forecasted to settle disputes in an international level. Appealing to arbitration might take place after the emergence of disagreements or while drafting a contract. Such a method of coming to terms is most frequently applied in international commercial contracts. The contract interpretation and enforcement are amongst the issues proposed in international commercial arbitration. In fact, the arbitration parties and arbitrators devise policies to control the arbitration process and it is substantially held non-adherent to the national standards meaning that arbitration has nothing to do with the domestic rules. Due to the same reason, it is evident that the governing regulations formulate the most important topic in international commercial arbitration. Arbitration has been accepted by the international commercial society for various reasons and it is becoming substituted for the state court's judicial methods in a daily increasing manner. The majority of the arbitration regulations are influenced by the UNCITRAL model law and there are also regulations not in compliance with the UNCITRAL Model Law. Iran's international commercial arbitration laws seem to have considered the UNCITRAL's Model Law as a primary source and, in the meantime, adjustments have also been brought about therein according to Iran's internal conditions. However, the success of this law can be ascertained in the course of time.*

Keywords: *Revocation, Judgment, Enteral*

INTRODUCTION

One of the most important mechanisms for the exercising of the legal inspection over the arbitration awards is investigating the annulment pleas so that the incorrect awards can be prevented from being issued. Therefore, it is necessary to investigate the annulment cases and aspects of arbitrators' awards and survey the similar and dissimilar examples of annulment cases in Iran's laws and UNCITRAL regulations as well as to get familiar with the annulment mechanism so that the arbitration can be insured in its soundness. In Iran's civil procedure, the authority qualified for trying the arbitration awards' annulment claims is the court to which the claim is referred or is found certified to try the principal case; furthermore, it is stated in Iran's international commercial arbitration that the court of common pleas situated in the provincial capitals wherein the arbitration tribunals are positioned are qualified to do so and that it is Tehran's general court of appeals that is permitted to try annulment claims so long as no arbitral tribunal is specified. It is also asserted in regard of the international arbitrations taking place based on UNCITRAL arbitration regulations that only the court of the country to which the award is related and pertinent to its arbitration and considered as internal verdict thereof is qualified to investigate the annulment claims of the arbitrators' awards.

- **Arbitration Conceptualization:**

In expressing the arbitration concept, the law scientists have the following exposition: "there is no barrier to individuals' withdrawal from formal authorities' interventions in their claims pertaining to their private rights and interests and give in to the private governance of the individuals who are especially trusted in in terms of their knowledge and technical information and/or in regard of their fame in trustworthiness and truthfulness. Such private governance is called arbitration (mediation)".

Arbitration or mediation is settlement of disagreement through a mutually chosen mediator meaning that the parties to a lawsuit agree based on their own wills and volitions to take their disputes, if any, to individuals trusted by them in lieu of its being tried in a qualified court of justice (the judge Shari'at Panahi, 2016).

Dr. Ahmad Matin Daftary realizes arbitration as the individuals' refrainment from formal authorities' intervention in dismissing and settlement of the claims pertinent to their private rights and their submission to the private governance of other individuals who are entrusted in terms of their knowledge and technical information as well as their being famous for trustworthiness and emancipation (Matin Daftary, 2014).

Some jurists, as well, know arbitration as the settlement of disagreement between one or several individuals according to methods apart from the ones practiced by the judges. This latter definition can be envisaged as a summary of the abovementioned conceptualization of arbitration.

Some recognize arbitration as the resolution of discrepancies through mediation of individuals mutually chosen by the parties to a claim or haphazardly appointed by the judicial authorities (Muhammad Ja'afar langerudi, 2009).

Put differently, arbitration is a contractual judgement based on legal principles according to which the parties of a dispute or a legal relationship commonly agree to, instead of filing their subject of controversy to a state court, take it to a nongovernmental person(s) who is entrusted by them and/or whose method of appointment has been previously agreed in which case arbitrator plays the role of the judge to issue a verdict about the lawsuit. Such a method of trial is an exception to judgement as a virtue of the government and its enforcement is guaranteed by the legislator like the verdicts issued by the courts.

There is no clear-cut definition of the arbitration in the international documents other than what has been defined in Iran's international commercial arbitration laws. Paragraph A of the article one of the international commercial arbitration law defines arbitration as stated in the following words:

"Arbitration includes the settlement of disputes between the claimants outside the courts by mutually chosen or appointed real or legal person(s)" (Haidar Muhammadzadeh Asl, 2000).

Some of the jurists (Gar Vasson) have expressed in defining arbitration that it is a provision by means of which a third party taking the position of a judicial mission executor resolves the emerging disputes between two or several person who have appointed him or her to do so (La'eiya Janidy, 2002).

But, the French professor Rene David presents in his book "Arbitration in International Commercial" a definition that is, as he describes it, mostly based on the nature and objectives of arbitration and it has to be said that his definition seems to be more comprehensive than those of the others. Arbitration is the method of assigning one or several individuals to a case in which two or several individuals have common interests. These individuals are called arbitrators who acquire their authority not from the governmental officials but from a private agreement that forms the base of their actions and decisions" (Morteza Nasiri, 2009).

- **The History of Arbitration Award Annulment:**

The need for devising an appropriate mechanism of resolving disputes emerged as an undeniable reality with the considerable booming of international commercial in twentieth century and this same reality imposed itself on the national ideals pertaining to the solidification and corroboration of the

judicial governance in such a way that the pervasive pessimism towards arbitration gave its position to general acceptance within a short period of time and such a method of resolving the discrepancies was largely welcomed, particularly in international commercial disputes. The first considerable reflection of such a reality can be traced in the arrangement of 1923's Geneva Protocol in regard of arbitration conditions as well as in 1927's Geneva Convention on foreign arbitration awards' enforcement. Despite the extant strong points, the vivid weak points of these treaties strengthened the thoughts concerning the perfection of the legal system governing such a mechanism of resolving the disputes in the involved courts and institutions and it especially instigated the international chamber of commerce to think of a convention to improve the status of the arbitration awards issued in international commercial discrepancies. To do so, the aforementioned provision, proposed the convention on the identification and enforcement of the international arbitration awards in 1953 (ICC Brochure, 1953) and presented it to the UN's social and economic council. Unwillingness of the majority of the countries around the globe for the acceptation of the arbitration and international awards independent from any national legal system and, as a subsequence, the high likelihood of its not being welcomed by them made the economic and social council of the UN to put forth another convention regarding the enforcement of the foreign, not international, arbitration awards' enforcement to the countries and international and nongovernmental organizations to inquire their ideas, reformations and possible suggestions. After the recommendations and suggestions were collected, the aforesaid council held a previously declared conference lasting from 20th of May to 10th of June, 1958, in New York. The product of New York Conference was New York's world-inclusive and pervasive Convention that undoubtedly owes its general acceptance to the wise attentions paid to the preparedness degree and the types of attitudes of various countries worldwide in the convention drafting time and summation and pooling of the contradicting expediencies and, finally, the exertion of efficient amendments in Geneva Convention.

- **Arbitration Kinds:**

Organizational Arbitration: by organizational arbitration, a type of arbitration is intended in which the parties to a lawsuit refer to the arbitration organization before or after the emergence of discrepancies and request it to engage in arbitration between them based on the corresponding organization's arbitral regulations, to wit it contributes to the appointment of arbitrators and referral of the case to them and simultaneously supervises the flow of the work and manages the arbitration (Sayyed Jamal Saifi, 2010).

Case-Specific or Ad-Hoc Arbitration: in this type of arbitration, the arbitrator is appointed for special cases and the arbitration does not take place within the format of an arbitral organization. It is up to the parties to decide regarding the method of the arbitrator's mediation without it being controlled by any supervising organization (Dr. Abdulhossein Shirawi, 2014).

- **Forms of Objecting to the Arbitration Awards:**

There are three ways of objecting to the arbitration awards:

1) Filing a revision request (through the arbitral tribunal issuing the award)
2) Objecting or appealing through filing a lawsuit to another organ, typically a court
3) Annulment plea

The goal in objecting to the validity of an award is annulling it based on certain foundations; on the other hand, appeal is usually presented to a higher judicial organ to revise a legal issue and it is assumed that appeal is a method of objection in line with the correction of a mistake made by the tribunal or authorizing it to consider and try a newly-discovered reality.

Arbitration agreements and its connected regulations are the assessment scales of the validity of the awards. The international general laws rule the arbitration when it is carried out within the realm of these laws. In other forms of arbitration, it is seminally the law of the arbitration locality that

determines validity of an award. However, in regard of the second case, the laws of the country wherein the award is being issued and to be enforced can also be allowed to exert judicial revision concerning the validity of the award to some extent (Sayyed Jamal Saifi, 2010).

- **Courts Qualified for Trial Based on Iran's International Commercial Arbitration Law Regulations:**
  According to the contents of article 6 of international commercial arbitration law, an arbitrator's award can be objected and invalidated in qualified courts. Thus, the annulment of awards can occur in local courts to which they are attributed (wherein the awards are issued). So, in terms of the qualification, the courts in the locality wherein the arbitration has taken place are qualified to try the objection cases filed by the convicts. The arbitration committees' decisions are controlled by the national courts and it is the national court that speaks the last word. That is because the arbitration award's influence and enforceability are to be safeguarded by the national courts (Sayyed Hussein Safa'ei, 1998). Therefore, according to Iran's international commercial arbitration and 1958's New York Convention, objections to awards can only be presented to qualified courts in localities wherein the arbitral tribunal has been held (Paragraph 1 of the Article 33).
- **The Authorities Qualified for Trying Arbitrators' Awards Annulment Pleas based on UNCITRAL Arbitration Law Regulations:**
  In general, international arbitrations, it is practically difficult to find the qualified court to which an objection to an award's validity can be filed in case of the absence of explicit regulations concerning the arbitration agreement. However, the lack of such regulations does not theoretically bar the annulment of the awards; on the other hand, the mere announcement of the invalidity by the unsatisfied party can barely strip an award of its indispensable effect. Normally, the awards are indispensable for the parties and the sole objection by one cannot dismiss the obligations. Paragraph 1 of article 4 of the declaration on the dispute settlement as well as the paragraph 2 of the article 32 of the arbitration regulations stipulates that the arbitral tribunal's awards are final and indispensable. There are no regulations regarding the basics of an award's invalidation or revision in the dispute settlement announcement.
- **The Formative Regulations of International Commercial Arbitration:**
  The formative regulations in regard of the arbitrators' awards annulment cases that have to be taken into account and observed in international commercial arbitration law are listed below:
  1) **Making Decision about the Arbitration Committees' Qualification:**
     In its verification of its qualification, the arbitration committee may take into consideration such subjects as the absence or invalidity of the arbitration agreement, arbitrator or arbitrators' special citizenships or the characteristics and conditions required from the parties to the lawsuit and/or the claim subject or arbitrators or their breach of their authority scope and the decision in this regard will be made by the trying court which will render the award invalidated in case of finding the arbitration committee lacking the necessary qualities.
  2) In case that an objection is made to the qualification in its essence and/or to the validity of the arbitration agreement, the arbitrator should make a decision on them before engaging in arbitration about the nature of the claim. If the arbitrator preliminarily vote in favor of his or her qualification, each of the parties can, within thirty days after receiving the communique, apply to a common court of pleas situated in the provincial center wherein the arbitral tribunal is held and to Tehran's general court of pleas as long as an arbitral tribunal has not been specified and ask it to try the case and make the appropriate decision and the arbitrator cannot be prevented from investigating the case so long as the foresaid request is under trial in the court.
  3) **Reviewing the Time of the Right to Apply for Arbitration Award Annulment:**
     According to paragraph 3 of article 33 of Iran's international commercial arbitration law, the request for invalidating the award as posited in paragraph 1 of the same article has to be

presented to the common court of pleas situated in the provincial center wherein the arbitral tribunal is held and to Tehran's general court of pleas as long as no arbitral tribunal has been specified within three months since the date the arbitration award, including both corrective or interpretive, was declared to the objector and the court will issue a writ of case closure if the request is made outside the announced time frame.

4) In trying the arbitration award annulment cases, the courts should consider the issue that there is only proposed a three-month respite to plead for award annulment and that there is not stipulated any special time limit in annulment cases (article 34); hence, the arbitration awards might be announced invalid till any time if they are found as examples of the cases postulated in article 34 and the issuance of the writ of case closure after the expiration of the three-month respite specified in paragraph three of article 33 of the international commercial arbitration law would lack the legal legitimacy (Sayyed Hussein Safa'ei, 1998).
5) In case that one of the parties to an arbitration case pleads for the arbitration award annulment to a court and the other party (winning party) pleads for the award enforcement, the former has to provide sufficient and proper evidences so that the annulment request can be rendered triable (article 35 of Iran's international commercial arbitration law).
6) If the court finds the case presented to an arbitration irresolvable through an arbitral tribunal considering its domestic laws, it will refrain from authorizing and ordering the enforcement of the final arbitration award; in other words, the examples of the subjects that cannot be settled down through arbitration are specified according to paragraph 2 of article 2 of 1958's convention content corresponding to the laws of the country that is demanded to enforce the arbitration award (of course, it is generally presumed that the award has been issued in the country members to 1958's New York Convention).
7) In case that the arbitration award is objected in legal terms before a qualified judge, if one party files a lawsuit against another in regard of the arbitrated dispute (arbitrator's decision) to a qualified court and the claim is also established based on the same cause, the court should reject the case for such reasons as the claim subject has been decided in the arbitral tribunal and the judged case's validity has been assured as well as for such other reasons as the unity of the parties, unity of the controversial issue and unity of the claim cause; but, in case that the issued award is found invalid hence rendered annulled or discarded by the court subject of article 6 of this same law then the invalidated award will not feature the effect of a judged case in forthcoming trials and the trial will be handed over to the UNCITRAL Arbitration Regulations (Ahmad Amir Mo'ezzi, 2012).

- **Documents Required for Award Annulment Plea:**

The party demanding the authorization and enforcement of the award and the objector avoiding the authorization and requesting the annulment of award can plea to a qualified court specified in article 6. According to Iran's joining of 1958's New York Convention in 2001, the person demanding the authorization of the award and issuance of writ of execution and also the person demanding the annulment and non-authorization of the award should annex the following documents to their pleas to qualified courts:

1) Certified copy or the original arbitration award and its formal translation in Persian
2) Certified copy or the original copy of the arbitration agreement along with its formal translation in Persian provided that the arbitration agreement is arranged apart from the basic commercial relationship contract

- **The Outcomes of Arbitration Award Annulment:**

According to the international documents and regulations, objection to the arbitration award features different effects in two stages. In objection trial stage and considering the fact that the objected award

is indispensable, the objection case's openness does not bar the enforcement of award in other countries; moreover, in award suspension or annulment stage in the source country, the award repudiation is accepted as a foundation of rejecting the execution request (Hussein Eskandary, 2010). The study of the countries' judicial procedures is indicative of the idea that the ceasing of the executive trials for such a reason as the annulment trial being in progress in a source country has been assigned to the discretion of the court to which execution request has been made. It means that if the court in the locality wherein the execution request has been made finds the foundations of annulment plea as being sufficiently strong, it can postpone the issuance of writ of execution till the parallel trials pertinent to award annulment reach a final decision and it can issue a writ of execution as soon as it realizes that the annulment plea is only made to serve the lengthening of the trial (La'eiya Janidi, 2002). New York Convention states in article 6 regarding the authorization and enforcement of the foreign arbitration awards that "the judge of the country wherein the award has to be enforced can, if it is deemed expedient, put off the execution and also s/he can ask the opposite party to present an appropriate guarantee if doing so is willed by the winning party". In addition, 1965's Washington Convention enumerates the cases of compulsory and voluntary cessation of an award in its paragraph 4 of article 51 and paragraph 4 of article 52. Based on the convention, in cases that the revision or annulment pleas are filed, the tribunal, finding it expedient, can put a stop to the execution of an award being tried. But, if the person demanding the revision or annulment of the award is found also mentioning in his or her plea the execution cessation till the issuance of a verdict regarding the compulsory cessation of an award execution. Therefore, the execution plea does not contradict the award annulment and there is the possibility of suspending the execution and/or asking for the supply of appropriate surety in necessary cases. And, of course, a new tendency has come about in the international commercial arbitration in regard of the implementation of the annulled arbitration awards' enforcement based on the spirit of New York Convention and it has been accepted in the judicial procedures of some countries. Corresponding to article 493 of the Islamic Republic of Iran's civil procedure, as well, objection to an arbitrator's award does not feature a suspensive effect. New York Convention and the majority of the conventions signed afterwards based thereon know the indispensability, invalidation or suspension of awards as foundations of dodging the execution and in all of the drafts presented so far regarding article 5 of New York Convention, the award annulment in the country wherein it is issued and, finally, in the source country forms the basis of avoiding its implementation in the other countries. Sanders as one of the prominent figures who has played a part in the course of New York Convention's formation supports the idea of foreign arbitration award's indispensability and interprets the convention in parallel to this same idea: "the courts [of the countries wherein the awards are to be executed] … avoid the implementation of [annulled] awards because there is no more an arbitration award and the implementation of a nonexistent award is impossible and even contradicting the public order of the country wherein the award was supposed to be executed" (Sanders, 1976).

Conclusion:

Iran's international commercial arbitration law seems to have been drawn on the UNCITRAL's model law but it has undergone adjustments according to Iran's domestic conditions. The new law pertains to arbitration in regard of the "discrepancies stemming from international commercial relations" and it does not provide a clear-cut definition of the international commercial relations; instead, it gives an unexclusive list of various types of commercial activities. However, the success of this law should be figured out in the course of time. Iran's international commercial arbitration law possesses two outstanding attributes: the first is the exertion and use of the criteria and principles prevalent in theory and practice of the international arbitration

performance and the second is the correction and repairing of the deficits that exist in Iran's current regulations regarding arbitration. Iran has been successful to some extent in terms of the second attribute the examples of which are as explicated below:

- A large deal of emphasis on the impartiality of all the arbitrators, disregarding method of their appointment
- Special concentration and attention on and to arbitration agreements in terms of their forms
- Paying appropriate amount of attention to the parties' and arbitrators' freedom of action in terms of the method of their appointment and arbitration procedures
- Explicit identification and verification of the arbitration under the supervision of arbitration organizations (organizational arbitration)
- The ability to implement arbitration agreement in a more vivid manner

There is also no topic offered in paragraph 1 of article 2 of UNCITRAL's model law regarding the internationality scale of a "commercial relation"; instead, apparently, the main scale of the concept "international arbitration, i.e. "internationality", has been underlined in an effort in line with defining the limits of law exertion. Although the issue can originate from the faults in the way the law has been arranged, the exertion of UNCITRAL's model law is not restricted to the international commercial arbitration and they can also be referred to in cases of disputes arising in the noncommercial, quite likely non-international, contracts.

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