

PUBLIC POLICY AS A GROUND TO REFUSE ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Asal Juraeva

ajuraeva@civil.uz

Abstract: This research examines public policy (PP) as a ground to refuse the enforcement of foreign arbitral awards under Article V(2)(b) of the New York Convention. The study highlights the complexities arising from the absence of a standardized definition of PP, leading to varied interpretations across national courts. It delves into the distinction between procedural and substantive PP, analyzing cases where enforcement was refused due to violations of procedural fairness, such as inequality between parties, lack of impartiality, and insufficient reasoning in awards. The goal is to propose a framework for harmonizing the application of PP in international arbitration, ensuring fairness and consistency across jurisdictions while respecting fundamental state interests. By examining case law and scholarly perspectives, this research contributes to developing a clearer understanding of the role and limits of PP in enforcing arbitral awards globally.

Keywords: Public policy, international arbitration, foreign arbitral awards, New York Convention, Article V(2)(b), procedural fairness, substantive public policy, arbitration enforcement, international commercial arbitration

The implementation of a foreign arbitral award in a country other than the one in which it has been awarded is one of the phases of the arbitration process in which the court may exercise some control over the considerations of PP. At this point, in order to ensure that it complies with specific national regulatory requirements, the court or the competent authority in the country in which the compliance is sought can evaluate the award. It is evident that The New York Convention is so relevant because certain criteria differ from country to country, since it helps to harmonize the compliance specifications of international arbitral awards between the Member States. As this research deals with investigating the impact of PP on the implementation of international arbitral awards, Article V(2)(b) will be the subject of the study. Article V(2)(b) of the Convention, as stated earlier in this research, has created a great deal of difficulty. This is because there are no explicitly established limitations on what can be deemed to be contrary to the foreign policy of the countries which are party to the New York Convention.

The national courts have left the interpretation of this ground to the various legal systems and to the variety of political, economic, religious and social considerations. Hence, the notion of PP has, probably inevitably, been formulated in numerous ways, where different types of PP problems have arisen since the Convention came into being in 1958.

The goal here is to work towards a simpler and more consistent implementation of PP via trying to find a certain standard of rules of PP applicable to international arbitration awards. To this end, the continuing distinction in this study between the application of national or international PP as a justification for refusing to implement a foreign arbitral award will be discussed further. This is to be done by examining the cases in which the same PP problems have

been considered and evaluating their approach to assess whether and, if so, to what degree the provision of PP has been an effective defence against the implementation of international awards. The claim is supported by the evidence that the definition of 'foreign PP' is gradually accepted in the courts as the basis for the New York Convention's interpretation of Article V(2)(b). PP issues can be divided into two main fields, procedural PP principles and issues related to the subject matter of the conflict in order to address this point adequately. It should be considered that the arbitration proceedings will be subject to a measure of control by the compliance court to ensure that they comply with procedural fairness standards. It should also be understood that PP encompasses a broad range of issues relating to the topic of the conflict, including moral, social, political, economic or any other element deemed to be a fundamental issue affecting the interests of the state in which the award is implemented. It might be named as "substantive PP". Substantive PP is different from procedural PP, as substantive PP relates to the recognition by a tribunal or law enforcement court of rights and responsibilities related to the subject-matter of the award as opposed to procedural PP related to the mechanism by which the dispute was awarded. It is important to carefully examine the scope and the extent of the implementation of PP according to these two categories. Thus, this chapter will be limited to the review of a variety of circumstances and judicial decisions which have been deemed to constitute a breach of PP procedural issues, leaving the examination of PP substantive issues to the chapter below.

Global arbitral award compliance may be denied if the arbitral proceedings (on which the award was based) violate the procedural due process requirements conceived by the courts of the country in which enforcement takes place. This is due to the fundamental principles of justice and fairness, such as the respect for the right to protection and equality as upheld in the state of enforcement by the

principle of PP. In this regard, in order to resolve the procedural irregularities that arose during the arbitration proceedings, the courts of compliance can invoke PP grounds as a safety net. For instance, courts in the country of implementation can decide that arbitral proceedings are subject to the relevant foreign law, even though it is necessary to regulate arbitration proceedings, but obstructs justice. Procedural PP is also a matter of procedural fairness, which refers directly to the issue of whether the standards of natural justice have been met in the arbitration process or not. For any issue that would obstruct justice between the parties, this involves the evaluation of a broad variety of procedural conditions on which the compliance of a foreign arbitral award may be declined. Several examples considered as criteria of procedural PP need to be discussed to demonstrate the degree to which PP is applied to procedural issues. The first problem being discussed would be the right of the parties to be handled equally. The second issue is whether the lack of a strong justification for the award could be a legitimate reason to fail to impose the award. Finally, since a lack of impartiality is a lack of justice, the lack of impartiality will be discussed as a PP problem.

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