Comparative study of the nature and the effects of conflict among national courts and authorities of international arbitrations

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Abstract

The current article deals with comparative study of the nature and the effects of conflict among national courts and authorities of international arbitrations using descriptive analytical method. In this research, the conflict between the jurisdiction and the rules of national courts and authorities of international arbitrations has been studied by having a glance at the law in Iran and other countries by using valid internal and external resources and the contents of the conventions of international arbitrations. The results of the study suggest that if there is a valid arbitration agreement, the courts do not have the jurisdiction to deal with the issue. Therefore, the effect of arbitration agreement is that the jurisdiction of state courts for dealing with the issue is excluded. The conflict of jurisdiction occurs if it is brought up simultaneously in an international court of arbitration and a state court. this kind of conflict can theoretically be the result of two different theories: (A) A theory which believes that the government has been delegated to administer the justice before being known as the legislator, (B) a theory which believes that choosing the judge of yourself is the natural human rights and so this kind of right should be protected against any interference and violation by the legislator. These two theories have been replaced by another theory which is a combination of them and by the replaced theory, they have had a peaceful coexistence. According to the second theory, it is true that the government can administer justice, however it does not mean that in all conditions, it can administer the justice all by itself by its courts. If the government keeps the ability of controlling the administration of justice by other organizations such as the courts of arbitration, then the justice is served.

Keywords: Arbitration, jurisdiction, national court, international arbitration, arbitration agreement.
Introduction

Significant changes in business relations in recent decades have led to the development of business rights in many countries. Currently, the development of commercial trade and foreign investments are of concern and therefore development and versatility of commercial rules are important in many countries. Here, the role of arbitration in administering the laws of international business is important as even some people consider it as the basis for development in international business because the truth is that international arbitration is highly significant in solving commercial disputes. One of the most important issues about the arbitration is determining the jurisdiction and afterwards extending the law of arbitration. In this thesis, first we determine the jurisdiction of arbitration if there is any conflict between national courts and authorities of international arbitration and then we study the laws of the nature of the lawsuit which its ultimate reason and final goal is resolving the existing lawsuit. Finally the conditions of identifying and executing the arbitration vote are analyzed.

Theoretical foundation of the conflict of the jurisdiction of national court and international arbitration

The conflict between the jurisdiction of national court and the authorities of international arbitration occurs when a lawsuit is brought simultaneously at an international arbitration court and a state court. This kind of conflict may occur theoretically as a result of using two different theories:

Theory of the exclusive jurisdiction of the court

The followers of this theory believe that the judiciary is the official authority for public complaints and pleadings, and the courts which are established and controlled by state laws have the jurisdiction to handle the lawsuits and dispute of people and even do not have the right to delegate their jurisdiction.

Theory of exclusive jurisdiction of arbitration in special conditions

As a result of the theory of exclusive jurisdiction of the arbitration in special conditions the parties of the international business agreements have the right to agree that if any contractual disagreements emerge, primary dealing with that disagreement is delegated to the arbitration of an individual or individuals which is accepted by both parties and the court has no right to intervene in the process unless it is something expected in law because by fulfillment of certain conditions the court has been disqualified in that case.

A theory that believes that choosing your own judge is the natural human rights and therefore this kind of right should be protected against any interference and violation by the legislator. These two beliefs have been replaced by another theory which is a combination of them and this way they have a peaceful coexistence.
The theory of relative jurisdiction of the court and arbitration

The theory of relative jurisdiction of the court and arbitration is indeed the balanced state of the two relatively intemperate theories of the exclusive jurisdiction of the court and exclusive jurisdiction of the arbitration which in contrast to them, this theory is highly appreciated in law . According to this method the general jurisdiction of the court is officiated for primary handling of the disagreements . Therefore the jurisdiction of the court is cancelled as soon as the parties agree to do so . Unless, the court ascertains that the agreement of arbitration is void, cancelled or not applicable. Otherwise, the judge will be responsible to return the lawsuit to the arbitration.

In international law and some countries

The theory of relative jurisdiction of the court and arbitrations as mentioned above can be observed in some parts of international documents in which some of them are mentioned as examples below. In Act 8 of the law of 1985 Uncitr in international business arbitration it is stated that : A court in which an issue concerned with the arbitration agreement is claimed, if one of the parties demands they will be referred to arbitration, unless it is claimed that the agreement is void and has no effect and cannot be approached . In English law , in Act 9 of arbitration law of 1996 four clauses deal with this issue . According to the conditions stated below the Act, the court should order to stop handling the case if the beneficiary demands so based on the agreement of arbitration . Unless he is persuaded that the mentioned agreement is void, has no effect and cannot be approached .

In Iran law

It could be said about the relation of the jurisdiction of the court and arbitration in international business claims in Iran’s law that according to the Article 159 of the constitution, the judiciary is considered as the official authority and establishing courts and determining their jurisdiction is subjected to the law . Therefore in order to deal with the issue it must be said generally that the general jurisdiction of the judiciary’s court is officiated for dealing with disagreements even in business arbitration, but this kind of jurisdiction must be cancelled and the lawsuit be referred to the arbitration if there is any arbitration agreement or if the parties agree on this issue even if the case is in the process of the appeal . Unless the court claims that the arbitral agreement is void, has no effect or cannot be approached .

The effect of the principle of the jurisdiction of the arbitration over the jurisdiction of national courts

The principle of arbitral jurisdiction

The main effect of an arbitral agreement is that the possible or existing lawsuit is excluded from the jurisdiction of the courts . This is the direct and negative effect of the arbitral agreement which today is accepted in domestic law of most countries which are associated with national arbitrations . Act 454 of procedure code of public and revolutionary courts in civil affairs approved in 1379 states that: All the individuals who are qualified to claim can refer their
case to one or more people whether their claim is stated in courts or not and if it is ,no matter at which level it is . In fact, the negative feature of arbitration is administration and expression and there is no doubt about it. In topic law of Iran and specifically in rules of civil procedure ,apparently jurisdiction over disputes between Iranian and non-Iranian parties, are not expected for domestic courts and under Article 971 of the Civil Code,it is stipulated that < If the same lawsuit is introduced to a foreign court it will not cancel the eligibility of the Iranian court >it is merely a rule to resolve the conflict which explains the jurisdiction of the Iranian court versus a foreign court .

**Discretion of the arbitrator or arbitrators in proceedings and ruling on their own jurisdiction**

The fact that the national judge can study the validity of the arbitration agreement directly or by the claim of one of the parties despite the objection of lack of jurisdiction by one of the parties and refer the lawsuit to the arbitration only if the lawsuit is proved to be invalid, is an important fault .which has traditionally roots in national legislators and doctrines not believing in the arbitration and jurisdiction being parallel with each other. It seems that Iranian legislator as Article 636 of the former Civil Procedure Code (currently, Article 461)states, is one of the countries which believes in the absolute prohibition of the arbitration to deal with its own jurisdiction if there is any fault in arbitration agreement.

In terms of jurisdiction there are always two assumptions:

1-the assumption in which the lawsuit is primarily and solely introduced to the court and it is only the national judge who gives his opinion about the jurisdiction or disqualification or studies the validity or invalidity of the condition for arbitration.

2-But, the issue of jurisdiction, whether it is judicial or arbitrational does not simply occur as mentioned above .On the contrary, Mostly a kind of dependence and conjunction exists and that is the time when one of the parties refers to the national court during the arbitration . One of the parties who is concerned about the arbitration or primarily believes that the agreement of arbitration is void asks for the national court to deal with his lawsuit . It is obvious and natural that in this situation , the other party objects to the jurisdiction of national court and avoids to accept that the national court handle their lawsuit.

**Jurisdiction and the agreement of arbitration**

**The jurisdiction of the court in handling the lawsuit of the arbitration’s agreement**

The parties of the arbitral agreement, by signing it, they have agreed to refer the conflict to the arbitration ,although it could be estimated that the parties remain committed to the agreement but the opposite assumption is possible too . Meaning that despite the existence of the arbitration agreement, one party claims that the subject of the agreement in court, may be invalid, void, or unenforceable and unpredictable in arbitration agreement. In this article in order to meet the brevity , terms of non-existent or invalid are used which include the four mentioned matters .
Pleading in court before referring to the arbitration

Each of the parties of the arbitration agreement may plead the lawsuit of the arbitrational agreement in a state court. This kind of action usually shows that the mentioned party denies the existence of such arbitrational agreement or considers it invalid. and this is one of the aggressive stance that each party may adopt against the arbitration agreement. In such assumption, the other party may react in two forms: objecting to the jurisdiction of the court or avoiding objection. For finding a more precise answer to this question, it is required to study two aforementioned states separately.

Plea of not having jurisdiction

The party of the arbitration agreement which has been complained about in a state law may plea for the jurisdiction of the court by considering the arbitration agreement valid and approachable and also accepting the jurisdiction of the arbitration. In French law, because of the second clause of Act 1458 of the new procedure code, if the lawsuit which is agreed in arbitration agreement is handled in a court, the court should act toward the agreement that it does not have jurisdiction, unless the arbitration agreement is cancelled openly. Yet, based on the third clause of that Act, the court cannot mention not having jurisdiction directly. In the past procedure code of Iran, like the new law, cancellation does not exist as the same way it can be observed explicitly in French law. Yet, according to the Act 463 of the new law, handling the lawsuit which is the subject of the arbitration agreement is under the jurisdiction of the court only if a certain individual who the parties are obliged to be judged by him, cannot or will not handle the case as an arbitrator. Another form in which the lawsuit of the arbitration agreement is under the jurisdiction of the court, according to the last clause of act 474 of that same law, is that the arbitrators cannot vote during agreement time or the time which the law has specified.

Avoiding to plea

According to the first clause of Act 481 of the new law, one of the issues which cancels the arbitration is the written consent of the parties. But does the written consent of the parties have a subject or through the authentication of the parties’ agreement it cancels the arbitration? It must be accepted that in the written consent of the parties it is important for us to reach the goal and therefore, any other way that discovers the agreement of the parties in cancelling the arbitration and referring to the court must be considered valid. Litigation of one of the parties in the court and the avoidance of the opposite party to claim that the court does not have the jurisdiction must be considered a kind of agreement on cancelling the arbitration. Therefore it must be accepted that proceeding the lawsuit which is the subject of the arbitration agreement in the court and not opposing to it by the opposite party, shows the consent to the cancellation of the arbitration and the court is responsible to handle it.

Bringing the lawsuit in court after referring to the arbitration

After referring to the arbitrator it is possible that one of the parties, bring the subject of the arbitration agreement in a state court. Making a plea which is the subject of the arbitration
agreement in a court can happen in two different ways: Before the vote of the arbitrator and after the vote of the arbitrator. Both ways are discussed separately.

Making a plea before the vote of the arbitrator

One of the parties may make the plea which is the subject of the arbitration agreement in a court while the lawsuit is also presented to an arbitrator. This kind of action, usually happens when the mentioned party denies the existence of the arbitration agreement or considers it invalid. The question is that can the court deal with the lawsuit or must declare not having jurisdiction. What is definite is that the question is brought up only when the court becomes informed about the existence of the arbitration agreement and its reference to the arbitrators, because otherwise, the court is responsible to handle the lawsuit according to Act 3 of the new law. But if the court becomes informed about the reference to the arbitration, according to the act 491 of the new law, it must be accepted that handling the lawsuit should be stopped in the court. As for the mentioned Act, if the main lawsuit is discussed in the court and by this way, it is referred to the arbitration, if there is any objection to the vote of the arbitration, then handling the lawsuit is postponed until the invalidation of the vote of the arbitrator becomes final. Therefore as it is observed, if it is referred to the arbitrator, even sentencing the invalidation of the vote of the arbitrator, before ascertaining the verdict, cannot be a license for a court to continue handling the lawsuit.

Making the plea after arbitration voting

After arbitration voting, usually, the vote of the arbitrator is objected by the convict. And if so, the court has the jurisdiction to investigate the vote of the arbitration. If objection to the vote of the arbitration is denied, then the vote of the arbitrator is usually conducted by force or by choice. After rejecting the objection, the dispute over the subject of the arbitration agreement is considered resolved according to the Act 491 of the new law making plea in a court must be faced with the rejection of the plea, even though the validity of the judged issue over the vote of the arbitrator is not obviously identified in procedure code. Of course whenever one of the parties make the plea for the subject of the arbitration agreement, but does not object to the jurisdiction of the court, it must be accepted that the court does not usually become informed about the vote of the arbitrator and this shows the agreement between two parties in rejecting the mentioned vote which is considered neutral according to the Act 486 of the new law. On the other hand, an issue which cancels the responsibility of the court to handle the lawsuit will not exist.

In French law, according to the act 1476 of the new procedure code, the vote of arbitration is valid since the time of being declared.

The jurisdiction of the court in handling the arbitration agreement

The arbitration agreement shows the agreement of two parties in delegating the present or future dispute to the arbitration and therefore, as provided by law, it is the unavoidable basis of creating the arbitration authority and jurisdiction (capability to judge) and the validity of its vote.
Therefore, creating the authority of arbitration, giving out vote and handling the lawsuit necessarily requires the parties to accept the arbitration. Although it is possible that the parties have no problem with the existence and validity of the arbitration agreement, but it is also possible that one of the parties denies the existence of the arbitration agreement or invalidate it. In this assumption, creation of the arbitration authority and handling it, requires handling the disputes and resolving them. As a result, one of the important issues which can be discussed in arbitration and has gotten the attention of lawyers and judiciaries is determining a proper authority to resolve the dispute over the existence or the validity of the arbitration agreement.

**Determining the arbitrator**

Another issue which each party can bring up in order to deny the existence of an arbitration agreement or invalidate it is avoiding to choose a specific, common or third-party arbitrator. In this case, the opposite party has no way but to refer to the court in order to specify an arbitrator. Although it is possible that the parties specify the arbitrator or arbitrators before or after the emergence of the dispute (Act 455 of the new law). So if the specific arbitrator or arbitrators give out their votes, the court cannot intervene in choosing the arbitrator. But if the parties have not specified an arbitrator and would not choose one during the dispute each of the parties can choose their own arbitrator and introduce him to the opposite part by an official statement and ask for an arbitrator or agree on choosing an arbitrator by a third party. This way, the opposite party is responsible to introduce his own arbitrator in 10 days or agrees on choosing the arbitrator by the third party.

**Handling when deciding about not accepting the jurisdiction of the arbitration**

The party who has denied the existence of the arbitration agreement or invalidates it, maybe in a position that he cannot do anything else. Meaning that as long as choosing the arbitrator is delegated to a third party, then his opposite party has the upper hand and has created the arbitration authority and made the plea which is the subject of the agreement. In this situation, the party who denies the existence of arbitration agreement or considers it invalid has the right to object to the jurisdiction of the arbitration based on this, but this kind of right in procedure code has not been predicted in such way that force the arbitrator to handle the case and decide about it and inform the parties about his decision. Yet, it must be recognized that if the arbitrator is to deal with the case then he has to provide an arbitration agreement and assure its validity. Therefore if the arbitrator, continues to arbitration even with the objection, the objector has to avoid taking part in arbitration regulations and wait until hearing the verdict in both conditions so that he can object according to the 7th clause of act 489 of the new law until the deadline. In this case the court must <at first> investigate the existence or validity of the arbitration agreement so that it would be clear that whether it is possible to object to the vote of the arbitrator or not.
Conflict between rules in international authorities

Implied condition indicative of negative option towards applying the national law

Arbitrators can interpret their behavior negatively if there is no direct choice of law and consider it as opposition to following the national law. Because as for not choosing the direct choice it is clear that they have not reached to the agreement that their business relations is following national law. Therefore, jury infers this silence as the negative option of the law.

In agreements which the government, organizations, companies or state organizations are one of the parties, it is strongly recommended that it should be stated on the agreement that:

None of the parties have accepted the jurisdiction of national law.

This way, the jury follows the neutral law or general principle of laws, or international business law and common business law without considering the national law of the parties.

Empowerment of arbitration law

This theory is described in two concepts:

In the first concept, this theory includes the resolution of the conflict between the laws concerned with the arbitration, as the arbitrator refers to these rules and chooses the suitable rule. But the second concept refers to the direct referral of the arbitrator to the material and substantive law of the arbitration.

The main basis of this theory in both concepts is based on the similarity of the arbitration to the court and the comparison of the position of the arbitrator to the judges of the state courts.

State law of the contractor

Most of the past theorists and a significant number of the current ones are influenced by a known international private rights and they do not prefer any law system over the state system. What supports this belief currently are:

1- From the point of international documents, there is the issue of arbitration regulations of the international center for resolving the lawsuits about investment which as a result of it if there is no agreement between the parties about the substantive law, then the court of law will persuade the state and obeys the law (Act 42 of the arbitration rules of the international center for resolving the conflicts about investment.)

2- Applying the new perspective of private international laws in which some of them are reflected in some of the newly approved laws such as European convention of 1980, meaning that applying the criterion for nearest and most real relation also leads to the superiority of state law. This perspective is reflected in Act 1 of the resolution of the international law institution adopted in Athens in September 1979. This Act states that:
Agreements signed by a state and a private foreign person follows the legal rules which are chosen by the parties and if there is no choice by them ,it follows legal rules which the agreement has the closest relation with.

3-From the scientific view , the famous case of Serbian loan is in parallel with the mentioned perspective . In this case, the permanent court of international judiciaries suggests that:

Any agreement which is not an agreement between states –from the point of their position as the subjects of international law-is based on domestic laws of the country . This issue that discusses about the law , is the subject of a branch of the law which today is usually described as the private international law or the theory of the conflict between the rules.

4-One of the reasons ,is the issue of the dignity of the government . Some has written that it could not be supposed that a state which is one of the parties of the agreement, follows a legal system other than of it self’s . and some have overdone this and consider applying a substantitive non-local law as a foreign national law contrary to the dignity of the government and believe that:

As by applying a foreign national law this dignity is dishonored ,by applying a non-local law this would happen too. Therefore ,although applying a national law is still common and even predominant in international arbitration ,the tendency is to apply the national law of the state which is one of the parties of the agreement.

The truth is that as long as the law of the state which is one of the parties may provide the benefits of that government and especially may be unilaterally changed and may be deprived of stability. Currently, there are different kinds of applying non-local substantive law and this method is highly accepted worldwide . Yet , supporting the theory of conflict between laws and relying on applying the state law is principally in favor of developing countries.

**The freedom of the arbitration (Applying the most suitable system of conflict between rules)**

This theory which now is highly accepted worldwide is going to replace the previous theories . The freedom of the arbitrator in choosing the law is reflected in a number of international arbitration documents as long as it is related to choosing the rules for resolving the conflict properly and not having an obligation to apply a certain national system for resolving the conflict. 4th clause of Act 7 of the arbitration rules of the Economic commission of United Nations and European convention also follow this theory of 1961.

The rules of the International chamber of commerce (3rd clause of Act 3 )and uncritical rules (1st clause of Act 32) also state as mentioned.

Today, some of the domestic rules have progressed even further .1st clause of Act 1496 of the new French procedure code states that: <The arbitrator resolve the lawsuit based on the chosen legal rules and if there has been no choice ,he resolves them according to the legal rules which are considered suitable.
This mentioned regulation makes the international arbitrators to refer to a system of confliction of laws in order to determine the applicable legal rules if the parties do not choose a law. This kind of choosing is the <direct>method for choosing the law that the arbitration courts exactly use when they decide to apply transnational rules.

Integration of systems for resolving the conflict

In this method, the arbitrator will search for a system of resolving the conflict through all the systems of conflicts so that he can reach a single system which has certain rules . Meaning that all systems will refer him to a certain national law . Some scholars have supported this method especially Mr. Durian who implies that: <The arbitrator studies the rules of conflict between rules among different countries that are associated with the lawsuit that is presented to him .If these rules for conflict between laws which always are different in content are focused towards a national law ,then the government declares that the law is applicable . >

Applying general principles of the conflict between laws

One of the methods that the arbitrators use for determining the applicable law in the lawsuit is applying the general principles of the conflict of laws or private international law. According to this method, the arbitrator actually apply a rule that is generally accepted and all the studied rules and comparing them with arbitration would cause the least problem . In verdict number 2575 on the international chamber of commerce in 1977 ,the arbitrator came to the conclusion that as for the < concepts of private international law> the center is the local agreement relation that the commercial representative has conducted his activities and therefore the rules of that country must be applied .

In verdict number 4996 of the chamber of commerce it has been stated that :<In comparative private international law, the law of the location where the agreement is running is predominant to the rules of the place where the agreement has been signed .

Eve Dern has written an interpretation for this verdict that :< The arbitrators indeed assess different relation factors in order to decide about this issue that which one of them actually should be applied according to the general principles of private international law. >

Direct choosing of substantive law

Studying the votes of the arbitration shows that sometimes the arbitrators avoid the complications of private international laws and by using a kind of a cross-cut thy have directly chosen the substantive law which is applied in the lawsuit .

We confront two circumstances in the first part . In some lawsuits, the arbitrator compares the substantive laws of the countries associated with the lawsuit and somehow finds a competence and alignment. Indeed all these laws have guided him to a single result .as every rule for resolving the conflict guides him towards one of the similar rules, the mentioned cross-cut is obviously defendable. We could believe that this kind of action matches the public rules at least in one part or gives out a similar result . The second situation is that the arbitrator announces that
he apply the substantive law of a certain country without a comparative comparison. In this case the arbitrator actually chooses the law that he considers the most suitable for resolving the lawsuit.

Applying the common rules of national legislation of the parties

Mr. Mary Robinno Smart now has given out a theory called <TruncComm> in 1987. Then this theory was reflected in articles of the lawyers. This doctrine which has been critiqued before has been said to be similar to applying to the rules of resolving the conflicts and an artificial replacement for the purpose of the parties. The result of this method is applying national laws which both parties decided not to use them. Some other writers have talked about this before, too.

Applying commercial transnational law

Studying the state agreements shows that despite the theoretical desire for applying the rules in these agreements is in fact a combination of national laws of the mentioned country, other rules and principles are also accepted and applied. Using these principles and rules which do not have roots in national law is for internationalizing the agreement. One of the obvious examples of internationalizing the agreement is the signed agreement between Kuwait and the independent American oil company in 1973 which it has been stated in the agreement that <… according to the general legal principle which is generally known by civilized countries including the legal principles that are applied by international courts > the agreements between the parties have been considered, interpreted and applied. Another example is also Act 2 of the statement of resolving the dispute between Iran and America which has given the permission to the court to refer to the commercial principle rights, international law and commercial norms.

Acceptance of applying the lexmercatoria

Study of the conventions and some international arbitration documents and also the arbitration regulation of international organizations shows that these documents and regulations include terms that could be reasonably included in lexmercatoria.

According to the fact that all conventions including 1st clause of Act 42 of Washington convention and Act 7 of European convention and also the rules of the chamber of commerce and the Uncitral rules have not limited the parties in choosing the legal rules which are applied according to the nature of the lawsuit and there is no limitation whether these rule should be of national law or not so the parties are free to choose a transnational law. In Washington convention the possibility for applying the rules of international law is also accepted. The necessity to notice the commercial norms also forms a part of the conventions and rules of international organizations. Scientifically, various votes could be seen which are explicitly referred to the commercial transnational law.
The most important verdict is the verdict given out in the lawsuit of Pabalk versus Nersler. The mentioned verdict is about the case number 3131 of international chamber of commerce which was in 1979.

In this lawsuit, a brilliant jury which one of the members was the great theorists of the agreement laws, professor Gusten, was responsible for handling it. The mentioned jury considered the French company (Nersler) responsible as long as it violated the signed agreement by its commercial representative. In this case, the applied law was not chosen by the parties and the arbitrators also did not have the authority to end the lawsuit based on justice and equity and by relying on their perception of the agreement, the came to the conclusion that the French company is responsible.

They confirmed that the commercial transnational law assures a rule which states that if the agreement is ended unjustly in a way that lead to a harm to the innocent party, damages should be paid. The term <justice> is used twice in the verdict.

Transnational law are accepted by some domestic rules. The major manifestations of these rules, are the French, Netherland’s and Algerian rules of procedure. According to these rules not only the parties but also the arbitrators are free to choose the applicable legal rules for the lawsuit and are not limited to referring to a national legal system.

The mentioned legal rules are stated with no limitations and therefore can be referred to as the transnational legal rules. Moreover, what is significant in national laws is accepting the commercial transnational law by the judicial procedure of the countries. This issue is expressed in two ways. Sometimes the courts have applied these laws and sometimes they have applied arbitration verdicts which are given out based on transnational laws:

**Codified norms imposed by legal precedent**

Two important decisions can be named in this matter. The first decision is the decision of German supreme court in 18th of June, 1975 which implies that if the parties have agreed on delivering the merchandise by FOB method, the interpretation of Inco terms from such condition is applicable even if the parties have not directly referred to Inco terms.

**Accepting the validity of arbitral decisions based on transnational commercial law**

This part also discusses about some verdicts which are highly famous and valuable. The first verdict, is the verdict in the lawsuit of Nersler versus Pabalk. This verdict is highly important and the followers of commercial transnational law count on it. Goldman considers this lawsuit a source for a real fight in French and Austrian courts. A fight in which the commercial transnational laws was the winner.

**Conditions for identification and applying the international arbitral verdicts**

In contrast to the public regimen of applying arbitral decision which is the subject of the procedure code, in international commercial arbitral law approved in 76/6/26, a special executive
regimen is employed which is called the decisions in international commercial arbitrations. Act 35 of Iran Commercial Arbitration Law enforcement and Article (35) of the samples is dedicated to identifying and applying the law.

**Forming conditions for applying arbitration agreement**

**Written and oral possibility of the agreement on arbitration law in Iran**

Most arbitral rules state that it is necessary for the agreement to be written so that it would be valid. Therefore in 20th century we were observing a tendency which was mostly described as a kind of a revival of the principality of formalities.

In the international commercial arbitral law of Iran there is no statement about presenting the original or copy of the agreement in order to apply the arbitral decision in the contrary to the Act 34 of the law. In national law systems also, there is condition for the agreement to be in written form. In Italian and Greek law, there is a statement in which according to it if there is no valid written arbitral agreement, if there is no written form and the parties confront the arbitrators and participate in arbitral procedures with no conditions then the lack of the written agreement will be compensated. In national law of Denmark, Sweden, Japan, Netherlands and Scotland there no need for the arbitral agreement to be in written form. Of course in some other countries like Korea, Peru Castarica and Colombia not only a written form of agreement is needed but also the agreement must be set officially.

**The necessity for the agreement to be in written form in New York convention**

1st, 2nd and 3rd clauses of Act 2 of the convention of New York in 1958 states the conditions which should be met in court so that it would refer to the arbitration as the followings:

1- Each promised government will identify the written agreement which the parties are promised to refer all their conflicts to the arbitration. 2-Written agreement include the arbitral condition in in the contract or the signed arbitral agreement by the parties. 3-The court of a promised government will refer the lawsuit to the arbitration if one of the parties requires from them to do so.

**Applying the arbitration verdict in international documents**

Arbitration is a private mechanism for resolving the conflict and the result of it is also a private document and is not obligated to be applied by itself. Therefore it is needed to investigate in order to create capability for applying the law or making conditions to oblige applying the verdict of arbitration.

**Applying the decision**

It has been stated in Act 3 of New York convention which shows the national arbitral rules that < Every state will identify and apply the arbitral judgments according to the procedure code of the country where the judgment is documented there.
Conditions and barriers for identifying and applying the decisions

In order to identify and apply the arbitral decision there must be some conditions and besides these conditions there would be no barriers. In this saying first the conditions of identifying and applying are discussed as a positive factor and then we will discuss the factors which are considered barriers for identifying and applying.

Conditions for identification and applying

Act 4 of New York convention states the conditions for identifying and applying by the applicant as the followings:

1-In order to identify and apply the contents of the previous Act, the applicant of identification should provide the following documents:

A) The original or certified copy of the judgment B) Original agreement with the subject of the Act 2 or a certified copy of it

2-If the verdict or sentence has not been set in the official language of the country where the judgment has been documented there, then the applicant for identification and applying the judgment should translate those documents to that specific language and the translation should be confirmed by the official or sworn translator or diplomatic or consular representative.

The mentioned Act has facilitated the identification and applying the verdict significantly and has made major modifications by comparing them to Geneva convention. Because the applicant for identification and applying was responsible to give reason for the following issues for the court:

A) Arbitration verdict in the country where the verdict is given out is considered the final vote and this condition practically leads to the necessity to give out the order to apply the rule in the country.

B) Rules of Geneva convention includes arbitration verdict

C) Arbitration verdict is given out following the arbitration agreement.

D) Arbitration verdict is given out based on the agreement of both parties and the rule governing the arbitration.

Rules of 1st clause of Act 4 of Geneva convention was also in council plan of 1955, 1st clause of Act 5 and was with the suggestion of the representative of Netherland’s government and significant changes was made to this convention.
Barriers for identification and execution

The cases of not identifying and executing the vote which is declared by the convict are mentioned in Act 5 of the convention. The first clause of this Act states that: The proper authority which is asked to identify and execute the verdict can avoid to identify and execute the verdict according to the party who the verdict is against him only if that party provide the following reasons:

A) The parties of the arbitration agreement with the subject of Act two, as for the applied law is not domestic from some perspectives or the mentioned agreement is not valid according to the law which the parties have agreed on or s for the parties have not decided which law should be obeyed according to the laws of the countries in which the verdict have been sentenced under its territory.

B) The party who is considered convict according to the verdict, have not been informed properly about choosing the arbitrator or about the procedure of handling the arbitration or by any other reasons had not been able to present his claims.

C) Verdict to the dispute which has not been because of the conditions for referral to the arbitration or did not have the mentioned conditions is undergoing or includes a decision about a subject which does not have the condition for referring to the arbitration, provided that if the decision which is made about the subjects which are referred to the arbitration is not separable by the subjects which are not referred, then we could identify and execute that part of the verdict which include the decisions about the subjects that are referred to arbitration.

D) The combination of the arbitration court or arbitration procedures are not in accordance with the agreement which is signed by both parties or if there is no such agreement, it does not comply with the law of the country where the arbitration has been conducted.

E) The verdict of the arbitration has not been obliged to the parties or has not been cancelled or postponed by the authorities of the country where the law has been written.

The courts of the countries where the case is investigated there, can only avoid identification and executing the verdict by citing these issues. In fact, New York convention has not only emphasized on the identification and execution of arbitration verdict by the member countries as stated in Act 3, it has also included some exceptions mentioned in Act 5 to it.

International laws of special supremacy and international authorities over domestic law and domestic jurisdictions can be observed in identification and execution of the arbitration verdicts issued the center for resolving the conflict of the subject of Washington convention.

As, according to 1st clause of Act 54 of the verdict of the center for resolving the conflict is promising for the contracting state, and has the power for executing the final verdict of the state court.
Meaning that the verdict of the center is highly valid in judicial authorities and no objection is accepted against the execution of the verdict.

The 6th part of the convention (Acts 53-55) deals with the identification and execution of the arbitration verdict. According to the rules of this part of the convention, the verdicts which are given out by the arbitration court, cannot be discussed by domestic courts and can be investigated only by this center just in some special occasions.

1st clause of Act 53 confirms the issue that:<The verdict is promising for the parties and each party should follow the terms of the verdict and execute the sentence>. Two statements which are quoted from Act 53, in fact indicate two rules: one is keeping the promise and the other is the validity of the finalized issue.

1st clause of Act 53 states that <verdict, cannot be investigated or be objected to unless ones which were predicted within the convention>. According to this Act, each party is promised to follow the terms of the verdict unless execution of the verdict can be stopped or delayed according to the Acts of the convention.

Panama convention is silent about the area of its acts. But from Act 5 of this convention which is adopted from New York convention it can be concluded that the convention is held for the verdict given out in another country other that the country where the verdict is executed.

Conclusion

By considering the mentioned issues we can conclude that interference of the courts in arbitration not only has effect on the process of arbitration but it can have supportive aspect. Yet, interference of the court should have a special limit so that it would not have conflict with reference to the arbitration by the parties. The conflict of the jurisdiction only may occur when a general arbitration agreement or general acceptance of the compulsory jurisdiction of the International Court of Justice does not include the conflicts according to a special agreement, conflicts which the special agreement has predicted them. This kind of conflict can theoretically occur as the result of applying two different theories: A) A theory believes that execution of the law is delegated to the government before being known as the legislator and this feature can be so principal and inherent that if put aside, the principle of the state theory will be affected. B) A theory that believes that choosing your own judge is the natural right of human and therefore this kind of right should be protected against any kind of interference and violation by the legislator. This two beliefs have been replaced by the theory which is a combination of these two and so they have a peaceful coexistence. The conflict between jurisdictions actually happens when the jurisdiction of domestic courts or the jurisdiction of a domestic arbitration court have been predicted and the jurisdiction of an international arbitration court is known in the main agreement meaning the general agreement or interstate documents. This issue may be brought up in a court or international court whether at the time of raising the issue the hearing is held at another authority or it is supposed to be held in the future.
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