World Bulletin of Management and Law (WBML)
Available Online at: https://www.scholarexpress.net
Volume-32, March -2024
ISSN: 2749-3601

ANALYSIS OF THE RIGHTS USED IN INTERNATIONAL COMMERCIAL ARBITRATION

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Article history:

Received: 4th January 2024
Accepted: 2nd March 2024

Abstract:

Disputes arising between the parties are regulated through the legal system established in the contract. The priority of law chosen in the contract is of great importance in the interpretation of the contract, in determining the rights and obligations of the parties, and in ensuring the priority of execution. This means not only the conclusion of a bilateral or multilateral contract between the parties, but also the dispute arising from it when the terms of the contract are violated. the resolution of the issue plays an important role. The field of law used when a dispute arises may also include legal norms against each other. The autonomy of the parties means the freedom of the parties to choose the law applied to them in the contract. Through this article, the rights applied to the dispute arising from the contract concluded between the parties It describes in detail the types and parties' freedom of voluntary choice in dispute resolution. In addition, it is stated which legislation will be used to decide if the parties do not choose the right and which priority will be taken into account when faced with conflicting norms.

Keywords: Party Autonomy, National Law And International Law, International Conventions, Non-Choice Of Applicable Law, Conflict Of Law, Modern Arbitration Rules, Lex Mercatoria, Ex Aequo Et Bono And Amiable Compositeur.

INTRODUCTION.

In international arbitration, the field of applicable law plays an important role in legal issues. The decision or decision is based on the law used by the arbitrator. That is, the result of the decision, whether it works for the benefit or the loss for this or that party indicates the level of importance of the applied field of law. Conflicting interests of the parties are resolved through the chosen field of law.

In addition, the priority of the right chosen in the contract is of great importance in the interpretation of the contract, in determining the rights and obligations of the parties, and in ensuring the priority of execution. This means not only the conclusion of the contract between the parties, but also the dispute arising from it when the terms of the contract are violated, which right is chosen. the resolution of the issue plays an important role. ***The autonomy of the parties*** means the freedom of the parties to choose the law applied to them in the contract. Through this article, the types of rights applied to the dispute arising from the contract concluded between the parties and the discretion of the parties in resolving the dispute describes the freedom of choice in detail. In addition, it is explained which legislation will be used if the parties do not choose a law, and which priority will be taken into account when faced with conflicting norms. As a result, it becomes more and more difficult to achieve the intended goal.

METHODS

Above, we noted that we can also recognize the autonomy of the parties in the field of law applied to the contract between the parties. we can see.

The European Convention of 1961 provides the following: "The parties are free to determine by agreement the law to be applied by the arbitrators on the substance of the dispute. [1]." International conventions and model rules on international commercial arbitration indicate the freedom of the parties to choose the law applicable to their contracts. In addition, ***the Washington Convention stipulates*** the following: "Arbitration

[1] European Convention on International Commercial Arbitration. Geneva , 21 April 1961

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shall settle the dispute in accordance with such rules as may be agreed upon by the parties." 'emphasized [2]. In addition, as stated in the ***UNCITRAL Model Law on International Commercial Arbitration***, the parties are free to agree on the procedure to be used in the arbitration process in accordance with the provisions of this Law. In the absence of such an agreement, the arbitration may be conducted by the parties as they deem appropriate, in accordance with the provisions of this Law. The arbitrator may rule on any objections to its jurisdiction, including the existence and enforceability of the arbitration agreement. For this purpose, the arbitration clause, which is part of the contract, should be considered as an agreement of the parties independent of the other terms of the contract. Also, among the rules of arbitration institutions, the rules of the International Criminal Court (ICC) stipulate the following: "The parties may freely agree on the law to be applied by the arbitration to the essence of the dispute ... ". In our opinion, it is fair to give the parties the right to freely choose the field of law used in considering the dispute. As a result, the interests of the parties to the contract will increase and it will create an opportunity to resolve the issue more quickly.

DISCUSSION.

As part of the discussion, we saw that the autonomy of the parties, i.e., the freedom of the right to choose which legislation or which right to choose a dispute arising from a contract between the parties, is recognized in international law documents.

Now, we will analyze these chosen rights. Arbitrator When choosing the field of law used by the party to resolve the issue, it is necessary to find a clearly defined clause in the contract. it is wrong to conclude that it gives unlimited possibilities. The choice of law in the system must be "honest and lawful" and the choice of law has no effect.

This principle is enunciated by Dicey & Morris in their Commentary on Rule 145 Rule I. It is stated that no court is affected by the choice of law (whether English or English). If the parties intend to use the contract in order to avoid the mandatory rules of this legal system in the absence of a clear indication that the contract is the most serious, the implied right shall be applied. [3].

National arbitration legislation provides the legal basis for conducting private arbitration proceedings. It primarily regulates the relationship between arbitration and national courts and defines the circumstances under which arbitration agreements and arbitral awards are valid and binding. This set of private arbitration rules focuses on the internal conduct of the arbitration. They operate within the framework of national legislation and form the basis of an increasingly harmonized international arbitration practice.

These rules are chosen by the parties and can be changed according to their personal needs and preferences. National arbitration laws, on the other hand, mainly deal with external procedural matters, ie the relationship between courts and arbitration. This difference is not always reflected in the terminology. The law applicable to arbitration is often referred to as procedural law, arbitration law, or curial law. National arbitration law serves several functions.

First, states that regulate the main issues of private arbitration recognize private arbitration by arbitral tribunals as an alternative means of dispute resolution to national court proceedings. Second, the mandatory rules of national arbitration law place a framework of binding rules around the field of arbitration as a private governing, autonomous system of dispute resolution.[4].

So, through these features, we can learn the importance of the national legal system from the side of the parties. However, there are always situations that are not regulated or not referred to by the national legal system. The parties can resolve unregulated relations by choosing international law. If one party cannot find a way to recognize its national law to another party, the parties turn to an alternative source of substantive law. For example, if the contract is about the sale of goods, parties to the UN Convention on the International Sale of Goods as a material right can choose. But this Convention did not regulate all issues in the contract. Thus, even if the parties choose the Convention, they must choose the national law governing the parts that it does not regulate, such as the validity of the contract or the effects of the contract on the goods sold. Since these issues are referred to national law, the parties must choose the national law that covers not only these issues but also other aspects not regulated by another Convention.

If the parties choose ***lex mercatoria***, i.e., a set of non-national rules for resolving the dispute, we will analyze what its legal basis is based on. Instead of a set of national rules, the parties chose a non-national

[2] CONVENTION relating to the settlement of investment disputes between States and foreign persons Washington, March 18, 1965

[3] DICEY & MORRIS, THE CONFLICT OF LAWS, 755-56 (1980 10th ed.)

[4] Gary Born, International Commercial Arbitration (3rd edn, 2009).

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standard. can be It is defined in various ways. For example, international law, international custom or usage, transnational law, international law.

Some contracts contain references to the concept of lex mercatoria or other expressions. For example, we can see "general principles of law" or "***usages of international trade***". However, such a choice of law is rare in practice, because contracting parties usually do not want to leave a large discretionary power. In allocating contractual rights, obligations and residuals to decision makers, their operations may be governed by a large degree of legal uncertainty, especially transaction costs. seeking legal advice on a set of standard rules as long as they are not excessive to the point of interfering with the parties: for example, the same national law can significantly reduce transaction costs when selecting articles of law for repeated use.In ICC Case No. 12111, the dispute arose out of a sales contract between a Romanian seller and an English buyer, which included a choice of law clause "the present contract shall be governed by international law".

During the trial, the parties disagreed on the nature of the dispute. the content of the applicable law. The parties to the sole arbitrator assured that they wanted to withdraw from the national legal system and that they did not want to apply the private international law of an undefined national legal system. The arbitrator believed that the international rules applicable should be understood as international treaties held..

The arbitrator referred to the lex mercatoria and general principles of law and applied to international treaty obligations as reflected in ***UNIDROIT principles*** and concluded that the dispute should be governed by UNIDROIT5. Statistics show that 59 percent of respondents used UNIDRUA principles when concluding a contract, and 13.1 percent applied to these principles in issues related to the issuance of an arbitration award.

If the parties cannot agree on which national law to choose and do not want to choose the general principles of law, they can choose the law of a neutral country that is not related to any of the parties. In many jurisdictions, a third country is not involved at all due to the strong concept of party autonomy is allowed to choose the law 6. Also, the parties to the contract desires freely can choose or choose a preferred governing law. In fact, based on party autonomy, contracting parties may choose multiple applicable laws. The freedom to choose multiple governing laws allows for contract formation, and we analyze the parties' selective adoption and application of the depechage theory to their contracts. This is called dépeçage, from the French verb dépeçer, which means to cut into pieces. In arbitration practice, this is usually translated as division[7]. Sometimes the parties choose the law of one country but the law to be applied is another country, the same situation arises.

In other cases, the chosen law does not regulate all relationships, for example, the 1980 Convention on Contracts for the International Sale of Goods (CISG) did not regulate such aspects as the validity of the contract, fraud outside the law of trade or unfair dealing. In other cases, the parties may choose more than one law or the arbitrator may apply a different law. The doctrine of renvoi is a legal doctrine that applies when a court is faced with a conflict of law and must consider the law of another state, a so-called rule of private international law. It can be used to deal with foreign issues that arise in succession planning and estate administration. Countries such as Spain, Italy and Luxembourg use the Single Renvoi system. This system refers to another jurisdiction's choice of law rules. If the matter arises in a jurisdiction such as Spain, Italy or Luxembourg (A), those jurisdictions will consider whether their domestic law is the applicable law or whether the applicable law is that of another jurisdiction (B). If the provisions of B may refer the matter back to A, (the court of the original forum), the court will accept the first remission and apply its domestic law. Jurisdiction chosen by the parties arises when applying another law specified in the conflict of law norms. Many jurisdictions deny international apportionment when the parties choose a particular law[8].

Another option for the parties is that they may instruct the court on ***issues ex aequo et bono, or asamiable compositeur***. Arbitrators are obliged to make decisions mainly in accordance with the applicable substantive law. However, most lex arbitri allow decisions based on principles of equity (ex aequo et bono) or allow arbitrators to assess the dispute and act as a courtesy compositor in the proceedings. The

[5] ICC Award in Case No 12111, 2003, ICC International Court of Arbitration Bulletin, 21-1 (2010), at 78

[6] Mo Zhang, Party Autonomy and Beyond: International Choice of Law in Contracts
welcome, 20 Emory Intl L. Rev. 511 (2006)

[7] Willis L.M. Reese, "Dépeçage: A Common Phenomenon in Choice of Law" (1973) 73 Columbia Law Review 58 at 58.

[8] Margaret L. Moses
Chicago Law School Loyola University Rustambekov Islambek Rustambekovich translation UDC 341.6 (075)(575.1) 106.

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definition of the content of the concept of ex aequo et bono is complicated by the fact that at least part of the theory in the international environment makes a strict distinction between ex aequo et bono and equity decision-making. The first case (just making a similar decision ex aequo et bono) goes beyond the scope of the applicable law. The equity approach to decision-making is based on praeter legem, that is, decision-making in accordance with the law and within the framework of the legal system. This distinction is usually based on the fact that justice in the sense of justice is part of the applicable law and the principles of justice related to the concept of decision-making ex aequo et bono are based on moral rules and social and political reality.[9].

The parties have a wide choice in choosing the law governing the contract and the arbitral tribunal. It is desirable that they make the choice clearly and simply. Making the choice of law and place of arbitration unduly difficult will make the arbitration process time-consuming and expensive.

The next section examines the uncertainties in the parties' choice of the law applicable to the contract and the place of arbitration, and the issues of the implementation of this choice by the arbitrator and the court. Failure to choose the right to be used by the parties in the event of a dispute leads to the application of the conflict of law. That is, it is important for the arbitrator to choose the right that is most suitable for the parties and make a fair decision. When there is no choice of law provision in the contract or agreement, the arbitrator may apply the "closest connection" or "most significant" and relationship rule, sometimes known as the unifying factors test, conflict of laws.

This leads to an objective localization of investment agreement in the law of the host country, because most of the unifying factors in the context of such an agreement indicate this law. This is also the case with most investment contracts. A rule is a general principle of law, because it is common to most legal systems, and therefore a part [10]. But most of the modern institutional rules does not mention conflict of laws law and gives arbitrators broad discretionary powers, according to which, if the parties do not choose the law to be applied, the arbitrator "shall apply the law or rule of the law it deems most appropriate.

RESULTS.

We analyze in detail the importance of the choice of law between the parties in a dispute arising from a contract. First, the choice of substantive law by international arbitrators, if the parties do not have an agreement on the law governing their dispute, including international commercial and examines the basic choice-of-law rules applicable in investment arbitration.

Second, the chapter addresses the issue of choice of substantive law, with the parties agreeing to a choice-of-law clause, including conflict-of-laws principles applicable to the validity and enforceability of such agreements. Third, the chapter examines the interpretation of choice-of-law agreements. Parties often choose international arbitration to resolve their disputes because they want certainty and predictability regarding their legal rights. Among other things, private parties want a stable, predictable substantive legal regime and a uniform, neutral procedural framework.

These objectives are particularly important in international trade matters, where the need for predictability and stability is particularly acute[11]. Ambiguity is almost inevitable with any contract involving two or more countries, each with its own basic laws and conflict of laws rules. A contractual provision that predetermines the forum in which disputes will be heard and the law to be applied is therefore an almost indispensable condition for achieving the order and predictability essential to any international business transaction. Above, we analyzed in detail the rights used to resolve the dispute arising from the contract between the parties.

CONCLUSION.

In conclusion, the parties can choose optimal and universal at least 5 types of rights used by the parties and can solve the situation;

-The law governing the parties capasity to enter into an arbitration agreement

-The law governing the arbitration agreement and the perfrmance of that agreement

-The law governing the exictence and proceedings of the AT - the lex arbitiri

-The law governing the substantive issues in dispute-generally described as the ,,applicable law" , ,,governing law" , ,,the proper law of the contarct" or ,, the substantive law" and

-The law governing the recognation inforcement of the award. Basically, the appearance of choosing at least 5 acceptable rights mentioned above plays an important role in the faster and more accurate resolution of the dispute between the parties arising from the contract and the dispute arising out of the contract. Later, after

[9] Application of Law in Arbitration, Ex Aequo et Bono and Amiable Compositeur Article page 34

[11] arbitration

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the end of the arbitration process, the decision It is of great importance in ensuring the execution of the decision in a third country. In conclusion, the faster decision of which legislation to apply by the parties will save both time and money in resolving the dispute for the subjects of the contract.

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