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THE CONCEPT OF "PUBLIC ORDER" IN INTERNATIONAL COMMERCIAL ARBITRATION: THE EXPERIENCE OF DEVELOPED COUNTRIES

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Article history:		**Abstract:**
Received:	24th January 2024	In this article, the Author has provided information and opinions about the concept of "public order" in International Commercial Arbitration and commented on his knowledge. Also, the experience of countries where the concept of "public order" has been developed in international commercial arbitration has been considered.
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Keywords: International Commercial Arbitration, "public order", private international law, a set of legal norms, a separate field of law, a branch of jurisprudence, domestic law areas of the state

The purpose: The concept of "public order" in international commercial arbitration: providing readers with new ideas and insights from the experience of developed countries.

Usually private international law in legal literature its own nature is two fold: a separate field of law, a set of legal norms expressed in views.

At first view, international private law, first of all from public international law, and secondly from civil law differs from that it is a field of law in terms of content and nature. [1]

In the second view, it is a branch of jurispriudence, that is, in terms of different a set consisting of norms of the legal field, scientific research field and others. In some other developed countries, the structure of the field of international private law the part consists only of collision norms possibilities, legal statuses of other foreign citizens, international norms regulating civil procedure (as an example, foreign court which applies to disputes regarding relations complicated by that elements, procedural of foreigners recognize rights and obligations, decisions of foreign courts and arbitrations international private law not to other areas of law (domestic law areas of the state) is considered relevant[4]. In these countries below, for example, in Germany, France, Hungary, Bulgaria, private international law is usually refered to as international conflict law. International private law as a field of legal science, conflict and along with the general rules of application of substantive law also studies issues related to international civil procedure. [5] Abroad Complicated international property relations occur with the element not only the right that should be applied, but this is for competent body determining the right, as well as a specific case. Problems about the procedural form and order of (disputes) considerations occur. [8]

With foreign elements and international significance, as well as the procedural right aimed at hearing a disputed case norms are a component of international civil procedural law it can be said that it constitutes Therefore, foreign citizens and of stateless persons, foreign organizations, foreign of the state, international organizations, foreign state, international
representative offices of organizations and their officcials procedural arising in the field of civil affairs questions about procedures and rules, international civil affairs issues of jurisdiction, foreign justice institutions
appeals, matters of execution of court orders, civil cases recognition and execution of decisions of foreign courts and other issues in the field of international civil procedural law applies. International commercial arbitration matters also belong to this field is related. [2]

Materials and research methods: The first step in any comparative exercises is to determine the appropriate research samples. When it comes to comparing any different prong of international law, this first step becomes more challenging one. Which segment should be taken into consideration and which one may be excluded and for what reasons? How valid is a comparison between two fields that are constitutionally set up to serve different

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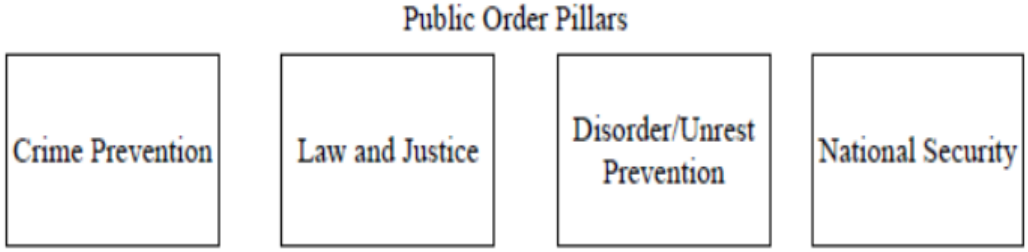
objectives? And most importantly, what is the best way to ensure that the comparison yield truly universal conclusions? [14]

Faced with these questions up, this article looks through dispute resolution systems under the World Trade Organization (WTO), the International Centre for Settlement of Investment Disputes (ICSID), the Inter-American Court of Human Rights (IACtHR), the European Court of Human Rights (ECtHR), and national courts enforcing foreign arbitral awards pursuant to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). These systems hear disputes relating to different subject matters (ranging from commercial and investment law to human rights); concern parties of a different nature (from disputes between sovereigns and individuals to disputes solely between sovereigns or private parties); and rely on dispute resolution bodies of different identities (including regional courts, international arbitral tribunals, and national courts). [9]

This diversity was intentional one, in order to ensure that any conclusions below from the comparison were indeed representative and global, thus solidify any findings of common themes among those systems. While there are inherent limitations for any example, and it was not possible to be truly comprehensive in this state, the wide range of dispute resolution systems considered here nevertheless provides a novel view of the global application of the 'public order' exception that was not previously available. The comparative analysis undertaken in the book indicates that, not withstanding the admittedly different elements, which condition the application of the public order exception within the select systems, there is nevertheless a striking similarity or commonality in the content attributed to public order. These concerns the definitions offered by the competent dispute resolution bodies and or the way in which the exception has actually been de facto applied. The term public order, therefore, appears to be predicated at least upon four key pillars, namely:

crime preventions, respects of law and justice, avoidance of disorder, unrest and social disruption, preservation of national security. [18]



1.*There are additional manifestations of public order jointly recognized by different combinations of dispute resolution systems*. [13]

Certain one of the select dispute resolution systems concur on potentially additional expressions of public order. These include fairness, economic, morality and social interests, as well as democratic and constitutional principles. The slight fluctuations in the actual manifestations of the term is arguably more a question of perspective than of actual substance. This is so to the extent that each different system has approached the public order exception from a different angle, depending on the nature of the disputes it is competent for; the factual circumstances it has been presented with; the overall aims and objectives it seeks to pursue; as well as its relationship and positioning vis-à-vis international law. [10]

Research results and discussions. The above mentioned issues are related to the norms of procedural law regardless of their relevance, they are ultimately international are regulated by the norms of private law, so they is studied by the science of private international law. Part of international private law norms, the emergence, features of recognition and use are of international importance have, because they

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are organized by concluding international agreements, adopting conventions, declarations. The second part internal laws of the state (eg Civil Code, Family Code, Civil Procedure Code, Land Code, Air Code and others) is based on. [11] These norms ultimately determine the state of international relations international political, international economic situation, in various fields determined by the level of development of international cooperation. International private law norms are established in each country taking into account a wide range of important internal and external interests, such as the establishment of such a norm at the international level is taken. But taking into account the material life conditions of the society take and reflect it in international private law norms domestically compared to state legal norms, it becomes more complicated. Because the domestic law norms of this country are specific social conditions, political and economic interests are reflected. International private law norms refer to international relations recognized custom and custom, established rules, his position, International legal status of foreign citizens and legal entities status, that is, different countries and their personal identity interests will be reflected. Therefore, private international law as a separate field of law takes its proper place in the legal system. [18] Its content internal legal norms of the state and collision (conflict) consists of norms regulated by norms. In addition to international legal customs, there are trade customs, of them international trade by countries and especially the sea. It is widely used in trade. International trade existing trade in the settlement of disputes that occurred in arbitration courts habits are taken into account.[19] Customary arbitration court in international trade practice by is used in the following cases: if such use indicated in the contract, and the dispute arose in connection with this contract if it came; if in relation to the relevant disputed legal relationship the application of custom is directly provided for in the legal norm; If the parties to the dispute comply with the rules of custom based on international agreements concluded by as well as if the observance of customary rules is a legal norm or Disputes not specified in the contract habit according to the conditions of its emergence and its characteristics. It is expedient for the disputing parties to comply with the rules and because it is not denied in international relations. [20] Applicability to international litigation, provision of legal assistance, abroad on recognition and enforcement of court and arbitration decisions problems reflect the characteristics of a complicated relationship with a foreign element. [22] This course covers the following issues of the international citizenship process:

a) foreign citizens, stateless persons, foreign organizations, foreign countries, international organizations, and officials conducting civil court proceedings concerning individuals, representatives of foreign countries
procedural situation regarding;

b) applicability to international civil litigation;

c) the procedure for determining the content of foreign law;

d) execution of assignments of foreign courts and other justice agencies
to be done;

e) international commercial arbitration (including foreign arbitration
issues of recognition and enforcement of decisions). [24]

The linkage between international commercial arbitration and public order emerges when the enforcement of an arbitral award comes on the agenda of the national courts. Because on the basis of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Court of First Instance may decide not to enforce the arbitral award for the sake of public interests. [26] However, there is not a universal understanding of public interests where all the international arbitral awards are subject to it. Hence international arbitrators should also consider the public order and interests while making the arbitral decision concerning the enforcement of the award. Before elaborating on the details of the public order issue, the difference between compulsory international arbitration awards and other foreign arbitral awards on the basis of enforcement should be clarified. As it was mentioned in the part where ICSID arbitration was discussed, if there is a bilateral investment agreement between two states or a contract which refers to ICSID arbitration between a host country and foreign investor, the ICSID (International Centre for Settlement of Investment Disputes) is the institution

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empowered for arbitration. Enforcement of the arbitral award is compulsory and irrevocable in the host country even if the award is against the public order and interest87. There cannot be a revision of the ICSID award, when declared, by the Secretary of the ICSID, and the host country has to enforce the award like its national court award. [25]

International Commercial Arbitration is the preferred method of dispute resolution between parties from different legal jurisdictions precisely because of its flexibility in the choice of law. Yet, that same flexibility poses risks to award enforcement; different jurisdictions perceive ordre public and international public order differently. Empowering arbitral tribunals to decide on questions related to international public ordre by privileging the concept of pacta sunt servanda would go far in reducing these risks. [27]

"The concept of public order is one of the most complex in modern legal systems. All the doctrinal studies which have tried to define it have been unsatisfactory. Nevertheless, this difficulty has not prevented legislators from continuing to give courts the right to sanction its violation. In the field of arbitration, a national judge is empowered to reject enforcement because an award is contrary to public order. Many questions are, in respect inevitable: What is public order? Which public order to we mean? Is it the domestic public order? Is it the international public order as conceived by the local system? Is it the transnational one? A number of authors take the position that it is the transnational public order." [26]

This comparative exercise initially sought to shed light on the content attributed to the term public order by different international and national courts and tribunals resolving international disputes. It soon became evident, however, that the term's meaning was not the only obscure element concerning the application of the public order exception. The legal requirements for the exception's application were equally unclear or even controversial depending on the relevant dispute resolution system under review. [17]

This confirms that 'public order' is a neighboring term to such other objectives, the level of proximity depending upon the content and meaning of each such goal. Moreover, an argument can be made that the overlaps between public order and other objectives indicate that public order is an elastic term, the outer limits of which are not precisely defined but may be flexibly extended to also capture factual situations that could potentially equally fall within the ambit of other public interest objectives. [19]

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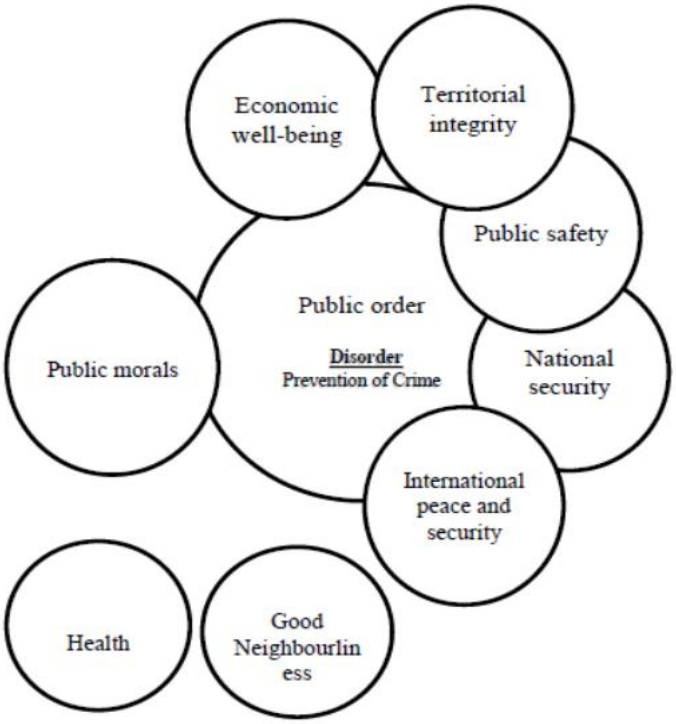

2. ***Defining the term 'public order' is not an end in itself, but a tool for assessing the application of exceptions [14]***

As a final conclusion, this article revisits the original question and suggests that adjudicating bodies may trust or draw from the content of transnational public policy as a relevant benchmark in applying the public order exception. In times of constant and even as unpredictable crisis, where exceptional provisions are increasingly invoked to justify restrictive decisions, international and domestic adjudicators alike join the frontline in the state of law, safeguarding legality and democracy itself. This is why, when faced with abstract legal terms at the international level, it is very important to take a step back and seek to draw inspiration from the common elements that bring us together as a global society nature. Hopefully, this article provides a concrete example of how this can be done in practice.

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