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APPLICATION OF THE 1958 NEW YORK CONVENTION IN THE REPUBLIC OF UZBEKISTAN: PUBLIC POLICY, ARBITRABILITY, AND THE LIMITS OF SUBSTANSIVE REVIEW IN THE ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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Abstract:

This article is devoted to the analysis of the application of the provisions of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in the Republic of Uzbekistan. The paper examines the methods and structures for implementing the provisions of the 1958 New York Convention in the enforcement of arbitral awards, emphasizing three key categories: public policy, arbitrability, and the limits of substantive review. The article analyzes the legal framework governing the enforcement of foreign arbitral awards and highlights the relationship between international and national legal norms.

Keywords: International arbitration, 1958 New York Convention, public policy, arbitrability, limits of substantive review, enforcement of foreign arbitral awards

INTRODUCTION

International arbitration plays a key role and is the primary mechanism for resolving commercial disputes between parties from different countries. Arbitration is a dispute resolution procedure assisted by an independent, neutral person, an arbitrator, who renders a binding decision for the parties, granting them significant autonomy and control over the dispute resolution process. The key characteristics of arbitration are:

– neutrality of the arbitrator, ability to conduct arbitration proceedings in accordance with the requirements of the parties;
– close connection with the courts and legislation;
– high level of confidentiality;
– flexibility of procedures;
– the possibility of choosing an arbitrator with a higher level of qualification in the subject of the dispute compared to the judge;
– finality of the arbitral award;
– potential reduction of timeframes and costs with proper procedural organization.

Arbitration offers a more neutral forum where each party is confident of a fair resolution of the dispute, as the parties do not want to submit to the jurisdiction of the other party's judicial system and each party fears the other party's "home court advantage"[1].

For Uzbekistan, international arbitration is one of the methods for resolving disputes arising from all commercial relationships, both contractual and non-contractual. Uzbekistan is a party to international conventions governing arbitration and has national legislation governing arbitration proceedings.

The primary step for any state to integrate into the international arbitration system is compliance with key international agreements and membership in international institutions. Accession to the 1958 New York Convention was a significant step for Uzbekistan toward developing a modern arbitration infrastructure that ensures the recognition and enforcement of foreign arbitral awards and the integration of its national legal system with international standards. According to the Resolution of the Oliy Majlis of the Republic of Uzbekistan dated December 22, 1995, Uzbekistan acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated June 10, 1958, and the Convention entered into force for the Republic of Uzbekistan on February 7, 1996[2]. Consequently, Uzbekistan has taken further steps to develop the arbitration court system and adopt regulations on the recognition and enforcement of foreign arbitral awards based on this Convention. One of the key stages of integration into the international system of enforcement of arbitral awards was the inclusion of a separate chapter on the recognition and

[1] Margaret L. Moses "The principles and practice of International Commercial Arbitration" Second Edition, Cambridge University Press, p.1

[2] Resolution of the Oliy Majlis of the Republic of Uzbekistan, dated 22.12.1995 No. 184-I

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enforcement of foreign court and arbitral awards in the Civil Procedure Code (Chapter 42) and the Economic Procedure Code of the Republic of Uzbekistan (Chapter 33). The next important step was the development and adoption of the Law "On International Commercial Arbitration" dated 16 February 2021. This regulatory legal act is based on the UNCITRAL Model Law on International Commercial Arbitration (1985), as amended in 2006 ("Model Law")[3]. The ICA Law contributes to increased investor confidence and an improved business climate, reducing the cost of doing business, and improving Uzbekistan's international standing in various indices and rankings[4]. In addition, the Law of the Republic of Uzbekistan "On the Execution of Judicial Acts and Acts of Other Bodies" provides a special article regulating the procedure for the execution of decisions of foreign courts and arbitration tribunals[5]. On November 5, 2018, the Resolution of the President of the Republic of Uzbekistan "On the establishment of the Tashkent International Arbitration Center (TIAC) under the Chamber of Commerce and Industry of the Republic of Uzbekistan" was adopted[6]. The TIAC was created to fairly and effectively resolve disputes arising between commercial organizations from different countries, including those involving foreign investors. The establishment of the TIAC helps Uzbekistan position itself as a reliable forum for resolving international commercial disputes.

Public order as a basis for refusal of enforcement

Each country's national legislation defines the scope of disputes subject to arbitration. Furthermore, most countries typically apply the principle of public policy to determine the validity of an arbitration agreement. In other words, if a dispute concerns the public policy of the relevant country, it is excluded from arbitration jurisdiction.[7].

Public policy *(from French – «ordre public»)* –the doctrine of public order, embracing the fundamental principles of law and justice[8]. Article 5 of the New York Convention sets forth grounds for refusing recognition and enforcement of an arbitral award, including, in paragraph (b) of the second part of this Article, the grounds for refusing recognition and enforcement of an arbitral award that conflict with the public policy of a particular country. However, the Convention does not provide a specific interpretation of public policy, which creates another broad loophole for refusing enforcement. Generally, most courts have interpreted this defense narrowly, consistent with the Convention's objective of ensuring enforcement.[9].

One of the key precedents that has had a significant impact on international judicial practice regarding the application of the New York Convention is the case *Parsons & Whittemore Overseas Co., Inc. v. Société Générale de l'Industrie du Papier (RAKTA)*, decided by the United States Court of Appeals for the Second Circuit in 1974 (508 F.2d 969). This decision has become a benchmark for the interpretation of Article V of the Convention, in particular the public policy exception. The American company Parsons, citing the deterioration of political relations with Egypt during the Six-Day War, refused to perform a contract under which it had committed to build a paper mill for the Egyptian company RAKTA. After the International Chamber of Commerce (ICC) ruled in favor of the Egyptian party, Parsons objected to its enforcement in the United States, arguing that it was contrary to public policy. The Court rejected these arguments and found that the concept of "public policy" within the meaning of Article V(2)(b) of the Convention is subject to a strictly restrictive interpretation. Enforcement may be refused only when enforcement of the award would violate "fundamental principles of morality and justice".

[3] 'Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006' (United Nations Commission on International Trade Law, 2021) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status

[4] Thomas R Snider, Sherzodbek Masadikov and Sergejs Dilevka, 'Uzbekistan Adopts Law on International Commercial Arbitration' Kluwer Arbitration Blog, 24 March 2021. https://arbitrationblog.kluwerarbitration.com/2021/03/24/uzbekistan-adopts-law-on-international-commercial-arbitration/

[5] Law of the Republic of Uzbekistan "On the Execution of Judicial Acts and Acts of Other Bodies" dated August 29, 2001, Article 6 https://lex.uz/docs/13896

[6] Resolution of the President of the Republic of Uzbekistan "On the establishment of the Tashkent International Arbitration Center (TIAC) under the Chamber of Commerce and Industry of the Republic of Uzbekistan" https://lex.uz/docs/4039518

[7] V.V. Komarov, V.N. Pogoretsky "International Commercial Arbitration" - Kharkov "Law", 2019, p. 50

[8] Islambek Rustambekov, "International Arbitration - Dictionary of Terms." Tashkent, 2019, p. 61

[9] Margaret L. Moses "The principles and practice of International Commercial Arbitration" Third Edition, Cambridge University Press, P.243

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Political and economic considerations cannot serve as an obstacle to enforcement of an arbitral award. The Court also emphasized that national courts have no power to review the merits of the dispute[10]. This case became a key benchmark for international practice and influenced the development of a pro-enforcement approach to the application of the New York Convention. A similar trend is observed in the judicial practice of the Republic of Uzbekistan, where the concept of public policy is also interpreted narrowly and applied only in exceptional cases.

The current legislation of the Republic of Uzbekistan also does not provide a clear definition of "public order" and the criteria by which a decision is considered contrary to it[11].

The category of public policy is a rather vague concept. In each specific case, the judge determines whether the legal relationship in question can be classified as contrary to public policy. Clearly, a decision rendered in violation of the principles of equality of arms between the parties, the parties' freedom to choose the composition of the court, the applicable law, the procedure and language of the proceedings, and the independence of the international arbitration court and arbitrators is subject to annulment as contrary to public policy[12].

The legislation of the Republic of Uzbekistan also contains a clause on public order and the refusal to recognize and enforce arbitral awards. According to Article 1164 of the Civil Code of the Republic of Uzbekistan, foreign law does not apply in cases where its application would be contrary to the fundamental principles of legal order (public order) of the Republic of Uzbekistan[13]. In these cases, the law of the Republic of Uzbekistan applies. However, the refusal to apply foreign law cannot be based solely on the difference between the legal, political, or economic system of the relevant foreign state and the legal, political, or economic system of the Republic of Uzbekistan. This clause is also regulated by Article 1193 of the Civil Code of the Russian Federation, as well as being minimally specified in many foreign countries[14]. Accordingly, the legislation of the Republic of Uzbekistan contains a clause on public order, but does not provide a specific definition of public order and its elements. This clause is also enshrined in the Economic Procedural Code of the Republic of Uzbekistan, namely in Articles 232[8] and 256 it is stated that an arbitration award is subject to annulment in recognition and enforcement if the economic court determines that the arbitration award is contrary to the public order of the Republic of Uzbekistan. In particular, the Resolution of the Plenum of the Supreme Economic Court of the Republic of Uzbekistan "On certain issues of application by economic courts of the norms of civil legislation on invalidity of transactions" No. 269 of November 28, 2014 (paragraph 12), interpreting the invalidity of a transaction on the grounds specified in Article 116 of the Civil Code of the Republic of Uzbekistan, provides clarification that «When recognizing a transaction concluded for the purpose of knowingly contradicting the principles of legal order and morality as invalid due to its nullity, the courts should establish whether the transaction violates the requirements of legal norms that ensure the principles of legal order, that is, those aimed at to protect and defend the foundations of the constitutional order, the rights and freedoms of man and citizen, the defense capability, security and economic system of the state (illegal arms export, tax evasion etc.), or whether it contradicts the foundations of public morality, that is, it grossly violates the established social notions of good and evil, right and wrong, vice and virtue, etc."[15]. In addition, the Civil Procedure Code of the Republic of Uzbekistan emphasizes that the execution of a decision of a foreign arbitration court may be refused if it would harm the sovereignty, security, or contradict the fundamental principles of the legislation of the Republic of Uzbekistan (clause 10, part 1, article 370)[16].

Based on international and national practice in Uzbekistan, the defense of public order should only be applied if the arbitral award substantially violates the

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10 https://newyorkconvention1958.org/index.php?lvl=notice_display&id=714

11 Islambek Rustambekov "Recognition and enforcement of decisions of foreign courts and international arbitrations in the Republic of Uzbekistan: Current status and problems", Analytical report, Tashkent – 2019, p. 30

12 I. Rustambekov, "International Commercial Arbitration" – Textbook. Tashkent, 2019, p. 160

13 Civil Code of the Republic of Uzbekistan, Article 1164https://lex.uz/docs/180550

14 A.R. Kompaniets, "The Public Order Clause in Private International Law," Electronic Bulletin of the Rostov Socio-Economic Institute. Issue No. 4 (October - December). 2014. P. 249

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16 Civil Procedure Code of the Republic of Uzbekistan, Article 370https://lex.uz/docs/3517334#3522712

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most basic and fundamental principles of law, justice and fairness in the State where it is enforced, or reveals errors affecting the fundamental principles of social and economic life.

Arbitrability in Uzbek law

Arbitrable, arbitrability = arbitrabilite *(French)* – the possibility of the subject of a dispute being subject to arbitration. The question of arbitrability in international arbitration proceedings is subordinated, first of all, *lex arbitri,* at the stage of recognition and enforcement of an arbitral award, this issue is governed by the national law of the court[17]. In the international context, arbitrability means the possibility of resolving a dispute in international commercial arbitration, and in the national context, the possibility of resolving a specific dispute within the framework of a national arbitration court, based on the current legislation and a valid arbitration agreement of a particular state.

Arbitrability is necessary to determine whether a particular dispute falls within the jurisdiction of an arbitrator. The concept of arbitrability is enshrined in Article 2 and paragraph 2 of Article 5 of the New York Convention. Paragraph 2 of Article 5 of the New York Convention states that recognition and enforcement of an arbitral award may be refused if the subject matter of the dispute is not capable of settlement by arbitration under the laws of this Article or recognition and enforcement of the award would be contrary to the public policy of that country[18].

The New York Convention grants each state the right to independently determine which disputes are considered arbitrable in accordance with its national law. In the Republic of Uzbekistan, arbitrability is regulated by the Law "On International Commercial Arbitration" of February 16, 2021, and the Law "On Arbitration Courts" of October 16, 2006. In accordance with Article 4, international commercial arbitration may consider disputes arising from all commercial relationships, both contractual and non-contractual[19]. The Law of the Republic of Uzbekistan "On Arbitration Courts" regulates domestic arbitration and establishes that arbitration courts may consider disputes arising from civil legal relations, including economic disputes between business entities. However, the second part of Article 9 states that arbitration courts are not authorized to consider disputes related to administrative, family, and labor law, or other types of disputes stipulated by law[20]. Such disputes, related to family law, labor law, bankruptcy, administrative matters, and criminal cases, are not arbitrable, as they fall within the exclusive jurisdiction of the state courts of Uzbekistan and are primarily public legal relations. If an arbitration award concerns a matter that is not arbitrable under the laws of the Republic of Uzbekistan, the national court has the right to refuse recognition and enforcement of the award of a foreign arbitration court, even if it was lawfully rendered abroad.

Thus, arbitrability is a key tool in the enforcement of foreign court decisions, balancing the principle of party autonomy with the protection of the state's public interests. The New York Convention grants states significant discretion in defining the limits of arbitrability, enshrining the possibility of refusing recognition and enforcement of an arbitral award due to the non-arbitrability of the dispute. This, in turn, demonstrates how arbitrability is particularly important in the interaction of national legislation with international standards.

Limits of substantive review in the enforcement of arbitral awards

When enforcing foreign arbitral awards, one of the fundamental international principles is the prohibition of reviewing the arbitral tribunal's decision on the merits of the dispute. This means that courts are not entitled to re-evaluate evidence, reconsider facts, or interpret the contract differently. They merely review the legality of the procedure based on the evidence presented and enforce it within the established procedures. According to Article 51 of the Law of the Republic of Uzbekistan "On International Commercial Arbitration" an arbitral award, regardless of the country in which it was rendered, is recognized as binding and, upon filing a written application with the court, is enforced, taking into account the provisions of the legislation of the Republic of Uzbekistan regulating the procedure for recognizing and enforcing arbitral awards[21]. The New York Convention provides that the competent authority of the country in which enforcement of a foreign arbitral award is sought cannot review the merits of the award[22].

[17] Islambek Rustambekov, "International Arbitration – Glossary of Terms." Tashkent, 2019, p. 7

[18] UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Articles 2 and 5

[19] Law "On International Commercial Arbitration" of February 16, 2021https://lex.uz/docs/5294087

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When enforcing an arbitral award, the scope of its review is limited. The principle of non-review on the merits means that the court cannot re-examine or reevaluate the issues the arbitral tribunal decided on the merits, such as who is right, who is wrong, what facts apply, etc. The court's jurisdiction only includes reviewing procedural and formal aspects, such as the existence of an arbitration agreement, the tribunal's jurisdiction, compliance with procedural order, whether the decision conflicts with public policy, and others. The Economic Procedural Code of the Republic of Uzbekistan also stipulates that an economic court has no right to review the merits of a foreign court or arbitral award (Part 4, Article 254)[23].

Article 5 of the New York Convention governs the refusal to recognize and enforce arbitral awards. An international arbitral award may be refused recognition and enforcement if the party against whom it is issued provides evidence that:

1) the party was incompetent or the arbitration agreement was invalid under applicable law;
2) the party was not given proper notice of the arbitration or was unable to participate in the proceedings;
3) the decision went beyond the arbitration agreement;
4) the composition of the arbitral tribunal or the procedure were not in accordance with the agreement of the parties or the law of the place of arbitration;
5) the decision has not entered into force, has been cancelled or suspended by a competent court.

In addition, the court must verify that the subject of the dispute is subject to arbitration under the laws of that country and is not contrary to the public policy of that country[24].

It is worth noting that parties enforcing an arbitration award should be aware that the court only verifies compliance with procedural rules.

A classic example illustrating the limits of judicial intervention in the enforcement of arbitral awards under the 1958 New York Convention is the case of Minmetals Germany GmbH v. Ferco Steel Ltd (1999)[25]. The dispute arose from a steel supply agreement between Minmetals (Germany) and Ferco Steel (England) and was referred to arbitration in China. In rendering their award, the arbitrators relied on another arbitral award, the existence of which the defendant was unaware of and, therefore, unable to object to. Considering this a violation of its procedural rights, the defendant filed a motion to set aside the award in the Chinese court, citing a violation of the principles of fairness and natural justice. The Chinese court refused to set aside the award, but remitted the case to arbitration for a retrial, giving the defendant an opportunity to remedy the alleged procedural violation. However, the defendant chose not to participate in the retrial, and the arbitrators upheld their original award. When the plaintiff (Minmetals) applied to the English court for recognition and enforcement of the arbitral award, the defendant objected, citing Article V(1)(b) of the New York Convention. The English Commercial Court dismissed the defendant's request to refuse enforcement, holding that:

– the court of the country, where the arbitration is located has already examined the procedural complaints and provided the party with an effective opportunity to resolve them;
– the defendant's refusal to avail himself of this opportunity excludes the ground for refusal of recognition under Article V(1)(b);
– the role of the court of the State of execution is not to review the merits of the award if the court of the place of arbitration has properly exercised procedural control.

The Court emphasized that its role is not to review the merits of the arbitral award and that the application of Article V requires an assessment not only of formal irregularities, but also of the general nature of the procedure, taking into account whether the party was actually deprived of a fair hearing.

Case *Minmetals Germany GmbH v. Ferco Steel Ltd* demonstrates the principle of utmost non-interference in the recognition and enforcement of arbitral awards and emphasizes the central role of the court of the seat of arbitration in monitoring procedural irregularities. This approach reflects the balance established in Article V of the New York Convention: courts of the state of enforcement are not entitled to review the merits of a dispute if the irregularities were examined and remedied in the jurisdiction where the award was rendered.

The principle of non-reconsideration of the merits applies in all countries that apply the New York Convention. It ensures that arbitration remains

[23] Economic Procedural Code of the Republic of Uzbekistan, Article 254https://lex.uz/docs/3523895#3534538

[24] UN Convention on the Recognition and Enforcement of Foreign Arbitration Judgments, Article 5

[25] https://newyorkconvention1958.org/index.php?lvl=notice_display&id=456

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independent and that the court does not replace the arbitral tribunal.

Conclusion

The application of the 1958 New York Convention in Uzbekistan significantly contributes to aligning the national legal system with international arbitration standards. The Convention has become a crucial instrument for the recognition and enforcement of foreign arbitral awards, strengthening foreign investors' confidence in Uzbekistan's judicial system.

Analysis shows that Uzbek courts generally adhere to a pro-arbitration approach, limiting judicial intervention in arbitral awards to those grounds expressly provided for by the Convention, such as conflict with public policy or the non-arbitrability of the dispute. The concept of public policy is understood narrowly—as a violation of fundamental legal principles, justice, or state sovereignty. However, current legislation lacks a clear definition of "public policy" and the criteria by which an award is deemed to be contrary to it. This, in turn, could lead to varying interpretations of the rules in judicial practice and a possible decline in the international community's confidence in Uzbekistan's judicial system[26].

The adoption of the Law on International Commercial Arbitration in 2021 and the establishment of the Tashkent International Arbitration Center (TIAC) demonstrate Uzbekistan's commitment to developing a modern, transparent, and effective arbitration system. These measures contribute to strengthening legal certainty, improving the investment climate, and harmonizing national practices with international dispute resolution standards.

Thus, accession to the 1958 New York Convention underscores Uzbekistan's commitment to creating a favorable legal environment for international trade, ensuring the rule of law, and strengthening trust in arbitration as an effective mechanism for resolving international commercial disputes.

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