



LACK OF REASONS IN THE AWARD. HOW IT MIGHT AFFECT THE ENFORCEMENT?

Asal Juraeva

Lecturer at Administrative and financial law department

Tashkent state university of law

ORCID: <https://orcid.org/0000-0003-1853-4011>

<https://doi.org/10.5281/zenodo.7839964>

Abstract: In some jurisdictions, it is a precondition to include reasons in an arbitral award. The international conventions seem to have left this problem to be decided by the national law of the country where compliance exists. This article discusses international and national laws of some jurisdictions on this issue and draws some conclusions.

Keywords: arbitration; arbitral awards; enforcement; reasoning.

The lack of appropriate grounds for an arbitral award has sometimes contributed to a reluctance to implement the award in countries that consider it a fundamental obligation to include the reasons for the award. The question here is whether a court will refuse to impose an international arbitral award that does not include justification as this court's state law requires it a fundamental obligation to include reasons in an award? The obligation to provide an arbitral award with evidence is central in several legal systems. In a bid to enact an award, most regulatory bodies do not consider rationalizing an award as vital. The mechanism of implementation of arbitral awards could be obstructed by this disparity between legal systems. Hence, reaching a compromise that could make implementation of international arbitral awards more obtainable was considered essential.

Moreover, it should be stated that the majority of international agreements relating to the enforcement of international arbitral awards do not have a specific position as to whether or not it is a prerequisite for the enforcement of foreign arbitral awards to provide reasons.¹ Neither the 1923 Geneva Protocol nor the 1927 Geneva Convention discussed this matter. In this respect, the New York Convention does not have a clear rule.

The Convention seems to have left this problem to be decided by the national law of the country where compliance exists. An alternative method might be stated in Article V (l)(d) from which it can be assumed (as this is not explicit) that the obligation to give reasons for arbitration awards will rely on the law applicable to arbitration proceedings.² Article V (l)(d) claims that: "the arbitration proceedings were not in compliance with the agreement of the parties or, in the absence of such agreement, in conformity with the law of the country in which the arbitration occurs."³ Thus, a court must build its decision on the parties' agreement and, in the absence of such a decision, on the law of the country in which the arbitration takes place when deciding whether to deny implementation of an international arbitral award due to a scarcity of grounds. At last, intention of providing an award is crucial to consider, as this

¹ Born G B. International Commercial Arbitration (Second Edition) [M], Kluwer arbitration (10): 3394–3731. Netherlands, 2014.

² Bermann G A. Recognition and Enforcement of Foreign Arbitral Awards: The Interpretation and Application of the New York Convention by National Courts[M]. Springer, 2017: 1–78. DOI:10.1007/978-3-319-50915-0_1.

³ Born G B. International Commercial Arbitration (Second Edition) [M], Kluwer arbitration (10): 3394–3731. Netherlands, 2014.



may demonstrate the link between doing so and the notion of public policy (hereinafter "PP").⁴

To provide the parties with an explanation of how and why the arbitral tribunal reached its decision, and to allow the court to consider concerns that might arise from the award, it is necessary to provide explanations for the award to justify the reasons on which it is based. It is therefore found essential for the parties to be aware of how justice has been performed in their case. This involves that the award should be clear, explicit and deserving of achievement by the group it is directed towards. It could also be necessary for the compliance body to provide reasons for the award, when it is required by the national legal system, in order to allow the award to provide appropriate details on its own. Therefore, a distinction must be made between the request of the parties to give reasons for the award, as part of the right of the parties to learn how the arbitral tribunal obtained its conclusion, and the obligation of the law to give reasons for the award, in order to examine the merits of the award by the courts in a bid to oversee how justice has been considered in the matter.

In many contemporary legal systems, it is now normal to see provisions of law that grant the parties a free option to determine whether or not to provide the award with grounds in international trade arbitration based on the concept of the autonomy of the parties. For instance, Section 52 of the English law of 1996 provides, in considering the form of the award, that: "(1) The parties may agree on the form of an award (2). If or to the degree that no such agreement exists, the following provisions will apply (3). The award will be signed in writing via all the arbitrators or all those who have consented to the award (4)". The award shall provide the grounds for the award unless the award is agreeable or has been agreed by the parties to dispense with the grounds for the award.

Article 43 (2) of the Egyptian Law of 1994 specifies that: "An arbitral award may specify the grounds on which it is based, unless otherwise decided by the two parties to the arbitration, or the laws relating to the arbitral proceedings does not demand the award to be based on the grounds." However, it is limited to countries whether to accept such freedom in their national arbitration rules to give the parties the autonomy to determine if the provision of reasons should be a requirement.

At the international level, according to the prevailing trend that differs between national and international arbitration proceedings, the obligation to provide reasons may be created. The Court of Appeal of Northern Lebanon, for instance, made a strong difference between internal arbitral awards which are subject to internal PP (which it finds obligatory to justify the award) and international arbitral awards which are subject to international PP (which does not demand such grounds). The Courts of Italy, in *S.A. Tradax Export v. S.p.a. Carapelli* found the implementation of an arbitration award made without excuse under the laws of the Trade Association of Grain and Feed (London). The court observed that English law allows awards without excuse and that the New York Convention needs no justification, noting that "what is essential in Italian law of procedure may not be forced on international legislatures or court officials". Despite its lack of justification, the same Court also enforced an arbitration award from the American Arbitration Association. The decision notes that: "the fact that the justification constitutes a norm of the Italian Constitution is not relevant as international

⁴ Kleiman E and Pauly C. The Guide to Challenging and Enforcing Arbitration Awards [J] Global Arbitration Review, 2019 [2022-12-04].



legislative and judicial authorities cannot consider as such what is central in Italian procedural law." In Italy, the Court of Appeal of Genoa has also found the distinction between domestic and foreign PP in the case of *Efxinos Shipping Co. Ltd. v. Rawi Shipping Lines Ltd*, which maintained that:

"It no longer appears to be contrary to Italian PP to accept a foreign award for which there are no grounds, provided that the parties have decided beforehand that no grounds may be granted." To the same point, the Court of Appeal of Paris in *Compagnie d'Armement Maritime* claimed that: "the lack of justification does not impact international PP and that thus it is a reason for nullity only of domestic awards". Moreover, on November 14, 1955, the district court of Nancy in France declined to declare an arbitral award binding, since it did not provide any reasons. The Court of Appeal of Nancy reversed the decision, taking into account that absence of justification, even though contrary to the rule of French procedural law, was not opposite to the international order of the public in France.

It should be considered that the arbitration proceedings will be subject to a measure of control by the compliance court to ensure that they comply with fairness standards. It should also be understood that PP encompasses a broad range of issues relating to the topic of the conflict, including moral, social, political, economic or any other element deemed to be a fundamental issue affecting the interests of the state in which the award is implemented. Therefore, it is important to carefully examine the scope and the extent of the implementation in a given jurisdiction.

References:

- [1]Born G B. International Commercial Arbitration (Second Edition) [M], Kluwer arbitration (10): 3394–3731. Netherlands, 2014.
- [2]Kryvoi Y, Hober K. Characteristics and Trends of Law and Practice of International Arbitration in the CIS Region[M]. Wolters Kluwer, 2017.
- [3]Otakhonov F, Umirdinov A. Chapter 11 : Uzbekistan arbitration court: law and practice of international arbitration in the CIS region jurisdiction. Kluwer Law International[J]. 2017: 1–30.
- [4]Bermann G A. Recognition and Enforcement of Foreign Arbitral Awards: The Interpretation and Application of the New York Convention by National Courts[M]. Springer, 2017: 1–78. DOI:10.1007/978-3-319-50915-0_1.
- [5]Kleiman E and Pauly C. The Guide to Challenging and Enforcing Arbitration Awards[J] Global Arbitration Review, 2019 [2022-12-04].
- [6]Chan T, Lee A. A Tale of Two Cases: Public Policy Defence to Award Enforcement in Hong Kong[J]. Kluwer Arbitration Blog, 2020.
- [7]Cassimatis A. Public Policy under the New York Convention – Bridges between Domestic and International Courts and Private and Public International Law [J]. National Law School of India Review, 2019, 31(1).
- [8]Prodromou Z. The Public Policy Exception under Article V(2)(b) of the New York Convention in the Time of Covid-19 [J]. Kluwer Arbitration, 2021.
- [9]Khandekar S, Singh D. Independence and Impartiality of Arbitrators: Are We There Yet? [J]. Kluwer Arbitration, 2017. <http://arbitrationblog>. kluwerarbitration.com /2017/11/14/independence-impartiality-arbitrators-yet/.