

Authority of Courts in Implementing Articles 34 and 36 of the UNCITRAL Law and the International Arbitration Law of Iran: Examination and Analysis

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Abstract: Considering the ever-growing need of traders for international commerce, establishing a proper platform for fast-tracking the resolution of disputes in the international arena with an independent arbitration body is of paramount importance. The UNCITRAL Law, known as the UNCITRAL Model Law on International Commercial Arbitration, allows traders to enforce the rulings of the arbitration tribunal of another country by resolving disputes through arbitration. This article seeks to address one of the most fundamental issues of arbitration, namely the authority of the courts to apply for annulment and non-recognition of arbitral awards, which are predicted in Articles 34 and 36 of the Model Law, Article V of the New York Convention and Articles 33 and 34 of the Iranian Commercial Arbitration Law. This study also seeks to determine under what conditions and rules, the courts, assuming having the required jurisdiction, can disregard the aspects prescribed by law and recognize the arbitral award in the country of origin even if it is annulled in the country of initial award. Two rules supporting this approach were examined in this regard, namely Estoppel and relevance. With a brief glance at the Iranian law, which has recently sought to establish a tribunal body for the annulment and non-recognition of arbitral awards by drafting Article 34 of the International Arbitration Law, the procedure of courts of other countries, including Germany, which adopts a similar approach in not accepting jurisdiction for courts, is scrutinized. Finally, suggestions for resolving conflicts are made by referring to the studied rules, namely the doctrine of Estoppel and the issue of relevance.

Keywords: Recognition and implementation, annulment, arbitration, authority, UNCITRAL Model Law on International Commercial Arbitration

Introduction

Among the most important challenges and concerns faced by international traders is the issue of resolving disputes in case of breach of contract. Considering that almost no trader is inclined to resolve its dispute in the country of the contracting party, there is always a tendency to appoint an arbitral tribunal to resolve disputes and hence limit the intervention of the courts. However, despite efforts to limit the intervention of the courts, the parties to the conflict have to nonetheless resort to the legally-binding authority of the courts to either recognize, enforce arbitral awards or annul the verdicts. Therefore, in view of the original purpose of the Model Law and the New York Convention in more coherent implementation of arbitral awards, it is necessary to limit the intervention of the courts to the aspects determined in the said laws, such that no court should refrain from executing and recognizing arbitral awards for other causes, while no arbitral award should be annulled except for the causes stated therefor. It is clear that the parties to arbitration agreements expect immediate enforcement of the award in arbitration and annulment of the award at least in rare cases, for which the governments must seek to comply with the minimum standards of justice in quasi-judicial proceedings within their territory.

This research is devised in two parts. First, the Iranian International Arbitration Law regarding cases of annulment and non-recognition of arbitral awards and the limits of jurisdiction of courts is briefly reviewed, followed by the examination of the distinctions between Iranian International Arbitration Law and other laws such as the Model Law and the New York Convention on the causes of annulment of arbitral awards and the non-acceptance of authority for the Iranian courts according to the legislation. In the second part of the study, the authority of the courts in neglecting the causes of annulment and recognition and the rules that can be employed to support this approach, including the doctrine of Estoppel and the issue of relevance, are hence examined. Thus, on the presumption of proof of the causes of annulment or non-recognition, the court has the authority to neglect the causes on the basis of the doctrine of Estoppel and not to object in a timely manner during the arbitration, or based on the principle of relevance, the courts may refuse to consider causes presented given that the objection has no effect as a result of the arbitral award.

This study also seeks to establish that if the arbitration award is annulled, the issued verdict will not be valid in another country. Yet, if the annulment of the arbitration award stems from causes such as the invalidity of the arbitration agreement, the issue of re-arbitration will be dismissed altogether. However, if the cause for the annulment is only owing to a formal objection to the arbitration procedure, it will be possible to refer the matter for re-arbitration. Finally, the assumptions of the implementation of the invalidated votes in the country of origin have been examined with the approaches of different countries.

1. Interference of courts in arbitral awards from the perspective of Iranian law

The principle of fast-track in commercial cases and trust in the elected judge has led to discrepancies in the proceedings of the courts and arbitrations, and there is an expectation of minimal court intervention in the arbitral awards. Professor Katouzian argues that “the trial should be limited to the cases provided for in Article 489; that is, it does not have the right to examine the merits of the arbitrator and its validity in general, and to annul it on the pretext that the arbitrator has dismissed the inalienable rights of one of the parties ”(Katouzian, 2020, pp. 131 and 132).

The involvement of courts in the arbitration process can be studied in three ways (Mafi, 2011, pp. 125-121). Prior to the commencement of arbitration, the arbitration agreement or the appointment of arbitrators shall be established following the objection of one of the contracting parties. Courts may intervene during the proceedings, for example in cases where the coercive power of the court is deemed necessary owing to the lack of executive power of the jury in obtaining evidence from the arbitration contract, or there is a need for court intervention to obtain an interim injunction in order to expedite the proceedings or to ensure the execution of the arbitral award. Finally, the intervention of the courts can take place after the issuance of the verdict to challenge the issued verdicts, or the recognition and the execution of the verdicts, an issue which examined in this article. The issuing party may request the annulment of the issued arbitral award or, at the time of requesting the execution by the other party, present the causes for non-execution in the standing of defense.

1. Limits of court intervention

In spite of the fact that Article 5 of the Model Law stipulates that no court should intervene in matters governed by this law to the extent permitted by the Model Law itself, there is no provision in the Iranian Arbitration Law pertaining to this article. According to this ruling, the legislator has sought to limit the intervention of the courts in the rulings issued by the arbitrators and subsequently to limit the cases of annulment and non-recognition of verdicts. Considering that the arbitral tribunals lack the coercive power to enforce the arbitral awards, the judiciary intervenes in identifying and enforcing the arbitral awards and the courts, as a supervisory authority, hear cases of annulment. Article 33 of the Commercial Arbitration Law of Iran has provided causes and cases for annulment of the arbitration award. Pursuant to this article, the arbitral award can be annulled at the request of one of the parties, given the persistence of causes established therein. Contrary to Article 34 of the Model Law, Iranian law has not employed the term “may” for the courts, as it seems that it seeks to create an obligation for the court to annul the verdict, without any authority, if the causes for annulment are met. In addition to lack of providing the jurisdiction for the courts in cases for annulment and expanding the grounds for annulment, Article 34 of the International Arbitration Law has provided for a more serious obligation for the courts. This article has considered the issued votes as fundamentally invalid on three grounds, which will be explained in the following. To limit the jurisdiction of the courts in deciding on these matters, the Iranian legislature has sought to establish the fate of the rulings issued with the mentioned conditions and merely required the courts to declare inherent invalidity without objection by the litigant and even outside the time limit for challenging the rulings contained in the law, an issue that is unprecedented and surprising in arbitration law compared to other countries.

On the other hand, the legislator, despite limiting the authority of the courts in neglecting the causes of annulment and rejection of enforcement with the purpose of supporting the enforcement arbitral awards, if the parties do not agree to a new arbitration following the annulment of the arbitral award, the courts are deemed to have the jurisdiction to hear the substance of the dispute, which is grossly in contrast to the original will of the contractors to consider the arbitral tribunal competent in resolving disputes and contrary to the Iranian legal practice of limiting the jurisdiction of the courts.

1.2. Recognizing and annulling arbitral awards

The UNCITRAL Model Law and the New York Convention have established seven for annulment and non-recognition of arbitration, while the International Commercial Arbitration Law of Iran has mentioned a total of twelve causes. That is, the Iranian Law has increased the scope of court intervention in arbitration. Regarding the enforcement and recognition of arbitral awards given the accession of Iran to the New York Convention on the Recognition and Enforcement of Arbitral Awards, the question arises as to whether the 12 clauses of Iranian law should be used as criteria for the recognition of arbitral awards or the provisions of the New York Convention.

According to Article 34 of the UNCITRAL Model Law, cases of objection can be divided into four categories (Moslehi, 2005, p. 37):

1. Causes pertaining to jurisdiction, including complete lack of competence or being beyond the limits of competence of the judges
 2. Causes pertaining to the verdict, including not mentioning the evidence and documents in the verdict.
 3. Causes related to the format of the arbitration procedure, including non-notification.
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4. Causes pertaining to the public order regarding the country of origin of the vote.

What is notable regarding the competence for reviewing annulments and refusal of recognition is that in commodity-related arbitrations, the organized arbitral tribunal is established as the arbitral review authority, which can replace the jurisdiction of courts in annulling verdicts. In addition to the courts where the award is made, the court of origin shall have the jurisdiction to hear the objections raised pursuant to Paragraph one of Article 5 of the New York Convention. Nevertheless, the selection of the court for execution is not left to the discretion of the litigant and should be determined according to the initial purpose of the arbitration award, whether defense, remedy or execution (Amir Moezzi, 2008, p. 555).

Recognizing a verdict as a valid verdict for closed is, in essence, accepting the fact that the provisions of the verdict are final and binding.” (Broushe, 1989, p. 190). Among the benefits of recognizing an arbitral award is having the enforceability of a court decision (Jafarian, 1995, p. 253). From the perspective of both laws, namely the New York Convention on the Enforcement and Recognition of Arbitral Awards and the UNICTRAL Model Law, as well as the International Arbitration Law of Iran, there are two categories of causes for the non-recognition of awards. The first category pertains to causes that should be announced to the court as a defense of non-recognition by the protester, and the causes in which the court acts without the objection of the litigant to recognize the verdict. The cases mentioned in the Convention are as follows:

- 1) Lack of legal capacity of the parties to the arbitration agreement or invalidity of the agreement, this condition is provided in Article 33 of the Iranian Commercial Arbitration Law with a slight difference in the subject of capacity. Iranian law has deemed sufficient the incapacity of one of the parties, while the Convention has provided for the incapacity of all the parties to the arbitration agreement. This is particularly the case where the arbitration agreement is the subject of a transfer or surrogate and the next transferor or successor has the necessary capacity. If a deputy arbitrator is deemed have capacity, it is unlikely to employ this cause as a defense against non-recognition of enforcement.
- 2) Failure to comply with the principle of correspondence, that is, the litigant claiming that he/she was not properly notified, lack of proper grounds for presenting the defenses and bills to the jury.
- 3) Lack of jurisdiction of the arbitral tribunal or violation of the jurisdiction by the arbitrators, in that the subject matter was not agreed upon by the parties for arbitration or the arbitrators exceeded their competence in addressing the subject matter. The arbitration law of Iran has remained silent on the jurisdiction of the arbitral tribunal.
- 4) Failure to observe the arbitration procedures in accordance with the agreement of the parties, and in case the contract remains coy on the matter, non-compliance of the procedure with the law of the origin of the vote will result in non-recognition of the vote. The second part of the current condition, which is in accordance with Article 5, Paragraph (d) of the New York Convention, is contrary to Iranian arbitration law. Article 33 of the Iranian law states, “... in the absence or absence of an arbitration agreement, the verdict shall not be contrary to the rules set forth in this law.” This is because in national arbitrations, the arbitrator is not obliged to observe the procedure otherwise agreed upon by the parties.
- 5) The last cause according to the convention is the lack of validity of the verdict due to uncertainty or annulment and suspension thereof in the country of origin.

In addition to the above, Iranian Arbitration Law has established to other causes for the annulment of verdict the, namely the arbitrator's verdict being based on forged documents or concealing documents by the litigant that documented the legitimacy of the objector, and finally issuing a verdict by the arbitrator whose challenge is accepted by the court.

The second category of causes, in the New York Convention and the Model Law, is referred to as the causes that can be directly applied by the courts without the evidences of the litigant on the annulment and rejection of the enforcement. First, according to the law of the country of origin, the disputed subject is not the execution of the decision that can be referred to arbitration, for example, the cases mentioned in Article 461,478 of the Code of Civil Procedure regarding disputes related to the principle of transaction, the principle of arbitration and litigation related to the principle of marriage and divorce. This cause is also referred to in paragraph 1 of Article 34 of the Arbitration Law of Iran. The second cause is that the enforcement of the arbitral award be contrary to the public order of the country. This condition is also stipulated, in slightly different terms, in paragraph 2 of Article 34 of the Iranian Arbitration, in that the award is contrary to the public order or good morals of Iran or the rules of commercial arbitration law. The French have provided for two types of public order in their new law to create a uniform procedure and prevent double standards. The new French Rules of Procedure allow an international arbitral award to be set aside or annulled when its recognition and enforcement is contrary to international public order (Amir Moazi, *ibid.*, p. 542).

Finally, pursuant to paragraph 3 of Article 34, if the arbitral award issued in respect of immovable property in Iran is contrary to the provisions of valid official documents, the award is essentially rendered invalid and hence unenforceable, a cause which is not established in the Convention and Model Law, while transactions of immovables are not considered to be the basis of a commercial transaction and hence there was no need to

formulate such an article in practice owing to its impracticality.

What is important is the establishment of a new body in international arbitration law by the Iranian legislature. Article 34 of the Iranian Arbitration Law is unprecedented in the laws of other countries, the New York Convention and the Model Law. In the first line of the mentioned article, the inherent invalidity of the arbitrator's verdict is conditional on the fulfillment of the three above-mentioned conditions. It seems that the decision of the courts in this regard is explicitly declaratory, and the ruling of such judgments is inherently invalid (Mohammadzadeh, 2002, p. 79). This article can be a clear example of non-acceptance of the courts' authority to ignore the causes for annulment and non-recognition of arbitral awards, which is discussed in the following. What stands out in the difference between the International Arbitration Law of Iran and the New York Convention is that, given Iran's accession to the New York Convention, which law should be referred to when dealing with conflicting implications for similar causes, and how a compromise is achieved. If the arbitral awards are issued in a country other than Iran and the issuing country is a party to the New York Convention, the New York Convention shall prevail in enforcement of verdicts issued in Iran.

2. The jurisdiction of the courts to hear international arbitral awards in accordance with the UNCITRAL Model Law

The Model Law was by the United Nations Commission on International Trade Law (UNCITRAL) to establish co-ordination in the global arbitration procedure, distinct from the wide-implicating rules on arbitration procedure, on common rules for the recognition and annulment of arbitral awards. Articles 34 and 36 of the said law respectively established the cases of non-recognition of the arbitrator and annulment of the verdicts in two lists that are almost identical to each other. In both lists, the causes are divided into two groups. The first group pertains to causes that can be stated and proved by the party against whom the verdict was requested for enforcement, while the second group pertains to causes that the court conducting the verdict can directly refuse to recognize and to execute the verdict or annul the verdict altogether. As such, Article 34 of the Model Law gives the parties to the international arbitral award the option to request from the court of origin the verdict to annul the decision, and Article 36 of the same law states the cases that can be applied by the protesting party in the form of defense against enforcement and recognition of international arbitration award. Although the judicial review of arbitral awards will limit the arbitral award and hence lead to grounds for the intervention of courts, a single standard is achieved in the court proceedings by limiting the cases of objections. It should be noted that the cases contained in Article 36 are taken from Article V of the New York Convention. In principle, countries have envisaged different methods in their domestic laws for annulment of votes, while some have employed implications of the Model law. What is of paramount significance is that the implementation of the model law is not mandatory for countries and some countries have not adopted the provisions inserted in Articles 34 and 36 and have thus neglected it (Sanders, 24, 1995), while some have adopted all the provisions on annulment and recognition. It should be noted however that although the two articles have addressed seemingly similar cases, they have different effects, including the fact that the annulment of the arbitrator's vote has international effects while the refusal to recognize the verdict has domestic effects. (Berg, 2010, 179-182), that is, if the party requesting the execution of arbitrator's verdict fails to recognize the verdict in the country of origin, it will be able to request the verdict to be recognized in another country (Blackaby, 2009, 618). Of course, the feasibility of this depends on the causes stated for non-recognition. If they are based on a violation of the public order of the country of origin, the possibility of enforcement in another country with different interpretation of public order is justified. However, if the causes for non-recognition is owing to a serious and irrevocable violation of the arbitration procedure, then the ruling will not be enforceable in any country, and the dispute will certainly have to be re-arbitrated.

2.1. The role of courts in reviewing arbitral awards

Tension in the independence of the arbitral tribunal and the legal control of the courts in the arbitration system is integral part of the legal system (207, 2005, Andrew). On the one hand, arbitration is accepted as an independent institution with the direct will of the parties to resolve the dispute, and on the other hand, the national courts have the authority to supervise and the executive courts have the power to review the verdicts according to compliance with basic procedural law. As a result, the arbitration system is not immune to the influence of the courts as an independent system for resolving disputes (Holtzmann, 1989, 2-7).

Legal doctrines have offered contrasting views on the extent to which courts can intervene, with some arguing that judicial review should be limited given the non-appealable nature of the arbitral award, as the parties have agreed that a non-judicial authority will handle their dispute and the annulment of the arbitral award is extremely rare. Some scholars also a comprehensive judicial review necessary to ensure that the verdict complies with the constitution of the executing country. They argue that what is more dangerous than a judicial review is a wide-influencing arbitral tribunal which is immune from binding judicial control (7, 1989, Davis).

By accepting the role of the courts in a more general sense and granting the proper jurisdiction to courts to determine the causes provided in Articles 34 and 36 of the Model Law, that is, the courts would be assumed to have no restrictions on the choice of cause for annulment or non-recognition of the verdict and would be able to

hence directly litigate, the jurisdiction of the court in annulment of arbitration awards are hence affected, and as such, the broad jurisdiction of the courts may be supported or the jurisdiction of the courts may become

limited. Also, based on whether arbitration is considered a private function between individuals or a public function derived from the power of sovereignty, there are four theories, namely description, contractual theory, judicial theory, mixed theory and independent theory, based on all of which even if the arbitration system is deemed an independent institution, the structures of national law for granting legal validity and enforcing the verdict are should be referred to beforehand (Born, 2009, 184-189).

Therefore, the recognition and enforcement of the verdict is at the discretion of the judiciary and the courts, and the arbitral tribunal has no means of securing the enforcement of the verdict. The basis of the courts' competence in the proceedings relies on a supervisory body to act in accordance with the rules of procedure in support of the arbitrators and in accordance with Articles 34 and 36 of the Model Law. Nevertheless, the signatories of the Model Law and the New York Convention have agreed that the reasons stated should be fully observed. What remains unclear is why and how the courts will be allowed to neglect, and hence deviate from, the established reasons.

2.2. The jurisdiction of courts

Proponents of the competence of the courts have all relied on the term "may" in the provisions of the Model Law and the New York Convention, and have seen it as an implication for the courts' negligence in causes for annulment of the arbitral award. Opponents, on the other hand, argue that the court's discretion undermines the certainty of arbitration decisions and hinders their order. Domestic courts are affected by their own laws, leading to different procedures and the enforcement of judgments being rather subject to the nationality of the courts. There is always this concern that the jurisdiction of the courts will lead to their involvement in areas that are of particular importance in Model law and the New York convention. Issues related to the annulment or rejection of arbitration are among the most challenging issues of arbitration and should be addressed in the model law, and this indicates the value of the model law as a legal regime structured based on international arbitration (Report of the Secretary, 1981, 107).

What must be accepted unconditionally is that the UN Legal Commission has sought to establish an international consensus on the minimum criteria of this procedure, that is, acceptance of some causes for the annulment and non-recognition, and in case of accepting authority for courts in neglecting the minimum criteria, the aforementioned consensus becomes irrelevant. As a result, courts are allowed to enforce arbitral awards that should not have been upheld by an international consensus. At the beginning of the arbitration, the parties may selectively violate the request for judicial reform of the verdicts, but they can only expect a judicial review, since even if the competence of courts are established, it would necessarily translate to the obligation of courts in regards to arbitration

As a result, the purpose of the Model Law and the New York Convention is not only to establish a unified procedure for all courts to annul arbitral awards, but also to enable them to enforce arbitral awards in cases where formal objections, despite the guarantees set forth in Articles 34 and 36, are so narrowly interpreted that they ultimately lead to the approval and enforcement of arbitral awards.

This authority allows the courts to rule on a case-by-case basis with greater flexibility based on the circumstances of each case (China Nanhai Oil Joint Service Corporation Shenzhen Branch v Gee Tai Holdings Co. Ltd, 224), and, in practice an arbitration system in which decisions are subject to only minor formal errors, the verdicts are enforced anyway. On the other hand, some scholars argue that accepting jurisdiction for the courts poses risks in the broad interpretation of jurisdiction and is contrary to the soul of the model law. Therefore, it is necessary to determine the limits of the jurisdiction of courts with the aim of not exceeding the objectives of the model law by being within its scope.

2.3. Court Procedure

Judicial procedures should be preferably examined to look for indicators to investigate the willingness of judges to accept the jurisdiction of the courts. Given the close affiliation between Article V of the New York Convention and Articles 34 and 36 of the Model Law, existing procedures for interpreting Article V in jurisprudence are scrutinized.

In principle, the procedure of the courts confirms the jurisdiction and competence of the courts, the only exception being that of the German courts, which have generally rejected the aforesaid competence (Liebelt, 2013, 22). Most procedures do not call into question the nature of competence by referring the term "may". Schreter v Gasmac Inc⁷⁶, for example, stated that the legal basis of Article 36 is at the discretion of the courts, even where there is no obligation for the court, or the arbitral award has been overturned by a court.

Another case involving the dispute of arbitration pertains to China Nanhai v Gee Tai, in which despite the fact that there was no cause for non-recognition, the court ordered an arbitral award without regard to the objection of the protesting party, arguing that "even if the contrasting cause is proved, the court would still have the power to enforce the verdict, hence implying that causes for non-recognition are not easily enforceable, and therefore the power of the courts enables the enforcement of verdicts with the purpose of attaining fair outcome. It seems quite unfair for a party to appreciate that there might be something wrong with the composition of the tribunal yet not make any formal submission whatsoever to the tribunal about its own jurisdiction, or to the

arbitration commission which constituted the tribunal and then to proceed to fight the case on the merits and then two years after the award, attempt to nullify the whole proceedings on the grounds that the arbitrators were chosen from the wrong list” The court also considered the application of the doctrine of estoppel to other aspects of the New York Convention. Thus, on the basis of estoppel principle, the award was upheld because parties got the arbitration under the chosen rules and this sort of maneuver should not be permitted

2.4. The approach of the German courts

The Germans strongly persist on the lack of jurisdiction of the courts in neglecting the grounds for annulment and non-recognition, yet, in practice this approach does not make much difference in German courts compared to the procedure of other courts, as German legal procedures so narrowly interpret the aspects set out in Articles 34 and 36 for annulment and non-enforcement that results in similar implications to that of the New York law, that is the enforcement of arbitral awards. Narrow interpretation means that the courts rely on considerations such as causality, materiality, and doctrine of estoppel, and despite the court's refusal to ignore the grounds, a similar result is obtained in German courts. nevertheless, many courts have incorporated the doctrine of estoppel instead of discretion in the interpretation of grounds (Liebelt, 2013).

Kaplan argued in the *China Nanhai v Gee Tai* lawsuit that the term “may” does not refer to jurisdiction of the courts, but to other grounds, including the doctrine of estoppel. That is, if the applicant for annulment or non-execution of award during the arbitration period remains silent on the formal objections of the trial or the arbitral tribunal and does not submit the request for annulment to the court, the corresponding party would be subject to losing the right to request annulment based on the same objection according to the doctrine of estoppel. This is something other than the courts' discretion to ignore the grounds for annulment or rejection, although Paklito described *Investment Limited v Klockner East Asia Limited*⁹² has applied the doctrine of estoppel as an example of court jurisdiction.

In the lawsuit of the *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan*, a clear distinction is made between the doctrine of estoppel and the discretion of the courts. The examples indicated that differentiating between the interpretation of effective aspects of the violation of the verdict and the rejection of the arbitral award and the exercise of the courts' authority is a challenge of broader interpretation. German courts are not the only court that argue for additional considerations being taken in the event of annulment. In the draft of both laws, there is little talk about the existence of authority, which indicates the intentional use of the term “may”. The German courts, which do not accept the nature of jurisdiction, consider the same grounds only as part of the authority and an integral part of the cause, so it is not a question of competence, but rather the considerations that the courts must take into account when assessing arbitration.

2.5. Scope of authority and interpretation of causes

It should be noted that the grounds set out in Articles 34 and 36 and Article V of the New York Convention are definitive. Therefore, the courts cannot refuse to enforce or rule on a case for grounds other than those mentioned above, but since it is not mandatory, the domestic legislature may formulate other applications to overturn or reject the arbitration unless the country of origin is a party to the New York Convention.

2.5.1. Narrow interpretation of the courts' authority

The general assumption is that the provisions of Articles 34 and 36 of the Model Law should be interpreted narrowly because they are exceptions of the international arbitral awards. Also, the independence of the arbitral tribunal elected by the parties should be maintained by minimizing the interference of the courts. The narrow interpretation of the causes against public order is of utmost importance, as some countries consider it to be the most basic concepts of ethics and justice, while some consider its implications to be the cause of violation of the local principles of justice and fairness. Therefore, there must be a serious violation for the verdicts to be invalidated.

2.5.2. Methods of narrow Interpretation

Recognition or annulment of the verdict, despite the proven grounds at the time of drafting the model law, had caused the debate as to whether a minor defect in the arbitration process can lead to the annulment of a verdict or not. The organization's secretariat proposed several recommendations to address this issue. One possible way was to employ the doctrine of estoppel in the sense that the party was aware of the objections during the arbitration proceedings, but did not cite them during and after the arbitration. Another method that has been proposed is a serious flaw in the legal procedure, for example, a serious or gross violation of mandatory compliance (Holtzmann and Neuhaus, 1989, 921).

2.5.2.1. The doctrine of estoppel

Among the most significant doctrines that that courts refer to when it comes to narrow interpretations of Articles 34 and 36 and the New York Convention is the doctrine of estoppel. It is a principle in the civil and public law of countries, referring to the fact that the party to the dispute should “estop” as soon as possible as

soon as it learns the facts and has the opportunity to object, otherwise his objection will not be heard in subsequent hearings. Estoppel is an effective principle and prevents the parties from continuing unnecessary litigation. This principle is included in Article 4 of the Model Law, which states that a party who, despite being informed that it does not object to the non-observance of the arbitration cases, is deemed to have waived its right to object altogether. This article is specified in Article 5 of the International Arbitration Law of Iran. Also, the traces of this rule can be seen in jurisprudence in the issue of denial after confession. One of the conditions of the doctrine of estoppel is that the opposing actions are performed by one party; That is, the same person who previously took action is now making an opposing claim. Another condition is to claim an action that is contrary to or different from the previous practice, such that the next statement is in conflict with the previous statement or changes it fundamentally (Khudabakhshi, 1393, p. 666). This doctrine is also established in Article 1027 of the German Code of Civil Procedure and Article 73 of the 1996 Arbitration Act of England and is undoubtedly applicable to the annulment of local judgments, yet it is not mentioned in the New York Convention and there is ambiguity as to whether it is expandable to foreign arbitration or not? The courts of most countries consider this doctrine to be one of the reasons for the right of annulment. Given its prevalence in domestic verdict, its enforcement in the execution of an international should be scrutinized. If the opposing party fails to present its objection to the arbitral tribunal or to the court of the country of origin as a rebuttal, the doctrine of estoppel comes to fore. The first issue to be addressed is that whether or not this doctrine prevents the citation of the grounds for the annulment and non-recognition in case the party does not object during the proceedings. Article 34 of the Model Law provides for a three-month period for the annulment of a vote and does not hear a claim for annulment come the expiration period. However, some believe that the protesting party is not obliged to protest the verdict in the country of origin. There is no provision in the New York Convention stating that a person has a duty to apply for annulment in the issuing country to object in the country of origin. As a result, in the opinion of the jurists, the protesting party is not obliged to challenge the ruling in the trial in the country of origin, but if the entire arbitration process is not invalid and the party has been silent about it from the beginning, the outcome of the case will be unpredictable for the reasons for annulment and non-recognition in the court. In the case of *Paklito Investment Limited v Klockner East Asia Limited*, for example, the court referred to the doctrine of estoppel because the parties agreed to arbitrate at the CIETAC Arbitration Court in Beijing, but the panel issued its verdict in London. The protester did not object to this from the beginning, while the jury was incompetent. In arguing that the doctrine of estoppel is also established in the New York Convention, some have considered it an implication of the rule of good faith. In a lawsuit filed by *Hebei Import & Export Corporation v Polytek Engineering*, Hebei Import & Export Company proved that one of the arbitrators cast a biased verdict and that the verdict was against the public order of Hong Kong, what the doctrine of estoppel established in the defendant's action is a violation of the rule of benevolence or merely a violation of the principle that the issue of non-compliance with applicable law must be brought before the court immediately. The behavior of the protesting party in not presenting a timely objection in the arbitration is such that it legally justifies the issued verdict. As a result, it must declare it protest as soon as possible, otherwise the party loses its right to protest. However, UK courts believe that if a party has the right to object or to present reasons for non-recognition in other courts, it will not have to appeal in the country of origin (*Yukos Oil Co. v Dardana Ltd*).

It seems that if the possibility of annulment or rejection of the arbitral award fails in the country of origin and if the grounds are enforceable in the country conducting the vote, the three-month period of objection in Article 34 becomes indefinite and the protesting party is able to submit its protests and to challenge the arbitral award without time limit. On the other hand, if the grounds of annulment are accepted in the country of origin but the same grounds are not deemed applicable in the local countries, the verdict may lose credibility. The courts are of the opinion that the distinction between various interpretations of public order may be accepted as grounds for annulment. German courts have accepted in practice that the ruling of the enforcing court will be more competent in examining the grounds for annulment. As a result, the grounds pertaining to public order or other grounds related to the country of origin, whether in the annulment or in the omission of the aspects, may be neglected by the enforcing court.

The purpose of the UNCITRAL Law was to ensure that the countries conducting the verdict respected the decision of the country of origin of the vote (Report of the Secretary-General, art 34). There are some countries that have issued rulings against this purpose, such as the United States and France, which issue the order of execution if the vote does not contradict the rulings of the executing country. As a result, if the vote is annulled in the country of origin, it will be possible to enforce it in France (Sanders, 2004, 179). This practice is contrary to the purpose of the New York Convention and the Model Law, and it is better to have only international causes and grounds for annulment or rejection of the arbitral award supported by the courts.

Finally, the doctrine of estoppel is used as an international rule to enforce the principle of good faith, to prevent delays and the supremacy of the courts of origin. Although not explicitly mentioned in the New York Convention and the Model Law, its interpretation as an example of a court of law or its good faith, its application to enforce arbitral awards and the negligence of non-recognition and annulment of grounds seem justified and legal. The doctrine of estoppel supports the integrity of the arbitration system and urges the parties to inform the arbitral tribunal of their objection documents in view of the assignment of arbitration to resolve disputes and not to wait for a verdict or objection in court. As mentioned, the German courts are one of the strongest proponents of this rule, while the British courts avoid relying on this rule. As a result, if only the grounds for the objection

are related to the executing country, the appeal should be heard, otherwise the party was obliged to lodge its objection in the country of origin within the legal period.

2.5.2.2. Relevance and Causality

The second principle that the courts refer to regarding the negligence of the reasons for annulment or rejection of the execution of the arbitration, in order to enable the finalization of the arbitral award and its enforcement, is the principle of causality or relevance. This means that even if there are grounds for annulment or rejection, but ultimately have no effect on the outcome of the arbitral award, the stated grounds will not be accepted. However, this principle has not been accepted despite the proposal of the UN Legal Secretariat, and according to Article 34, mere reasons can invalidate the vote. Article 1996 of the United Kingdom, for example, states that a serious disruption of public order, causing considerable injustice to the plaintiff, is required to invalidate the vote. There have been many cases in Hong Kong that have dealt with the issue of relevance, one of which is *Paklito Investment Limited v Klockner East Asia Limited*. If the court, after examining the defense, concludes that the annulment of the verdict does not affect the disputes of the parties, it can enforce it despite proving the ground for annulment, and the verdict can be annulled only where the party proves that the outcome would change. Of course, this annulment must be interpreted narrowly. In another lawsuit, *Brunswick Bowling & Billiards Corporation v Shanghai Zhonglu Industrial Co. Ltd*, the plaintiff claimed that he was unable to present the required evidence, however the court decided to reject the objection because providing evidence would not affect the outcome of the verdict. New Zealand courts also generally consider the extent and consequences of objections, and the New Zealand Legal Commission has stated in the case of *Todd Petroleum Mining Company Limited v Shell (Petroleum Mining) Company Limited*, although the objection is admissible, it does not seem to lead to a different verdict. Also, if the grounds that the arbitrator neglected have a realistic shot at influencing the outcome of the verdict, they cannot be simply ruled out.

As a result, the issue of relevance seems have more applicability compared to the doctrine of estoppel. As mentioned, German courts again apply this principle more than any other court. The courts of Hong Kong must make sure that no violation has occurred in order to change the verdict. In New Zealand, too, violations must have a realistic impact on the outcome of the verdict.

2.5.2.3. Differing approaches to domestic and foreign votes

Both rules are applicable to domestic and foreign arbitral awards, the only difference being that it will be more difficult for courts to examine violations in the proceedings of a foreign jurisdiction. Even with regard to public order, the enforcer has a stricter approach compared to domestic votes. Prior to the rejection of the verdict on the grounds of public order, more convincing reasons beyond the minimum that justifies the annulment of the domestic court's ruling and is fundamentally opposed to the concepts of justice should be sought. Research indicates that, in the courts of England, the power to enforce a verdict, despite the establishment of sound grounds, is limited and is exercised only in exceptional circumstances. Therefore, if the objector has essentially no legal standing in the arbitration agreement or the arbitration agreement is invalid, there is no cause left for the execution of the verdict (*Yukos Oil Co v Dardana Ltd*, at 8). Looking at the grounds listed in Articles 34 and 36, the courts seem to have accepted the doctrine of estoppel and the issue of relevance in all grounds, unless the arbitral tribunal lacks competence, in which case the arbitration agreement is annulled or the parties agree on the other arbitral tribunal.

2.5.3. Enforcement of annulled votes

According to one jurist, “the New York Convention allows arbitral awards issued in one state party to be enforced in other States Parties without regard to their annulment in the state in which they are issued or is pursuant to its law.” What permits the annulment of votes by the New York Convention is the interpretation of Article V of the said law, which stipulates that in the event of a vote being annulled in the country of origin, its recognition and enforcement may be refused. First, if the annulled vote had no effect, there was no need to develop this article. Also, none of the articles of the Convention excludes the annulled verdicts from the range of verdicts covered by the Convention. Article v of the Convention states that, even if there are grounds for not recognizing the enforcement of the arbitral award, each interested party has the right to benefit from the law or treaties of the country of origin instead of invoking the Convention. In addition, some argue that under Article V of the Convention, the judge requesting recognition has the authority to issue an enforcement warranty if the grounds for non-recognition are proven. This view is derived from employing the term “may” instead of “shall” or “must” (Lastaneouse, 1999, 26). Some countries implement the revoked votes by broad interpretation of the New York Convention. Owing to the fact that Article 1502 of the new French Code of Civil Procedure authorizes the enforcement of annulled judgments, this procedure has become commonplace in French courts. In fact, it was the literary interpretation of the rules that enabled them to enforce the annulled rulings, a principle that was clearly and unequivocally upheld by the trial court in the January 14, 1997, of *Chromalloy Aeroservices* case. In this ruling, the trial court upheld the decision of the lower court, which had ruled the enforcement of the

verdict issued and annulled, arguing that a French judge can only rule in certain and limited cases under Article 1502 of the new French Code of Civil Procedure, that is the national law on the matter, which *Chromalloy*

Aeroservices was authorized to invoke, and this article does not include some of the ground for refusing enforcement set out at Article V of the Convention. The verdict issued in Egypt was an international verdict that had not entered the legal order of that country, so that it will remain valid despite its annulment, and its recognition in France would not be contrary to international public order. Therefore, the grounds of the Arab Republic of Egypt for truth-seeking are baseless (Eskandari, 2010, 34).

Conclusion

A brief review on the International Arbitration Law of Iran clearly indicates that, while accepting the model law in most cases, as well as acceding to the Convention on the Recognition and Enforcement of Arbitration Awards, it has sought to expand the causes for annulment and non-recognition aspects. Furthermore, the establishment of Article 34, which restricts the jurisdiction of the courts and the obligation to issue a ruling declaring the invalid arbitration awards stipulated in that article, the scope of the courts' intervention regarding negligence and issuance of enforcement orders is clearly determined. The history, expressions, and purpose of the Model Law and New York Convention are neither entirely in agreement with, nor explicitly against, the authorization to use the term "may" in the relevant regulations. An analysis of the case law shows that, with the exception of the German courts, other courts accept jurisdiction. However, the analysis of the judicial process indicates that the German courts employ a strict interpretation approach, and hence accept the same principles that other courts consider as part of their jurisdiction in proving one of the causes. As previously noted above, the courts of European, American, and Asian countries adopt the doctrine of Estoppel and principle of relevance, and have in practice followed the German approach to enforcement of arbitral awards. As a result, it has become clear that the main question in this research is not whether the term "may" establishes jurisdiction, but rather under what circumstances the courts, even if one of the causes established by law is proven, can enforce the issued vote. It is possible that even if the term "may" is not employed in its original sense, many courts consider the doctrine of Estoppel and principle of relevance as the main components of the cause. Thus, it seems that by returning to the situation in which the courts rely when ignoring one of the causes, the doctrine of Estoppel and principle of relevance are recognized as two major principles, the mere application of which differs from country to country.

Nevertheless, the accord of the courts of several countries on the application of the doctrine of Estoppel and principle of relevance indicate that these principles are incorporated in most legal systems and are therefore fundamental principles, shaping up in the process a common consensus on certain legal procedures and the issue of relevance. The courts from the aforementioned jurisdictions exhibit the necessary caution in applying these principles to have themselves prevented from interfering far too much in the arbitral awards. Hence, by carefully using the causes mentioned in this article, not enough attention will be paid to the individual circumstances of the case. This authority gives the courts the opportunity to apply the general principles of law which justify the application or recognition of a judgment, even if proof of one of the causes is available, and full coherence must be in favor of a fair and just outcome. Therefore, the model law should take into account the doctrine of Estoppel and the principle of relevance for establishing a harmonized international procedure and preventing dissent.

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