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THE RELATIONSHIP BETWEEN ARBITRAL TRIBUNALS AND NATIONAL COURTS

Abstract

Arbitral tribunals and national courts both have roles in resolving disputes, but they operate under different legal systems. Arbitral tribunals are private forums where parties can voluntarily submit their disputes to a panel of arbitrators for a binding decision. National courts, on the other hand, are part of a country's judicial system and are responsible for enforcing the laws of that country.

In terms of their relationship, arbitral tribunals and national courts can work together in several ways. Overall, the relationship between arbitral tribunals and national courts is complex and can vary depending on the specific circumstances of each case. However, both institutions play important roles in the resolution of disputes and can work together to ensure a fair and efficient process.

Keywords: *arbitration, national courts, jurisdiction, alternative dispute resolution, arbitral award, arbitrator, arbitration process*

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Arbitraj tribunalı ilə milli məhkəmələr arasında əlaqə

Xülasə

Arbitraj məhkəmələri və milli məhkəmələr mübahisələrin həllində rola malikdirlər, lakin onlar müxtəlif hüquq sistemləri altında fəaliyyət göstərirlər. Arbitraj tribunalları tərəflərin könüllü olaraq öz mübahisələrini məcburi qərar qəbul etmək üçün arbitrlər qrupuna təqdim edə biləcəyi özəl forumlardır. Milli məhkəmələr isə ölkənin məhkəmə sisteminin bir hissəsidir və həmin ölkənin qanunlarının icrasına cavabdehdirlər.

Münasibətləri baxımından arbitraj tribunalları və milli məhkəmələr bir neçə yolla birlikdə işləyə bilərlər. Ümumiyyətlə, arbitraj məhkəmələri ilə milli məhkəmələr arasında münasibətlər mürəkkəbdir və hər bir işin konkret vəziyyətindən asılı olaraq dəyişə bilər. Bununla belə, hər iki qurum mübahisələrin həllində mühüm rol oynayır və ədalətli və səmərəli prosesi təmin etmək üçün birgə işləyə bilər.

Açar sözlər: *arbitraj, milli məhkəmələr, yurisdiksiya, mübahisələrin alternativ həlli, arbitraj sazişi, arbitr, arbitraj prosesi*

Introduction

The relationship between arbitral tribunals and national courts is a complex and evolving issue that affects the effectiveness, legitimacy, and autonomy of international arbitration as a method of dispute resolution and requires a balanced approach that respects the principles of comity, competence and cooperation between different legal systems.

Arbitral tribunals and national courts have different roles, functions, and sources of authority, but they also share some common goals, norms, and values, such as fairness, impartiality, finality, and enforceability of decisions. However, the interaction between these two types of adjudicators can give rise to various challenges and opportunities, depending on the nature and context of the dispute, the legal systems involved, and the expectations and preferences of the parties (1).

The relationship between arbitral tribunals and national courts is a multifaceted and context-specific issue that requires a nuanced and interdisciplinary approach, drawing on legal, social, political, and economic perspectives. By examining the strengths and weaknesses of different approaches and practices, and by identifying common interests and values, it is possible to enhance the legitimacy, effectiveness, and autonomy of international arbitration, and to contribute to the development of a more harmonious and coherent system of private international law ("The Law and Practice of International Commercial Arbitration" by Alan Redfern and Martin Hunter, 191-192).

However to determine the relationship between arbitral tribunals and national courts we must learn each of them separately.

Arbitral tribunals are private, independent dispute resolution bodies that are established to resolve disputes between parties through arbitration. They are typically formed to resolve disputes related to commercial transactions, investment disputes between foreign investors and host states, or disputes arising under international treaties or agreements. Arbitral tribunals are composed of one or more arbitrators who are chosen by the parties to the dispute or by an appointing authority designated in the arbitration agreement. The arbitrators are impartial and independent and are expected to make a decision on the dispute based on the evidence presented and the applicable law.The decisions of arbitral tribunals are usually final and binding, and can be enforced in courts in accordance with national and international laws. The process of arbitration is often faster and more flexible than traditional court proceedings, and can provide parties with a more efficient and cost-effective means of resolving disputes.

Arbitral tribunals work by providing a private and flexible means of resolving disputes between parties through the process of arbitration. Here are the typical steps involved in how an arbitral tribunal works: (International Commercial Arbitration: An Asia-Pacific Perspective by Simon Greenberg, Christopher Kee, and Romesh Weeramantry, 142-146).

Agreement to arbitrate: The parties involved in a dispute agree to resolve their dispute through arbitration. This agreement is usually contained in a contract or a separate agreement that specifies the rules, procedures, and governing law that will apply to the arbitration.

Selection of arbitrators: The parties choose one or more arbitrators to serve on the tribunal. The arbitrators are typically chosen based on their expertise and experience in the subject matter of the dispute.

Preliminary proceedings: The tribunal will typically hold a preliminary meeting to discuss the procedure and timing of the arbitration, and to clarify any procedural issues that may arise ("Arbitration and the Constitution" by R.Doak Bishop, 451).

Presentation of evidence: The parties present evidence, such as documents and witness testimony, to support their respective positions.

Decision: The arbitrators consider the evidence presented and issue a decision on the dispute. The decision may be in the form of a final award or an interim award, depending on the circumstances of the case.

Enforcement: Once the award is issued, the parties are required to comply with the decision. If a party fails to comply voluntarily, the award can be enforced through national courts in accordance with national and international laws (Redfern and Hunter on International Arbitration by Nigel Blackaby, Constantine Partasides, and Alan Redfern, 265).

According to the stements above the arbitral tribunal process offers a more private, flexible, and efficient means of resolving disputes compared to traditional court proceedings and its jurisdiction refers to the authority of the tribunal to hear and decide a particular dispute. The jurisdiction of an

arbitral tribunal is determined by the arbitration agreement between the parties. The arbitration agreement specifies the scope of disputes that may be referred to arbitration, the rules and procedures that will apply, and the governing law. The agreement also specifies the number and qualifications of arbitrators and the place of arbitration. Arbitral tribunals have jurisdiction over the disputes that fall within the scope of the arbitration agreement. The tribunal does not have jurisdiction over disputes that are not covered by the agreement, unless the parties agree to submit those disputes to arbitration (6).

In addition, the jurisdiction of the arbitral tribunal may be challenged by one of the parties if it believes that the tribunal does not have the authority to hear and decide the dispute. This challenge may be made before the tribunal itself or before a national court. The tribunal or court will then decide on the issue of jurisdiction based on the terms of the arbitration agreement and applicable law (7).

It is important to note that the jurisdiction of the arbitral tribunal is limited to the specific dispute that is referred to arbitration, and the tribunal can not extend its jurisdiction beyond the scope of the arbitration agreement.

In talking about the relationship between arbitral tribunals and national courts it is important to learn the features of national courts separately and how can we differ it from arbitral tribunals.

National courts and arbitral tribunals differ in several key ways, including:

Expertise - national courts are staffed by judges who are generalists in the law, whereas arbitral tribunals are often composed of specialists with expertise in the subject matter of the dispute.

Finality - national courts decisions are subject to appeal and review, whereas arbitral awards are generally final and binding with limited opportunities for review and appeal.

Enforcement - national court decisions are enforced through the state's legal system, whereas arbitral awards are enforced through the New York Convention, which provides for recognition and enforcement of awards across borders.

Cost - national court proceedings are generally less expensive than arbitration, particularly if the dispute is straightforward and does not involve complex evidence or witnesses.

Confidentiality - national court proceedings are generally open to the public, whereas arbitration proceedings are confidential unless the parties agree otherwise .

Despite the features the relationship between national courts and arbitral tribunals can also be determined by the jurisdiction that refers to the authority of a court to hear and determine a particular case. The jurisdiction of national courts is typically determined by a combination of the following factors (The Jurisdictional Tensions Between Domestic Courts and Arbitral Tribunals by Emilia Onyema, 21):

Subject matter jurisdiction: This refers to the power of a court to hear cases of a particular type or subject matter. For example, a family court may have jurisdiction over cases involving divorce, child custody, and child support.

Territorial jurisdiction: This refers to the power of a court to hear cases that arise within a particular geographic area. For example, a state court may have jurisdiction over cases that arise within that state.

Personal jurisdiction: This refers to the power of a court to hear cases against a particular person or entity. This typically requires that the person or entity have some connection to the geographic area where the court is located, such as residence or business operations.

Hierarchical jurisdiction: This refers to the power of a court to hear cases at a particular level within the court system. For example, a trial court may have jurisdiction over cases at the trial level, while an appellate court may have jurisdiction over cases on appeal.

The jurisdiction of national courts can be complex and may vary depending on the legal system and jurisdiction in question. In general, however, the court's jurisdiction is determined by statutory and constitutional law, as well as by case law developed over time.

National courts and arbitral tribunals may interact with each other in a number of ways, depending on the specific circumstances of the dispute. This includes the statements including:

(International Commercial Arbitration: A Transnational Perspective" by Tibor Várady, John J. Barceló III, and Arthur T. von Mehren, 127-134).

Enforcing arbitral awards: One of the most common ways that national courts and arbitral tribunals interact is through the enforcement of arbitral awards. If a party fails to comply with an arbitral award, the prevailing party may seek to enforce the award in national courts. Under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, national courts are required to recognize and enforce arbitral awards issued in other countries, subject to certain limited exceptions.

Interim relief: In some cases, parties may seek interim relief, such as an injunction, from national courts while the arbitration is pending. National courts may have jurisdiction to issue such relief, depending on the specific rules and laws of the jurisdiction.

Challenging arbitral awards: Parties may challenge an arbitral award in national courts, typically on limited grounds, such as a lack of jurisdiction, serious irregularity in the conduct of the arbitration, or public policy concerns. National courts may also be called upon to resolve disputes over the validity or scope of an arbitration agreement.

Assistance with evidence: National courts may assist arbitral tribunals with the taking of evidence, particularly if the evidence is located in the jurisdiction of the national court.

Parallel proceedings: In some cases, parties may pursue parallel proceedings in both national courts and arbitral tribunals, leading to potential conflicts or challenges related to the coordination of the proceedings (10).

As arbitral tribunals and national courts interract with each other in some ways it can lead different conflict between them.Conflicts between arbitral tribunals and national courts can arise in a number of ways, such as a challenge to the validity of an arbitration agreement or the enforcement of an arbitral award. When conflicts arise, there are several mechanisms that can be used to resolve them, including arbitration proceedings, arbitration proceedings mediation or negotiation.

In some cases, the parties may agree to submit the conflict to arbitration. This may involve appointing a new arbitrator to resolve the conflict or asking the existing arbitral tribunal to rule on the issue. In another cases parties may also seek to resolve the conflict through national court proceedings. For example, a party may challenge the validity of an arbitration agreement or seek to enforce an arbitral award in national court. And mediation or negotiation also can be an effective way to resolve conflicts between arbitral tribunals and national courts and can involve direct discussions or the assistance of legal counsel or third party. In some jurisdictions, there may be a mechanism for appellate review of national court decisions related to arbitration. This can provide a further avenue for resolving conflicts ("Arbitration and Mediation in International Business" by Christian Bühring-Uhle and others, 541-562).

As mentioned before the relationship between arbitral tribunals and national courts have various challenges.

One of the main challenges of the relationship between arbitral tribunals and national courts is the issue of jurisdictional conflicts, which arise when a court is asked to intervene in a matter that has been submitted to arbitration or when an arbitral tribunal is asked to decide on a matter that is within the exclusive jurisdiction of a court. To address this issue, different approaches have been developed, such as the principle of kompetenz-kompetenz, which allows arbitral tribunals to determine their own jurisdiction, subject to review by national courts; the doctrine of separability, which distinguishes the validity of an arbitration agreement from the validity of the main contract; and the doctrine of competence-competence, which recognizes the primacy of arbitral tribunals in deciding their own jurisdictional scope (Arbitral Tribunals and National Courts - Constant Battle or Efficient Co-Operation? by Elina Haikola and Lapin Yliopisto, 41-42).

Another challenge of the relationship between arbitral tribunals and national courts is the issue of judicial review, which refers to the extent to which national courts can scrutinize or intervene in the decisions of arbitral tribunals, either at the stage of enforcement or annulment. While some legal systems allow for a limited or deferential review of arbitral awards, others impose more stringent or

substantive standards of review, which may affect the finality and certainty of arbitration as a means of resolving disputes. Furthermore, the availability and effectiveness of judicial remedies may vary depending on the jurisdiction and legal culture of the national courts involved, as well as the degree of cooperation and coordination between different legal systems (International Commercial Arbitration: An Asia-Pacific Perspective by Simon Greenberg, Christopher Kee, and Romesh Weeramantry, 201-202).

A third challenge of the relationship between arbitral tribunals and national courts is the issue of diversity and inclusiveness, which relates to the representation and participation of different stakeholders in the arbitration process, such as parties, counsel, arbitrators, and experts, as well as the recognition and enforcement of arbitral awards across different jurisdictions and legal regimes. While arbitration has been praised for its flexibility, neutrality, and efficiency, it has also been criticized for its elitism, lack of diversity, and potential for abuse or bias. National courts can play a role in addressing these issues by promoting the use of non-discriminatory and transparent selection and appointment procedures, by ensuring the respect of fundamental rights and procedural safeguards, and by engaging in constructive dialogue and cooperation with other courts and arbitral institutions (The Oxford Handbook of International Arbitration edited by Thomas Schultz and Federico Ortino, 19).

Conclusion

Arbitral tribunals and national courts have a complementary relationship in the field of international dispute resolution. Arbitral tribunals are private bodies that parties can agree to use to resolve their disputes outside of the court system. National courts, on the other hand, are state institutions that have the authority to adjudicate disputes under the law of their respective countries.

While arbitration offers an alternative to litigation in national courts, it does not replace the role of national courts in providing an essential framework for the recognition and enforcement of arbitral awards. National courts also play a crucial role in supervising and providing support to the arbitral process, including the appointment of arbitrators, the setting aside of awards, and the review of arbitral awards on procedural and jurisdictional grounds.

In summary, arbitral tribunals and national courts are mutually supportive of each other, with national courts playing a vital role in enforcing the outcomes of arbitration, while arbitral tribunals offer an alternative method of resolving disputes that can complement the traditional court system. Each institution plays a critical role in ensuring the effectiveness and enforceability of the arbitral process, while arbitration offers parties a flexible and private means of dispute resolution, national courts provide essential support and oversight to ensure that the arbitral process is fair and effective.

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