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Annulment of International Arbitration Awards in the Light of Investment Law

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Abstract

With the spread of economic crises in recent decades, the number of disputes between the host government and the investor has increased. Mechanisms have been established to resolve these disputes, which maintain order and security in the international community. Among these mechanisms is investment arbitration. Arbitration decisions are final, binding and one-step. But sometimes the issued vote has such damages and defects that it needs serious correction and annulment. It seems that prescribing the implementation of such decisions is like participating in injustice. Therefore, the development of codified and consistent rules regarding annulment in organizational and case arbitrations, as well as the arbitration rules of countries, will lead to encouraging foreign investment. Regarding the annulment of arbitration opinions, their advantages and disadvantages, no written research has been done, and cases of annulment have only been mentioned during the writing of some books or articles, without the precise interpretation of its existence. Especially, despite the importance and effect of Article 52 of the ICSID, the framework of this article has not been accurately calculated in arbitration procedures. Therefore, according to the philosophy of arbitration, the cases of revoking the vote should be limited to specific cases so that the vote is not swayed due to the non-compliance of minor matters. It should be kept in mind that the request to annul the arbitration opinion is not an obstacle or limitation of the arbitration and the purpose of these mechanisms is not to question the one-stage nature of the arbitration. In this research, it is tried to state that the purpose of establishing the revocation mechanism is not to weaken the arbitration procedure, but to create fairness and balance. Because it lacks causes the lack of transparency and accuracy of arbitration opinions, which is undeniable.

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Introduction

The recent economic developments show the need of countries for investment. The desire of the legislators in this regard is aimed at removing the obstacles on the way of foreign investment and creating facilitating factors. Nowadays, in developing countries, they consider many guarantees for investors to attract capital. A cursory review of the evolution of the rules and regulations governing foreign investment shows that the existing rules are, on the one hand, the product of conflict and division of opinion in this area, and on the other hand, they are influenced by numerous political and economic factors and stimuli at different times. Therefore, evaluating and analyzing the content of the current rules in the field of foreign investment, in the first place, requires a thorough and accurate study of the formation process of foreign investment rights and the pathology of the events and factors surrounding it.

Legal guarantee and protection of foreign investment requires the existence of two main pillars: first, the existence of a valid legal system through which foreign investment can be encouraged and supported. Second, the existence of a suitable mechanism for resolving disputes between the investor and the host government, which is undoubtedly the best option considering the appropriate mechanisms for annulment of arbitration decisions. The doubt and concern of foreign investors towards the judicial system of the host government has encouraged them to seek arbitration. Because, unfortunately, the national laws of the countries do not have the necessary efficiency and effectiveness in this regard. In investment arbitrations, after the decision is issued, one of the parties may object to the proceedings or the content of the decision and request annulment. Of course, typographical errors, oversights, and revisions should not be confused with revision requests.

Excessive insistence on the finality of the arbitration opinion or the annulment of the arbitration opinion harms the strength, coherence and efficiency of the investment arbitration system. Therefore, balance should be created against this duality. Therefore, the investigation of review mechanisms and annulment of arbitration decisions should be done in order to consolidate arbitration proceedings and finally issue fair judgments and encourage arbitration instead of judicial proceedings. The review of these mechanisms should be interpreted narrowly, so that the finality and validity of the arbitration opinions are not disturbed.

The definitive and enforceable principle of arbitration opinions:

The certainty and bindingness of the arbitration decision has always been mentioned as one of the advantages of arbitration. But sometimes, an arbitral award is issued that is clearly against the law, which causes irreparable damage to both the host government and the investor. According to the principle of the validity of a closed matter, a lawsuit that is raised in the hearing authority and leads to the issuance of a verdict is closed and cannot be re-heard. But this principle is not absolute and there are exceptions (Audit, 2008: p. 52). Among these exceptions is cancellation.

In international law, there are many documents that show the finality and validity of the decision issued by international authorities. For example, paragraph 1 of article 4 of the

statement on the settlement of Iran-US claims stipulates: All decisions and rulings of the court will be final and binding. Article 56 of the First Hague Convention stipulates that the arbitration award is only binding on the parties. Later, in the Second Hague Convention in 1907, in articles 81 and 84, this article was followed and it was declared that the arbitration award is binding for the parties and has the validity of a closed matter.

In short, it can be said that the lack of a coherent and binding procedure regarding the principle of the validity of the sealed matter, according to many lawyers, is considered a serious threat to the security and legal coherence in the international investment arbitration system (Ghanbari Jahormi, 2019, p. 99).

Cancellation

When a vote is issued by institutions that do not have jurisdiction, or the fundamental principles of public order are violated in the issued vote, that vote cannot be recognized and enforced anymore, so it is considered invalid.

The request for annulment of the arbitration award should be submitted to the competent court and if the reasons for annulment of the award are sufficient or the competent court itself finds out some of the reasons for the annulment of the arbitration award. As if the ruling is against the general order of the hearing court, it can annul the ruling (Iranshahi, 2010, p. 73). The result of the annulment process is the only violation or invalidity of the initial decision. The revocation system in the Exide Center only monitors the legitimacy of the initial voting process and does not monitor the substantive validity of the vote.

For example, statistical studies show that issuing an arbitration award in ICSID takes an average of 3 to 5 years, and the annulment of the said arbitration award will take about 2 years. As a result, on average, an arbitration proceeding at the ICSID center takes more than 5 years. In the analysis of the criticisms raised regarding the increase in time and cost in proceedings, the matter should be looked at with a realistic view in order to reach a correct and practical result. In addition, according to some lawyers, the fundamental goals of coherence and integrity of the dispute settlement system are much more important than sacrificing the speed and cost of arbitration proceedings.

One of the reasons that critics have for the arbitration process is that, without the revocation process, justice will not be done. In other words, although the speed of the arbitration mechanism is one of the important advantages of arbitration, it should not cause justice to be lost in arbitration proceedings. If a narrow interpretation of the causes of annulment is implemented, not only the nature of the arbitration will not be disturbed, but it will also prevent the issuance of unfair decisions. In fact, the purpose of establishing the revocation mechanism is not to weaken the investment protection procedure, but to create fairness and balance. Because it lacks causes the lack of transparency and accuracy of arbitration opinions, which is undeniable (Potesta, 2013, p.88).

Processing of the request for annulment of the arbitration award is usually done in the courts of the country where the award was issued or the country where the award is enforced. For example, in the ICSID arbitration center, the request for revocation regarding bribery, which is one of the causes of revocation, must be submitted within 120 days after its discovery, and in any case, this time interval should not exceed 3 years from

the date of the ruling. It is obvious that the request to revoke the verdict is not submitted to the court that issued it, but a special committee appointed by the head of the administrative council of the ICSID center deals with this matter. The special committee at the Exide Center can cancel all or part of the vote. However, it should be noted that if the annulment of the verdict is partial, the unannounced part has the validity of the sealed order and the new court cannot re-examine the aforementioned part. The first paragraph of Article 52 of the ICSID Convention enumerates the accepted directions and bases for the request for annulment of the verdict (Antonietiti, 2006, p. 427).

Causes of cancellation

According to the investigations, the reasons for cancellation are:

Bribery of referees

Today, corruption is known as a threat against sustainable development and an obstacle to the realization of human rights. Corruption causes the efforts of the international community to provide and guarantee human security to not reach the desired result and the income from these capitals in the destination countries. But the international community also provides the necessary tools to deal with and face these challenges by taking advantage of human experience. By updating investment treaties and including conditions under the title of legitimacy or the need to comply with anti-corruption standards in investment treaties, governments have provided an effective tool to arbitration authorities so that arbitration boards can use anti-corruption standards.

The International Chamber of Commerce introduced corruption as an international evil that is contrary to moral principles and contrary to international public order, accepted by nations (Kohler, 2015, 512).

The arbitrator's violation of the limits of authority

Exceeding the limits of authority occurs when the court goes beyond the agreement of the parties regarding the arbitration. This issue happens when the court makes a decision about the nature of the lawsuit while it has no jurisdiction or has lost its jurisdiction. Jurisdiction of ICSID Courts is determined according to Article 25 of the Convention. Also, if the conditions related to the jurisdiction according to the ICSID Convention are not observed, there is no jurisdiction and the substantive opinion is considered to exceed the limits of authority. Among the other cases of lack of competence and, as a result, exceeding the limits of authority to be considered a substantive opinion, we can mention the lack of valid consent to arbitration. In fact, exceeding the limits of authority should be clear and obvious so that it can be considered as a basis for the annulment of the vote.

In the case of Mitchell v. Congo, the request for annulment of the opinion was based on the fact that despite the fact that the dispute was not caused by investment, the court dealt with the dispute under the assumption of its jurisdiction and therefore clearly exceeded the limits of its powers. From the point of view of this committee, the investment in the meaning of Article 25 of the ICSID Convention has not been made and consequently, the Court has also exceeded the limits of its authority by assuming jurisdiction.

It is worth mentioning that failure to exercise existing authority is also considered as exceeding the limits of authority. In the investigation case, the special committee pointed out: It has been proven and none of

the parties have a dispute in this regard that a court formed under ICSID has committed an overreach of authority in the case of failure to exercise the powers it has.

In one case, the court did not consider a complaint and referred the petitioners to domestic courts. The special committee ruled that the court violated the limits of its powers with this act, and announced; According to the committee, ICSID courts that according to a bilateral investment treaty; Regarding the claim that is based on a substantive provision of the bilateral investment treaty, they cannot reject the claim with the argument that a national court should or can deal with that claim. The committee concludes that the court overstepped its authority in the sense of Article 52, in the sense that the court refused to make a decision in this regard despite having jurisdiction over the petitioner's claims.

Article 52 of the ICSID Convention explicitly does not allow the annulment of the opinion for failure to apply the governing law, but it must be said that the provisions of the governing law are one of the basic elements of the parties' agreement for arbitration. Therefore, legal actions other than the law agreed upon by the parties can exceed the limits of authority and cause annulment. On the other hand, a mistake in the application of the governing law, even if it leads to a wrong decision, is not considered as a reason for annulment of the vote. Although the special committees basically recognize this distinction, they have always hesitated and had problems between non-application and incorrect and wrong application of the appropriate law.

The most serious example of abuse of authority is when the court tries to resolve disputes despite the lack of jurisdiction. In this case, because the jurisdiction of the court is special and exceptional and arises from the contract or arbitration agreement between the parties, the parties can object to the correctness and validity of the court's decisions. Another example of exceeding the limits of authority is when the arbitration court makes a decision contrary to the substantive law governing the case. According to Article 42 of the Washington Convention, the Court is obliged to deal with the claim according to the legal provisions agreed upon by the parties, and if there is no agreement on this matter, it will decide on the basis of the law of the contracting party of the claim. It should be noted that non-application of substantive rules governing arbitration and mistakes in interpretation and application of those rules are two separate and distinct things from each other. In the last case, examining the interpretation of the arbitration courts from the substantive rules and correcting their mistakes is beyond the jurisdiction of the special committee.

Not using the court's judicial powers is also considered a type of abuse of powers. Of course, it is necessary to emphasize the difference between not using the appropriate law and using the appropriate law incorrectly. The first case is an example of a clear violation of the authority of Article 42 and is a reason for annulment, while the second case is not an example of an infringement of the authority and cannot be a reason for annulment. The special annulment committee in the case of "Maine" also confirmed the acceptance of this opinion and said that the court's failure to pay attention to the legal rules agreed by the parties is a violation of the powers and duties according to which the court has been authorized to make a decision. An example of such a violation is the application of legal rules other than the

rules agreed upon by the parties, or issuing a judgment without relying on legal rules in a case where the parties have not agreed to observe the principles of fairness. Now, if this case is a clear violation, it will be considered a clear and explicit violation of the limits of authority. Despite this, not paying attention to the legal rules governing the claim is different from the wrong application of those rules. Because the last case, although it is an example of an obvious mistake, will not invalidate the vote.

The opinion of the ICSID Arbitration Court must specify the assignment of all the issues raised. Failure to address all the issues raised or a serious flaw in the argument can be considered as a violation of authority or failure to issue a reasoned opinion, both of which are grounds for annulment of the opinion. Usually, violation of the limits of authority occurs when it is claimed that the authority dealing with the arbitration matter failed to apply the law. And the path of decisions in the IXID procedure confirms that the inability to apply the applicable law may be considered as exceeding the limits of authority. In case of incorrect application of the law, it is not considered as a basis for annulment.

Therefore, it is necessary to determine that the desired error is equivalent to:

1- Negligence in legal actions in which the decision of the arbitration authority is probably invalid; or

2- Legal malpractices in which the event, even if incomplete, will not be annulled.

The court or arbitral tribunal violates its jurisdiction when it does not respect the limits specified by the arbitration parties. For example, to deal with issues that have not been raised before it, or to not apply the ruling law in the arbitration. As stated in the opinion of the ICSID expert committee in the case of Sufraki against the United Arab Emirates, the jurisdiction of the ICSID is determined by the three criteria of judicial requirements (specified in Article 42 of the ICSID) and the issues raised by the arbitration parties. In addition, according to Article B, 1, 52 of the Washington Convention, in order for an explicit violation of jurisdiction to provide grounds for annulment of the arbitral award, it must be obvious.

On the other hand, failure to apply the governing law in arbitration should be considered separate from clear violation of jurisdiction. It should be said that incorrect application of the governing law, even if it is obvious, is not a reason to annul the arbitration. Sir Arthur Watts has come to the conclusion that sometimes a situation arises in which the arbitral tribunal, when applying a rule of law, finds it so wrong that it does not apply it at all. Based on the findings of the expert committee dealing with the case of AMCO Asia against Indonesia, it has recently been suggested that the annulment of the arbitration is not possible in these circumstances because the arbitration court applies the correct legal system and the recognition of the law is correct. In the case of Daimler against Argentina, the expert committee found that it can determine whether the arbitral tribunal correctly recognized the governing law and tried to apply it or not?

The arbitration court recognizes the governing law, if the decision to annul the arbitration is not issued, it means that the annulment of the arbitration is justified only when the arbitration court applies a set of laws that are different from the law that should have been applied; For example, the governing law is English law or international law, but the arbitration court applied Japanese law. It should not be

overlooked that the non-application of some specific articles in the governing law usually does not create grounds for issuing an annulment opinion. Despite this, it leaves such a deep impact on dispute resolution that in some situations it can be said that the governing law has not been applied.

Some jurists have proposed an idea regarding the unlimited jurisdiction, especially the jurisdiction of the IXID Arbitration Court, which is problematic. And even if it is assumed that the arbitration court does not violate other basic rules. For example, the role of evidence in dealing with lawsuits should be considered cautiously. In the case of TECO v. Guatemala, the expert committee noted that the arbitral tribunal is not required to refer to all the evidence that has been recorded. However, the latter theory does not mean that the arbitral tribunal can ignore the evidence that the parties attach great importance to; That too without the arbitration court analyzing and explaining why this arbitration authority does not consider the said evidence to be sufficient, convincing and satisfactory. The key issue is the concern of the parties to the dispute and the arbitrator in issuing a reasoned opinion and its implementation. However, not mentioning these evidences and paying attention to them in situations where one of the parties has emphasized them a lot; And the evidence is among the evidence that points to an important issue in the case, it causes concern about the correct process of dealing with the dispute. In some special cases, this case may be a justification for issuing a ruling to cancel the arbitration (Broches, 1991, p. 826).

General deviation from the basic rules of procedure

According to the IXID Convention, the violation of a formal rule related to the procedure is considered to invalidate the opinion only when the deviation from the relevant rule is serious and the said rule is a fundamental rule. The seriousness of the violation means that the violation of the rule is not partial and has an important effect on one of the parties to the dispute. In this way, a partial and insignificant violation of a formal rule cannot be the reason for the annulment of the vote. In addition, it is considered a basic rule that is considered as the foundation of justice and impartiality of the proceedings. Among the examples of basic formal rules, we can mention the right of self-defense. In several cases, in which the issue of the violation of the right of self-defense by the court was raised, one of the parties to the dispute claimed that the document of the issued opinion was a theory that the parties to the dispute did not discuss before the court. The special committees have not accepted the claim that the courts are limited to the issues and arguments presented by the disputing parties in order to issue judgments.

In the case of Clockner against Cameron, the special committee announced:

Arbitrators should be free to rely on the arguments they deem most appropriate, even if those arguments were not developed by the parties (although the parties could have done so). Even though arbitrators generally do not want their decision to be based on issues that the parties have not addressed, it cannot be concluded that they are committing a serious deviation from a basic formal rule.

The party who finds out about the violation of a formal rule by the court must immediately react by announcing his objection and following it up. Negligence in such a response is considered as a forfeiture of the right to protest in the next stages. If one of the parties to the dispute does not object to the non-observance of the formal rule, subse-

quently, during the annulment of the opinion, it cannot be claimed that this non-observance of the law is a serious deviation from a fundamental rule of the procedure.

Hear the principle of the argument of the other side of the dispute is one of the important principles of the procedure that in case of deviation from it and if this deviation is natural and minimal and has a real effect and deprives him of the desired benefits. The logical argument for proposing this situation is that all cases of deviation from the formal rules contained in the IXID Convention or arbitration rules are not examples of deviation from the fundamental laws.

In the Clockner vs. Cameron case, the expert committee believed that arbitrators should be able to freely refer to the arguments that seem to be the most important, even if these arguments were not raised by the parties. Even in the case of not using an argument that was not raised by the party, arbitrators should not deviate from one of the basic rules of the arbitration procedure.

Therefore, partial tolerance in this procedure has not caused the annulment of arbitration decisions; Rather, a basic rule related to the procedure, such as the principle of impartiality and equal treatment of the parties, timely notification, respect for the right of defense and giving sufficient opportunity to each party to raise their claims and positions, must have been violated, and such a serious violation cannot be ignored. in such a way as to deprive one party of the benefit or protection that is the intention of the aforementioned principle (Joneidi, 2002, p. 54). It is also necessary to remind that the term "fundamental principle of procedure" will not necessarily be the arbitration rules approved by the IXID Central Court.

Regarding Article (1), 52 part "D" in the English text of the Washington Convention, the phrase (fundamental deviation from one of the rules of procedure) and in the French text (fundamental violation of one of the rules of procedure) are used. In general, this condition is related to the integrity and fairness of the arbitration process; Therefore, the violation of a basic rule, such as the formal process of the trial, can justify the cancellation of the arbitration award even if the trial process is fair. Fundamental deviation means a complete violation of procedural principles. In other words, is the mere occurrence of a violation of fair trial principles, for example, lack of proper notification or lack of opportunity to defend, or violation of the arbitrator's impartiality, or the arbitrator's desire to win one of the parties in the arbitration, enough to invalidate the decision? Or that there should be a connection between the committed violation and the product of the arbitration, that is, the issued arbitration opinion, and some kind of causal relationship should be established between them? Or it is possible to reject the need to establish the causality relationship and say that the mere violation of a fair trial will invalidate the opinion, whether there is a causal relationship or not, especially that entering into the discussion of causation will cause the court to enter into the substance. The reality is that not only the arbitrator's psychological and impractical inclination, by itself, cannot be considered a violation of fair proceedings; And it is the actions of judges and the way they act, and their actions or omissions, that can be considered a violation of fair trial and even a violation of public order; But in a further step, it can be said that any acts of discrimination and violation of impartiality may not affect the result of arbitration. It should be noted that the principles of fair trial and arbitration are not the goal in themselves, but rather a

means to ensure greater peace of mind and ensure the achievement of a fair and just result. From this point of view, the mere violation of fair trial principles cannot by itself be a reason for violating the issued opinion, but there should be a reasonable connection between the violation and the result of the arbitration.

In the event that the arbitration authority, in violation of the rules and principles of the proceedings, refuses to give effect to the valid documents and reasons of the parties, both official and unofficial, or issues an opinion that is obviously unfair; By resorting to the standard of public order, the issued opinion will face the guarantee of nullity. But if the arrangement of the arbitration court not to give effect to the valid documents of the parties was made due to the mere mistake of the arbitrators; Necessarily, it should be accepted as one of the costs paid in return for the benefits of arbitration and we must believe that there will be no possibility of protesting against the arbitration opinion and canceling it for this reason. Of course, depending on the case, it is possible to assign responsibility to the referees, which is another discussion.

Failure to properly form the arbitration court

So far, in the few cases where the decision of the court has been requested to be annulled, no one has raised the incorrectness of the formation of the court. Because in practice, the courts of the IXID Center ask the parties to approve the correct formation of the court in the first session of their proceedings, and in this way they obtain the consent of the parties. In addition, the party who knows that a provision of the arbitration rules has not been followed, if he does not quickly express his objections to the court, he will be deprived of the right to object (Namadian, 1997, p. 186).

The specialized committee investigating the IDIF case added that in a situation where other members of the arbitration court or the head of the executive council of this court have voted about the incompetence of one of the members of the arbitration court; The expert committee is limited to the evidence that is found in the opinion issued regarding the disqualification of the member of the court. In the case of Azores v. Argentina, the Expert Committee has stated that the Committee can sometimes revoke the arbitral award based on Article 52, Part 1 (a); Not being able to properly adapt to the process that has been provided for injuring the members of the arbitral tribunal in other articles of the Washington Convention.

Lack of justification of the opinion issued

The purpose of requiring the courts to present the reasons for their decisions is to explain the decision to the parties to the dispute so that they understand why and how the court issued such a decision. Paragraph three of Article 84 of the IXID Convention clearly states the obligation of the courts to state the reasons for their opinions. Therefore, complete absence of reasons in votes is very rare and its probability is very low. Despite this, requests for annulment of votes have often involved the lack of providing reasons in certain parts of the vote. In addition, there are complaints based on the existence of ineffective and insufficient reasons, contradictory reasons in the opinion or not addressing all the issues raised before the courts.

If the reason is not provided in a particular case in the vote, the special committee can complete the reasons for the vote. Therefore, if the reasons for the court's decision are not

clearly stated, but are easily understood and received by the special committee, the court's decision will not be invalidated. The implicit reasons in the votes are also considered sufficient and do not lead to the annulment of the vote when it can be reasonably deduced from the expressions and results of the vote.

The inadequacy and inadequacy of the opinion has been cited many times to invalidate the rulings of the courts. Reasonableness of the opinion is clearly a subjective standard and the special committees have stated that the reasons for the opinion should be "sufficiently relevant" and "appropriate" and allow the parties to understand the decision. In this regard, the special committee announced in the Vivendi case:

According to part "e" of paragraph one of article 52, cancellation should only be done in a very specific situation. This situation is subject to two conditions: first, the failure to provide a reason must be such that we necessarily realize the obvious illogicality of the opinion in a particular issue; And secondly, that issue itself should be considered necessary for the opinion of the court. Also, it has been accepted that providing contradictory reasons can be considered as failure to provide reasons by the court, because the respondent will not be able to verify the motives of the court for issuing the decision. In addition, it should be noted that basically contradictory reasons are mutually exclusive.

The obligation of the court to examine all the issues raised before it is included in paragraph 3 of article 48 of the ICSID Convention. Failure to address all the issues raised is not independently considered as a reason for the annulment of the vote, but the special committees have considered this deficiency as one of the examples of failure to provide reasons. However, this requirement does not mean that the court should deal with each and every issue raised by the disputing parties. Only important and decisive issues are raised as "disputed issue". In fact, some issues are also considered decisive, the acceptance of which can overshadow the judgment of the court.

In order to administer justice, it is mandatory to provide reasons and this is one of the definite duties of the court and it cannot be postponed under any circumstances. On the other hand, not providing reasons due to their inadequacy cannot be interpreted as a valid reason for not providing them (Kim, 2011, p. 263). According to Article 48, the duty of the IXID Arbitration Court is to state the reasons based on which the decision was issued. This is actually a response to the well-known but not accepted proposal regarding the non-obligation of the arbitral tribunal to state the reasons for issuing an opinion, which was raised during the negotiations of the Aron Broche Convention. In these negotiations, it was emphasized that it is mandatory to state the reasons for issuing a vote. Years later, Broche presented his views on removing this requirement, which was approved with 28 votes in favor against 3 votes against. Based on this, the arbitration parties have the right to agree with the idea that the arbitration court is not required to state the reasons. As in the case of Vena Hotels vs. Egypt, the expert committee argued as follows:

If the judgment issued by the arbitration court does not meet the minimum requirements regarding the reasons provided by the court, there is no need to raise the dispute again in a new arbitration court. The expert committee came to the conclusion that based on the knowledge it has gained regarding the dispute, it is possible to explain the reasons

that support the opinion of the arbitration court. The vote must be based on the reasons, unless the parties have agreed that the reasons will not be included in the vote.

Contradictory statements of the referee after issuing the opinion

The referee may make statements contrary to his opinion and claim a fundamental mistake in the opinion. Sometimes, after issuing and submitting the opinion, the arbitrator mentions things such as mistakes or concealment of the truth or collusion, and in general, contrary to the content of his opinion. This issue, which can be seen in case arbitrations, is the basis of some of the later lawsuits to annul the arbitrator's opinion. Some jurists have pointed out the negative consequences of this case, that the occurrence of mistakes in some opinions is the basis for the justification of annulment. The arbitrator's admission of a mistake or the presence of defects in the issued opinion, along with the lack of its substantive evaluation, can be a justification for re-controlling the opinion.

Also, on October 6, 2009, the Swiss Federal Court annulled the arbitration award because it was found that the witness had misled the arbitration authority and made contradictory statements (Baker and McKenzie, 2010, p. 345; Bray et al, 2013, p. 293). Also, Article 192, Paragraph 1 of the Swiss Private International Law states: The parties can completely waive the action for annulment or limit it to one or more reasons. In fact, the agreement of the parties to the dispute in limiting the reasons for annulment is recognized as valid.

Failure to observe the principle of neutrality

The position of the arbitrator appointed by the parties is noteworthy. According to the American Arbitration Association, which is based on the decisions of the New York courts, independence and complete neutrality is only a condition for the third arbitrator. But the European practice considers the condition of impartiality necessary for all judges. So that the lack of impartiality towards each of the arbitrators, even the arbitrator appointed by the parties, is considered a fundamental flaw and is considered a formal violation that ultimately distorts the validity of the arbitration award.

If the arbitrator does not observe the important principle of impartiality and favors one of the parties, if this is proven, it can be considered as a reason for annulment of the arbitration opinion. For example, in the case of Newscenter Company, which had purchased the privilege of a software program from Positive Software Solutions Company, the judgment of cancellation was issued in favor of Positive Software Company due to non-observance of the aforementioned principle. The Supreme Court of the United States of America, in the case of Kaman Wealth Coating Corp. v. Continental Kajalti Co., considered the failure of the arbitrator to disclose an important relationship with one of the parties as a violation of impartiality and required the annulment of the arbitration award. For example, in the case of News Center Company, which had purchased the privilege of a software program from Positive Software Solutions Company, the judgment of cancellation was issued in favor of Positive Software Company due to non-observance of the aforementioned principle. The Supreme Court of the United States of America, in the Commonwealth Coatings Corp. v. Continental Casualty Co case, considered the arbitrator's failure to disclose an important relationship with one of the parties as a violation of impartiality

and required the annulment of the arbitration opinion. Of course, in the United States of America, the courts are not unanimous about what should be disclosed (Rossein and Hope, 2007, p. 206).

A mistake regarding the arbitrator and his or her characteristics or the arbitration institution, or a mistake regarding the impartiality of the arbitrator or the suitability of the arbitrator or the arbitration institution may also be raised to question the arbitration agreement. In a case related to an international arbitration agreement, one of the parties filed a lawsuit directly before the Paris Appellate Authority, stating that the arbitration agreement he had signed was invalid due to a mistake or fraud. He claimed that he had no information about the fact that the president of the International Court of Arbitration of ICC was the lawyer of the other side. The Court of Appeal of Paris rejected this claim. The French Court of Cassation also confirmed the opinion with the argument that the petitioner could not prove the claim of mistake or fraud and it was not established that at the time of signing the contract containing the arbitration clause, the head of the arbitration court had already acted as the attorney of the respondent company.

If the arbitrator or arbitrators violate their impartiality during the arbitration and take sides with one of the parties, or apply a specific opinion regarding the arbitration issue, Ali Al-Qaeda will retain the right to challenge the arbitrator and also to object to the arbitration decision. The "disclosure" duty of judges has been emphasized by international and domestic sources. This issue is mentioned in the case of Free Laser against IDH Management.

Failure to observe public order

Failure to observe public order leads to the violation of basic principles, including the principle of justice and fairness. Some writers attach importance to these principles to such an extent that they believe that the public order of every country is made up of the principles of justice and fairness, both in formal matters and matters regarding the nature of the vote. It is obvious that if the basic and natural rights of the objector have been violated in the arbitration resulting in the issued opinion, the court may invalidate the arbitration opinion based on the standard of public order.

What is considered sensitive and a kind of red line for all governments is the category of public order, and the main reasons for revoking the arbitrator's opinion are based on this (Kia et al., 2021, p. 156).

Fraudulent and deceitful acts and bribery in obtaining arbitration opinion also cause disruption of public order. which can, according to the law of the investigating court, be an independent reason for objecting to the arbitration opinion or be included under it. Therefore, in the countries where these cases are not recognized as clear and independent causes of objection to the verdict of international arbitration, Ali Al-Qaeda can be considered as examples of public violations. For example, the Federal Arbitration Law of the United States enumerates obtaining a vote through bribery, deception, or illegal means, and obvious bias or bribery of arbitrators or any of them, among the special causes of objection to the arbitrator's opinion and its annulment. In an American case in New Jersey, the American defendant, who was called to arbitration in Switzerland according to the arbitration rules of the International Chamber of Commerce and a judgment was issued against him, refused to participate in the arbitration and claimed that he was not able to present his defenses. Due to the fact that according to one of the contracts

related to the lawsuit, his rights and responsibilities were not completed and could not be evaluated until the expiration of that contract. In addition, he claimed that the other party committed fraud in obtaining votes. Because he did not present the contract to the judges. The court rejected both claims and reasoned that since the proceedings and the arbitration process were communicated to him, he should and could present his claims and arguments before the arbitration court. Regarding the claim of fraud, the court commented that since the defendant had the possibility to prove his claim based on fraud according to Article 10 (A) of the Federal Arbitration Law, the criterion of conflict of opinion with public order is not applicable in this case.

In Hong Kong, violation of public order is a criterion for annulment of international arbitration award. However, courts have been reluctant to apply the public order standard and have rarely applied it. The most obvious example in which the courts of this country invalidate the arbitration verdict based on the standard of public order is in cases where the verdict was obtained through fraud, crime, oppression, or other behaviors against human conscience. The model law also considers the violation of public order as a reason to protest and annul the international arbitration opinion. The model law states that if the court of the country of origin finds that the international arbitration award is in conflict with the public order of that country, the award can be annulled.

Failure to include the arbitrator's signatures

If the applicable arbitration law or the law governing the arbitration deems the signature of all three arbitrators to be necessary on the bottom of the award, even mentioning the lack of signature of one of the arbitrators and including the reason for his lack of signature on the bottom of the issued opinion may not free it from the risk of annulment. In such a case, if the vote is annulled, the parties will have to restart the arbitration process (Caron and Caplan and Pelonpaa, 2006, p. 79).

Of course, if the arbitrators have deliberately issued a decision that has fundamental flaws; Especially if the performance of the arbitrators can be considered as an example of exceeding the limits of their competence and authority, the matter is different and it is beyond the scope of the criterion of the arbitrator's mistake and the issued opinion will be annulled based on other causes.

The referee's error criterion should not be confused with other similar criteria. For example, between the objection to the arbitration decision due to the arbitrator's mistake, which Ali al-Qaeda must be inadvertent; There is a big difference with the objection to the arbitration award based on the standard of obvious disregard for the law in the United States arbitration law, according to which the arbitrator's non-observance of the law must be deliberate and deliberate in order to be able to annul the arbitration award. The arbitrator's mistake should not be confused with the criterion of "irregular and arbitrary" arbitration opinion, although this criterion is also somehow related to the arbitrator's mistake and requires judicial review or the content of the arbitration opinion.

The disproportion of the composition of the arbitration court

In the history of IXID arbitration, none of the parties to the dispute used this reason to submit a cancellation request. The inappropriateness of the composition of the court may be raised as a reason for annulment

when issues regarding the nationality or competence of the arbitrators are considered, or the accusation of conflict of interests is raised according to the IXID Convention.

Referee corruption

New investment treaties, by adding anti-corruption conditions and compliance with the internal laws of the host country (legitimacy condition), have provided conditions so that investors do not have the opportunity to benefit from their illegal and illegitimate actions.

According to the investigations, the establishment of the correct mechanism regarding the review and annulment of votes, arbitration can encourage governments to arbitrate. Because governments can submit an objection to the arbitration process in the form of submitting a request to the hearing authority, and to some extent, the concerns caused by the unpredictability of votes, arbitration for governments and foreign investors are eliminated. It should be kept in mind that the request for annulment of arbitration decisions does not hinder or limit arbitration and the purpose of the annulment mechanism is not to question the one-stage nature of arbitration; And according to the importance and position of the principle of "validity of sealed matter" they should be interpreted narrowly (this matter has been confirmed by arbitration courts). According to the overviews, the arbitration institutions as well as the laws of the countries, do not follow the same mechanism for canceling the issued votes; But they are trying to find the best solution to face exceptional circumstances, such as fraud in the proceedings or discovering new facts and reasons after issuing a decision. Therefore, it is not unlikely that the review and annulment of arbitration awards will increase in the future as one of the acceptable solutions to protest the finality of the awards (especially the awards issued by the IXID Convention). Therefore, the establishment of a suitable and useful mechanism regarding the annulment of arbitration decisions is of great importance.

Due to the lack of grounds for annulment of votes during arbitration proceedings, lawyers in this field should discuss legal standards, including the following. The principles of interpretation, proof of claim and examination of evidence in these proceedings - considering it as an exceptional solution, not a substitute. In this research, while emphasizing the goal of cancellation as an exceptional solution, some suggestions can be presented:

First of all, if all the reasons and conditions of Articles 51 and 52 of the IXID Convention are met, it can be successful in the request for annulment of arbitration decisions. Therefore, these materials can be used as a criterion for the revocation mechanism.

Secondly, annulment should be interpreted narrowly considering that it is an exceptional solution. Thirdly, according to the principle of the validity of the sealed order, strict standards should be applied regarding the evidentiary reasons and evidence review in the revocation mechanism. It means that there should be a balance between the proof and the validity of the closed matter, with the principle of justice and fairness in the proceedings, although in the IXID arbitration procedure, the finality of the arbitration opinion is preferred.

In order to prevent unnecessary interventions in the matter of revocation in arbitration, it is necessary to limit the cases of revocation. As the revocation directions are limited to globally accepted cases (international commercial arbitration law), including dealing with public order.

On the other hand, the problems caused by the lack of precedent can be solved, especially in the field of international investment arbitration, by referring to consistent procedures in a set of similar opinions. Based on this, the arbitrators should follow the mentioned approach in case of adopting a consistent approach in a chain of similar cases by other arbitration courts, unless there are very convincing reasons to deviate from the mentioned procedure. Therefore, one of the other suggestions to reduce the number of uncoordinated votes is to use the referral procedure. For this purpose, in similar cases, when an opinion is issued, it will be referred to other arbitration courts under the title of single procedure. The achievement of accepting this practical procedure in international investment arbitration is the emergence of relative harmony in the decisions issued and the approximate predictability of the outcome of lawsuits and obtaining legal security; In the end, these cases are favorable to the litigants and legal systems due to giving credit to the legitimate expectations of the parties to the dispute. Finally, we can believe that the consistency of opinions and their predictability in international investment arbitration is due to the creation of a single and coherent procedure (Brower, 2000, p. 92).

Conclusion

The annulment of arbitration decisions is considered one of the challenging issues of arbitration, the establishment of the mechanism of annulment of arbitration decisions, considering its special nature, is to consider precise criteria; And the formation of an independent institution that has this competence and whose goal is to develop justice in a balance between the control of votes and the observance of fairness is a suitable option. Certainly, the formation of this institution and the implementation of this idea are faced with problems such as its time-consuming nature and numerous legal proceedings. On the other hand, the formation of an independent institution also depends on factors such as the sharing of benefits, capital flow, and the closeness of the countries' level of development. The independent institution of revocation of votes can, with the goals of preventing unreasonable expectations of the parties to the dispute from the arbitrator in the stage of investigation and objection to arbitration decisions; Integrity in arbitration decisions and examination of formal deficiencies, reduction of injustice in the course of actions, speeding up the process of correcting judicial and thematic errors, guaranteeing accurate review of court decisions and issuance of fair and just judgments should be established. The issue of the inherent authority of arbitration institutions to review and annul the arbitration award, in limited and exceptional cases, is one of the important issues of international arbitration and proceedings in this regard, which has attracted the attention of lawyers and international judges and arbitrators. In terms of basic considerations, the proceedings and the limits of the powers of the arbitration body are based on the consensus of the parties, and therefore, in the assumption that the arbitration court does not exercise explicit authority in the matter of review and annulment, the integrity and coherence of the proceedings process is completely overshadowed.

Compilation of rules and codified proceedings in the annulment mechanism can raise the current problems of international arbitration to some extent and increase the willingness of investors to invest and the governments to attract capital. By establishing such a mechanism, it is possible to avoid the

confusion of votes, and the same interpretations are made from them, and as a result, more confidence is obtained in the arbitration process. The content of these rules should also be based on the needs of both parties. Because the rules that are only to meet the needs of one of the parties of the relationship will not be implemented. It is possible to help achieve this goal by drafting rules with high acceptability and having minimal standards. Therefore, it is suggested that, by drafting the arbitration rules, the arbitration institutions should try to cover all the problematic issues in the annulment process in the form of a "rite of passage" in a set of arbitration rules regarding annulment. Even if this set of arbitration rules does not necessarily solve all the issues that arise from annulment proceedings, it will ultimately provide a useful framework to support foreign investment.

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