

## POSSIBILITIES OF ENFORCEMENT PROCEDURE OF FOREIGN ARBITRAL AWARDS IN RUSSIAN FEDERATION AND PEOPLE'S REPUBLIC OF CHINA

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### Abstract

Awarding procedure is not only limited with the final decision of a court of stipulated country, likewise the People's Republic of China and the Russian Federation but also its significant procedural aspect for enforcing the arbitral decision. Practically parties should enforce foreign arbitration awards without exception unless it violates the country's internal and external policy.

Economic growth in both countries demonstrates remarkable changing on legal behavior on mentioned countries' private parties as well. Dispute resolution has passed a long way in the trade relations between Russian and Chinese companies. Referring to complex social approach to the legal nature of both countries, it is not a surprising fact that they apply the private international law demands in practice. Both governments seek a modern transparent approach to finalize and enforce international arbitral awards without limiting the freedom of activities of companies in domestic and cross border transactions.

All the features of legal nature and enforcement procedure on foreign arbitration awards in the Russian Federation and the People's Republic of China are not very harsh at first glance since both countries adequately adhere to New York Convention 1958 on Enforcement of Foreign Arbitration Awards, however, likewise in any jurisprudence, there are several weak points while applying the procedure.

This article analyses and compares legal possibilities and challenges on the application of foreign arbitral awards in the People's Republic of China and the Russian Federation. The findings reveal the essential procedural points for the enforcement of foreign arbitral awards and their complexity from the theoretical point of approach.

The goal is achieved by solving a number of problems:

- Research the procedure of enforcement of foreign arbitral awards in People's Republic of China and Russian Federation.
- Identify the problems of procedural matters while enforcing the foreign arbitral awards
- Highlight the possible solutions and pathway for making easier the enforcement procedure of foreign arbitral awards in China and Russia

The results of the study can be used in determining the key goals and objectives of procedural character, improving the functioning of judicial and extrajudicial institutions, law enforcement, research activities, as well as in teaching activities, in particular, in lectures and seminars on courses of civil procedure, arbitration process, and international private law.

**Keywords:** Arbitration, Legal nature, Foreign element, International private law, Civil procedure code.

## 1. INTRODUCTION

The increasing graph of economies and trade relations make the new possibilities to private parties of pioneer countries to enlarge their vision and approach to the understanding of “trade”, “commerce” and “legal perspective”. The factor of dispute resolution enhanced its admissibility within various perspectives likewise arbitration and other dispute resolution methods. However, the accountability of approval of the decisions made by foreign arbitrations in the local context is still questionable due to legislative and socio-cognitive factors. The Russian Federation and the People’s Republic of China are one of the best role models for applying international decisions while disputes were raised from concerns on either material or non-pecuniary damages during trade making procedure. Historical and social backgrounds of both enumerated countries are eligible to compare the legal natures and approaches from the point of view of modern jurisprudence, demands, challenges on arbitration procedure, post arbitration and decision making structure.

Both countries have come to modern jurisprudence scene from social- communism system (even if this system is ongoing in one of them) - in the People’s Republic of China and the Russian Federation it affects the legal nature of awards and its enforcement procedure.

The People’s Republic of China has become a party to United Nations Convention on Recognition and Enforcement Foreign Arbitration awards (New York Convention 1958) in 1986. After some time of this partnership as a requirement it is demanded to recognize and enforce the foreign arbitration awards in a stipulated country as a loyal party of convention, yet it can be argued what are the main grounds of recognition in its deeper and detailed nature. All the cases the foreign arbitration awards cannot be recognized and enforced due to lack of demanded requirements by the PRC.

## 2. METHODOLOGY

**The research methodology** is based on both qualitative and quantitative analysis, as well as on the method of empirical experiment. The study of civil procedural legislation, as well as a number of national sources and other normative acts was carried out using the methods of specific research, logical, statistical and content analysis. In the work on the topic, the authors relied on the results of studies of Russian and foreign legal theorists in the considered and related fields of knowledge.

## 3. RESULTS

### 3.1. Legal Framework of the Proceedings in arbitration in the Russian Federation and the People’s Republic of China

#### 3.1.1 Arbitration in the People’s Republic of China

Structural court bases on four layers in the People’s Republic of China [2]. The layers of court structure ranged as follows: people’s court in each county and district, the intermediate people’s court in each prefecture level city and level of province, the higher people’s court of each county, autonomous courts or municipal courts directly controlled by the Chinese Central Government and the last and the highest instance is the Supreme People’s Court. The range level of courts also effects the international decisions and its recognition and enforcement as well [3]. For instance, the appeal from the decision of higher is courts rarely seen and accepted by the Supreme People’s Court. Obviously, the court level range is based on the experience of courts and the judges [1].

Arbitration is another possible way to solve the dispute out of the legal courts in the PRC. It is a newly growing value of China which makes good amount of money over solving the material (commercial) disputes between parties. It approaches as a third party to the case assessment deal between them and gives the final decision which is legally binding. This should be enforceable by the state court due to its legal formation and legal nature.

Practically, arbitration used the commercial disputes' solving and as growing and prosperous value of the PRC, it has its various requirements which should be met by parties. There are main requirements as follows: (i), the clear description of issues should be arbitrated, (ii) obvious and understandable expression of parties for applying to arbitration, (iii) selection of right arbitration institution for dispute resolution [10].

Understanding of arbitration is the one of the best methods for solving the disputes among or between the parties due to several facts and reasons [6]:

- Arbitration is more developed rather than a local PRC's court due to its flexibility and professionalism in China [11];
- Arbitration institutions suggest the professional neutral arbitrators who are mainly specialized in exact fields (industrial, commercial and etc.), whether dispute would be based on technical matters, it gives (what?);
- Contradiction between litigation and arbitration demonstrated itself in confidentiality as well, so far while drafting the case through litigation it goes directly to state courts and is mentioned publicly, on the other hand, arbitration promises the confidentiality until parties wish to publicly reveal the details of the case;
- Arbitration gives opportunity to parties on flexibility of procedural matters such as language, composition of tribunal and etc. This factor can be much important while both parties meaningfully participate to the case.

### **3.2 Arbitration in Russian Federation**

Following international experience, arbitration institutions (courts) are aimed at resolving the disputes alternatively. Generally, parties go to arbitration in case of commercial disputes and their sub disputes. Regarding to the law of the Russian Federation on International Commercial Arbitration which came to force on 14th of July In 1993, the law maintains the objective view as the third party targeting at resolution of foreseeable disputes between parties.

Referring to the research in Chinese court division above, the Russian Federation has also divisions in the manner of arbitration courts. The eye catching factor is about the professionalism of the Russian Federation in arbitration divisions due to functionality likewise the international Commercial Arbitration Court.

This is the main indicator of the Russian side's professionalism in arbitration understanding in general.

Referring to the division of arbitration courts in the Russian Federation [12]:

- The first level is made up of the federal arbitration courts of the entities of the Russian Federation. They comprise the arbitration courts of republics, territories, regions, cities of federal significance, autonomous areas and autonomous regions. They hear cases as courts of the first instance. There are 82 first instance arbitration courts.
- The second level is represented by arbitration appellate courts. Under the Federal constitutional law No. 2-FCZ of 25.03.2004 «On Introducing Amendments and Addenda into the Federal Constitutional Law on Arbitration Courts in the Russian Federation», 20 such courts were formed by the end of 2005. The arbitration appellate courts fully reexamine cases on appeals against the decisions that have been passed by the first instance courts but have not yet come into legal force.
- The third level is formed by 10 federal district arbitration courts, each of which functions as a court of cassation with regard to a group of arbitration courts making up one court circuit. These courts as cassation instance in their districts check the legality of the decisions passed by arbitration courts and having entered into legal force, from the viewpoint of correctness of the application of the norms of substantive and procedural law.
- The fourth level is represented by the Supreme Arbitration Court of the Russian Federation that is the superior judicial body for deciding commercial disputes, and other cases handled by the arbitration courts: it supervises their activity and issues explanations on matters of the judicial practice.

The Russian Federation as a continuous supporter of United Nations obligations and development programs, takes responsibility of being a party to New York Convention on Recognition and Enforcement of Foreign Arbitration awards (1958). Logic ending of this range came to the scene under the name of International Commercial Arbitration which mainly works independently and neutral without any connection with state courts.

Legislation of recognition and enforcement of foreign arbitration awards is laid on the main internal laws:

- The Law on International Commercial Arbitration (No. 5338-1, 7 July 1993, amended on 29 December 2015);
- The Arbitration (Commercial) Procedure Code

Furthermore, Russian Federation jurisdiction is based on Model Law which refers to UNCITRAL Model Law and its subparts; functionality of modeling the law on the base of UNCITRAL Model Law gives a chance to parties to design the law as main bases of International jurisdiction of the United Nations [13]. It helps only parties while the dispute settled in the Russian Federation.

### **3.3 Recognition and Enforcement of Foreign Arbitration awards in China and Russian Federation**

#### *3.1.1 Experience of Russian Federation*

The main procedural part of arbitration on recognition and enforcement is about arbitration agreement likewise international experience (e.g. the People's Republic of China). This is also one of the main grounds for refusal in case of default inside of any part. Arbitration agreement defines the pivotal legal relationships between the dispute parties due to misunderstandings on contractual or non-contractual relations. Arbitration agreement is not only limited with commercial part but also the statutory documents of companies, and shareholder's documents can be included.

Jurisdiction is the second vital issue while going to step-by-step recognition and enforcement of foreign arbitration awards. Jurisdiction is based on range of level of state courts in the Russian Federation. The Final enforcement power belongs to the Supreme Court of the Russian Federation. A sole judge gives effect to decision of foreign arbitration.

Regarding the comparative analysis thesis, there are some main grounds for refusal in the Russian Federation due to contradictions of local jurisdiction. The pioneer legal instruments for refusing or recognizing the arbitral awards are based on New York Convention Article V and Article 36 of Law of the International Commercial Arbitration. There are focal grounds which should be met by parties to apply the enforcement of recognition or refusal the arbitration awards. In the cases of situations which is ranged in the below the arbitration has a right to refuse the case [5]:

- The parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

#### *3.3.2 Chinese Experience*

Rapidly growing partnership with the United Nations Organization led to the People's Republic of China support the pivotal conventions of the enumerated organization at the highest level, so far the PRC ratified the New York Convention on Recognition and Enforcement of Foreign Arbitration awards through the courts of the PRC. Moreover, regarding to main idea of the convention, signatory states are responsible to recognize and enforce the foreign arbitral awards until it crosses the public policy of the state.

Leading specialists count and assume the Chinese courts are more willing to implement the requirement of the public policy as a prior reason for the rejection of enforcement of foreign arbitral awards. This is not coincidence for making decision on rejection due to the exact answer of mandatory review by the Supreme Court of the PRC. Detailed comparative analysis demonstrates the similarities of the Russian Federation

Supreme Court not only with same named but also functionality in the PRC. All legal natures of rejection in the PRC crosses with the Russian Federation at all the bases, however the term of public policy still is not defined by the Chinese governmental or legislative body which plays a major role in the procedure [8].

Accepting the prior factor of the public policy in the PRC, case study is the best way to approach on understanding of the stipulated problem [9]:

A music band group from the United States of America contracted to perform in the People's Republic China in the style of rock. The peculiarities of the concert showed that the type of the concert would interfere the Chinese youth ideology. After ending of the concert, the Chinese government refused to pay the money to the group which brought to the arbitration dispute by American band. The Arbitration awarded to them compensation on damages however the Supreme court of China refused to implement it due to crossing the public policy of the PRC.

Moreover, it was held decades ago but nowadays morality, especially in music and its sub points, does not play great role while taking into account for the reason of refusal on the matter of public policy.

#### **4. FINDINGS**

Despite the growing of legislative instruments in both the People's Republic of China and the Russian Federation, they still did not achieve their goal on enforcement and recognition of foreign arbitral awards due to factorial reasons likewise morality, crossing on state sovereignty, crossing on internal jurisdiction of them, and so forth. Furthermore, there are some other problematic barriers that should be taken into account as political, economic, socio-cultural situations in both states [7].

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