



Short Review Paper

Arbitration agreement and its effects on court's jurisdiction

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Abstract

To deprive the court from its jurisdiction an arbitration agreement is required. Of course it is worth noting that just because the parties rely on the agreed arbitration to resolve their differences does not mean the courts are absolutely deprived of their right to intervene but the courts will have this right to intervene in the various stages of judgment and even after the court issues decision. Therefore a mutual agreement upon arbitration or agreement of arbitration during proceedings will not absolutely hinder court involvement in trials and the court can be involved in various arbitration cases as provided in the civil procedure code.

Keywords: Arbitration, Court, Jurisdiction, Agreement, Judge.

Introduction

This study aims to assess the role and involvement of courts in proceedings and issuing decisions. Since no separate work has been done in this field and only small references have been made to general explanation and the role of courts, and since courts play an important role in this regard and seriously regulate arbitral decisions in processing and issuance, so the present study aims to assess court interference in arbitration separately in every discussion. The present article has three sections, each including various clauses.

First discussion- The concept of arbitration

Clause one - Definition: The differences that rise between people on their those rights and private interests, can also be resolved in ways other than litigation in the courts of law and due process of civil procedures but through people other than judges and without due process. This method is called arbitration and these people are called arbitrators¹.

Arbitration is based on mutual consensus, so it's a bilateral approach for resolving disputes. This expression means arbitration can be defined as a way to solve disputes by private parties with their mutual consent or according to the law. The legislators did not provide an independent definition of arbitration though².

It should be noted that the dispute must be referred to the arbitration only before or during the time the court is preceding the case and that before the final judgment is issued³.

Clause two - Arbitration agreement: Arbitration proceedings depend on an arbitration agreement concluded between the parties. The parties may during a deal or as separately, agree that in case of occurrence of difference between them, the

dispute will be resolved through arbitration and they may also pre-select the arbitrator. But in case they have not already chosen the arbitrator, if they have not concluded the said agreement or if one refuses to select an arbitrator the court will have to determine an arbitrator. After selecting the arbitrator they will have no right to dismiss them except by mutual consent¹.

Discussion two - the main introduction

Legislator has in the seventh chapter of the civil procedure code described arbitration and its conditions, and has in some cases prescribed court intervention in arbitration, in most cases of which the intervention of the court happens in case when the parties disagree about arbitration or when they chooses not to agree, or if they request.

Given arbitration is cost-effective method for resolving disputes is therefore it is highly beneficial for the two parties if the court intervenes more and more³.

Since the decisions arbitrators make have legal effect for the parties, in order to protect the rights of the parties and avoid infringement of their rights and any disruption in arbitration, courts are required to intervene.

Discussion three - Involvement of the courts

Clause one- Selection and appointment of arbitrators: The parties may, either before or after a dispute arises, choose their arbitrator(s) or they may agree on a third-party or the court choosing the arbitrator for them. This would mean permission for the court to intervene in choosing the arbitrator. In this case, the court will determine an arbitrator upon the request of one of the parties. This is mentioned in article 459 of civil procedure

code and the competent court would be the one the parties choose or a court that has jurisdiction to handle the first dispute⁴.

The second case when the court is involved is when the parties have decided to appoint an arbitrator by mutual consent themselves, but one party abstains from the selection and appointment of an arbitrator within the determined time. In such a case the second person applies to the competent court and requests the appointment of an arbitrator³.

The third case is when the parties have in one way or another disagreed over the selection and appointment of an arbitrator in which case the court undertakes to appoint an arbitrator and actually substitutes the parties in choosing an arbitrator³.

The fourth case of the intervention of the court in determining an arbitrator is to substitute a deceased, incapacitated or resigned arbitrator. article 463 of the civil procedure code implies that in case of the arbitrators' death, loss of reason or resignation arbitration will not be obliterated but the competent court chooses an arbitrator and the judgment will continue⁴.

The fifth case of court intervention in the appointment of an arbitrator, pursuant to article 474 of civil procedure code is to determine the successor of an abstaining arbitrator. It must be said in explanation that in a case is referred to arbitration by the court, and one of arbitrators resigns or fails to attend the arbitration hearing twice, or chooses not to decide or if arbitrators disagree over the case, in then the court will have authority to interfere within 10 days to determine an arbitrator, unless the parties appoint a different arbitrator before the court does⁴.

The sixth, as mentioned at the beginning is when the parties grant the authority to appoint an arbitrator to a third party (natural or legal). Now if like the previous case, the third party fails to choose an arbitrator in one way or another or if choosing arbitrators is impossible for them, and the parties fail to agree or choose an arbitrator between them, beneficiaries can request arbitrator from the court under article 460 of the civil procedure code⁴.

Clause two - arbitration mandate: In arbitration mandate it can be said that the extent of court involvement is much less than the previous cases. The parties will freely determine the arbitrator based solely on the interests of the parties and the arbitrator and the role of the arbitrator themselves in determining the time is little. At first glance, article 468 is found to stipulate that in cases when the court should determine arbitrators instead of the parties the duration of the arbitration mandate and its extension are also on the court, but according to article 474 of the in any case the parties will have to decide the duration of arbitration⁴.

Clause three- arbitration proceedings: In arbitration proceedings there are cases that require the intervention of the

competent court and we will study them separately in this discussion. i. Whenever during the arbitration proceedings, the circumstances show a crime and penal aspects of the issue, in a way that is effective in arbitration, in such cases because the criminal proceeding is not in the jurisdiction of the arbitrators, they will have to stop, until the criminal court hears the case first and issues their decision, then the arbitration proceedings can start⁵. ii. When the matter referred to arbitration needs to address the principle of marriage, divorce and parentage, in which cases the issue should be stopped, until the competent court studies the case of marriage, divorce or parentage, and issues their final decisions, then the arbitration proceedings can start⁵. iii. By virtue of the articles 250 232 234 236 and the silence of article 47 of the civil procedure code it can be understood that an arbitrator cannot perform actions like local search and hearing the witnesses. This suggests the necessity to attend the proceedings of the court for hearing testimonies and the witnesses taking an oath⁴. iv. Arbitrators will only be able to hear the entry or summoning of a third, with the consent of the third party with the parties about referring the case to an arbitrator, otherwise and if the consent of a third arbitrator entering the case affects the decisions of the arbitrators, they must be stopped until a competent court decides if the third arbitrator can enter the judgment and issues their final decision, then the arbitration proceedings can start⁴.

Clause four- inviting to attend the hearings: In accordance with article 484 of the civil procedure code, invitation to attend the hearings should be by done by arbitrators themselves and the court will intervene in this matter only in cases where the referral of the dispute to an arbitration is done by the court⁵.

Section five- issuing the verdict: In announcing the arbitration decision the court will only be able to intervene about the decision when in the issue referred by the court one of the arbitrators resigns or refrain from voting or attending the hearing two times in a row again and the two other arbitrators dispute about their final decision, in this case to replace the resigned, abstaining or absent arbitrator, the court will have to draw to choose a substitute within 10 days unless before the court intervention, the two parties select another arbitrator⁴.

The second case of courts involvement in issuing the arbitration decision when the arbitration doesn't issue their decision in the given time and the parties have not agreed to other persons' arbitration in which case under article 474 of the civil procedure code, the court will undertake proceedings under legal provisions and will issue verdict⁴.

Based on the civil procedure code the arbitration decision must be delivered to the court to which has referred the claim to arbitration or a court that has jurisdiction over the lawsuit and the office manager will have to deliver the decision to the sitting judge after which the decision original version will be filed and its certified copy will be communicated to the parties¹.

Clause six- Communicating the arbitrator decision: If there is consent between the parties on certain ways for communication, they will act that way, and in case they don't, the arbitrator shall give their decisions to the office of the court which submitted the case to arbitration or a court that has jurisdiction to hear the case, the court office will have to file the decision and its certified copy will be communicated to the parties according to the court order⁴.

Clause seven- Correcting the arbitrator's decision: In cases where a mistake inadvertently happens in the writing, such as the omission or addition of the name of one of the parties or that of the arbitral and so on in the arbitration decision, the court will only have the right to correct the errors if the arbitration mandate has ended and in this case, the court that has jurisdiction over the claim can undertake the correction of the decision, at the request of the, as annexed to the decision sheet or on a separate sheet that must be signed by the court prosecutor⁵.

Clause eight- Implementing the arbitrator decision: Like court orders, the arbitration decision is applicable after communication and when the sentenced person enforces it, there would not be a need to issue an executive order⁶.

After the notification (both legal and real) of the arbitration decision to the parties, if the two parties take no action against it, if they don't protest or request for annulment of the decision of the court within twenty days from the date of communication of the decision, the court is obliged to issue an executive order and the court office will issue an executive order in line with implementing the court decision proceedings, in which case it is also worth noting both parties may protest and request its annulment within 20 days to the court that referred the case to arbitration or the court that has jurisdiction over the dispute; issuing the executive order in this case is a task for the court¹.

One thing that is worth noting in this regard and the question that arises is whether a protest against the arbitration decision is the same as the request to annul it? This question arises because, according to the general rule in civil proceedings code protesting against uncertain decision prevents its execution procedure, except in cases of seizure. In the case of registered civil procedures protest or annulment request doesn't hinder the implementation of the executive order, if against promulgated charter in the civil procedures code, if they protest they won't stop the implementation. So at the same time the invalidation request is processed in the court the implementation will also take place and go on.

Clause nine- protest against the arbitration decision: For annulment of the arbitration decision, court proceedings are needed. Any request for annulment and objections should be given to the court that referred the case to arbitration or that has jurisdiction over the litigation so that the court addresses the issue, and if it matches with one of the provisions referred to in

article 489 they decide to issue the annulment of the verdict¹ and these cases include: i. if the arbitral decision is contrary to the rules protecting rights. ii. The arbitration decision is issued beyond the subject of arbitration. iii. The arbitrator has issued a decision beyond the scope of their mandate. iv. The arbitration decision is issued and communicated after the mandate has ended. v. The arbitration decision is against the documents registered at the notary office between the parties. vi. Verdict is issued by unauthorized arbitrators. vii. Arbitration agreement is invalid.

In all cases, if a protest to arbitration decision or annulment request is given to the court, hearing the main dispute will stop until an arbitration decision annulment becomes final⁵.

Clause ten - arbitration deterioration: About the deterioration of the arbitration, in all cases expressed in law, such as the agreement of the two parties, death and loss of reason of one of the parties, unwillingness of the certain person or their impossibility to pass judgment, failure to issue decision within the given time and issuing the verdict of annulling the arbitral decision, in any case if the court has referred the case to arbitration, or (in some cases) the two parties have no mutual agreement and consent on another arbitrator, arbitration will deteriorate and the case will be dealt with in the court.

Conclusion

Evaluating the role and involvement of the court in proceedings and issuing arbitration decision in the Iranian law made it clear that although arbitration is a way separate from the judicial organization for the settlement of disputes without judicial formalities between parties and is dependent on the private parties' interpersonal will, however, in several cases the courts intervene in the arbitration proceedings and this involvement starts from the stage of appointing the arbitrator until the issuance and conveyance of the arbitral decisions and also protesting against it.

So although arbitration is a private way to resolve disputes but more or less courts are involved, and this intervention is not ineffective but works to ameliorate the decisions and avoid infringement of the rights of the parties involved.

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