

**Public Policy Exceptions in EU Case-Law on
Recognition and Enforcement of International
Commercial Arbitration Awards
(Original Research)**

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Persian Text pp. 115-133

(DOI) : 10.22066/cilamag.2024.2029485.2562

Date Received: 17 May.2024

Date Accepted: 4 Oct.2024

Extended Abstract

1. Introduction

The question of whether arbitral awards can be recognised and enforced in different jurisdictions is one of the key concepts in international commercial arbitration. Public order is one of the criteria to not recognize and enforce foreign arbitration awards listed in Article 5.2.b of the 1958 Convention. Examining the standard of public order in the European Union in identifying international commercial arbitration awards constitutes the main topics of this article. One of these cases is doubt in the recognition and implementation of commercial arbitration awards and its compliance or non-compliance with EU laws. The review of existing restrictive legal procedures in this regard has formed the shape of the public order of the European Union in the recognition, implementation or non-implementation of commercial arbitration awards. Failure to pay attention to the considerations of the public order of the countries related to the arbitration can have adverse consequences, such as the failure to recognize and implement it in the implementing country.

This article examines the public order in the judicial procedures governing the European Union by the European Court of Justice with a

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descriptive and analytical method, in analysing how public order is considered at the level of the European Union.

2. Structure of the European Court of Justice

The European Court of Justice is the judicial pillar of the European Union. Since its establishment in 1952, it has always played a significant role in the development of EU law. This institution is composed of three judicial pillars, which are: the European Court of Justice, the Court of First Instance and judicial boards. The European Court of Justice is the highest judicial authority of the European Union, which is headquartered in Luxembourg. The Court has the final word on matters related to the rights of the Union in order to guarantee its uniform implementation in all Member States.

3. EU Law and interaction with commercial arbitration

The European Union and international arbitration awards have a challenging relationship with one another. The reason for this situation is mostly the interpretations that the European Court of Justice has ruled in its role of supervising the implementation of EU laws. In other words, the jurisprudence of the European Court of Justice plays a significant role in this regard. This article, in agreeing with other commentators argues that the European Court of Justice has become increasingly willing to rule against arbitral awards under the public order criterion. The most important reason for this issue is perhaps the wide range of EU laws, which over time have added new legal branches such as the law of protection of commercial agencies, the law of consumer protection and the law of competition, etc. within its framework.

4. The judicial procedure of the European Court of Justice and the standard of public order

The procedure of the European Court of Justice and subsequent decisions by the courts of European countries have expanded the scope of public order, which has become a gateway to the non-recognition and annulment of international commercial arbitration awards.

Currently, there are many complex issues and challenges in EU law, such as combating trade discrimination, creating an economic and monetary union, creating a free trade area, security and justice, which may use the criterion of public order to avoid identifying and implementing the commercial arbitration award, based on any of them, is not far from reach.

As a result of the rapid expansion of EU law, it has become increasingly difficult to predict the possibility of non-recognition and enforcement of a commercial arbitration award as a result of misinterpretation or misuse of EU law.

In trying to establish the jurisprudence which is relevant on this matter, authors have made use of several high-profile cases. The first is the *Eco Swiss*

case. In this case, although the European Court of Justice acknowledged that Member States have procedural independence in examining cases in accordance with EU law and domestic law, it recommended the restrictive application of the "principle of equality" and the "principle of effectiveness", and ruled that they are to be taken as mandatory. Second, is the *Ingmar* case. Here, similar to the previous case, European Court of Justice considered the application of the EU Directives to be mandatory, and stated that the Directives are a mandatory common language that the harmonized internal market of the European Union requires. The third, is the *Mestaza* case. In this case, European Court of Justice stated that in cases where the national laws require the court not to recognize the judgment based on the violation of national public order, the violation of EU laws should also be treated in the same way, and the basis of this decision is the general order within the European Union.

Conclusion

The practice of applying EU public order regarding the recognition and enforcement of international commercial arbitration awards at the EU level raises the concern that if one of the trading parties is from the EU, they cannot rely on arbitration agreements. This is interpreted by the international business community as protectionism, where the free choices of the parties are ignored, and the entire arbitration process is jeopardized. Although the European Court of Justice declares that Member States have procedural independence in reviewing cases in accordance with EU laws and domestic laws, it has highlighted and mandated two promoting and limiting principles; namely the principle of equality and the principle of effectiveness.

The European Court of Justice does not propose any direct definition of public policy for the non-recognition of commercial arbitral awards. The Court pointed out the mandatory nature of the norms resulting from EU laws, which have the nature and importance of certain public interests. This exception needs to be properly defined in order to determine how far the general order of the European Union is extended. The lack of direct communication of the European Court of Justice with the courts and arbitration centers, regarding the acquisition of advisory opinions, along with the promotion of the expanded public order of the European Union, the work of the arbitration courts and arbitrators in issuing commercial arbitration awards based on this criterion faces the risk of non-recognition and implementation. If they do not, it makes it more difficult.

Keywords

Commercial Arbitration, European Court of Justice (ECJ), Case-Law, Public Policy

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