



The Notion of Public Policy and its Role in International Commercial Arbitration

by

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Public policy as a notion affects the enforcement of foreign arbitral awards in various ways, as the application of this notion may occur at different stages of the arbitration process. Initially the arbitral tribunal may find that it is imperative to apply public policy rules that might have a considerable consequence on the validity of their verdict.¹ Secondly the court in the country of origin, which has jurisdiction over the arbitration process, may refuse to assist the arbitration process or to recognise the validity of the arbitration agreement and the resulting award if it considers that the award violates its national public policy rules. Finally if the award was considered as a foreign award, then the court where the enforcement is taking place may not recognise or enforce the award if it contradicts with public policy as conceived in that state.

The final stage has a special significance. This is due to the nature of foreign arbitral awards in that they were rendered outside the scope of the states' supervision and therefore, courts may reinvestigate the validity of an arbitral award according to its conformity with the mandatory rules in the state of enforcement. This may expose the award to a wide range of possible grounds on which the award will be nullified and set aside.

The study will firstly focus on the concept of public policy. Secondly the focus will be upon the traditional classification of public policy rules, both domestic and international, which deserves a careful analysis. Therefore, a distinction between the different forms of public policy will be drawn to illustrate the different applicable public policy rules to relationships that involve a foreign element. Finally, we will examine the development of the concept of international public policy, and the approach towards accepting the existence of international public policy rules, as distinct from domestic public policy rules.

¹ It is a common thing to find public policy rules which cannot be contracted out of by the parties or which cannot be disregarded by the arbitrators. See.