



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

Part 2 *(continued from previous issue)*

by

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I. The Role of Domestic Public Policy in Private International Law

National courts are bound by the public policy rules of a state since such national public policy rules are designed and intended to be applicable by the court as part of their legal system. A national court may, therefore apply national public policy rules to all disputes that fall within the scope of the court's jurisdiction, regardless of the proper law of the contract.¹ Accordingly, a court may nullify a foreign contract, disregard a foreign law², or set aside a foreign award by virtue of its contradiction with the national public policy rules.

The flexible nature of the concept of public policy has previously been noted. It is this flexibility that makes it hard to discern the limitations to applying domestic public policy rules to private international law relations. This could be illustrated by viewing four different examples. In these examples it will be presumed that the English courts are the courts that have the jurisdiction to decide the applicable public policy rules.

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- 1 See Okezie Chukwumerije, Choice of Law in International Commercial Arbitration, Library of Congress Catalog (1994), p. 181. He states that: "The court system is one of the vehicles through which a society expresses and protects those fundamental values that underlie its social fabric; thus national courts generally apply imperative rules that invariably represent the essential values of their societies, even in cases where the forum's law does not govern the contract."
 - 2 Hussam Fatahi Nasif, Supervising Foreign Awards by the National Courts, Dar al Nhdah al Arabiah (1996), p. 460. He states that: "Public policy in private international law could be used in a negative sense. It could provide the national courts with a legitimate reason to change the jurisdiction of the applicable foreign law by permitting the court to disregard the jurisdiction of the foreign rule that the conflict of law rule indicates points to, and replace it with its national law."