

Kluwer Arbitration Blog

A New Bump on the Qatar-New York Road

Minas Khatchadourian (Qatar International Center for Conciliation and Arbitration) · Tuesday, January 28th, 2014

In an earlier [post](#), it was reported that several domestic arbitral awards rendered in Qatar have been set aside by the national judges based on the necessity to be rendered in the name of His Highness The Emir of Qatar, otherwise these awards were considered in violation of public policy.

Few weeks ago, a new bump on the Qatar-New York Road came on surface as a Qatari Court decided to set aside an ICC award rendered in Paris on May 2013 for the same reasons, regardless the application of the New York Convention to such foreign award and to which Qatar adhered in 2003.

Such foreign arbitral award of several million dollars was rendered in a big construction dispute between two Qatari contractors. Submitted by the winner party to the Court, it was supposed to either receive enforcement according to article IV or to be rejected under article V of the New York Convention.

The award was challenged by the losing party before the Court of First Instance. The judges of the Court decided to apply the same provisions of the Qatari Law (which does not make any distinction between provisions for domestic awards and foreign awards in respect of nullity) and to follow the ruling of the supreme court of June 2012 in a case where the award was not subject to New York Convention. The judges misperceived completely the validity of an award and its enforceability. In other words, the validity of an award in its country of origin must be distinguished from its enforceability in another country.

For a foreign award, only the enforceability provisions under the New York Convention should be applied in such circumstances.

Since Qatar has adhered to the New York Convention in 2003, its provisions became part of the national legislation and even have priority of application over any contrary internal rule.

Was the arbitrator (suppose an Italian national) sitting in Paris in an ICC arbitration supposed to render his award in the name of His Highness the Emir of Qatar, to ensure its enforceability ? I doubt!

It is true that an arbitrator has a particular duty to conduct the arbitration in such a way that leads to a valid award and not open to any challenge. Also, an arbitrator has to take into consideration all issues which might threaten the validity of the award. But, it will not be reasonable to ask him to

ensure the enforceability as he/she cannot know or presume in which country the award shall be enforced. Only in few circumstances, an arbitrator may anticipate the place of enforcement like in the case of two parties from the same country. Accordingly, if the case concerns two parties from an Islamic country, he/she shall ensure the enforceability of the award by rendering an award without interests.

Since this new Qatari ruling, it is recommended to any foreign party who obtain an arbitral award in its favor and want to enforce it in Qatar where the award debtor has its assets, to request from the arbitrator the addition of such formal prelude in the award. Shall such request receive acceptance as placed under the arbitrators' duty to render an *enforceable award* ?

Dr. Minas Khatchadourian is an international arbitrator and the director of the Qatar International Center of Conciliation and Arbitration. He has an extensive experience in the Gulf Region. He can be reached at drminas@qcci.org.


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