

Kluwer Arbitration Blog

UAE Court Rejects Enforcement of Foreign Arbitral Award for Irregularity in the Placement of the Arbitrator's Signature and Confirms the Period for Appealing an Order to Execute Foreign Arbitral Awards

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On 21 April 2022, the Dubai Court of Cassation (the “**Cassation Court**”) issued a judgment in respect of an application for the recognition and enforcement of foreign arbitration award in [case no. 109 of 2022](#) (the “**Judgment**”, available in Arabic-only on the Court’s website). In the Judgment, the Cassation Court considered whether an arbitration award issued by a sole arbitrator in a New York Convention country should be ratified and executed in circumstances where the award had only been signed on one page, being the operative section at the end of the award, rather than on every page of the award. The Cassation Court affirmed that arbitrators must sign not only the operative part of the arbitral award, but also the reasons, in order for it to be enforceable.

Procedural Background

The arbitration award, which was issued under the ICDR-AAA Rules, arose from a dispute under a non-disclosure agreement (the “**Award**”). The judgment does not specify the seat of the arbitration where the award was issued but does refer to various provisions of the New York Convention, thus confirming that it was issued in a New York Convention country.

The Award creditor filed a petition with the Execution Judge¹⁾ in the Dubai Courts for an order that the Award be ratified and executed. On 20 June 2021, the Execution Judge ordered that the Award be executed and that an execution file be opened. The Award debtor appealed this order to the Court of Appeal. The Court of Appeal rejected the appeal on the basis that the Award debtor’s appeal was filed out of time and the right to appeal had therefore lapsed. The Award debtor further appealed to the Court of Cassation on the grounds that the Court of Appeal’s decision to reject the appeal as being out of time was an error in the application, and therefore in violation of the law, as recognition and enforcement of a foreign award is a substantive matter (rather than a summary matter) that requires full deliberation by the court rather than summary determination.

On 11 November 2021, the Cassation Court accepted the Award debtor’s appeal and overturned the Court of Appeal’s rejection of the appeal on the basis that the Court of Appeal Judge had erred by relying on Article 159 of the Civil Procedures Law,²⁾ which states that the “*time limit shall be*

10 days for summary matters”, in determining that the Award debtor’s right to appeal has lapsed. The Cassation Court confirmed that the period for appealing an order to execute arbitration awards issued in foreign countries is, in fact, 30 days pursuant to Article 57 of the UAE Arbitration Law.³⁾ The Cassation Court thus referred the matter back to the Court of Appeal for reconsideration.

Following reconsideration, the Court of Appeal upheld the first instance Execution Judge’s original order. However, the Award debtor appealed again to the Cassation Court on a different ground, namely that the Execution Judge’s decision erred in its application of law and therefore contravened it, arguing that that Article 3 of the New York Convention⁴⁾ stipulates that enforcement of arbitration awards is to be carried out in accordance with the procedures applicable in the state in which enforcement is to take place. In particular, the Award debtor contended that: (i) the arbitrator had only signed the last page of the Award in question, which included the operative section only; and (ii) this is not compliant with Article 41(3) of the Arbitration Law, which it claimed should be interpreted as requiring both the reasons and the operative parts of the arbitration award to be signed by the arbitrator.⁵⁾

The Court of Cassation’s Judgment

The Cassation Court accepted the Award debtor’s second appeal and found that the Execution Judge had erred in the application of the law. The Cassation Court held that: (i) pursuant to Article 41(3) of the Arbitration Law, an arbitral award must include the arbitrator’s signature as without it, the award cannot be attributed to the arbitrator; and (ii) what is meant by an “arbitral award” is both the reasons and operative parts of the award, such that it is necessary for arbitrators to sign both these parts, otherwise the award is rendered void.

The Cassation Court also held that a nullity on such ground is a matter of public policy and is therefore capable of being raised for the first time before the Court of Cassation. Accordingly, the Court determined that the Award did not comply with the execution requirements set out in the law and therefore could not be executed.

Comments

This is not the first occasion on which the UAE courts have rejected enforcement of a foreign arbitral award based on the placement of the arbitrators’ signatures (or lack thereof). For instance, in 2020, the Dubai Court of Cassation⁶⁾ already stated that the arbitrators’ signature is one of the “essential details” that must be included in an arbitral award, and that the arbitrators must sign both the operative and reasons sections of the award. In that case, however, the Court held that there is an exception to that rule, which applies when some of the reasons fall on the same page as the operative section of the award and the arbitrators sign that page only. The rationale behind this is that that signature extends to all the reasons of the award, which would be in line with the legislator’s intention of having the arbitrators sign the arbitral award. The Court also found that the requirements of Article 41 of the Arbitration Law are similar to that of the now repealed Article 212 of the Civil Procedures Law,⁷⁾ and are thus subject to the same interpretation.

Even prior to the promulgation of the Arbitration Law, the Dubai Court of Cassation⁸⁾ had also held in 2011 that it is not sufficient for the arbitrators to sign the operative section of the arbitral award only, as both the reasons and operative sections must include the arbitrators' signatures. The Court's finding, at that time, was based on Article 212(5) of the Civil Procedures Law, which (like Article 41 of the Arbitration Law) provided that an arbitral award must be signed but did not expressly specify where on the award the arbitrators' signatures were required to be affixed. The Court found that an arbitral award is comprised not only of the operative section, but also the tribunal's reasoning.

Accordingly, the Court of Cassation's latest judgment on this issue is not necessarily new and serves as a reminder that the UAE courts are likely to take a narrow and stringent approach when considering whether the technical requirements of a foreign arbitral award have been met for enforcement purposes. Thus, where parties anticipate that enforcement procedures may need to be undertaken in the UAE, it is important that they request their arbitral tribunals to ensure that each arbitrator signs each and every page of the award.

The Court of Cassation's judgment is also important for at least three further reasons. First, it provides clear confirmation as to the relevant time period for appealing decisions of the Execution Judge in the context of applications for the recognition and enforcement of foreign arbitral awards (as opposed to judgments issued by foreign courts). Second, it serves as a caution that, what may have been thought to be a historical and largely redundant issue when it comes to enforcement of foreign arbitral awards being rejected on (arguably overly) technical grounds, may still prove a real barrier to enforcement even under the recently revamped and more streamlined Civil Procedures Law. Third and finally, it serves as a reminder that new grounds of appeal may be introduced at the Court of Cassation stage and that what amounts to a public policy ground may be construed widely.

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References

- Pursuant to the new procedure set out in Cabinet Decision No. 57 of 2018 on the Regulation of Federal Law No. 11 of 1992 concerning the Civil Procedures Law, as amended (“**Cabinet Decision No. 57**”). Article 85(2) of Cabinet Decision No. 57 provides that, in order for a judgment/award creditor to obtain a court order for execution of a foreign judgment/award, a petition may now be
- ?1 submitted directly to the execution judge who is required to determine the application within 5 days. This new process allows for a significant streamlining of the process for execution of foreign judgment/awards, which previously were required to be submitted to the Court of First Instance and which applications were considerably more susceptible to technical defences raised by judgment/award debtors. The execution order may however be appealed in accordance with the rules and procedures prescribed for filing an appeal.
- ?2 Federal Law No. 11 of 1992 concerning the Civil Procedures Law, as amended.
- ?3 Federal Law No. 6 of 2018 on Arbitration.
- ?4 The UAE acceded to the New York Convention pursuant to Federal Decree No. 43 of 2006.
- ?5 Article 41(3) of the Arbitration Law provides: “*The arbitrators shall sign the award, or otherwise the reason for any omitted signature shall be stated. The award shall be valid if signed by the majority of the arbitrators*” and thus does not expressly require that every page of an arbitral award must be signed.
- ?6 Dubai Court of Cassation case no. 1083 of 2019.
- ?7 Article 212 was repealed by the Arbitration Law.
- ?8 Dubai Court of Cassation case no. 252 of 2011.

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