

# Kluwer Arbitration Blog

## Bahrain Court of Cassation Further Consolidates Pro-New York Convention Practice

Reyadh Mohamed Seyadi (Judicial and Legal Studies Institute (JLSI), Kingdom of Bahrain) · Sunday, April 21st, 2024

The Bahrain Court of Cassation (“**COC**”) in Case No. 53 of 2021 clarified the uncertainty surrounding the enforcement of foreign arbitral awards. The COC in this case established an expedited enforcement process of arbitral awards in Bahrain and confirmed that a decision of the Bahrain Court of First Instance (“**CFI**”) granting the enforcement of an arbitral award is final and not subject to any appeal. This approach has been followed in a number of recent decisions and has resulted in an enhanced enforcement process in line with the spirit of the [United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958](#) (“**New York Convention**”).

Prior to Case No. 53 of 2021, there were two important aspects that were unclear under the [Bahraini Law No. 9 of 2015 Promulgating the Arbitration Law](#) (“**Bahrain Arbitration Law**”):

- First, whether the process of enforcing an arbitral award was by way of an order or a judgment of the court; and
- Second, whether the enforcement order issued by the competent court was final or subject to appeal.

Bahrain adhered to the New York Convention in 1988 by way of [Royal Decree No. 4 of 1988](#). Article III of the New York Convention provides for the enforcement of foreign arbitral awards through the national procedural rules of each contracting State, subject to the requirement that those rules do not impose additional grounds for refusal other than that prescribed in the . Article 3 of the Bahrain Legislative Decree No. 22 of 2021 Promulgating the Law of Civil and Commercial Execution issued in 2021 (“**Bahrain Code of Execution**”) regulates the recognition and enforcement of foreign and local arbitral awards in Bahrain; it is silent about any appeal against a court order granting or refusing enforcement of an arbitral award. The COC thus took the opportunity, in Case No. 53 of 2021, to clarify the position of the Bahrain judiciary and resolve the legislative ambiguity by deciding that no appeal was permitted against a court order enforcing an arbitral award under Article 35 of the Bahrain Arbitration Law. Consequently, the judgment of the COC confirms that Bahrain facilitates an expedited enforcement process in line with the spirit and purpose of the New York Convention. This post will explore the current approach of recognising and enforcing local and foreign arbitral awards in Bahrain.

## COC's Approach in Case No. 53 of 2021

In [Case No. 53 of 2021](#), the claimant (the award creditor) applied to the CFI to enforce a foreign (London seated) arbitral award in Bahrain and the CFI granted the enforcement order (“**CFI Order**”). The defendant (award debtor) challenged the CFI Order before the Court of Appeal (“**COA**”) in Appeal No. 3439 of 2020. The COA refused the defendant’s challenge and upheld the decision of the CFI (“**COA Judgment**”), holding that the defendant’s appeal was inadmissible. This was on the basis that under Article 3 of the Bahrain Code of Execution, arbitral awards were enforced through a court order, rather than a judgment. As the CFI Order was an order of the court and not a judgment, the COA held that it was final and not subject to appeal.

In rendering its decision, the COA held that:

*“The law did not regulate a method of appeal against the order that granted enforcement to the arbitral awards issued by the President of the High Court; therefore, the appeal is inadmissible.”*

Indeed, by looking at the Bahrain Code of Execution and the [Bahrain Arbitration Law](#), it is clear that no provision permits an appeal against court orders that enforce or refuse enforcement of an arbitral award. Further, according to [Article 200 of the Bahrain Civil and Commercial Procedures Act](#), the appeal is only possible against a court judgment or verdict. In contrast, a court order that grants or refuses enforcement of an arbitral award is not considered as a judgment or verdict, and therefore it is not subject to appeal.

The COA Judgment was appealed to the COC in Case No. 53 of 2021. The COC upheld the COA’s decision and dismissed the defendant’s challenge, thereby effectively affirming the position that the CFI Order that granted the enforcement of the arbitral award was final and not subject to any challenge or appeal (“**COC Judgment**”). In the COC Judgment, the award debtor argued that in the Bahraini legal system, parties had rights of appeal before the COA and the COC. The COC rejected this argument and held that:

*“the court order that grants recognition and enforcement of arbitral awards is final and not subject to any appeal or challenge since the law allows the award debtor, the party against whom the enforcement order is issued, to bring a separate annulment action either before Bahrain courts or competent jurisdiction. As a matter of fact, if the court refuses enforcement, it must issue a reasoned judgment rather than an order. The refusal judgment is subject to appeal according to the appeal process regulated by the Bahrain Civil and Commercial Procedures Act.”*

In all cases, the appeal is not a substantive appeal seeking the annulment of the arbitral award but a limited appeal against the court ruling refusing enforcement but not against an order of the court allowing such enforcement. The COC clarified the uncertainty surrounding the national rules that regulate the means of recourse against court decisions on recognition and enforcement of foreign arbitral award which are not regulated neither in the Bahrain Arbitration Law nor in the Code of Execution.

### Article III of the New York Convention

Article III of the New York Convention promotes uniformity and represents the pro-enforcement policy. It sets forth the overarching principle that “*each contracting state shall recognize arbitral awards as binding and enforce them.*” This means that foreign awards have a *prima facie* right to recognition and enforcement within contracting states. However, [Article III of the New York Convention](#) also grants states the discretion to enforce the foreign arbitral award according to their own national rules of procedure, provided they do not impose “*substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.*”

As the *travaux préparatoires* make clear, the drafters of the New York Convention refrained from developing a harmonised set of procedural rules applicable to the recognition and enforcement of foreign awards in each contracting State because it would have been unlikely for all the States to reach an agreement on a uniform set of rules. As a result, the New York Convention does not refer to any specific set of rules, leaving it to each contracting state to define the rules of procedure applicable to the recognition and enforcement of awards in their respective territories as per its discretion. Accordingly, the national laws of each contracting state govern the recognition and enforcement of foreign awards in their respective jurisdictions.

### Bahrain’s Regulation on the Recognition and Enforcement of Arbitral Awards

In the Bahraini national legal system, the enforcement of arbitral awards, either foreign or domestic, is subject to similar national rules of procedures stipulated in Article 3 of the Bahrain Code of Execution which states that:

“Arbitral awards may be enforced by a **request** submitted to the High Court after paying the prescribed fee, attaching to it the original award or a copy thereof, and a copy of the arbitration agreement. If the award is written in a language other than Arabic, a translation shall be submitted in Arabic, and the clerk of the court shall write a report of this request, and a copy of it shall be announced to the person against whom the award is requested to be enforced. The arbitral award shall be enforceable by **order** issued by the President of the High Court after reviewing the award and the arbitration agreement and after verifying that there is nothing preventing its enforcement.” [emphasis added]

Therefore, to enforce a foreign or domestic arbitral award in Bahrain, the rule of procedures as contained in Article 3 of the Bahrain Code of Execution must be followed which provides for a party to submit a request to the competent court rather than to formally institute a lawsuit. While it is easy to confuse the two or use the terms interchangeably, they are not the same. Understanding the difference between a request and lawsuit is important in the context of the Bahraini legal system, particularly when it comes to the enforcement of an arbitral award. A ‘request’ is a legal demand submitted to the court in certain types of dispute that the legislature prefers to organise in

an expedited procedure, such as the enforcement of an arbitral award as stipulated in Article 3 of the Bahrain Code of Execution. In contrast, lawsuits are legal actions decided in court and involve a plaintiff, suing a defendant, with the court required to issue a reasoned judgment. Pursuant to a request, the court is only required to issue an ‘*order*’ to enforce the arbitral award without holding any hearings or providing reasons. It is evident that the Bahraini legal system prefers the courts to issue an order when deciding the enforcement of arbitral awards as it is a quicker process and makes Bahrain an arbitration friendly jurisdiction.

The COC Judgment was followed by a number of recent CFI decisions in Bahrain, such as [Case No. 16218 of 2023](#), [Case No. 00561 of 2024](#) and [Case No.00782 of 2024](#). These decisions held that a court order granting the enforcement of foreign or local arbitral awards in Bahrain was not subject to any means of challenge or appeal, either before the COA and the COC or otherwise.

This approach of the Bahrain judiciary consolidates the pro-New York Convention enforcement practice and establishes an effective mechanism to facilitate the enforcement of foreign and local arbitral awards in Bahrain. It provides parties seeking enforcement with a user-focused environment with clear, fast, and simple procedures that are necessary for arbitration users.

## Concluding Remarks

In conclusion, while Article III of the New York Convention grants contracting States the freedom to apply their own national rules of procedure at the recognition and enforcement stage, the Bahraini judiciary has applied Article III in accordance with the New York Convention policy of promoting the recognition and enforcement of awards to the highest extent possible.

The takeaways from [Case No. 53 of 2021](#) are three-fold. First, it resolves the uncertainty on the national procedural rules that regulate recognition and enforcement of foreign and domestic arbitral awards. Second, it confirms the expedited process of enforcement by adopting the request process rather than lawsuits, which certainly saves time for arbitration users. Third, it clarifies that court orders granting enforcement of arbitral awards, either foreign or local, are final and not subject to any means of challenges or appeals. If the court refuses enforcement, it shall issue a reasoned ruling or judgment rather than an order, and this ruling or judgment is subject to an appeal process. The Bahraini judiciary has aligned its approach to the enforceability of arbitral awards with that of the New York Convention by establishing a new approach expediting the enforcement process by following a request rather than a lawsuit process, and clearly adopting the principle of finality that a court order that enforces an arbitral award is not subject to any means of appeal.

---

*To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).*

## Profile Navigator and Relationship Indicator

Access 17,000+ data-driven profiles of arbitrators, expert witnesses, and counsels, derived from Kluwer Arbitration's comprehensive collection of international cases and awards and appointment data of leading arbitral institutions, to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Newly updated

# Profile Navigator and Relationship Indicator Tools

 Wolters Kluwer

Request your free trial now →

This entry was posted on Sunday, April 21st, 2024 at 8:30 am and is filed under [Bahrain, Middle East](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.