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## Administrative Approval for Agreement to Arbitrate: The Iranian Supreme Court Offers a New Interpretation of Article 139 of the Iranian Constitution

Nima Nasrollahi Shahri (University of Paris 1 Panthéon-Sorbonne) · Tuesday, July 16th, 2024

The Supreme Court of Iran has rendered a historic decision, providing insight into the proper interpretation of Article 139 of the Iranian Constitution concerning administrative approvals for agreements to arbitrate, which has been considered to be a major hurdle to arbitration in Iran. This provision, which also finds voice in the Civil Procedures Code, requires that disputes involving public and state-owned properties be referred to arbitration only with the permission and approval of the Board of Ministers and, in certain cases, the Parliament of Iran.

The [Article](#) states:

“The settlement of claims relating to public and state property or the **referral** thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Assembly must be informed of these matters. In cases where one party to the dispute is a foreigner, as well as in important cases that are purely domestic, the approval of the Assembly must also be obtained. Law will specify the important cases intended here.”

Therefore, the wording of this Article suggests that the approval of the Council of Ministers is required in each case when the dispute concerns public/state-owned assets. A second level of approval has been added where one party to a dispute is a foreigner or where the case is “important”. There are no laws or regulations which prescribe the meaning of “important cases”, and this would create enormous confusion. Plus, the additional level of surveillance by the Parliament in cases in which foreign parties are involved could potentially stifle the development of international arbitration in Iran.

Several other theoretical questions have been raised regarding the interpretation of this Article, particularly whether it constitutes a subjective or objective restriction on arbitrability and how the term “referral” should be [interpreted](#). In many cases, when an authorization was not obtained by the Iranian state party, tribunals and foreign courts have consistently rejected objections based on this provision, mostly relying on principles of good faith and the prohibition of states’ reliance on their own national law in order to circumvent their undertakings under the agreement to arbitrate. In other words, tribunals and foreign courts have upheld the principle that a party cannot obtain a

benefit by relying on its own wrong.

Some [scholars](#) have also studied the application of this Article, particularly in the context of how arbitration clauses are drafted: whether this constitutional restriction is explicitly/implicitly mentioned in the clause, and which party is more likely to cite it. In certain cases, the provision is cited not by the state entity involved but by its counter-party.

## **Brief Background**

In a judgment issued on May 27, 2024, the First Branch of the Supreme Court of Iran conducted a substantive retrial of a final decision by the Court of Appeal. This retrial was conducted pursuant to Article 477 of the Criminal Procedures Code. This is indeed a rarely used, extraordinary means of judicial review. It allows the head of the Judiciary to refer a matter to the Supreme Court if a final judgment is deemed to violate Sharia laws. The Supreme Court would then issue a final decision on the merits.

In the instant case, the Supreme Court offered a new interpretation of Article 139. The Court of Appeal had previously upheld a final decision by the Tehran Civil Court, in which the Tehran Civil Court had annulled a PCA arbitration award dated September 30, 2020 and issued in favor of Jam Petrochemical Company. This award ordered Mehr Petrochemical to pay a sizeable compensation of approximately USD 872.3 million.

This decision, titled the biggest petrochemical compensation in [Iranian history](#), has garnered significant attention within the oil and gas industry and among legal professionals. The size of the award is reported to be equivalent to or greater than the entire market value of [Mehr Petrochemical Company](#).

The final decision of Branch 9 of the Tehran Public Civil Court annulled the PCA arbitration award in favor of Jam Petrochemical Company, on the basis of a violation of Article 139. The Court of Appeal agreed with the Court of First Instance's view that, because the Iranian government owned Jam Petrochemical Company at the time that the underlying contract was signed, the arbitration agreement was null and void in the absence of the necessary approvals under Article 139, and that Iranian courts would be the only competent forum to hear any dispute.

The Supreme Court, however, offered a new interpretation that clarifies long-standing debates.

## **Analysis**

The term "referral" in Article 139 has been considered to be vague and has been interpreted differently in past decisions. The Guardian Council, which is the competent authority for issues of constitutional interpretation, has never clarified this issue. The primary question is whether authorization is required at the time of the arbitration agreement's conclusion or when an actual arbitration dispute is initiated. In other words, is obtaining the necessary approvals a condition precedent for the validity of an arbitration agreement, or for its operation and effectiveness?

If "referral" to arbitration is interpreted to mean the conclusion of an arbitration agreement or the

inclusion of an arbitration clause in a contract, the absence of such approval would render the agreement invalid, and this defect cannot be remedied.

In 2012, the Administrative Court of Justice ruled that the Council of Ministers' post-execution approval of a contract permitting the referral of a dispute concerning public properties to arbitration had no legal validity, because "*the requirements of Article 139 regarding arbitration must [have been] met prior to or at the time of entering into the arbitration agreement*" (Inspection Organization of Iran v. Council of Ministers, Case no. 376–90/654, Decision no. 138–139, June 11, 2012). Notably, this decision did not take into account a key practical issue, namely that: there had not been a single reported instance since the change in regime in 1979 where authorization to arbitrate was issued at the time of concluding a [contract](#). In other words, the decision of the Administrative Court of Justice implied that all arbitration agreements involving public or state-owned parties would face a *fait accompli*: they would be rendered null and void.

On the other hand, if "referral" to arbitration would equate to the submission of a dispute to arbitration, then it would suggest that, whilst the arbitration agreement would be valid, it would not be considered to be fully operational unless the necessary approvals are obtained. Despite the Administrative Court of Justice's decision, which is in any event not binding on other courts, the prevailing view (at least before arbitration tribunals) remained that the necessary approvals were required for the operability of an arbitration agreement (see for example: ACIC Case no. 36/84/42/121).

The decision to annul the arbitration award by Branch 9 of the Tehran General Civil Court, confirmed by Branch 28 of the Tehran Court of Appeals, was based on the fact that Jam Petrochemical Company was state-owned at the time of the arbitration agreement's conclusion, and therefore that arbitration agreement could not have been concluded without obtaining the necessary approvals further to Article 139. The Supreme Court, however, distinguished between the formation of an arbitration agreement and the referral to arbitration, clarifying that, at the time the dispute arose (and it was "referred" to arbitration), Jam had been privatized; it was no longer a state-owned entity, the dispute no longer concerned public or state-owned assets, and therefore the Article 139 approvals were not required.

## Conclusion

This is an important ruling by the highest judicial authority in Iran, conclusively deciding on a significant issue that has sparked much legal debate, especially following the poorly reasoned decision of the Administrative Court of Justice in 2012. The *dispositif* of the Supreme Court's judgment could significantly facilitate the development of arbitration in Iran, not only in the context of negotiation of contracts with Iranian state-owned counterparts for foreign companies, but also in the sense that it would provide more certainty and clarity to parties arbitrating against Iranian state-owned entities.

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