

AN INVESTIGATION OF THE ROLE OF DOMESTIC COURTS IN INTERNATIONAL COMMERCIAL ARBITRATION IN IRANIAN LAW*

AKBAR BASHIRI**
ISLAMIC AZAD UNIVERSITY, IRAN

HOJJATOLLAH NOURI***
ISLAMIC AZAD UNIVERSITY, IRAN

Abstract: The fact that almost every legal system considers a specific basis for the intervention of state courts in the process of arbitration has resulted in uncertainties and criticisms regarding the independence of the so called quasi-judicial dispute settlement of arbitration as well as its effectiveness and successfulness. The author of the present study has made an effort to on the one hand separate the cases of assistive intervention of civil courts in the process of arbitration from the regulatory intervention cases and on the other hand, investigate the form-related and essential limitations of the enforcement of judicial supervision by the courts.

Keywords: Arbitration. Commercial arbitration. Sentences of foreign arbitration. Arbitration laws.

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** Assistant Professor, Department of Law, Maragheh Branch, Islamic Azad University, Maragheh, Iran.

*** PhD Student, Department of Law, Maragheh Branch, Islamic Azad University, Maragheh, Iran. E-mail: hojjat.nouri.hn@gmail.com

I. Introduction

Since arbitration is a process similar to judicial processes, different countries view it as a parallel judicial institution and take the necessary precautions while delegating its authorities and specifying its limits in intervention in cases. Therefore, as soon as an arbitration institute initiates the process of arbitration, countries give a preserved right of intervention to their state courts considering it as an act towards the enforcement of their judicial governance. On this basis domestic courts have major roles in the supervision of the process of arbitration, judicial reviewing of the verdicts and, identification and enforcement of arbitration verdicts as soon as an arbitration court is formed for dealing with a referred case. However the mutual impacts of arbitration verdicts on the role of courts and, court verdicts on the quality of the arbitration process should not be left aside. As arbitration verdicts, especially in bilateral investment contracts are getting more and more extensive; and processes are being formed regarding certain basic conditions including confiscation without compensation and etc., courts are continuously affected by the subject matter to the extent that it is referred to as the investment common law. On this basis it seemed necessary to make a comparative investigation regarding the subject matter while considering the history of commercial arbitration in Iran and the role of courts in this process which is of both applied and theoretical importance. Additionally, it seemed necessary to make an investigation regarding the issue of the limits of intervention of domestic courts in the process of arbitration as well as the appeal and enforcement phases.

Therefore, while accepting the arbitration process's need for courts, the author of the present study has made an effort to analyze the cases of intervention of courts as well as the possibility of confinement of courts' intervention with regard to the position of state courts.

II. The Essence of International arbitration

International arbitration is the leading form of international dispute settlement between businesses from different nations and foreign investors and states. Referring to international

dispute settlement is a necessitating satisfaction that is normally faster and cheaper than referring to domestic courts.

The law of international commercial arbitration defines arbitration as follows: arbitration is defined as out-of-court settlement of disputes by legal persons or entities that are selected by the sides of the dispute. The sides of the dispute include the plaintiff and the defendant. There are a few points in the former definition. One point is that arbitration is an order for settlement of dispute. Second point is that arbitration guarantees an out-of-court settlement while the third point is that arbitration is undertaken by entities selected by the sides of the dispute and the fourth point is that arbitration can be done by both real (human) entities and legal (nonhuman) entities including institutions and organizations approved by the legislators. The sides of a dispute can select both real and legal entities as the arbitrators for settlement of their disputes.

III. The Concept of Commercial Arbitration

Now that we have been familiarized with the notion of arbitration, let us get to know the words "Commercial" and "International" too. It can be said that by commercial it is referred to something related to commerce and business. However someone who is not familiar with the word of commerce is not expected to know the meaning of the business word. A commercial act is an act aimed at obtaining a benefit. In commercial arbitration we elaborate on arbitration in cases of business-related disputes. In other words, people who do business together may sometimes run into conflicts which they can't settle on their own through regular negotiations and hence, they prefer to make use of the arbitration process instead of going to the court. In doing so, the sides of the dispute must select arbitrator(s) for settlement of their dispute. However, by commercial arbitration it is not necessarily meant that the sides of the dispute at hand must be businessmen. In fact, sometimes some non-businessmen run into commercial conflicts. For example a person who has not selected to do business for a living might do a business deal, run into a problem with the other side of the deal and seek arbitration. Such arbitration is also a commercial arbitration although that the sides of the dispute are not businessmen. However, this type of arbitration should not be confused with domestic

arbitration. It has been traditionally established that whenever a wife and husband run into a conflict, first of all efforts are made to make a compromise between them through negotiation and if doing so fails, a third person who is usually a member of the family or a friend is selected to deal with their conflict as the arbitrator. This act has nowadays obtained a more formal shape in the way that courts are obliged to refer the domestic dispute cases to arbitrators and if the arbitrators conclude that the couple can no longer have a common life together, the court can put out a divorce verdict. There is also another type of arbitration that is called international arbitration. It takes place between governments. As persons may run into problems and conflicts that can't be solved through negotiation, governments or states may also run into similar conflicts. one traditional way of international dispute settlement was making war. In other words, whenever governments ran into a rather unsolvable problem, they would use force to settle the dispute. But not only that making war is not a civilized solution, but also it is a heavily costly solution that has unclear outcomes. In addition, current international law prohibits referring to war as a foreign policy tool. The question why war is still out there has a long answer that will be elaborated on in the general international law course.

As it was mentioned earlier, when governments fail to settle the disputes among them through negotiating while not tending to declare war against each other, they must be provided with median solutions through which they can settle their disputes; arbitration is one of these median solutions. In terms of relationships between the governments, arbitration implies that there is a dispute between two or more governments and they tend to select a person or a legal entity as the arbitrator of their dispute settlement process who puts out a compulsory verdict. There are several instances of arbitration in the contemporary literature of international law while the analysis of rules of arbitration between governments and the effects of the former are subjected to detailed discussions in the context of international law.

IV. The Concept of International Arbitration

Now it is the "International" word's turn to be discussed as the opposite of the word "domestic". Legal disputes are divided into two categories of domestic and international. In an

effort to define international and domestic conflicts in the simplest of ways, it must be stated that domestic disputes are the ones that are related to a single country or government while international ones are related to two or more countries. Here we are concerned with the disputes in which there is at least one foreign issue. in cases where at least one side of the dispute is a foreigner, or in cases in which the contract has been set in foreign country and in cases where the contract's subject is in a foreign country, we are faced with an international dispute.

In more specific words, an international dispute is a dispute in which there exists at least one foreign element. However the foreign element can involve various affairs including the foreign nationality of one of the sides of the dispute or the existence of the subject matter in a foreign country. In such cases we have an international dispute at hand. Every country has specific rules for selecting the arbitrators, arbitrators' duties once they are selected and the manners of arbitration as well. In general, whenever there is the issue of conflict of laws, the issue is no longer a domestic issue, rather it is considered as an international issue. in other words, once foreign elements are introduced to a dispute, the arbitration process becomes an international one.

V. Court Action Regarding Arbitration Contract

The court is obliged to undertake necessary investigation regarding the existence of an arbitration contract and its validity. For example, in cases where one of the sides of the dispute claims that an arbitration contract exists, the court must investigate whether the claimed contract actually exists or not. In addition, assuming the existence of the former contract (agreement), the court must investigate the validity of the contract. Article 461 of Iranian civil procedure verifies this statement.

In order to be valid, not unlike any other contract, arbitration contracts require certain fundamental or basic conditions to be considered as valid. Article 190 of the civil code points these conditions out.

Regarding the form of the arbitration agreement, the article 7 of the international commercial arbitration code states:

The agreement must be in form of a document signed by both parties of the dispute, or one side of the dispute must claim that such contract exists while the other side of the dispute accepts it.

Reference to a document in the contract that guarantees the arbitration condition is also considered as independent arbitration agreement. The sentence of this article states that the arbitration contract or agreement must be documented since this article also states that the arbitration agreement must be a document signed by both parties. Therefore, it is principally accepted that arbitration agreement must be written or documented. Iranian Legislator has approved oral agreement in only one case: where one side claims that such an agreement exists while the other side accepts it too. The other point to be mentioned is that as some lawyers (Joneidi, 2014: 19) have pointed out, the silence of the other side of the dispute cannot be regarded his/her consent unless the situation implies so.

The Civil procedure law does not include any article clearly stating that the arbitration agreement must be written. However some lawyers (Shams, 2016: 530) believe that arbitration agreement can be both written and oral. In the latter form, according to the article 461 of the civil procedure code, the claimant of existence of oral agreement must prove it. Hence it is a defense to say that the article 634 of the former civil procedure code states "the following points must be stated in arbitration agreements". This is while the article 458 of the civil procedure code (2000) used the word "determined" is used instead of "stated". Therefore it seems that the legislator meant that there is no necessity for having a written arbitration agreement, rather this type of agreement can also be in oral form.

Generally it must be stated that whenever one of the sides of a dispute is involved in the article 2 of the international commercial arbitration law, the subject at hand has an international characteristic and therefore the agreement between the sides must be in written form. However, whenever the subject is not international and is only a matter of civil procedure, the contract or the agreement can be oral form too. The main effect of an arbitration agreement is exclusion of the possible/existing dispute from the jurisdiction of courts. S2 of the article 2 of the international commercial statute states: "every person competent of filing a lawsuit can refer their case to arbitrator(s) through a compromise despite of having been following the case in

courts and or the phase of the case". The same statement is mentioned in the article 454 of the civil procedure code as follows: "every person competent of filing a lawsuit can refer their case to arbitrator(s) through a compromise despite of having been following the case in courts and or the phase of the case". The former and latter articles prescribe the mentioned effect of arbitration, being exclusion of the dispute from the jurisdiction of courts. In other words, whenever an arbitration agreement exists, the state court would no longer be competent for dealing with the lawsuit that is the subject of the arbitration (Shams, 2016: 535).

VI. Special Characteristics of Arbitration in Iranian Domestic Law

1- The higher speed of arbitration compared to the judiciary process

In general, the process of arbitration has a faster pace compared to the judiciary process. The reason is that the judiciary systems of most countries are faced with the problem of density of cases while having a limited time. This impedes the speed of the process of dealing with cases. During a day, a judge must deal with several cases and this large number of cases not only results in deterioration of precision, but also impedes the speed of the judge in doing so. One advantage of the process of arbitration is that the case can be left to arbitrator(s) who are not dealing with any other cases at the time. On this basis our selected arbitrator has more time for our case. On the other hand, the judiciary process involves complex and detailed formalities. These formalities are compulsory so that neither of the sides of a dispute is able to interfere with the other side's right. For this reason, simple affairs such as informing the plaintiff and defendant about trial time can sometimes add months to the length of trial while arbitration does not include such formalities. Although that to some extent, arbitration does include certain formalities, these formalities are minimal compared to the ones required by the judiciary process. In addition, in case of arbitration, the formalities are not completed using the slow and expensive state system.

2- Arbitration is professional

Whenever we face a conflict and refer to courts for settling it, a certain judge deals with our case. In most legal systems, judges are persons with an academic degree in the major of law. Judges are aware of the laws and regulations but are not familiar with our specific businesses.

For example, suppose that me and you are oil merchants and we have ran into a conflict whether in oil trades the product should be delivered in the destination's port or in source's port. On the regular belief of merchants, one of us believes that the product must be delivered in the source's port while the other one of us believes that oil is an exceptional product that must be delivered in the destination's port. Who can in such a situation do the best arbitration possible? It is obvious that in this case, an experienced oil merchant can arbitrate the case better than anyone else and therefore it is better for the sides of such a dispute to select this person as their arbitrator. However, as we have mentioned earlier, people are not able to select the judge who deals with their case and therefore if they tend to have an expert dealing with their case, they better select an arbitrator.

3- Having the lawsuit filed before referring to arbitrator(s)

The sides of the dispute might have filed the lawsuit in courts prior to referring to arbitrator(s). This action usually is a sign that the side who has filed the lawsuit tends to deny that an arbitration agreement exists. In such a circumstance, the defendant may react in two ways:

1) Objection the competence: in this scenario, the defendant proves the validity of arbitration agreement and objects the competence of court for dealing with the case. According to the article 463 of Iranian procedure code, the issue at hand with a proved arbitration agreement can only be included in the competency range of court if the selected person for arbitration wouldn't or couldn't deal with the case as the arbitrator. According to the final section of the article 474 of civil procedure code, whenever the arbitrators fail to put out their verdict within the time length specified by the statute and the sides of the dispute do not tend to select another arbitrator, the case would be dealt with in courts. By the prescription of the article 10 of the civil code (Private contracts are incisive if they are not in explicit conflict with the statute), arbitration agreement has become a compulsory contract but if the defendant does not object the competency of the court for dealing with case by the end of the first hearing, according to the article 87 of the civil procedure code the court gains competency for dealing with case. As a result, in case of existence of arbitration agreement, filing a lawsuit in courts would be against the principle of the rule of will in contracts and the nature of the article 10 of the civil code;

before receiving the arbitrator's idea, the court cannot interfere with case and is not competent to do so (Zandi, 2010: 119).

2) Avoiding the objection of competency: if the act of filing a lawsuit for the subject for which an arbitration contract or agreement exists is done with the aim of termination of arbitration, a question rises regarding the duty of court for dealing with the case. According to the S1 of the article 481 of the civil processing code, arbitration can be terminated by a written compromise between the sides of the dispute. Considering the emphasis of the legislator on the written form of compromise, it seems necessary to accept the view of some scholars who believe that this compromise can be in oral form too (Shams, 2016: 20). On this basis, oral compromise between the sides does not have any legal effect on termination of the arbitration. In this regard the Article 333 of the civil procedure code states: if the right to appeal has been terminated by the sides in a written compromise, they cannot ask for their right to appeal. On the other hand, the fact that less cases are sent to the courts implies that the S1 of the article 482 should be complied with (Mohajeri, 2008: 281-282). The article 8 of the Iranian international commercial arbitration statute (1997) the defendant's act is considered as a defense regarding the nature of the conflict while lack of demand for referring to arbitrators would be considered as cancellation of the arbitration agreement and the case would be continued in the court (Amir Moazi, 2008: 159).

4- Filing a lawsuit after referring to arbitrator(s)

Filing a lawsuit in courts for a subject of arbitration can be realized in two ways:

1) Prior to the verdict of the arbitrator: if one of the sides of the dispute emphasizes on the existence of an arbitration agreement before the end of the first hearing, the court would have no choice but to give up the case. In case of lack of awareness of the court about the existence of an arbitration agreement, the court would face the sentence of the article 3 of the civil processing code, implying that it should deal with the case. In case of conflicts regarding the agreement of arbitration, according to the article 461 of the civil processing code the court must specify the validity of the agreement.

2) After the verdict of the arbitrator: the verdict of the arbitrator can be objected by the defendant. In this case, a competent court would deal with the objection. If the objection is denied, the arbitrator's verdict would be validated and it would be enforced. However, if the objection was accepted, the arbitrator's verdict would be invalidated and, considering the general competence of state courts, the sides of the dispute can refer to these courts. In this case, the arbitration agreement is considered as terminated.

VII. Intervention of courts in international commercial arbitration

The global trend is towards mitigation of judicial intervention in international commercial arbitrations, but this does not mean that courts are completely excluded; rather their intervention is accepted under certain limitations. There are different ideas regarding the instances of intervention of courts and what one judicial system accepts as an instance of intervention of court may be considered as unacceptable by another judiciary system. On this basis efforts have been made to point out the similarities that exist between domestic rules of different countries. Basically, the restriction of intervention of courts in international commercial arbitration can be investigated in terms of arbitration subject and the competent court

1- Restriction of courts' intervention in arbitration

Some believe that the major effect of courts is the phase of enforcement of arbitration verdicts. It is obvious that this cannot be correct and limiting the intervention of courts to the phase of enforcement of arbitrators' verdicts would not satisfy the requirements of arbitration process, this is because problems may arise during the process of arbitration that require the intervention of courts; therefore the range of competency of courts must include the issues resulting from arbitration agreements. In this regard, courts' competency would be described based on arbitration.

A) Assistive competency

As soon as the process of arbitration starts, courts provide the necessary assistances. This is where issues such as identification of the arbitration agreement and issuance of temporary dictums are brought up. In case of identification of the arbitration agreement, the most

important of the arbitration agreement is exclusion of the case from the range of general competency of courts; therefore if one of the sides of the arbitration agreement files a lawsuit in courts regarding the subject of arbitration agreement, this would result in different procedure codes and accordingly, despite the competence of arbitrators, courts would deal with the case too. In this regard, the competent court dealing with the case must out out an initial dictum and prohibit the continuance of procedure in the court while referring the sides of the disputes to arbitrators. This method is an evolution in favor of arbitration process.

One instance of assistive competency of courts is their assistance in obtaining causes that adds up to the effectiveness of the process of arbitration. The issue of assistance of courts in obtaining a cause is mostly observed in countries in which arbitrators are not found competent for running a swearing allegiance. However courts must be noticed that the assistance request should not be made with the aim of prorogation of trial. The article 27 of the ancillary sample law and the article 1782 of the American arbitration statute and the articles 43 and 44 of English law (1996) point to this issue, however Iranian international commercial arbitration statute has remained silent in this case and this may be due to avoidance of prorogation of the process of arbitration as well as maintaining the confidentiality of arbitration.

B) Intervention competency

The intervention of court during the process of arbitration is only for adding to the effectiveness of the arbitration and it includes assigning or dismissing arbitrators, issuance of temporary verdicts, setting the limits of power of arbitrators, appealing and assistance in obtaining causes.

1- Assigning arbitrators: if the sides have not made any agreements regarding selecting the arbitrators, they can ask the court to intervene and assign an arbitrator. The courts' intervention for assignment of arbitrators is only valid in temporary arbitration and not in organizational arbitration; this is because in organizational arbitration, the arbitrator is assigned by the Iranian arbitration department while the civil procedure code does not include any regulations regarding the lack of intervention of courts in the process of arbitration.

2- Dismissing arbitrators: basically the act of courts' in terms of dismissal of arbitrators, guarantees the effectiveness of the arbitration process and the issues related to the

dismissal of arbitrators are not included in the will of the sides of the dispute. Reasons for dismissal of arbitrators include lack of neutrality and lack of dependence. Lack of dependence is an objective concept and it applies to the entire relationships between the arbitrator and his/her client. In addition lack of neutrality is a subjective concept and implies that the arbitrator is obsessed with one side of the dispute; this is evident from the conditions of the activities of the arbitrator. In addition, lack of consent of sides of the dispute is another instance of dismissal of arbitrators. The arbitrator is obliged to make his/her client aware of the entire conditions that may result in a reasonable doubt in neutrality of the arbitrator. This is known as disclosure. The method of dismissal of arbitrators depends on the agreements between the sides of the dispute. This must be explicit and in case of lack of agreement, reference must be made to arbitration rules and regulations. Deciding upon dismissal of an arbitrator is primarily done by the arbitration council related to the dismissed arbitrator. If the side that requires the arbitrator to be dismissed does not agree with the vote of the arbitration council or if the dismissed arbitrator resigns, the side that requests the arbitrator to be dismissed can refer to the court. Article 13 of the arbitration sample law has stated the conditions for dismissal of arbitrators. This article has been adapted by the Iranian international commercial arbitration law. However dismissal of arbitrators is only possible in cases of temporary arbitration.

3- Setting arbitrators' power limits: as we already know, if the arbitrator considers him/herself as competent, he/she has a duty to put out a verdict. However, sometimes certain barriers arise in the process of arbitration which may impede the continuance of the arbitration process. In addition, during the process of arbitration it is necessary for courts to intervene and issue temporary verdicts. However there is also an extremist view that believes that temporary verdicts can only be issued by arbitrators. This view is no longer viewed as valid today. In case of issuance of temporary verdicts by courts during the process of arbitration, the theory of free choice has been proposed and according to this theory, the sides of the dispute are free to request the issuance of temporary verdict from both courts and arbitrators; while the verdict put out by both are of equal effects. This theory has been accepted in Germany and France. It should also be pointed out that arbitrators' power is bound to the will of the sides of the dispute and lack of agreement is also equal to lack of competency. In many cases, a reasonable doubt may exist

regarding the competency of arbitrators. Nowadays, both domestic and international arbitration laws have realized the competency of the arbitration committee in determining their competency as the principle of competency in determination of competency. According to this principle, arbitrators themselves are the most competent persons to determine their competency. Basically, the time for objecting the competency of arbitrators ends at the time of defense. The arbitration committee is also competent for determination of the validity of arbitration agreement too and it can also deal with the objections made to the validity of the arbitration contract. Article 16 of the arbitration sample law and The Iranian international commercial arbitration law have explicitly emphasized on this point.

C) Supervisory competency

Basically, the issue of control or supervision should be considered as an issue separated from the phases of identification and enforcement of verdicts. The issue of court supervision is brought up after that the verdict has been put out and according to it, if the arbitration verdict is in conflict with public order, the judicial source will interfere and invalidate the verdict. Supervising the verdicts of arbitrators is the duty of the courts of arbitration location or site and the courts cannot have any control on the verdicts issues outside their jurisdiction unless they are asked to.

D) Verdict identification and enforcement competency

This competency has a magisterial aspect that is only executed by the courts after the issuance of the arbitration verdict and during the request for execution of the arbitration regulation; it is governed by the laws of the country of arbitration location. In order to adhere to the basis of limited intervention of courts, only one court can control the process of international commercial arbitration because intervention of more than one court is viewed as a threat against the process of arbitration. The issue of identification of arbitration agreement identification has also been accepted in both international and domestic rules of arbitration. Article 2 of the New York convention and the article 8 of the arbitration sample law have common elements regarding the identification of the arbitration agreement including: first of all, an arbitration agreement must exist regarding the conflict at hand; second, the defendant must have asked to refer the case to arbitration and in case of lack of request, the court assumes that

the defendant accepts the competency of the court; third, the arbitration contract or agreement must be free from errors and objections. There are similar rules in Iranian international commercial arbitration. It must also be pointed out that in terms of identification of the arbitration agreement, domestic arbitration and international arbitration must be distinguished from each other. In this regard, in case of domestic arbitration the issuance of halt of processing the case is not mandatory, but in case of international commercial arbitration the courts are obliged to issue a processing halt verdict and refer the case to arbitrators.

Although that the majority of verdicts are made during the process of arbitration, having a sense of requiring these rules might be felt prior to the initiation of the arbitration process. Issuance of a temporary verdict prior to the formation of the arbitration committee depends on the view of the complementary court. This has been accepted in countries including Belgium, Netherlands and England and according to it, if it is urgent to issue a temporary verdict and no arbitration committee has been formed yet, the court can issue a verdict.

Restriction of courts' intervention from the view of competent court: in order to make the process of arbitration as effectiveness as possible, courts must have a limited intervention. In an answer to the question asking which courts are competent to intervene, it should be said that basically the process of arbitration is controlled by a court that is able to solve the issues in the process of arbitration. The arbitration regulation is governed by the laws of the country of arbitration site and in order to adhere to the principle of limitation of courts' intervention, only one court must deal with case and if more than one court intervenes, it is considered as a threat on the process of arbitration. In addition, variability of competencies results in invalidation of the process of arbitration; therefore the same way that arbitration is only governed by one court at a time, international arbitration must also be only controlled by one court too. On this basis, in international rules and regulations, efforts have been made in a way that only one court is able to control the process of arbitration. In addition, the 1958 New York convention believes that the competent court is the court of the country of issuance of arbitration verdict.

2- Application of the principles of proceeding in international commercial arbitration

There are no agreements regarding the possibility of applying the proceeding principles mentioned by human-rights documents. In general there are three theories in this regard:

a) Absolute waiver theory

In the views of proponents of this theory, proceeding principles resulting from the principle of due processing and guarantees of fair trial are only enforceable by courts, which are tribunals established by the law. However, in terms of arbitration, since the arbitration entity is not a tribunal established by law and gains its power from the will of the sides of the arbitration agreement, it cannot enforce it. As a criticism to this theory it must be stated that governments support arbitration and even the courts have foreseen it in arbitration conventions and regulations. In addition, in case of international businesses, it is easier to enforce foreign arbitration verdicts compared to the verdicts of foreign courts. Since governments enforce the votes and verdicts of arbitrators, if a government avoids enforcing the verdict that is issued by arbitrator(s), it has committed an act against human-rights and therefore, this theory is unacceptable.

b) Delegation theory

According to certain authors, since arbitration has a semi-judicial role and task, therefore the arbitrators must adhere to the foreseen principles of fair judgment (Jaksic, 2008: 203). Proponents of this theory believe that arbitration is the legitimate representative of the judicial process that has been traditionally known as a duty of courts (Ibid, p.203). as a criticism to this theory it must be stated that arbitration is of a private nature and the arbitrator gains his/her power from the will of the sides. Therefore it is neither the government nor the courts that delegate their duty to the arbitration department; rather it is the sides of the dispute who decide to refer to arbitrators instead of referring to courts. Therefore it cannot be said that the arbitrator(s) deal with cases as representatives of the courts of the government and therefore, the delegation theory is also unacceptable.

c) The theory of distinction between voluntary and compulsory arbitration

The proponents of this theory make a distinction between voluntary and compulsory arbitration and believe that in case of voluntary arbitration, the sides of a dispute decide to go to arbitrators instead of referring to courts, in this case the principles arising from human-rights

documents are enforced implicitly since although that the sides have decided to refer to a private institution, still the role of courts cannot be ignored. Since the courts are able to invalidate the arbitration verdicts or refuse to enforce them, then they must adhere to the human-rights' principles of fair trial. As a result it can be said that these principles readily enforced in voluntary arbitration implicitly. On the other hand, there is the compulsory arbitration in which arbitration power is obtained through law rather than the consent of the sides. In this case, the aforementioned principles of fair trial are readily enforced explicitly and the arbitrator is obliged to adhere to these principles (Liebscher, 2003: 580). Governments enforce the verdicts of arbitrators within their jurisdiction and the realization of fair trial is in debt to adherence to proceeding principles by the responsible source. Therefore it must be said that in arbitration, the arbitrators and or the arbitration council are obliged to adhere to proceeding principles. In case of voluntarily and compulsory arbitrations, these principles are enforced respectively implicitly and explicitly. However it must be mentioned that considering the fact that arbitration is private and non-formal, not all the obligatory principles of judges are meant to be adhered to by the arbitrators.

VIII. Conclusion

By taking a look at previously mentioned content it can be concluded that intervention of courts in the process of arbitration not only does not interfere with the process of arbitration, but also supports it too. Still, courts' intervention must have limited basis so that no conflicts are made with the aim of the sides of dispute by referring their case to arbitrators instead of courts. This is because if courts intervene in arbitration cases without permission, they will have caused unfairness or at least have caused a delay in the process of dealing with the case. Arbitration is an independent institution and the legislator has given it the power to have a contractual nature. For this reason, courts' appeal in issued verdicts is against the will of sides of the dispute in establishment of a neutral source that must make decisions based on the rules and regulations selected by the sides of the dispute. Not unlike the courts, the main goal of arbitration sources is administration of justice. Paying attention to the extent of intervention of courts in the process

of arbitration shows that the purpose of intervention is a combination of supervision and assistance. For example, in cases of issuance of temporary verdicts, in addition to the supervisory roles, the courts are seen to have roles in assignment of arbitrators, dismissal of arbitrators and enforcement of the arbitrators' verdict. Judicial supervision is stated as the control over arbitration verdict in case of objection of the verdict. In this case, courts have major roles. While reviewing the requests for invalidation of the verdict of arbitrators, courts tend to take the necessary precautions. On this basis, successful objections on arbitration verdicts are rarely seen. When the time of arbitration expires, the sides of the dispute do not need to refer to the court if they have made a new arbitration agreement. Otherwise, the right to refer to public courts is reserved. This is because the competency of the arbitrator is considered as an exceptional competency. It is worthy of pointing out that in cases of international commercial arbitration, procedures and tendencies are based on the limitation of extent of intervention of courts in the process of arbitration. Therefore, except for exceptional cases, it is principally believed that the courts should not interfere with arbitration cases. For example, article 5 of the ancillary sample law states: no court can intervene with subjects involved in this law, unless in cases foreseen by the law. The sample arbitration law has anticipated or foreseen the cases of intervention of courts in articles 8, 9, 11, 13, 14, 16, 27, 34, 35 and 36. In other words, arbitration is a contractual arrangement by which the sides of the dispute subject themselves to the verdict of arbitrators. The main effect of this agreement is avoidance of referring to courts and avoidance of the time consuming formalities of judicial proceeding as well as avoidance of prorogation in dealing with the case. For this purpose, precise, general and desirable regulation of the arbitration agreement can in many aspects prevent the unnecessary interventions of courts in the process of arbitration.

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Universidade Católica de Petrópolis
Centro de Teologia e Humanidades
Rua Benjamin Constant, 213 – Centro – Petrópolis
Tel: (24) 2244-4000
lexhumana@ucp.br
<http://seer.ucp.br/seer/index.php?journal=LexHumana>



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