THE BALANCE BETWEEN PUBLIC INTERESTS AND THE AUTONOMY OF THE INSTITUTION OF INTERNATIONAL COMMERCIAL ARBITRATION

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Abstract: *The international commercial arbitration system has evolved to offer a flexible, neutral, and efficient method of resolving cross-border commercial disputes. However, the increasing autonomy of arbitration institutions has raised concerns about balancing this autonomy with the preservation of public interest. This paper analyzes the role of state supervision, and the tension between private and public interests in international legal relations. The research draws on comparative legal analysis of European and international practices, case studies from civil and common law jurisdictions, and doctrinal developments from both East and West. Findings show that international arbitration promotes efficiency and neutrality, it also challenges traditional legal safeguards. The paper proposes a balanced model where institutional autonomy coexists with core public interest protections.*

Key words: *arbitration, public interest, international law, autonomy, lex mercatoria.*

JEL: K10, K20

1. Introduction

International commercial arbitration (ICA) has gained a central role in resolving international business disputes due to its flexibility, confidentiality, and enforceability. However, the increased autonomy of arbitral tribunals, particularly under the concept of delocalization, has sparked a debate regarding the limits of this autonomy when confronted with imperatives of public interest, such as legality, transparency, and enforceability. The purpose of this article is to assess how states, arbitral institutions, and international instruments manage the tension between arbitral independence and societal expectations[4].

2. Basic content

2.1 Theoretical foundations of arbitral autonomy and delocalization

The doctrine of delocalization, primarily developed in France and supported by scholars like Berthold Goldman and Emmanuel Gaillard, posits that arbitration should be viewed as an autonomous legal order, disconnected from national systems. Goldman observed that, "the arbitration system increasingly seeks to function beyond the confines of the territorial legal orders, toward a supranational community governed by transnational norms."[5] Gaillard emphasized that arbitral autonomy stems not from national endorsement, but from the mutual consent of parties bound by commercial custom and procedural neutrality.

This theory encourages the application of transnational principles such as lex mercatoria. The principle is reflected in the UNCITRAL Model Law and supported by arbitral rules of ICC, LCIA, and SIAC. Delocalization enhances neutrality and global accessibility, yet limits judicial control.

[4] Gaillard, E. (2010). Legal Theory of International Arbitration. Leiden: Martinus Nijhoff.
[5] Astakhova, D.O., 2019. Tendentsiya delokalizatsii mezhdunarodnogo kommercheskogo arbitrazha. MGIMO, p. 28.

2.2 Public interest and the role of the state

Despite the private nature of arbitration, states retain an interest in overseeing proceedings to ensure compliance with fundamental legal norms, particularly in regard to due process, public policy, and access to justice. National courts often assert this interest during the annulment or enforcement of arbitral awards. In jurisdictions such as France and Switzerland, courts have shown a restrained approach, promoting arbitral freedom. For example, in the landmark case of Putrabali v. Rena, the French Cour de Cassation refused to annul an arbitral award solely based on foreign procedural irregularities, emphasizing the "autonomous character" of the arbitral award.[6]

Conversely, in jurisdictions like Russia, courts often refuse enforcement based on broad interpretations of public policy. Astakhova (2019) noted that "such national resistance constitutes a barrier to the modernization and acceptance of the autonomous arbitration paradigm."[7]

2.3 Comparative analysis of arbitration regimes

The legislation of civil law countries such as France (Code of Civil Procedure) and Switzerland (PILA) accommodates delocalization, allowing foreign elements to be present without forfeiting enforceability. In Switzerland, PILA Article 176 provides that an arbitral tribunal can operate independently from Swiss procedural norms when parties have foreign domicile. Similarly, in France, Article 1504 CCP grants tribunals the discretion to bypass French law if parties opt for international arbitration.

Common law systems like England, Singapore, and Hong Kong also support arbitration, though they emphasize procedural fairness. The Singapore High Court in *Malini Ventura v. Knight Capital* upheld the use of emergency arbitrators, reinforcing flexibility within the rule of law. Hong Kong's legal framework expressly adopts the 2006 UNCITRAL amendments, recognizing the enforceability of interim measures granted by arbitral tribunals.[8]

2.4 Institutional mechanisms and soft law

Arbitral institutions have developed internal safeguards to align with public interest. ICC, SIAC, and LCIA offer scrutiny mechanisms, rules on transparency, and emergency measures. The emergence of "soft law" instruments such as the IBA Guidelines on Conflicts of Interest and the Prague Rules also demonstrate efforts to self-regulate without undermining autonomy. These mechanisms build legitimacy and foster predictability.

2.5 Moldovan context and challenges

In Moldova, international arbitration is governed by the Law on International Commercial Arbitration (No. 23-XVI of 2008), closely aligned with the UNCITRAL Model Law. However, practical application is limited. Court enforcement of arbitral awards remains inconsistent, and there is no effective mechanism for interim measures, such as emergency arbitration.

Moreover, Moldova lacks a strong domestic arbitral institution with international reach. While the Chamber of Commerce maintains an arbitration center, it lacks the procedural flexibility and neutrality required by modern commerce.

Judicial training and legislative refinement are essential. Moldovan lawmakers should consider explicitly recognizing interim measures by arbitral tribunals and clarify the narrow application of public order exceptions, similar to reforms adopted in Singapore and France.

[6] Cour de Cassation, 29 June 2007, case no. 05-18.053, Putrabali v. Rena
[7] Astakhova, D.O., 2019. Tendentsiya delokalizatsii mezhdunarodnogo kommercheskogo arbitrazha. MGIMO, p. 105
[8] UNCITRAL Model Law (2006), Article 17H

3. Conclusions

International commercial arbitration must navigate between two poles: complete autonomy and public accountability. Delocalization offers efficiency and neutrality but cannot completely override state interests. The future lies in a hybrid model—one that ensures arbitration remains a viable tool for international commerce while safeguarding fundamental values such as fairness, transparency, and access to justice.

The Moldovan legal system can enhance its attractiveness to international business by adopting best practices from France, Singapore, and Switzerland. Institutional reforms and legal certainty will support arbitration's function as a modern dispute resolution method and position Moldova competitively in regional arbitration markets.

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