The Extent to Which an Arbitral Award Must Be Issued in the Name of the Ruling Authority

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Arbitration is undergoing an increasing prosperity as its scope of implementation has expanded to include the resolution of disputes in all types of transactions, commercial, civil and even administrative. Arbitration has today become a form of private international justice, with its rulings being enforced swiftly, whether the arbitration is national or international, due to the binding power it acquires through its endorsement with an enforcement order by the national judiciary, which grants it the authority of res judicata. On the other hand, arbitral awards also gain enforceability through the ratification of international conventions in this field.

It is worth noting that arbitral awards are final and rendered at a single level, with no possibility of appeal except through an annulment action. However, despite the enforceable nature of arbitral rulings, it remains necessary to observe a number of practical formalities, particularly with regard to the form of other of the arbitral award itself.

In recent times, a practical issue has arisen concerning whether an arbitral award must be issued in the name of the ruling or supreme authority of the country, where the award is rendered, or of the country whose laws are applied to the arbitral award, whether substantively or procedurally, in accordance with the arbitration agreement.

Judicial applications and interpretations have varied significantly in this regard from one country to another, and even from one judicial circuit to another within the same country. There is no consistent international judicial position on this matter, in addition to the difference in justifications and arguments raised by jurisprudence and the judiciary in the same regard between supporters and others opposing the idea.

This has prompted the present research attempt to examine the various justifications, viewpoints, and legal trends concerning this issue, with the aim of reaching a reasoned opinion on whether it is necessary for an arbitral award to be issued in the name of the ruling of supreme authority of the state, and whether the absence of such a formality leads to the annulment of the award or not.

To study this topic concerning the issuance of the arbitral award in the name of the ruler or the supreme authority in the country. This research will be limited to the position in the Arabe Republic of Egypt (**Section 1**), then in some other Arab countries (**Section 2**). And in Morocco, (**Section 3**).[1]

Section 1. The position in the Republic of Egypt

Legal scholars and the judiciary in Egypt believe that issuing an arbitral award follows rules different from those governing judicial rulings. An arbitral award must include several mandatory details, the absence of which results in the invalidity of the award. Moreover, arbitral awards differ from June judgments issued by the state judiciary in that they are not pronounced in public sessions, nor are they issued in the name of the supreme authority of the country or the ruler. The law does not require a draft of the award to be written and filled in the arbitration case file, nor does it require the signature of the courts clerk or session recorder on the award.

However, one of the most significant practical issues is the problem of not issuing the award in the name of the people. Issuing a judgement in the name of the people is part of the preamble of judicial rulings mandated by law, a purely formal procedure traditionally and consistently included in legal texts and has become binding for the judiciary by application of the law.

As for including this formal element in arbitral awards, legal scholars and judicial authorities have differed regarding the non-issuance of the award in the name of the supreme authority of the country. Some scholars and courts, including the Kuwaiti Court of Cassation, hold that it is necessary for the award to be issued in

[1] 1 Kuwaiti Court of Cassation, appeal No. 39 of 1975, decided on the 06th of January 1977, published in *Majmouat Al-Qawa'id* more (Collection of Legal Principles), p. 81.
See also: Mohammed Said Al Shaiba, *The Particular Nature of Arbitration Proceedings*, 1st Edition, 2016 Dar Al Nahda Al Arabiya, p.320 et seq.

the name of the supreme authority of the state. If it is not, the award is considered null and void 1 though not non-existent 2. This contrasts with the position of the judiciary in Egypt, where all chambers of the Egyptian Court of Cassation agree that the omission of this statement does not lead to the invalidity of the arbitral award 3.

The ruling stated that the absence of the ruler's name in the arbitral award does not render it invalid nor negatively affect it. Similarly, the decision of the Beirut Court of First Instance, Third Chamber Decision number 65, dated 23/03/1994, published in the Lebanese Journal, Issue 1, p. 64, affirmed that issuing the award in the name of the people is not a requirement, unlike judicial decisions.

In contrast, the Syrian Court of Cassation ruled that if it is assumed that an arbitral award must be issued in the name of the supreme authority, then any award that lacks this phrase is considered non-existent and contrary to the law and therefore cannot be granted enforceability. (Decision dated 06/03/2000. Al-Alousi, Rule 21).

the effect resulting from the failure to issue the arbitral award in the name of the supreme authority is a natural consequence of the arbitration, obligating them to comply with it. It also binds other authorities, which must likewise enforce and respect it. These characteristics of arbitral award are explicitly affirmed by the legislative text, which states that the arbitrators' decision is considered a judgment.

Therefore, its enforceability stems from the will of the legislator, not the will of the arbitration parties, and it is treated accordingly, just like ordinary judicial rulings, which—according to Article 16 of the law on the Organisation of the Judiciary—must be issued in the name of the Emir of the country.

Well, Egypt's position on issuing arbitral awards in the name of the people remains inconsistent, oscillating between acceptance and rejection, and between nullity and non-nullity, as previously explained—the approaches of other Arab countries differ, as they clearly require that arbitral awards be issued in the name of the supreme authority; otherwise, they are considered invalid or unenforceable.

Section 2. The situation in some other Arab countries in light of legal doctrine and judicial practise.

It is evident that Egypt's stance on issuing arbitral awards in the name of the people is marked by hesitation, fluctuating between acceptance and rejection, and between invalidity and validity. In contrast, the positions of other Arab countries differ, as they clearly require that arbitral awards be issued in the name of the supreme authority; Otherwise, such awards are considered invalid or unenforceable. Accordingly, we shall examine some judicial approaches as follows.

1. Issuance of the Arbitral Award in the Name of the Supreme Authority in Qatar

The Qatari Court of Cassation ruled that an arbitral award is equivalent to a regular judicial ruling, and that its issuance in the name of the supreme authority in the country is a matter of public order. The court justified this by stating that the legislator, in the arbitration section of the law, described the arbitrator's decision and considered it a judgement. An arbitral award is thus an ordinary judgement that must comply with the prescribed formalities and is issued by a person entrusted with performing a judicial function in relation to the dispute, even if that person is not originally part of the judiciary. Therefore, if the arbitrator's decision is not issued in the name of the supreme authority of the country, it loses its status as a judicial ruling, since issuing it in that name affirms that the public authority stands behind the decision and requires its enforcement[2]. This rule, the court affirmed, is a matter of public order.

2. The position in the Syrian Arab Republic.

The Syrian judiciary does not significantly differ from that of Qatar. In Syria rules related to public order required the judicial rulings in arbitral awards be issued in the name of the Syrian Arab people. In one precedent involving a party obtaining

[2] Judgement of the Qatari Civil Court of Cassation in Appeal N. 64 of 2012, Third Chamber, session held on 12/06/2012. This judgement was published in *the International Arbitration Journal*, issue No. 16, p. 447. A notable commentary on this ruling appeared in the same journal issue No. 20, and its key points were significant enough to be incorporated into the present research.

an enforcement order for a ruling issued by a sole arbitrator, it was found that the arbitral award was not issued in the name of the Syrian people. This made it contrary to public order rules in Syria, and therefore, it was legally impermissible to grant it enforceability in accordance with proper legal procedures. 1

The ruling stated the following:

Whereas, the defendant, through her legal representative, expressed no objection to granting this award enforceability in accordance with legal procedure, and whereas Article 56 of the Arbitration Law states in its following paragraph:

3. An arbitral award may not be granted enforceability under this law unless the following are verified:

A. It does not conflict with a judgement previously issued by Syrian courts regarding the subject of the dispute.

B. It does not contain anything that violates public order in the Syrian Arab Republic.

C. It has been properly notified to the party against whom it was issued.

And whereas the rules of public order in the Republic require that judicial rulings or arbitral awards be issued in the name of the Syrian Arab people, and whereas upon reviewing the award issued by the sole arbitrator, Nidal Abdeljalil, it was found that it was not issued in the name of the Syrian Arab people, this renders it in violation of the rules of public order in the Syrian Arab Republic, and therefore, it has become legally impermissible to grant it enforceability in accordance with proper legal procedure.

Therefore, it was unanimously decided to:

Reject the Plaintiff's request to grant the Arbitral award issued by the sole arbitrator, lawyer Nidal Abdeljalil dated 24/09/2012 and filed with the registry of this court under No. 28 for the year 2012, an enforcement order in due form, on the grounds that the said award violates the rules of public order in the Syrian Arab Republic. The plaintiff is also ordered to pay court fees and attorney's fees in accordance with the law.

Section three: The situation in the Kingdom of Morocco

In Morocco Including the phrase "In the Name of His Majesty the King" in arbitral awards has sparked considerable debate, and the discussion remains ongoing. This matter pertains specifically to the preamble of the arbitral award, which is mandated by law.

What is meant here is that judicial rulings in Morocco, as in other Arab countries, must be issued in the name of a specific authority, such as the King in the case of the Kingdom of Morocco, the Emir in the State of Kuwait or in the name of the people in the Republic of Tunisia. The central question being raised is whether this phrase must also be included in arbitral awards, or not.

Practically speaking, in Morocco, the enforcement order, that is, the decision issued by the president of the competent court, is rendered in the name of His Majesty the king. As such, an arbitral award acquires binding enforceability through this enforcement order, even if the award itself does not contain the royal preamble. Without this official enforcement, i.e., the formal order issued by the court president, not the arbitrator who drats the award, the arbitral decision cannot be executed coercive. This formality is imposed by the ordinary judiciary as a supporting authority to arbitration.

For answering the key question, it should be clarified that this phrase is a purely formal requirement, traditionally codified in legal texts an inherited overtime, and it has become mandatory for the ordinary judiciary in accordance with the law. In fact, to avoid omitting this phrase during the delivery of judicial rulings, court papers are pre-printed with this standard formulation.

This kind of formal procedure is not substantive and should not be regarded as an essential part of due process that arbitrators must follow, and if they are not entirely exempt from procedural rules. In practice, such an issue rarely arises, although there have been cases, such as in the UAE and Oman, where arbitral awards were rejected for lacking the preamble referring to the head of state.

In conclusion, while this procedure is indeed required in judicial rulings, we believe it should not extend to arbitration. Therefore, the absence of such a phrase in an arbitral award does not render it invalid or unenforceable.

Conclusion

First: Arab countries differ on the issue of whether an arbitral award must be issued in the name of the ruling authority. Some consider this a matter of public order, thus making it mandatory and invalidating any arbitral award that lacks such a declaration. Others do not view it as such, allowing arbitral awards to be issued without naming the ruling authority, and therefore do not deem the award null in its absence.

Second: Most comparative legislations do not draw clear boundaries between an award issued by an arbitral tribunal and a judgement issued by the state judiciary, particularly in terms of form and procedure. As a result, courts tend to apply the same standards to both types of rulings without clear distinction. This reality calls for the amendment of legislation to allow for a clear differentiation between arbitral awards and judicial rulings. In the absence of such amendments, it is only natural that courts will continue applying general judicial standards to both types of decisions.

Third: we support and agree with court decisions that invalidate an arbitral award for not being issued in the name of the ruling authority. As long as the law considers this requirement essential. However, we do not support decisions that invalidate an award for being issued in the name of the ruling authority, on the grounds that it resembles a court judgement. This position is based on the lack of legislative distinction between arbitral and judicial rulings from both procedural and formal perspectives.

Fourth: Domestic courts must not confuse the concept of internal public order with the application of international conventions. In the event of a conflict between the two, internal public order takes precedence. Therefore, if issuing an arbitral award in the name of the ruling authority is considered a matter of domestic public order, international arbitral bodies must take this into account and respect the internal public order of the country in which the arbitral award is to be enforced.

Fifth: Arbitral tribunals must ensure compliance with all formal requirements and essential elements in the arbitral award before issuing it. Among the most important of these is that the award must be issued in the name of the ruling

authority, in accordance with the Constitution and applicable laws. Failure to do so may constitute a ground for annulment of the award unless the legislator explicitly provides otherwise, specifically, in the context of drawing a clear distinction between judicial rulings and arbitral awards.