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Current Challenges of Enforcing Annulled Arbitral Awards

Lenka Psárska

Faculty of Law, Masaryk University, Czech Republic

Abstract

The controversy regarding the French approach to the enforcement of annulled arbitral awards may have died out, yet new issues continue to arise. This paper analyses the current practice in respect to the discretion given to the enforcing courts by the New York Convention. Special attention is paid to the development of case law and approaches of leading jurisdictions concerning the relationship of an award with the legal order under which it was rendered. The purpose of this paper is assessment of the discretion granted to the national courts by Article V of the New York Convention to enforce an award notwithstanding its annulment at the seat.

Keywords

Annulment Proceedings; Discretionary Power; International Arbitration; New York Convention; Public Policy.

1 Introduction

The purpose and a defining characteristic of arbitration proceedings is, among other things, that it results in a final and binding award. In general, the award cannot be appealed to a higher-level court after it is rendered.[1] However, this does not guarantee the finality of arbitration proceedings as the non-prevailing party might try to challenge the award at the seat of arbitration where it might be set aside or annulled.[2] Generally, the grounds for setting aside are constituted narrowly within respective legal orders.

1 MOSES, M. L. *The Principles and Practice of International Commercial Arbitration*. Cambridge: Cambridge University Press, 2008, pp. 2–3.

2 Ibid.; see also Art. V para. 1 letter e) New York Convention.

Common reasons for setting aside include conflict of the award with the public policy, incapability of the subject-matter of the dispute to be settled by arbitration, incapacity of a party to the arbitration, issues regarding composition of arbitral tribunal, or misbehaviour of arbitrators manifested through impartiality, fraud, corruption, or failure to hear evidence.[3]

This form of judicial intervention by the courts of the primary jurisdictions is well established.[4] It demonstrates how the states continue to administer justice even after parties to a dispute have deliberately decided to avoid litigation.[5] However, success of the non-prevailing party in the annulment proceedings does not mean that each and every jurisdiction will consider an annulled award as having been stripped of any legal effect. It is true that the annulment might nudge the prevailing party to try to resolve the dispute by negotiation, commence new proceedings or even accept its loss and decide not to waste any more resources on the dispute, but at the same time, it does not mean that the dispute has reached a dead end as an enforcement of such an award remains a possibility.

Enforcement of annulled arbitral awards has sparked interest within the legal community numerous times in the past decades.[6] Some jurisdictions have developed clear and distinct rules stemming not only from their national law, but also from long-standing case law. Meanwhile, there are jurisdictions that have only recently been given an opportunity to form their approaches on paper and to adapt them to current needs and international standards. The following chapters of this paper will concern the implications of the current practice. With the United Nations Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards ("New

3 See, for example, United States. § 10 of the United States Arbitration Act (FAA), Pub. L. No. 68-401 Stat. 883 (1925); Czech Republic. § 31 Act No 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards, as amended; Art. 34 UNCITRAL Model Law on International Commercial Arbitration.

4 RAU, A. S. Understanding (and Misunderstanding) 'Primary Jurisdiction'. *American Review of International Arbitration* [online]. 2010, no. 06-10, pp. 1–118 [cit. 30. 5. 2022]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633555

5 KERAMEUS, K. D. Waiver of Setting-Aside Procedures in International Arbitration. *The American Journal of Comparative Law*. 1993, Vol. 41, no. 1, pp. 73–74.

6 The interest was commonly sparked by the case law from France and the United States. See PETROCHILOS, G. C. Enforcing Awards Annulled in Their State of Origin Under the New York Convention. *International & Comparative Law Quarterly*. 1999, Vol. 48, no. 4, pp. 856–888.

York Convention" or "Convention") residing at the core of this issue, the paper will demonstrate how the Convention allowed respective jurisdictions to choose their own approach towards the enforcement of annulled arbitral awards. After establishing two approaches that lie on the opposite sides of the spectrum, the paper will focus on other views not falling within prior categories. The main focus will be on the interplay between the award rendered by arbitrators and the judicial ruling of a foreign court, and public policy as a tool to maximize legal certainty and uniformity.

2 A Failure or a Triumph of the New York Convention?

The New York Convention, considered to be one of the most successful international treaties, has greatly contributed to rapid and effective enforceability of international arbitral awards.[7] Enforceability constitutes an essential advantage of arbitration, mainly in comparison to international litigation.[8] The main objective of the Convention is to ensure that awards are enforceable worldwide,[9] which is also consistent with the central obligation of the Convention to recognize arbitral awards as binding and enforce them as stipulated under Article III of the Convention.

At the same time, the epicentre of the presented legal challenges lies in the New York Convention itself. The Convention's wording of provision concerning the refusal of recognition and enforcement, mainly in regards to previous set-aside or annulment of an award, remains as the source of uncertainty. Even though these provisions were created in order to secure the fulfilment of the goal of the Convention to extend the number of enforced awards, this goal came at the expense of certainty, leaving one to wonder whether the Convention established unsustainable pro-enforcement bias.[10] Whether

7 BORN, G. B. The New York Convention: A Self-Executing Treaty. *Michigan Journal of International Law*. 2018, Vol. 40, no. 1, p. 115.

8 BIRD, R. C. Enforcement of Annulled Arbitration Awards: A Company Perspective and an Evaluation of a New York Convention. *North Carolina Journal of International Law & Commercial Regulation*. 2011, Vol. 37, no. 4, p. 1024.

9 SILBERMAN, L. The New York Convention After Fifty Years: Some Reflections on the Role of National Law. *Georgia Journal of International & Comparative Law*. 2009, Vol. 38, no. 1, p. 39.

10 JUNITA, F. 'Pro Enforcement Bias' under Article V of the New York Convention in International Commercial Arbitration: Comparative Overview. *Indonesian Law Review*. 2015, Vol. 5, no. 2, p. 141.

this can be considered as a failure of the Convention or not, the following chapter will focus on respective perspectives that originated from these provisions and were formed by their diverse interpretation.

2.1 Guidance Provided by the New York Convention

The New York Convention contains two provisions that pave a path both to questions and answers regarding the enforcement of annulled arbitral awards. Article V in conjunction with Article VII of the Convention is a source of the perspectives presented further in the paper. Article V seemingly allows the enforcing courts to make a decision regarding refusal of enforcement, while Article VII had opened a door for the contracting states to adopt national legislation or to conclude international treaties that would grant additional or more favourable rights to the interested parties.

Linguistic interpretation of Article V para. 1 letter e) of the Convention alone might be persuasive enough for a reader to admit that national courts do indeed have a discretion in their decision to enforce an award notwithstanding previous set-aside. Owing to usage of a permissive term "may" instead of "shall", it is generally accepted that Article V is of a permissive nature.[11] More specifically, Article V of the New York Convention stipulates:

> *"1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:*
>
> […]
>
> *(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made."*

The sole interpretation of the language of the Convention supports the view that a mere designation of setting aside the award at the seat of arbitration as a reason for refusal of recognition and enforcement does not oblige courts to deny enforcement. At the same time, non-mandatory refusal fits within

11 See ibid., pp. 140–164; BIRD, R. C. Enforcement of Annulled Arbitration Awards: A Company Perspective and an Evaluation of a New York Convention. *North Carolina Journal of International Law & Commercial Regulation.* 2011, Vol. 37, no. 4, p. 1029.

the notion that the Convention has a clear pro-enforcement bias.[12] On the other hand, it opens questions about the status of the set-aside decision as such. More specifically, does the provision allow discretion in respect to specific circumstances of each individual case, and if it does, how can these circumstances be assessed, or does the Convention allow disregarding the set-aside decision as such?

The only other provision providing further guidance is Article VII para. 1 of the New York Convention which stipulates that:

> *"The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon."*

This provision encourages greater enforcement and ensures that interested parties would not be deprived of additional national rights.[13] French legislation and practice are adequate examples of this interpretation.[14] Article 1525 of the French Code of Civil Procedure stipulates that recognition or enforcement may be denied only on the grounds listed in Article 1520.[15] Article 1520 contains narrow grounds for setting aside arbitral awards[16] and a previous set-aside decision had not become a reason for refusal of recognition and enforcement. Therefore, French law contains more favourable rights for interested parties, while the Convention had created a way which grants the parties a mean to avail themselves these rights.

12 JUNITA, F. 'Pro Enforcement Bias' under Article V of the New York Convention in International Commercial Arbitration: Comparative Overview. *Indonesian Law Review*. 2015, Vol. 5, no. 2, p. 141.

13 BIRD, R. C. Enforcement of Annulled Arbitration Awards: A Company Perspective and an Evaluation of a New York Convention. *North Carolina Journal of International Law & Commercial Regulation*. 2011, Vol. 37, no. 4, p. 1029.

14 DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, p. 119.

15 France. Art. 1525 Code of Civil Procedure (Decree No. 2011-48 from 13 January 2011, reforming arbitration).

16 BIRD, R. C. Enforcement of Annulled Arbitration Awards: A Company Perspective and an Evaluation of a New York Convention. *North Carolina Journal of International Law & Commercial Regulation*. 2011, Vol. 37, no. 4, p. 1036. See France. Art. 1520 Code of Civil Procedure (Decree No. 2011-48 from 13 January 2011, reforming arbitration).

However, while a lack of such provision in national law does not necessarily preclude an enforcement of an annulled arbitral award, in practice, it can be seen as an obstruction.

2.2 Partial Conclusion

In practice, the presented interpretation is not often as straightforward or universal. Moreover, even without Article VII and additional rights, one can wonder about residual discretion granted solely by Article V. Further analysis will show that guidance provided by the Convention is not sufficient to have the potential to create a uniform practice across the particular contracting states. The following chapters will address how selected jurisdictions have handled their discretion and substantiated their own approach.

3 Two Sides of the Same Coin

The decision whether to enforce an award despite prior annulment belongs to the courts with a secondary jurisdiction.[17] The object of their assessment is largely identical, yet their conclusions might principally differ. Even though the enforcing courts would be primarily guided by their national law, this step will be omitted for the purposes of this paper. For that reason, the first step of the analysis is a question whether an award is attached to the legal order under which it was rendered. An affirmative answer can lead the court to quite a simple conclusion that the award has lost its legal effect and cannot be enforced as it stopped existing.[18] On the other hand, a negative answer that denies the attachment will lead to further questions. Subsequent solution will depend on various factors and can easily end in disregarding the set-aside decision as such. Generally, the outcome will likely arise out of adopted legal theories and national law, possibly coming down

17 RAU, A. S. Understanding (and Misunderstanding) 'Primary Jurisdiction'. *American Review of International Arbitration* [online]. 2010, no. 06-10, p. 6 [cit. 30. 5. 2022]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633555

18 BERG, A. J. van den. Enforcement of Arbitral Awards Annulled in Russia – Case Comment on Court of Appeal of Amsterdam, April 28, 2009. *Journal of International Arbitration*. 2010, Vol. 27, no. 2, pp. 179, 187, 198.

to theoretical foundations of international arbitration.[19] There is a spectrum of possible perspectives and this chapter will outline two of them that are on the opposite ends.

3.1 Territorial Approach

The former of the two presented perspectives responds to the existence of a set-aside decision by refusing the recognition and enforcement of an arbitral award. Aside from being labelled as territorial, this approach is often described by the term *ex nihilo nihil it* – out of nothing, comes nothing.[20] This approach *"gives predominant and almost exclusive relevance to the seat"*[21] and assumes that *"the powers of arbitral tribunals are confined to the limits imposed by the law of the country of the seat."*[22] Therefore, an award is attached to the legal order of the primary jurisdiction. As a result of the annulment, it loses any legal effect under the *lex arbitri*.[23] The award no longer exists and cannot be brought back to life during the enforcement procedure.[24] There are several civil law countries, such as Germany, Italy,[25] Chile,

19 CORREIA FILHO, A. C. N. The Theories of International Arbitration and Related Practical Issues: The Brazilian Approach (Particularly the Recent Leading Case on Recognition of Annulled Awards) vis-à-vis the Delocalization Trend. *Revista Brasileira de Arbitragem*. 2016, Vol. 13, no. 52, p. 28.

20 SILBERMAN, L., HESS, R. U. Enforcement of Arbitral Awards Set Aside or Annulled at the Seat of Arbitration. *Cambridge Compedium of International Commercial and Investment Arbitration* [online]. 2022, p. 3 [cit. 30. 5. 2022]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4029102

21 CORREIA FILHO, A. C. N. The Theories of International Arbitration and Related Practical Issues: The Brazilian Approach (Particularly the Recent Leading Case on Recognition of Annulled Awards) vis-à-vis the Delocalization Trend. *Revista Brasileira de Arbitragem*. 2016, Vol. 13, no. 52, p. 28.

22 Ibid.

23 MOURA VICENTE, D. Requirements for the Enforceability of Arbitral Awards: A Comparative Overview. *APA – Associação Portuguesa de Arbitragem* [online]. 2019, p. 17 [cit. 30. 5. 2022]. Available at: https://www.arbitragem.pt/xms/files/Estudos_da_APA/requirements-enforceability-arbitral-awards-dario-moura-vicente.pdf

24 BERG, A. J. van den. Enforcement of Arbitral Awards Annulled in Russia – Case Comment on Court of Appeal of Amsterdam, April 28, 2009. *Journal of International Arbitration*. 2010, Vol. 27, no. 2, pp. 179, 187, 198.

25 TWEEDDALE, K., TWEEDDALE, A. Cutting the Gordian Knot: Enforcing Awards where an Application Has Been Made to Set Aside the Award at the Seat of the Arbitration. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*. 2015, Vol. 81, no. 2, p. 138.

Brazil,[26] or Russia[27] that adopted this approach and would not enforce an award that had been set-aside.

For example, German courts can reverse the previous enforcement decision if the award had been annulled at the seat after it was already enforced,[28] and would deny the enforcement if the annulment of the arbitral award had yet to take legal force.[29] Moreover, when it comes to review of the annulment of an arbitral award, German courts would not find it necessary to examine whether the decision was correct in terms of the ground for annulment if reciprocity between Germany and the state of a primary jurisdiction is established.[30]

Similarly, Singaporean Court of Appeal adopted this approach when it pondered about the purpose and the effect of the set-aside decision in *Astro*:

> *"While the wording of Art V(1)(e) of the New York Convention and Art 36(1)(a)(v) of the Model Law arguably contemplates the possibility that an award which has been set aside may still be enforced, in the sense that the refusal to enforce remains subject to the discretion of the enforcing court, the contemplated erga omnes effect of a successful application to set aside an award would generally lead to the conclusion that there is simply no award to enforce. What else could it mean to set aside an award? If this avenue of recourse would only ever be of efficacy in relation to enforcement proceedings in the seat court, then it seems to have been devised for little, if any, discernible purpose. As such, we do not think that in principle, even the wider notion of 'double-control' can encompass the same approach as has been adopted by the French courts. The refusal to enforce*

26 CORREIA FILHO, A. C. N. The Theories of International Arbitration and Related Practical Issues: The Brazilian Approach (Particularly the Recent Leading Case on Recognition of Annulled Awards) vis-à-vis the Delocalization Trend. *Revista Brasileira de Arbitragem*. 2016, Vol. 13, no. 52, p. 39.

27 SILBERMAN, L., HESS, R. U. Enforcement of Arbitral Awards Set Aside or Annulled at the Seat of Arbitration. *Cambridge Compedium of International Commercial and Investment Arbitration* [online]. 2022, p. 4 [cit. 30. 5. 2022]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4029102

28 HORVATH, G. J. What Weight Should be Given to the Annulment of an Award under the Lex Arbitri? The Austrian and German Perspectives. *Journal of International Arbitration*. 2009, Vol. 26, no. 2, p. 260. See also Germany. § 1061 para. 3 Code of Civil Procedure (5 December 2005).

29 DOBIÁŠ, P. The Recognition and Enforcement of Arbitral Awards Set Aside in the Country of Origin. In: BĚLOHLÁVEK, A. J., ROZEHNALOVÁ, N. (eds.). *Czech (& Central European) Yearbook of Arbitration. Vol. 9*. The Hague: Lex Lata, 2019, p. 15.

30 Ibid., p. 17.

> *awards which have not been set aside at the seat court may therefore constitute one of the outer-limits of 'double-control'."* [31]

3.2 Delocalized Approach

Often described as delocalization of international commercial arbitration,[32] this approach allows the set-aside decision to be disregarded. The reasoning is based on the delocalization theory. Some authors subscribe to a view that international arbitration is an autonomous legal order that is not rooted in any specific national system, therefore arbitral awards are not attached to any state.[33] For example, *Emmanuel Gaillard* explains:

> *"Arbitrators do not derive their powers from the state in which they have their seat but rather from the sum of all the legal orders that recognize, under certain conditions, the validity of the arbitration agreement and the award. This is why it is often said that arbitrators have no forum."* [34]

France is a typical example of a jurisdiction with this approach. The elimination of Article V letter e) as a ground for non-recognition has been confirmed by the French case law. National law must authorize a court to refuse enforcement of an award as it is the only subject with capacity to decide whether an award itself is entitled to recognition under the French law.[35] In this light, an award is considered to be independent of a legal regime under which it was rendered.[36]

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31 Decision of the Singaporean Court of Appeal, SGCA 57, of 31 October 2013, Civil Appeals Nos 150 and 151 of 2012, *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) vs. Astro Nusantara International BV and others and another appeal*. In: *UNCITRAL* [online]. Para. 77 [cit. 27. 5. 2022]. Available at: https://www.uncitral.org/docs/clout/SGP/SGP_311013_FT_1.pdf

32 DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, p. 121.

33 CORREIA FILHO, A. C. N. The Theories of International Arbitration and Related Practical Issues: The Brazilian Approach (Particularly the Recent Leading Case on Recognition of Annulled Awards) vis-à-vis the Delocalization Trend. *Revista Brasileira de Arbitragem*. 2016, Vol. 13, no. 52, p. 29.

34 DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, pp. 114–141.

35 SILBERMAN, L., HESS, R. U. Enforcement of Arbitral Awards Set Aside or Annulled at the Seat of Arbitration. *Cambridge Compedium of International Commercial and Investment Arbitration* [online]. 2022, p. 8 [cit. 30. 5. 2022]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4029102

36 Ibid., p. 12.

Looking back as far as to the 1980s, the Court of Appeal of Paris stated in *Götaverken*[37] that *"the place of the arbitral proceedings, chosen only in order to assure their neutrality, is not significant; it may not be considered an implicit expression of the parties' intent to subject themselves, even subsidiarily, to the loi procédurale française"*[38]. In addition to that, French courts stipulated in cases *Hilmarton,*[39] *Chromalloy*[40] and *Putrabali*[41] that incorporation of an annulled arbitral award into French legal system does not constitute a violation of the French international public policy.[42]

3.3 Partial Conclusion

In spite of certain trends towards delocalisation of international commercial arbitration,[43] it has been affirmed that territorial approach prevails among the contracting states of the New York Convention.[44] In general, the jurisdictions that will give effect to annulled arbitral awards – perhaps apart from France – are not that liberal in their approach, as they would enforce the award only under exceptional circumstances.[45] Yet, these trends and perspectives are not solely a question of legal theory. Their state and clarification can greatly

37 Judgment of the Court of Appeal of Paris (Cour d'appel de Paris), France, of 21 February 1980, Case F 9224. In: TWEEDDALE, K., TWEEDDALE, A. Cutting the Gordian Knot: Enforcing Awards where an Application Has Been Made to Set Aside the Award at the Seat of the Arbitration. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*. 2015, Vol. 81, no. 2, p. 138.

38 Ibid.

39 Judgment of the Court of Appeal of Paris (Cour d'appel de Paris), France, of 19 December 1991, Case No. 90-16778. In: DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, p. 120.

40 Judgment of the Court of Appeal of Paris (Cour d'appel de Paris), France, of 14 January 1997, Case No. 95/23025. In: DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, p. 120.

41 Judgment of the French Court of Cassation (Cour de cassation), France, of 29 June 2007, Case No. 05-18.053. In: DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, p. 120.

42 Ibid.

43 CORREIA FILHO, A. C. N. The Theories of International Arbitration and Related Practical Issues: The Brazilian Approach (Particularly the Recent Leading Case on Recognition of Annulled Awards) vis-à-vis the Delocalization Trend. *Revista Brasileira de Arbitragem*. 2016, Vol. 13, no. 52, p. 31.

44 Ibid.

45 Ibid., p. 33.

influence the preservation of credibility of international arbitration as well as legal certainty. For that reason, avoiding arbitrariness is of great importance and should be an objective even of the small number of jurisdictions that do not adhere to neither of the previously presented approaches.

4 Discretionary Powers – Legal Theories versus Reality

The chasm between the territorial and delocalized approach is filled with a variety of theories and scholars have suggested different methods for solving the discrepancies of the present issue. For example, *Jan Paulsson* has suggested differentiation of two sets of standards for annulments – local and international – under which the annulment on the basis of the local standards would only have a local effect. This solution was rightfully criticized as not being suitable for the New York Convention.[46] Other suggestion, proposed by *Gary Born*, was a creation of criteria that would *"justify disregarding an annulment decision at the arbitral seat"*[47]. However, this could greatly undermine the parties' choice of a specific seat and its legal order.[48] Another solution might stem from a multi-local theory which is based on enforcement as the ultimate goal of the arbitration.[49] *"This theory embraces the idea that the whole arbitration is legitimated a posteriori, when the arbitral award meets the requirements to be recognized where its enforcement is sought. According to this theoretical model, the legal orders of the places of enforcement are the origins of the legal force of the arbitration."*[50] However, this theory greatly undermines the role of the seat and the legal certainty of parties to a dispute. On the other hand, the practice has defined the current challenges that need to be addressed. Their existence is reflected in respective cases, and the conclusions

46 SILBERMAN, L., HESS, R. U. Enforcement of Arbitral Awards Set Aside or Annulled at the Seat of Arbitration. *Cambridge Compedium of International Commercial and Investment Arbitration* [online]. 2022, p. 13 [cit. 30. 5. 2022]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4029102

47 Ibid., p. 14.

48 Ibid.

49 CORREIA FILHO, A. C. N. The Theories of International Arbitration and Related Practical Issues: The Brazilian Approach (Particularly the Recent Leading Case on Recognition of Annulled Awards) vis-à-vis the Delocalization Trend. *Revista Brasileira de Arbitragem*. 2016, Vol. 13, no. 52, p. 28.

50 Ibid.

drawn from them might eventually have implications for the subsequent practice worldwide. This chapter focuses on a particular challenge – setting a standard for review of the set-aside decisions obtained as a result of bias or corruption.

4.1 The Yukos Saga

Courts in multiple jurisdictions had an opportunity to address a question whether there is a possibility to enforce an award despite a prior set-aside thanks to a dispute between *Yukos Capital SARL ("Yukos")* and *Yuganskneftegaz*.[51] The dispute concerned four loan agreements. The parties had chosen Russia as a seat of arbitration and subsequently, four awards were made in favour of *Yukos*.[52] After *Yuganskneftegaz* merged with *Open Joint Stock Company Rosneft Oil Co ("Rosneft")*, *Yukos* requested *Rosneft* to comply with the award. Instead, *Rosneft* initiated annulment proceedings and the Arbitrazh Court of Moscow set aside the award.[53] The grounds for the annulment included denial of a right to present the case, a submission of new claims that were not in compliance with the rules of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation ("ICAC"), and an arbitral tribunal not having been formed in accordance with the agreement of the parties.[54] Generally, doubts as to the impartiality of the set-aside proceedings might not be accepted easily. However, *Rosneft* is an entity that was entirely and later by a majority

51 Award of 19 September 2006, International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, *Yukos vs. OJSC Yuganskneftegaz*. In: *Jus Mundi* [online]. [cit. 27. 5. 2022]. Available at: https://jusmundi.com/en/document/decision/en-yukos-capital-s-a-r-l-v-ojsc-yuganskneftegaz-award-1-tuesday-19th-september-2006#decision_18241

52 Ibid.; see also TWEEDDALE, K., TWEEDDALE, A. Cutting the Gordian Knot: Enforcing Awards where an Application Has Been Made to Set Aside the Award at the Seat of the Arbitration. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*. 2015, Vol. 81, no. 2, pp. 141–142.

53 Decision of the England and Wales High Court, UK, of 3 July 2014, *Yukos Capital Sarl vs. OJSC Oil Co Rosneft*. In: *Practical Law* [online]. Para. 2 [cit. 27. 5. 2022]. Available at: https://uk.practicallaw.thomsonreuters.com/D-026-6158?transitionType=Default&contextData=(sc.Default)&firstPage=true; see also NACIMIENTO, P., BARNASHOV, A. Recognition and Enforcement of Arbitral Awards in Russia. *Journal of International Arbitration*. 2010, Vol. 27, no. 3, p. 304.

54 NACIMIENTO, P., BARNASHOV, A. Recognition and Enforcement of Arbitral Awards in Russia. *Journal of International Arbitration*. 2010, Vol. 27, no. 3, pp. 304–305.

owned and controlled by the Russian government.[55] The interest that the Russian government could have had in the outcome of the proceedings raises a suspicion, yet one might ask whether a single suspicion can justify a disregard of a foreign national judgment.

4.1.1 Proceedings in the Netherlands

Yukos had initiated the enforcement proceedings in the Netherlands. Even though the application was initially denied by the District Court in Amsterdam[56] on the ground of Article V para. 1 letter e) of the New York Convention, it was reversed by the Court of Appeal in Amsterdam. In its decision,[57] the Court of Appeal had denied the existence of an obligation to enforce an award while it stated that:

> *"Since it is very likely that the judgments by the Russian civil judge setting aside the arbitration decisions are the result of a dispensing of justice that must be qualified as partial and dependent, said judgment cannot be recognized in the Netherlands. This means that in considering the application by Yukos Capital for enforcement of the arbitration decisions, the setting aside of the decision by the Russian court must be disregarded."* [58]

This decision was subjected to criticism as the accusations it held against the annulling courts in all three instances were extremely serious and were

55 Decision of the England and Wales High Court, UK, of 14 June 2011, *Yukos Capital Sarl vs. OJSC Rosneft Oil Co.* In: *Practical Law* [online]. Para. 6 [cit. 27. 5. 2022]. Available at: https://uk.practicallaw.thomsonreuters.com/D-014-9934?transitionType=Default&contextData=(sc.Default)

56 Judgment of the District Court of Amsterdam (Uitspraak van het Rechtbank Amsterdam), the Netherlands, of 28 February 2008, *Yukos Capital SARL vs. OAO Rosneft*. In: BERG, A. J. van den. Enforcement of Arbitral Awards Annulled in Russia – Case Comment on Court of Appeal of Amsterdam, April 28, 2009. *Journal of International Arbitration*. 2010, Vol. 27, no. 2, p. 180.

57 Judgment of the Court of Appeal of Amsterdam (Uitspraak van het Gerechtshof Amsterdam), the Netherlands, of 28 April 2009, *Yukos Capital SARL vs. OAO Rosneft*. See DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, p. 126.

58 TWEEDDALE, K., TWEEDDALE, A. Cutting the Gordian Knot: Enforcing Awards where an Application Has Been Made to Set Aside the Award at the Seat of the Arbitration. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*. 2015, Vol. 81, no. 2, pp. 141–142.

not supported by sufficient evidence.[59] The court acknowledged the lack of direct evidence and based its decision on a mere deduction of bias formed on the basis of press publications and general reports.[60] The reasoning focused on a systematic lack of impartiality, while it suggested that there was not a judge in the Russian judiciary that could reach an impartial decision when considering the present case.[61] While one would expect a court to be concerned with establishing requirements as to the threshold for the burden of proof, this ruling instead serves as an example of an unrestrained usage of discretion.

4.1.2 Proceedings in the United Kingdom

Despite the successful enforcement proceedings in the Netherlands, *Yukos* had to seek enforcement in the United Kingdom. However, as *Rosneft* eventually paid the principal sum, the proceedings subsequently concerned only the entitlement to interest.[62] This allowed the England and Wales High Court to assess the possibility to enforce the annulled award. Applying principles of comity,[63] the court ruled that:

> *"The answer to the question is not provided by a theory of legal philosophy but by a test: whether the Court in considering whether to give effect to an award can (in particular and identifiable circumstances) treat it as having legal effect notwithstanding a later order of a court annulling the award. In applying this test it would be both unsatisfactory and contrary to principle if the Court were bound to recognize a decision of a foreign court which offended against basic principles of honesty, natural justice and domestic concepts of public policy."*[64]

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59 BERG, A. J. van den. Enforcement of Arbitral Awards Annulled in Russia – Case Comment on Court of Appeal of Amsterdam, April 28, 2009. *Journal of International Arbitration*. 2010, Vol. 27, no. 2, p. 180.

60 Ibid.

61 Ibid., p. 181.

62 TWEEDDALE, K., TWEEDDALE, A. Cutting the Gordian Knot: Enforcing Awards where an Application Has Been Made to Set Aside the Award at the Seat of the Arbitration. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*. 2015, Vol. 81, no. 2, p. 142.

63 Ibid.

64 Decision of the England and Wales High Court, UK, of 3 July 2014, *Yukos Capital Sarl vs. OJSC Oil Co Rosneft*. In: *Practical Law* [online]. Para. 20 [cit. 27. 5. 2022]. Available at: https://uk.practicallaw.thomsonreuters.com/D-026-6158?transitionType=Default&contextData=(sc.Default)&firstPage=true

The court explicitly denied both the existence of the *ex nihilo nihil fit* principle in English law[65] and any duty to disregard of the set-aside decision.[66] This approach seems to be consistent within the English case law. For example, in *IPCO*[67] the court conveyed a favour towards enforcement as an underlying purpose of the New York Convention.[68] Previous case law also denied an automatic refusal, as it was held that *"the English courts still retain a discretion to enforce the award, though that jurisdiction will be exercised sparingly"*[69]. A year after the decision in *Yukos*, the High Court assessed whether a set-aside decision in *Malicorp* meets the tests for recognition.[70] When the claimant argued that *"the judges responsible for the 2012 Cairo Court of Appeal decision were guilty of progovernment bias"*[71] the court stated this can only be accepted with *"positive and cogent evidence"*[72] while criticising that the presented evidence did not go beyond generalised and anecdotal material.[73]

65 Decision of the England and Wales High Court, UK, of 3 July 2014, *Yukos Capital Sarl vs. OJSC Oil Co Rosneft*. In: *Practical Law* [online]. Para. 81 [cit. 27. 5. 2022]. Available at: https://uk.practicallaw.thomsonreuters.com/D-026-6158?transitionType=Default&contextData=(sc.Default)&firstPage=true

66 TWEEDDALE, K., TWEEDDALE, A. Cutting the Gordian Knot: Enforcing Awards where an Application Has Been Made to Set Aside the Award at the Seat of the Arbitration. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*. 2015, Vol. 81, no. 2, p. 143.

67 Decision of the England and Wales High Court, UK, of 14 March 2014, *IPCO (Nigeria) Ltd vs. Nigerian National Petroleum Corp*. In: *Practical Law* [online]. [cit. 27. 5. 2022]. Available at: https://uk.practicallaw.thomsonreuters.com/D-024-8161?transitionType=Default&contextData=%28sc.Default%29

68 TWEEDDALE, K., TWEEDDALE, A. Cutting the Gordian Knot: Enforcing Awards where an Application Has Been Made to Set Aside the Award at the Seat of the Arbitration. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*. 2015, Vol. 81, no. 2, p. 140.

69 Decision of the England and Wales High Court, UK, of 27 July 2011, *Dowans Holding SA vs. Tanzania Electric Supply Co Ltd*. In: TWEEDDALE, K., TWEEDDALE, A. Cutting the Gordian Knot: Enforcing Awards where an Application Has Been Made to Set Aside the Award at the Seat of the Arbitration. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*. 2015, Vol. 81, no. 2, p. 140.

70 Judgment of the England and Wales High Court, UK, of 19 February 2015, *Malicorp Limited vs. Government of the Arab Republic of Egypt and Others*. In: *Italaw* [online]. Para. 28 [cit. 27. 5. 2022]. Available at: https://www.italaw.com/sites/default/files/case-documents/italaw7672.pdf

71 Ibid., para. 26.

72 Ibid.

73 Ibid.

4.2 Maximov – A Follow up to Yukos?

Similarly to *Yukos*, the award in the dispute between *Nikolay Viktorovich Maximov ("Maximov")* and *Open Joint Stock Company 'Novolipetsky Metallurgichesky Kombinat' ("NLMK")* was issued by arbitrators under ICAC. The dispute concerned the calculation of the purchase price of shares in Open Joint Stock Company Maxi-Group pursuant to a share purchase agreement.[74] The Arbitrazh Court of Moscow had set aside the award on three grounds – failure of arbitrators to disclose links the claimant's expert witnesses, failure to follow the price formula in the agreement resulting in violation of Russian public policy and the non-arbitrability ground, as the dispute was of corporate nature that is not arbitrable under the Russian law.[75] The decision was upheld on appeal[76] and later refused by the Supreme Arbitrazh Court of the Russian Federation.[77] After that, the claimant sought to enforce the award in France, where it was successful, and in the Netherlands and the United Kingdom.[78]

4.2.1 Proceedings in the Netherlands

In spite of similarities between the present case and *Yukos*, the Amsterdam Court of Appeal had adopted a fundamentally different approach.[79]

74 DEVENISH, P. Enforcement in England and Wales of Arbitral Awards Set Aside in Their Country of Origin. *Oxford University Commonwealth Law Journal*. 2018, Vol. 18, no. 2, p. 144.

75 Ibid., p. 145.

76 Decision of the Federal Arbitration Court of the Moscow District (Постановление Федерального арбитражного суда Московского округа), Russian Federation, of 26 September 2011, *Maximov vs. Novolipetsky (NLMK)*. In: *Jus Mundi* [online]. [cit. 27. 5. 2022]. Available at: https://jusmundi.com/en/document/decision/ru-nikolay-viktorovich-maximov-v-ojsc-novolipetsky-metallurgichesky-kombinat-postanovlenie-federalnyi-arbitrazhnyi-sud-moskovskogo-okruga-monday-26th-september-2011#decision_18314

77 Decision of the Supreme Court of Arbitration of the Russian Federation (Определение Высшего Арбитражного Суда Российской Федерации), Russian Federation, of 30 January 2022, *Maximov vs. Novolipetsky (NLMK)*. In: *Jus Mundi* [online]. [cit. 27. 5. 2022]. Available at: https://jusmundi.com/en/document/decision/ru-nikolay-viktorovich-maximov-v-ojsc-novolipetsky-metallurgichesky-kombinat-opredelenie-vysshego-arbitrazhnogo-suda-rossiiskoi-federatsii-no-vas-15384-11-monday-30th-january-2012#decision_18312

78 Ibid.

79 Judgment of the District Court of Amsterdam (Uitspraak van het Rechtbank Amsterdam), the Netherlands, of 17 November 2011, *Maximov vs. Novolipetsky (NLMK)*. In: *Jus Mundi* [online]. [cit. 27. 5. 2022]. Available at: https://jusmundi.com/en/document/decision/nl-nikolay-viktorovich-maximov-v-ojsc-novolipetsky-metallurgichesky-kombinat-beschikking-von-rechtbank-amsterdam-thursday-17th-november-2011#decision_18275

Maximov argued that the Russian judiciary has been overwhelmingly corrupt and biased for many years, particularly in proceedings involving the Russian state. He also made arguments that *NLMK* should be deemed as being equivalent to the Russian state, and if not, that there are close links between them. Yet, the court addressed the burden of proof, as it demanded that an accusation of bias and impartiality must be based on verifiable and independent sources. Moreover, it was not found that Russia had interests in the present case. *Maximov* did not provide evidence nor proved that the principles of judicial procedure were unacceptably disregarded. In contrast with *Yukos*, the court stated that even if it accepted that Russian judiciary was generally corrupt, it could not be stated about the judges that dealt with the present case.[80] This decision was later upheld on the appeal,[81] implying that the attitude adopted in *Yukos* would not be followed.

4.2.2 The proceedings in the United Kingdom

This case was also assessed by the England and Wales High Court.[82] The court was *"asked to infer bias from the perverse nature of the Russian court's conclusions (and in certain respects the manner in which they were arrived at)"*[83] despite lack of evidence in the case of actual bias, and to *"test is whether the Russian courts' decisions were so extreme and incorrect as not to be open to a Russian court acting in good faith"*[84]. Therefore, the object of the review were conclusions

80 BERG, A. J. van den. Netherlands No. 41, Nikolai Viktorovich Maximov v. OJSC Novolipetsky Metallurgichesky Kombinat, Provisions Judge of the District Court of Amsterdam, 491569/KG RK 11-1722, 17 November 2011. In: *Yearbook Commercial Arbitration Vol. XXXVIII*. Alphen aan den Rijn: Wolters Kluwer, 2013, pp. 274–276.

81 Judgment of the Court of Appeal of Amsterdam (Uitspraak van het Gerechtshof Amsterdam), the Netherlands, of 18 September 2012, *Maximov vs. Novolipetsky (NLMK)*. In: *Jus Mundi* [online]. [cit. 27. 5. 2022]. Available at: https://jusmundi.com/en/document/decision/nl-nikolay-viktorovich-maximov-v-ojsc-novolipetsky-metallurgichesky-kombinat-beschikking-von-gerechtshof-te-amsterdam-tuesday-18th-september-2012#decision_18276

82 Judgment of the England and Wales High Court, UK, of 27 June 2017 *Nikolay Viktorovich Maximov vs. Open Joint Stock Company 'Novolipetsky Metallurgichesky Kombinat*, Case CL-2014-337; CL-2014-658. In: *New York Convention Guide* [online]. [cit. 27. 5. 2022]. Available at: https://newyorkconvention1958.org/index.php?lvl=notice_display&id=4624&opac_view=2

83 Judgment of the High Court of Justice of England and Wales, UK, of 27 July 2017, *Maximov vs. Novolipetsky (NLMK)*. In: *Jus Mundi* [online]. Para. 2 [cit. 27. 5. 2022]. Available at: https://jusmundi.com/fr/document/decision/en-nikolay-viktorovich-maximov-v-ojsc-novolipetsky-metallurgichesky-kombinat-judgment-of-the-hight-court-of-justice-of-england-and-wales-2017-ewhc-1911-thursday-27th-july-2017

84 Ibid.

in the judgment. The evidence of bias was not meant to be found in errors related to due process, but in the substance. The Court concluded that *"the Claimant bears a heavy burden to establish not only that a foreign courts decisions were wrong or manifestly wrong but that they are so perverse as for it to be concluded that they could not have been arrived at in good faith or otherwise than by bias."*[85] An incorrect substantive decision is not enough. *"The decision of the foreign curt must be deliberately wrong, not simply wrong by incompetence."*[86] In spite of mistakes, the Court was not persuaded that these decisions are so extreme and perverse that they can only be ascribed to bias against the Claimant.[87]

4.3 Judicial Adoption of the Conflict-of-Laws Approach

The scope of review of the presented cases appears to be limited to procedural issues. The courts of the secondary jurisdictions have to assess whether the procedure manifestly offended fundamental principles of natural justice and public policy. Even though the England and Wales High Court was asked to review the conclusions of a decision, it seemed to have established an even higher threshold than it would have required had it reviewed procedural matters. This author evaluates the reasoning of this court positively. Even though the courts of the secondary jurisdictions should strictly limit themselves to the review of procedural matters, exceptional cases, where an impartiality within a judiciary might cleverly conceal itself under seemingly correctly working procedure, may occur.

Generally, it can be concluded that the presented cases have adopted a conflict-of-laws approach. It is based on treating annulment decisions as any other foreign judgments. The annulment will be generally respected save for situations when there is a reason to suspect that the annulment *"lacked procedural integrity or offends public policy of the enforcing State"*[88]. This author is of the opinion that this approach might be considered as the most suitable in comparison with other proposed views or approaches, as it does not undermine the primary jurisdiction, and at the same time, it creates a reasonable point of view for the discretion granted by the New York Convention.

85 Ibid., para. 53.
86 Ibid., para. 15.
87 Ibid., para. 53–64.
88 DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, p. 124.

5 Conclusion

Reflections of the questions that have been arising in front of national courts in regard to the enforcement of annulled arbitral awards can be seen in the recent legal debates and theories. Courts of certain jurisdictions had been put in a position where they seemingly could have accepted the set-aside decision as having stripped an international arbitral award of its legal effect. Yet, they accepted the challenge to justify an enforcement notwithstanding prior annulment. This paper indicated one major reason to do so – the necessity to address a suspicion of a bias or corruption conducted by the judiciary of a primary jurisdiction. In this light, one can find it easier to navigate within the possibilities that the discretion granted by the Article V para. 1 letter e) of the New York Convention offers.

The search for justification to enforce an annulled arbitral award can be successful and in harmony with the New York Convention. The Convention provides little guidance as to usage of discretion, mainly if one cannot rely on the more-favourable right provision. Moreover, some might even dispute the possibility to apply the residual discretionary power to Article V para. 1 letter e) of the Convention.[89] In spite of that, several jurisdictions have managed to identify an acceptable approach that does not disregard the set-aside decision, nor accepts the *ex nihilo nihil fit* principle. The focus of the previous chapter on cases in which the most fundamental principles of law were at stake demonstrated that it is possible to use the discretion in a reserved manner. Remaining respectful towards the courts of the primary jurisdiction is possible even when handling a suspicion that a judicial ruling was obtained by wrongful and unfair means. More specifically, there is not a tendency to review the substance of an award or to criticize courts of primary jurisdiction for honest or minor errors that can occur in any legal order.

Yet, the trend to review the set-aside decisions indicates that the interplay between the award and the set-asides might be shifting. Despite their function as a tool to control the awards, these decisions can be treated as any other

89 See BERG, A. J. van den. Enforcement of Arbitral Awards Annulled in Russia – Case Comment on Court of Appeal of Amsterdam, April 28, 2009. *Journal of International Arbitration*. 2010, Vol. 27, no. 2, pp. 188, 190.

foreign judgment. Therefore, as a court of a secondary jurisdiction can deny recognition and enforcement of an award on the basis of Article V para. 2 letter b) of the New York Convention if it contradicts its public policy, this court might not recognize the set-aside decision on the same grounds, thus giving an effect to an annulled arbitral award.

This author is of the opinion that adoption of the conflict-of-laws approach is suitable even for jurisdictions that have not yet had an opportunity to analyse the possible usage of residual discretion granted by the New York Convention. It creates a conditional acceptance of recognition and enforcement of annulled arbitral awards where it remains up to the respective courts to rule under which conditions it is possible to grant enforcement.[90] Applying this approach restrictively in exceptional circumstances, the confidence in the usage of the discretion might rise. More specifically, any negative impact on legal certainty would be limited as the exceptional circumstances would cover the situations where the set-aside decision is contrary to the public policy of secondary jurisdictions, which is generally narrow and already well-defined in relation to other enforcements that do not concern previous arbitral proceedings. On the other hand, it is crucial to properly establish the threshold for the burden of proof.

In conclusion, it is probable that the future developments might manifest in the presented manner. If there is any need in practice to adopt new rules in relation to enforcement of arbitral awards in general, the need stems from the necessity to react to biased or unfair judiciary. Even though the New York Convention did not provide much guidance as to the usage of this discretion, utilizing it in order to avoid giving effect to a ruling that resulted from a blatant disregard of due process and fundamental notions of justice can be considered as an adequate usage.

References

BERG, A. J. van den. Enforcement of Arbitral Awards Annulled in Russia – Case Comment on Court of Appeal of Amsterdam, April 28, 2009. *Journal of International Arbitration*. 2010, Vol. 27, no. 2, pp. 179–198. DOI: https://doi.org/10.54648/JOIA2010010

90 DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, pp. 127–128.

BERG, A. J. van den. Netherlands No. 41, Nikolai Viktorovich Maximov v. OJSC Novolipetsky Metallurgichesky Kombinat, Provisions Judge of the District Court of Amsterdam, 491569/KG RK 11-1722, 17 November 2011. In: *Yearbook Commercial Arbitration Vol. XXXVIII*. Alphen aan den Rijn: Wolters Kluwer, 2013, pp. 274–276.

BIRD, R. C. Enforcement of Annulled Arbitration Awards: A Company Perspective and an Evaluation of a New York Convention. *North Carolina Journal of International Law & Commercial Regulation*. 2011, Vol. 37, no. 4, pp. 1013–1058.

BORN, G. B. The New York Convention: A Self-Executing Treaty. *Michigan Journal of International Law*. 2018, Vol. 40, no. 1, pp. 115–187. DOI: https://doi.org/10.36642/mjil.40.1.new

CORREIA FILHO, A. C. N. The Theories of International Arbitration and Related Practical Issues: The Brazilian Approach (Particularly the Recent Leading Case on Recognition of Annulled Awards) vis-à-vis the Delocalization Trend. *Revista Brasileira de Arbitragem*. 2016, Vol. 13, no. 52, pp. 26–54. DOI: https://doi.org/10.54648/RBA2016051

DEVENISH, P. Enforcement in England and Wales of Arbitral Awards Set Aside in Their Country of Origin. *Oxford University Commonwealth Law Journal*. 2018, Vol. 18, no. 2, pp. 143–149. DOI: https://doi.org/10.1080/14729342.2018.1507809

DOBIÁŠ, P. The Recognition and Enforcement of Arbitral Awards Set Aside in the Country of Origin. In: BĚLOHLÁVEK, A. J., ROZEHNALOVÁ, N. (eds.). *Czech (& Central European) Yearbook of Arbitration. Vol. 9*. The Hague: Lex Lata, 2019, pp. 3–26. DOI: https://doi.org/10.2139/ssrn.3408735

DUNNA, G. T. To Enforce or Not to Enforce: Laying a Standard of Enforcement of Annulled Awards in India. *Indian Review of International Arbitration*. 2021, Vol. 1, no. 1, pp. 114–141.

HORVATH, G. J. What Weight Should be Given to the Annulment of an Award under the Lex Arbitri? The Austrian and German Perspectives. *Journal of International Arbitration*. 2009, Vol. 26, no. 2, pp. 249–266. DOI: https://doi.org/10.54648/JOIA2009013

JUNITA, F. 'Pro Enforcement Bias' under Article V of the New York Convention in International Commercial Arbitration: Comparative Overview. *Indonesian Law Review*. 2015, Vol. 5, no. 2, pp. 140–164. DOI: https://doi.org/10.15742/ilrev.v5n2.150

KERAMEUS, K. D. Waiver of Setting-Aside Procedures in International Arbitration. *The American Journal of Comparative Law*. 1993, Vol. 41, no. 1, pp. 73–87. DOI: https://doi.org/10.2307/840507

MOSES, M. L. *The Principles and Practice of International Commercial Arbitration*. Cambridge: Cambridge University Press, 2008, 340 p. DOI: https://doi.org/10.1017/CBO9780511819216

MOURA VICENTE, D. Requirements for the Enforceability of Arbitral Awards: A Comparative Overview. *APA – Associação Portuguesa de Arbitragem* [online]. 2019, 23 p. [cit. 30. 5. 2022]. Available at: https://www.arbitragem.pt/xms/files/Estudos_da_APA/requirements-enforceability-arbitral-awards-dario-moura-vicente.pdf

NACIMIENTO, P., BARNASHOV, A. Recognition and Enforcement of Arbitral Awards in Russia. *Journal of International Arbitration*. 2010, Vol. 27, no. 3, pp. 295–306. DOI: https://doi.org/10.54648/JOIA2010016

PETROCHILOS, G. C. Enforcing Awards Annulled in Their State of Origin Under the New York Convention. *International & Comparative Law Quarterly*. 1999, Vol. 48, no. 4, pp. 856–888. DOI: https://doi.org/10.1017/S0020589300063715

RAU, A. S. Understanding (and Misunderstanding) 'Primary Jurisdiction'. *American Review of International Arbitration* [online]. 2010, no. 06-10, pp. 1–118 [cit. 30. 5. 2022]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633555

SILBERMAN, L., HESS, R. U. Enforcement of Arbitral Awards Set Aside or Annulled at the Seat of Arbitration. *Cambridge Compedium of International Commercial and Investment Arbitration* [online]. 2022, 35 p. [cit. 30. 5. 2022]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4029102

SILBERMAN, L. The New York Convention After Fifty Years: Some Reflections on the Role of National Law. *Georgia Journal of International & Comparative Law*. 2009, Vol. 38, no. 1, pp. 25–46.

TWEEDDALE, K., TWEEDDALE, A. Cutting the Gordian Knot: Enforcing Awards where an Application Has Been Made to Set Aside the Award at the Seat of the Arbitration. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*. 2015, Vol. 81, no. 2, pp. 137–149.

Contact – e-mail

480136@mail.muni.cz