



Annulment of Arbitral Awards on the Basis of “Manifest Disregard of Law Doctrine” in U.S. Law; with a Look at Iranian Law

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Abstract

Although the principle of judicial supervision of arbitration decisions in national systems is agreed upon, there are different views and approaches regarding the limits of this supervision. A limit of the judicial supervision of the courts on the arbitrator's decision, which is a matter of consensus and accepted in the framework of international instruments, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1958, is generally based on three aspects of the arbitrator's authority and competence, the principles fair proceedings, and public order. In other words, procedural coherence, along with the arbitrator's competence and public order, which oversees the most fundamental values of a legal system, form the common and main basis for monitoring arbitration decisions.

However, some legal systems have shown a tendency to exercise more judicial supervision over arbitration decisions. One of these special bases is the supervision of how the law governing the substance of the dispute is applied by the arbitrator, in the sense that the arbitrator's mistake in applying the governing law can be monitored with certain restrictions and conditions. It should be noted that the mistake in applying the governing law is different from not applying the governing law in general and ignoring the clause of the parties' choice of law. This regulatory basis has been subject of many discussions in arbitration law. On the one hand, the principle of non-supervision of the content of the arbitrator's decision by the courts and limiting as much as possible the ways of annulment of the arbitral decision has been emphasized in the new perspectives, in addition to the new trends towards the promotion and development and self-foundation and self-regulation of the arbitration process; On the other hand, minimal supervision over the way the arbitrator applies the governing law and not approving and implementing decisions based on gross legal mistakes of the arbitrators, guaranteeing respect for the agreement of the parties in choosing the governing law and fulfilling their expectations and predictions in resolving the dispute and Their legal and commercial relations are based on the governing law and also guarantee the rule of law and the legitimacy of the arbitration process.



The United States of America is one of the countries where the supervision of the correct application of the law governing the substance of the dispute in arbitration has been accepted in the form of the doctrine of manifest disregard of the law. There are many discussions about the nature, basis, criteria, and usefulness of this doctrine in arbitration law. Studying and examining the concept, criterion, and usefulness of the doctrine of manifest disregard of the law is important in several ways. First, due to the important impact of American law on trade law and dispute resolution, its comparative study will be beneficial; Second, monitoring the application of the governing substantive law in arbitration is not a traditional issue specific to American law, and its topics are generally discussed in arbitration law and comparative law (for example, Article 69 of the English Arbitration Law, and Article 190 of the Swiss Code of Civil Procedure) and thirdly, paying attention to this doctrine can provide Iranian lawyers with a different perspective on the issue of annulment of the arbitrator's decision based on the contradiction with the laws establishing the rights in Article 489 of the civil procedure code. In other words, the examination of the doctrine of manifest disregard of the law by the arbitrator can explain one of the issues raised in arbitration law from the aspect of comparative law and also include approaches to interpret or modify Iran's arbitration regulations. Based on this, in this research, the doctrine of manifest disregard of the law in American law has been discussed, and while stating the definition and the basis and criteria of monitoring based on it, the views in favor and against the usefulness of this doctrine have been examined, and finally, the discussion of Iranian law is followed with the aim of benefiting from comparative law discussions to promote and improve Iran's arbitration regulations. In this research, by examining the concept, and criteria and evaluating the usefulness of this doctrine, it seems that applying minimal supervision, with specific and narrow criteria, on the way of applying the governing law by the arbitrator can increase the predictability and rule of law in arbitration and at the same time, it should maintain the finality of the arbitrator's decision and the minimum intervention of the courts. The aforementioned doctrine and its application criteria in American law can be used in the interpretation or amendment of Iran's arbitration regulations in the context of applying such supervision, especially the first paragraph of Article 489 of the Civil Procedure Code.

The approach of the doctrine of manifest disregard of the law for Iranian law is revealed in two issues. The first issue is that it is possible to accept the supervision over the application of the governing law as an extraordinary and exceptional supervisory method to ensure the rule of law of arbitrators, especially in domestic arbitrations where the governance aspect is more important. This proposal can be taken into consideration in the plan to amend the arbitration regulations that is proposed in the legislature; Especially considering the fact that in the mentioned plan, such supervision is not foreseen even for internal arbitration opinions.

The second issue is the standard of such supervision, which is important in the current legal order and in the application of the first paragraph of Article 489 of the Civil Procedure Code, which refers to the annulment of the arbitrator's decision in the event of a conflict with the law establishing the rights. Considering that there is a difference of opinion in the judicial procedure about the level of intervention of the courts based on



this paragraph and the appropriate level of judicial supervision, the criteria proposed under the doctrine of manifest disregard of the law can be used to interpret this paragraph.

Keywords: Arbitration, annulment of arbitral awards, manifest disregard of law, governing law, grounds for annulment.



References

Books

1. Emami, Seyyed Hassan (2011), Civil law, Tehran: Islamiya Publishing House [in Persian]
2. Fazli, Hassan (2021), Analysis of the Procedure and Aspects of Annulment of the arbitration award, Tehran: Tehran Province Justice Publications [in Persian]
3. Haddadi, Mehdi (2021), International Arbitration in Iran's Legal System, Tehran: Majd. [in Persian]
4. Jafari Langroudi, Mohammad Jaafar (2017), Legal Terminology, Tehran: Ganj Danesh. [in Persian]
5. Joneidy, Laiya (2015), Implementation of Foreign Commercial Arbitration awards, Tehran: ShahrDanesh, [in Persian]
6. Khodabakhshi, Abdullah (2021), Arbitration and its Rights and Claims in Judicial Procedure, Tehran, Sahami Company. [in Persian]
7. Park, William W. (2006). Arbitration of International Business Disputes, New York: Oxford University Press
8. Rowley QC, J William (2019). The Guide to Challenging and Enforcing Arbitration Awards, London: Law Business Research Ltd
9. Shams, Abdullah (2016). Civil Procedure (Advanced Course), Tehran: Darak. [in Persian]
10. Shiravi, Abdul Hossein (2012). International Commercial Arbitration, Tehran: Samit, [in Persian]
11. Wiliński, Piotr, (2019). Excess of Powers in International Commercial Arbitration, The Hague: Eleven International Publishing

Articles

12. Aragaki, Hiro N. (2009). The Mess of Manifest Disregard, The Yale Law Journal, 191(1)
13. Brown, Matthew J. (2013). Final Awards Reconceptualized: A Proposal to Resolve the Hall Street Circuit Split, Pepperdine Dispute Resolution Law Journal, 13
14. Burch, Thomas V. (2010). Manifest Disregard and the Imperfect Procedural Justice of Arbitration, Kansas Law Review, 59
15. Chen, Annie (2008). The Doctrine of Manifest Disregard of the Law after Hall Street: Implications for Judicial Review of International Arbitrations in U.S. Courts, Fordham International Law Journal, 32 (6)
16. Cole, Sarah Rudolph (2016). Curbing the Runaway Arbitrator in Commercial Arbitration: Making Exceeding the Powers Count, Ohio State Public Law, 344



17. Drahozal, Christopher R. & Ware, Stephen J. (2010). Why do Businesses Use (or not Use) Arbitration Clauses?, *Ohio State Journal on Dispute Resolution*, 25(2)
18. Drahozal, Christopher R. (2007). Codifying Manifest Disregard, *Nevada Law Journal*, 8.
19. Ghamami, Majid (2022). Comparative Research on the Characteristics of the Optimal Judicial System. *Contemporary Comparative Law Studies*, 13(27), [in Persian] Doi: 10.22034/law.2021.46656.2929
20. Graff, David (2008). The Helmsley Case: An Illustration of the Confused State of the Law Surrounding the Manifest Disregard of Law Doctrine as Applied to Arbitration, *Touro Law Review*, 24
21. Gross, Jill I. (2009). Hall Street Blues: The Uncertain Future of Manifest Disregard, *Securities Regulation Law Journal* 37(3)
22. Gurian, Nico (2017). Rethinking Judicial Review of Arbitration, *Columbia Journal of Law and Social Problems*, 50
23. Ha, Choong-Lyong (2020). The Finality of Arbitral Awards: The U.S. Practices, *Journal of Arbitration Studies*, 30 (3)
24. Hayford, Stephen L. (1998). Reining in the Manifest Disregard of the Law Standard: The Key to Restoring Order to the Law of Vacatur, *Journal of Dispute Resolution*, 1998 (2)
25. Kennedy, Kate (2007). Manifest Disregard in Arbitration Awards: A Manifestation of Appeals Versus a Disregard for Just Resolutions, *Journal of Law and Policy*, 16
26. Larson, Caroline (2018). Substantive Fairness in International Commercial Arbitration: Achievable through an Arbitral Appeals Process? *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*, 84 (2)
27. Mansouri, Abbas and Amini, Isa, (2021). Limits of court supervision over Domestic Arbitration Award in Terms of Compliance with the Law Establishing Rights Based on Judicial Practice, *Private Law Research*, 10 (36) [in Persian] Doi: 10.22054/Jplr.2019.43299 .2230
28. O'Mullan, Michael P. (1995). Seeking Consistency in Judicial Review of Securities Arbitration: An Analysis of the Manifest Disregard of the Law Standard, *Fordham L. Rev.*, 64 (3)
29. Pivateau, Griffin Toronjo, Reconsidering Arbitration: Evaluating the Future of the Manifest Disregard Standard, Available at: Doi: 10.2139/ssrn.1649093.
30. Reuben, Richard C. (2009)., Personal Autonomy and Vacatur After Hall Street, *Penn state law review*, 113
31. Rubins, Noah (2001). "Manifest Disregard of the Law" and Vacatur of Arbitral Awards in the United States, *American Review of International Arbitration*, 12.



32. Sims, MyLinda Kay; Bales, Richard A. (2012). Much Ado About Nothing: The Future of Manifest Disregard after Hall Street, *South Carolina Law Review*, 62.
33. Stinson, Judith M. (2010). Why Dicta Becomes Holding and Why it Matters, *Brooklyn Law Review*, 76 (1)
34. Strickland, Henry C. (1992). The Federal Arbitration Act's Interstate Commerce Requirement: What's Left for State Arbitration Law? *Hofstra Law Review*, 21 (2)
35. Tompkins, Jonathan J. (2018). Manifest Disregard of the Law: The Continuing Evolution of an Historically Ambiguous Vacatur Standard, *Dispute Resolution International*, 12 (2)
36. Ware, Stephen J. (2014). Vacating Legally-Erroneous Arbitration Awards, *Yearbook on Arbitration and Mediation* 56 (6)
37. Weiskopf, Nicholas R. (2007). Arbitral Injustice Rethinking the Manifest Disregard Standard for Judicial Review of Awards, *The University of Louisville Law Review*, 46
38. Weston, Maureen A. (2010). The Other Avenues of Hall Street and Prospects for Judicial Review of Arbitral Awards, *Lewis & Clark Law Review*, 14