

Jordan: Arbitration International conventions vs. Domestic Law

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In Jordan, Article 215 of the Jordanian Maritime Trade Law No. 12 of 1972 (the “Maritime Trade Law”) stipulates that “notwithstanding any other law, any clause or agreement that ousts the Jordanian court’s jurisdiction with regards to disputes arising in relation to shipping and maritime transportation documents shall be nullified”. In the case outlined below, the Court of Cassation settled the matter by referring to international conventions that address the same issue.

Facts of the case:

- In the bill of lading of a shipment, there was an arbitration clause that referred any dispute to an international arbitral court excluding the courts’ jurisdiction in any other country.
- The Claimants (an insurance company acting in subrogation of the insured) claimed an amount of 21068.775 Jordanian Dinars (JOD), in addition to the legal fees, expenses, interest, and lawyer’s fees for the loss of a part of the shipment.
- The Defendant requested that the case be dismissed on account of the arbitration clause in the Bill of Lading. They argued this case pursuant to Article 10(b) of the Jordanian Arbitration Law No. 31 of 2001 which stipulates that:
“The reference in a contract to the provisions of a standard contract or to an international convention or any other document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference (to such clause) is clear with regards to that clause as a part of the contract”
- As a result, the Court of First Instance ruled in favor of the Defendant and ordered the dismissal of the case. In addition, it ordered that the Claimant pay the fees and interests incurred by the Defendant.
- The Defendant challenged the Court of First Instance’s decision and then to the Court of Cassation.

The Judgment:

In the Court of Cassation’s decision, the Court first highlighted the issue of the Claimant subrogating the Insured. This is as if the Claimants were not a party to the Bill of Lading, and because the insurance policy in question did not contain an arbitration clause. Consequently, the Claimants could not make a claim except if they act in lieu of the Insured. In the Court of Cassation’s decision, it was stipulated that the Claimant subrogated the Insured in the contract with the Defendants in accordance with Article 926 of the Jordanian Civil Code. Both of the conditions specified by the aforementioned Article were fulfilled in this case by virtue of the following:

1. Because the Claimant had paid the amount of the insurance to the Insured.
2. For the fact of the existence of a tort.

Additionally, and with respect to the Claimants argument that the arbitration clause in the insurance policy did not apply in accordance with Article 215 of the Jordanian Maritime Trade Law No. 12 of 1972, which stipulates that “notwithstanding any other law, any clause or agreement that ousts the Jordanian court’s jurisdiction with regards to disputes arising in relation to shipping and maritime transportation documents shall be nullified”, the Court of Cassation decided that this provision conflicts with the United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules) (the “UN Convention”) of 1978. In accordance with Article 22 of this UN Convention, it is permissible for parties of a contract to refer any dispute, relating to the shipment of products, to international arbitration through the use of an arbitration

clause or an agreement. As such, and as international conventions supersede domestic laws, the Court of Cassation decided in favor of the Defendant and ordered the rescinding of the contested decision.

Conclusion:

In view of the foregoing, if a dispute arises in connection with a maritime or shipping document which contains an arbitration clause referring the said dispute to an international institution and in view of the fact that Jordan is a party to the UN Convention supersedes Article 215 of the Jordanian Maritime Trade Law, the parties in question are therefore allowed to refer to international authorities excluding any authority in any other country. It is important to note, however, that this UN Convention is with respect to arbitration clauses only; as such, the judgment issued by the Court of Cassation does not affect the fact that Article 215 of the Maritime Trade Law nullifies any provision in an agreement ousting the Jordanian courts' jurisdiction when dealing with a dispute.