

The Qatari Court of Cassation rules on the necessity for Arbitral awards to be rendered in the name of H.H. The Emir of Qatar

Mohammed Al Marri
m.almarri@tamimi.com

April 2013

Background

An award issued by a Qatari Arbitration Centre obliged the Plaintiff to pay to the Defendant more than QAR 8m. (Note that the Arabic text of the law makes no distinction between the words “award” and “judgment”).

The Case at First Instance

In 2010, the Plaintiff filed a civil case with the Court of First Instance in Qatar, seeking to nullify the validity of the impugned award.

In 2011, the Court of First Instance rejected the Plaintiff’s case.

Ruling of the Court of Appeal

Later in 2011, the Plaintiff brought the decision of the Court of First Instance before the Court of Appeal. But nonetheless, in a Judgment delivered in January 2012, the Court of Appeal affirmed the finding of the Court of First Instance.

Judgment of the Court of Cassation

In March 2012, the Plaintiff lodged a further appeal with the Court of Cassation, seeking to nullify the validity of the impugned award.

The Court of Cassation’s Decision

In justifying the necessity of rendering any arbitral award in the name of H.H. the Emir of Qatar, the Supreme Court reasoned as follows:

- Whereas, the Permanent Constitution of Qatar – Article 63 – states that “Judicial Authority shall be vested in the Courts in the manner prescribed in this Constitution and Judgments shall be issued in the name of

the Emir”.

- Whereas, the Qatari Civil Procedure Code – Article 69 – provides that “Judgments are issued and executed in the name of H.H. the Emir of the State of Qatar”; Article 198 stipulates that “Arbitrators render their judgment ... provided they do not violate the rules of public order and morality”; Article 202 states that “the judgment of the arbitrator is rendered after deliberations...”; Article 203 specifies that “The original text of arbitrators’ judgments, even if made for investigation proceedings, must be filed with the clerk of the Court originally having jurisdiction over the dispute...”; and Article 204 provides that “Arbitrators’ judgments are not enforceable unless an order of execution is granted by the President of the Court with whose clerk the original judgment was registered, upon request of any of the concerned parties.
- This execution order is granted after consideration of the judgment and the arbitration agreement and after confirmation that there is no obstacle against its enforcement. The execution order shall be endorsed on the original judgment. The enforcing judge has jurisdiction over all questions relating to enforcement.”
- Finally, Article 207 provides that “Parties may request the setting aside of arbitrators’ judgments in the following cases: if the award was made without there being an arbitration agreement... or if it breaches one of the rules of public order or morality”.
- In the light of the above-mentioned articles, the legislator qualified the decision of an arbitrator as a “judgment”, in light of its binding effect on the parties and the power of the Court to issue an execution order to implement and enforce its terms. Therefore, by virtue of Article 204 of the Civil Procedure Code, the arbitrator’s judgment (Award) should be issued in the name of H.H. the Emir of Qatar. If this condition is not fulfilled, the arbitrator’s decision shall not be recognised as a “judgment”, being contrary to both the Constitution and the Law. Furthermore, rendering the “judgment” in the name of H.H. the Emir confirms that it is supported by Public Force and is enforceable as such in accordance with the public order. Any decision or judgment of the arbitral tribunal should be rendered in the name of H.H. the Emir; otherwise, it shall be considered null and void, contrary to public order and the Court may sua sponte declare it as such.

In the light of the foregoing, The Court of Cassation overturned the judgment of the Court of Appeal.

Comment

This Judgment is only related to awards issued in Qatar. Since the said Judgment is issued by the highest court (Court Cassation), all the lower courts will probably follow same although in theory they are not obliged to do so.

This Judgment is extremely controversial, therefore, we will shortly issue an article to analyse and comment on the legal reasons and effects.

Please note:

Al Tamimi & Co. did not provide legal representation to any of the parties in the course of this litigation.