Sports Arbitration in Egypt: The Utterly Baffling Experience

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Introduction

There have been three main long-standing controversies concerning arbitration in Egypt. First, interest rates and whether they are truly part of Egyptian substantive public policy.[fn]Ismail Selim, 'Egyptian Public Policy as a Ground for Annulment and Refusal of Enforcement of Arbitral Awards' (2016) 3 BCDR International Arbitration Review, Issue 1, pp. 65–79.[/fn] Second, whether the ministerial approval for conclusion of arbitration agreements in administrative contracts should in fact be considered of Egyptian procedural public policy.[fn]*See*, Article (1) Paragraph (2) of the Egyptian Arbitration Law No. 27/1994 as amended by the Law No. 9 of 1997. (the ministerial approval was only introduced by the 1997 amendment).[/fn] Third, the challenge of arbitrators in institutional arbitrations seated in Egypt and whether they should be referred to the court or could be rather decided by the arbitral institution itself (*i.e.*, International Chamber of Commerce (ICC), or Cairo Regional Center for International Commercial Arbitration (CRCICA).[fn]Ibrahim Shehata, '25 Years of Model Law Arbitration in Egypt' Kluwer Law International (2019) 37 ASA Bulletin, Issue 3, pp. 631, 641.[/fn]

Each of the above are recurring provocative themes and deserve their status as controversies that warrant heated debates between arbitration practitioners. However, in my opinion, a fourth subject, on which this article focuses, definitely tops any other controversial arbitration topic in Egypt. Simply, it is the story of an

arbitral institution – incorporated by virtue of the Egyptian Sports Law No. 71 of 2017 – that excludes any annulment actions with respect to any arbitral award issued under the auspices of such institution regardless of the location of the seat of such an arbitration.

The Baffling Rules on Sports Arbitration

The Rules of the Egyptian Sports Arbitration Center envisage that arbitral awards should be subject to (a) an appeal; and (b) an annulment action.[fn]The internal annulment regime was introduced in March 2018 by virtue of amendments to the rules of the Egyptian Sports Arbitration Center.[/fn] In both cases, the appeal and the annulment could be adjudicated only internally within the same arbitral institution itself. The appeal regime is something that is not novel in the Egyptian arbitration world. It is recurrent in other sector-specific arbitrations, most notably, the customs arbitration regime.

What is truly original is having an internal annulment action within the Egyptian Sports Arbitration Center. The rules simply exclude the review of its arbitral awards through annulment actions by any domestic courts, whether Egyptian or foreign-based. The approach may be considered akin to the ICSID internal annulment regime, which excludes also the review of ICSID awards by any domestic courts.

Further, the rules were later amended once again in July 2018 to explicitly provide that the internal annulment regime apply to any arbitral award whether seated in Egypt or abroad. In other words, the rules have an extraterritorial reach beyond the borders of Egypt whereby they apply to domestic and foreign arbitral awards alike.[fn]*See* Article 92-bis (c) of the rules of the Egyptian Sports Arbitration Center.[/fn]

The Egyptian Courts' View

The question then becomes whether Egyptian Courts (or foreign-based courts) would defer to these rules that very much interfere with one of the main duties of Egyptian Courts in the field of arbitration: reviewing annulment actions of arbitral awards seated in their jurisdiction. If you tried to guess, you probably guessed

wrong.

A useful example is provided by a recent case presented to the Cairo Court of Appeal. On the 15th of April 2018, one of the candidates to the elections of an Egyptian sports club initiated an annulment case before the Cairo Court of Appeal concerning an arbitral award issued by the Egyptian Sports Arbitration Center. The candidate based its annulment lawsuit on two grounds, namely, (a) the non-existence of an arbitration agreement concerning the dispute in question; and (b) the alleged unconstitutionality of the sports arbitration regime as pronounced by articles (66) and (67) of the Egyptian Sports Law No. 71/2017. The counterparty has alleged that the annulment case should be held inadmissible in light of the new changes to the rules of the Egyptian Sports Arbitration Center as amended in March 2018.

The Cairo Court of Appeal[fn]Challenge No. 40/ JY 135 (Hearing Dated 5th of December 2018).[/fn] – quite surprisingly – ruled that annulment actions concerning arbitral awards issued by the Egyptian Sports Arbitration Center are *inadmissible* ("**December 2018 Appeal Judgment**"). The Court did not find any legal issues with these utterly baffling rules. The Court explained its position by stating that the annulment procedures under the Egyptian Arbitration Law No. 27/1994 do not apply to sports arbitration awards as the latter follow a special regime for annulment as provided for under the new amendments to the rules of the Egyptian Sports Arbitration Center. In a nutshell, the Cairo Court of Appeal followed the literal interpretation of the newly amended rules of the Egyptian Sports Arbitration Center without providing any reservation in that regard.

The Utterly Baffling Experience

There are several unacceptable legal issues with these rules and the outcome they provide. The first two issues concern arbitral awards seated in Egypt, and the third issue is in relation to foreign-seated arbitral awards in particular.

First: The Egyptian Sports Arbitration Center has assumed within its rules one of the core function of the domestic courts of any seat; that is being the review of arbitral awards through annulment actions. This is usually an exclusive function for the domestic courts of the seat that can only be waived by these courts themselves. For instance, one can recall the very brief Belgian experience which

allowed for the parties in arbitrations seated in Belgium to exclude the review of such awards through annulment actions.[fn]Margaret Moses, The Principles and Practice of International Commercial Arbitration: Third Edition, Cambridge: Cambridge University Press, pp. 120-1.[/fn] This experience has been replicated more recently in Bahrain in what was termed as the "free arbitration zone".[fn]*See* generally, John Townsend, The New Bahrain Arbitration Law and The Bahrain "Free Arbitration Zone" – Part 1 – Chapter 4 – ICDR Awards and Commentaries.[/fn] Accordingly, it is only up to the jurisdiction itself to decide upon this issue and not the arbitration center.

Second: Sports arbitration in Egypt is mandatorily referred to the Egyptian Sports Arbitration Center. This has raised some concerns on whether such mandatory arbitration is constitutional or not. In April 2019, the Cairo Court of Appeal refused to refer such a matter to the Egyptian Constitutional Court as it considered that sports arbitration might be mandatory, however, it is still constitutional as it falls within the exception previously carved out by the Egyptian Constitutional Court itself for mandatory arbitrations.[fn]Challenge No. 16 / JY 135 (Hearing Dated 4th of April 2019).[/fn] Such exception applies to sector-specific disputes that specify in advance the concerned parties, and when the regime governing such mandatory arbitration keeps in place all core principles relating to due process in such arbitrations. The Court in this case did not consider whether the new internal annulment regime envisaged by the rules would in fact endanger the constitutionality of mandatory sports arbitration. This is because the arbitral award in question was issued before such internal annulment regime was introduced by the rules.

In this author's opinion, this internal annulment regime is to a great extent unconstitutional as it places parties in sports arbitration on an unequal footing with other types of arbitration. This is because the parties in sports arbitration would be entitled under this regime to a one-time opportunity to have their arbitral award reviewed under the annulment route, in contrast to the dual-step route available to parties in other types of arbitrations where their award gets reviewed by the appeal court then the cassation court.

Third: The extraterritoriality of these rules whereby they exclude the annulment actions before foreign-based courts runs in clear violation of the New York Convention which has set forth the principle that the courts of each seat are the ones having jurisdiction over annulment actions for all arbitral awards rendered in

such seat. If this is the case with Court of Arbitration of Sport (CAS) arbitral awards which are regularly reviewed in annulment actions before Swiss courts, how it could be any different with the Egyptian Sports Arbitration Center foreign-seated arbitral awards?

Conclusion

The landmark December 2018 Appeal Judgment[fn]Challenge No. 40/ JY 135 (Hearing Dated 5th of December 2018).[/fn] which held annulment actions for arbitral awards issued under the umbrella of the Egyptian Sports Arbitration Center to be *inadmissible* has not been yet reviewed by the Court of Cassation. The author truly hopes that the Court of Cassation refers the matter to the Egyptian Constitutional Court to review these utterly baffling rules and consider how far they contravene with both the Egyptian Constitution and International Conventions alike.