

UUMILC 2017
9TH UUM INTERNATIONAL LEGAL CONFERENCE

**THE POLITICAL INFLUENCE ON THE ENFORCEMENT OF
INTERNATIONAL ARBITRAL AWARDS IN YEMEN**

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Abstract

The judges are often frustrated of political interference which hindered the enforcement of the international arbitral award (IAA) or receiving threats from some parties to the conflict in case of compulsory attendance before the court. The executive interferes with the judicial affairs so the political intervention in the judiciary is the most element challenges the enforcement of (IAA). This study employed a doctrinal approach. Legal research method by applying data is collected through the library. As well, collect data through face to face semi-structured interview through the purposive sampling of choosing expert persons. The data are analysed by using the content analysis method. This study aims the legislator to make stricter laws to evade the political interference in the judiciary as well as aware the investors of the corrupt system in Yemen which the government has to fight if willing to enhance the arbitration system and attract the foreign direct investment. It has found some cases of arbitrary dismissal against judges because of judgments not in favour of the government. The judicial system can be considered as a branch of the executive body so the enforcement of IAA will fail in case the debtor party has any relationship with politicians.

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Keywords: Enforcement of Arbitral Award, Impediment, Independence of the Judiciary, Political Interference, Political Influence.



1. Introduction

The independence of the judiciary has judicial community that appoints the judges based on their experience and merit (Ahmad Badawi, et. al., 2013). In the Yemeni judiciary, the appointment of judges is based on the political recommendation, political intervention in the judiciary is the most element challenges the judiciary reforms (Veen, 2014). The political interference may be considered as an obstacle towards the enforcement of International arbitral award (IAA) whereas the local court is the main element to make the arbitration system to succeed. According to Calvo doctrine that provides the foreign nationals are mandatorily subject to the jurisdiction of a national legal system, so the arbitration agreement is impossible to expel the jurisdiction of the local court (Born, 2012).

In a study of the People's Republic of China is found out some challenges of IAA which may similarly as that in Yemen. The similarities in the matter of weakness of the judiciary as well as the political intervention. An article published in 2001, Seek Truth from Facts: An Empirical Study of Enforcement of Arbitral Awards in the PRC of Randall Peerenboom also forms an important form of the literature review (Peerenboom, 2001). This study confirms that the enforcement of the arbitral award is the most fundamental element to the disputed parties. The judges often frustrated of political interference which hindered the enforcement of the arbitral awards or receiving threats from some parties to the conflict in case of issuing compulsory attendance before the court.

The non-independence of the judiciary and the weakness of the judiciary will make the laws vain (VonDoepp & Ellet, 2011). The investor or the individual has to refer to the court if his/her rights infringed as the court is the guardian of the rule of the law (Ahmad Badawi, et. al., 2013). The judiciary is the last authority that the victim to refer to for the protection of the rights (Trevaskes & Nessosi, 2017). The creditor party has to refer to the court to enforce the arbitral award. It means the reliance of the enforcement of the arbitral award on the court. The court has to be independent from the external influences to achieve the justice. The justice does not parallel with a weak judiciary and not independent.

The effective legal system is a fundamental element to encourage the FDI as well as a protector of some impediments that adversely affect the environmental business which the foreign investors could ensure the protection of the property and the rights as a whole (Júlio 2013). The constitution provides the independence of the judiciary. Article 149 provides the judges are only subject to the law, whereas the judiciary body is independent of all other bodies, such as the executive body of a legislative body. The same article states interference in the judicial affairs is considered as a crime that must be punished. Also, Article 187 of the Yemeni Penal Code provides that those official persons and whoever are strictly prohibited from giving recommendations or interfering in judicial procedures and processes; doing so are punishable with not more than three years.

2. Problem Statement

The independence of the judiciary must not write on papers but has to see that through the application of the law (Maidin & Abdulkadir, 2012). The independence of the judiciary is not enough to protect the rule of the law, but such independence has to be practiced (Ahmad Badawi, et. al, 2013). The judiciary has to reassure the people that their rights are reserved by the law (Maidin & Abdulkadir, 2012). The people will not trust to settle their dispute by the court if not seen the independence of the judiciary.

As a result, people will refer to other mechanism to settle their dispute. According to Abdullah Bawazir, et. al. (2017), Yemeni people do not trust the court system because of the multiple factors that adversely affect its operations such as non-enforcement of the laws, political interference, corruption, and so on. Unfortunately, the Yemeni judiciary is constitutionally independent of the other branches is only on paper, but in reality, there is no application of what is written in the constitution (Veen, 2014). The judiciary is considered as a part of the executive body. The President of the Republic is the Head of the Supreme Judicial Council so the executive interferes in the judicial administration. The appointments of judges more depend on the political alliances than qualifications. Thus, the executive is the authority that indirectly appoints and remove the judges (Al-Zwaini, 2006). However, to achieve the justice the government has to rule the country by the law (Sri Ram, 2012). This means the government jurisdiction is subject to the law. The separated jurisdiction between the executive and the judiciary is very important for reform and fight corruption (Trevaskes & Nessosi, 2017). The power must be separated among the three authorities. The absence of the separation of power leads to the interference of the executive in the judiciary (Johnson, 2015). The judicial power is weakened as the judiciary loses control of overseeing the places of detention and investigation (OHCHR, 2011). So, the accountability is not effective because of the lack of independence of the judiciary and the impact of corruption on the judiciary's good performance. Such things will infringe the individual rights, it has to make an effective judicial review to ensure the executive is administered subject to the rule of law (Sri Ram, 2012). The judiciary is the last tool to ensure the achievement of the justice. The judiciary has to have control and supervision over the prisons to prevent any illegal detention and ensure the enforcement of the law (Trevaskes & Nessosi, 2017). Such control and supervision will protect individual rights to challenge even the politician if breaches the law (Johnson, 2015).

According to Syed Hussein Alatas, fighting corruption is only successful if the government cooperates with the anti-corruption commission in the investigation of the serious corruption issues (Alatas, 1968). The investigation covers issues in policy, economy, administration, and culture. In addition, the absence of corruption, the enforcement of the law, and the security prevents the government of misuse of power (Taylor, 2017). Furthermore, the studies have shown that the law alone is inefficient to fight the corruption if the politicians are corrupt. Thus, fighting corruption must have a joint cooperation between the legislative, judicial and the executive branches. The lack of accountability means the country is unstable (Júlio, 2013). According to Garry, some national courts are incompetent to settle international commercial issues because of the lack of judicial independence (Born, 2012). The judiciary is the first institute that must be reformed to combat corruption so the judges have to an appointment based on precise criteria of qualifications (Asian Institute of Management, 2013).

The judiciary body is an extension of the Executive body; the Executive supervises and administers the Supreme Judicial Council, so the judiciary system is dependent on it. Moreover, the judiciary staff is employed according to party affiliations (Veen, 2014). It is stated that the major barrier to challenge the improvement of the judiciary is the political interference as well as tribalism which replace the official law in solving some disputes. The judiciary cannot force the duty because of the executive interference, whereas the judges are not protected from arbitrary actions that are more likely to be taken by authorized persons in case of the commercial court judges did not listen to them or give a

judgment against them for such actions like transferring the judges of higher level court to lower level court as a punishment (Robinson, et. al., 2006).

Indeed, the Yemeni judiciary institution is not sufficient to conduct commercial disputes because of weak enforcement of the law (Veen, 2014). If one of the disputed parties is politics, the party whom the judgment is his favour may lose his right if the second party is powerful or has a relationship with the political man. Clearly, the principle of all citizens is equal before the law is not practiced (Morris, & Tramme, 2011). This is confirmed by Syed Hussein Alatas, the society that suffers from corruption is adversely affected by the unequal judicial performance (Alatas, 1968). Corruption is notable in Yemen whereas 60% of the court judgments were not enforced (Veen, 2014). The studies have shown that 60% of judgments are not enforced (Al-Zwaini, 2006). According to Calvo doctrine that provides the foreign nationals are mandatorily subject to the jurisdiction of a national legal system, so the arbitration agreement is impossible to expel the jurisdiction of the local court (Born, 2012). As far as the executive interferes with the judicial affairs. Hence, the political interference is considered an obstacle towards the enforcement of the International arbitral award (IAA) as the local court is the main element to make the arbitration system to succeed.

3. Research Questions

1. How far does the influence of the politicians impede the competent court towards the enforcement of international arbitral awards in Yemen?

4. Purpose of the Study

This paper seeks to study the effects of the interference of politicians on the enforcement of the international arbitral award in Yemen.

5. Research Methods

This paper adopts a qualitative research method of conducting interviews with three of the Court of Appeal judges who have jurisdiction to deal with the enforcement of the international arbitral award, a member of the Judicial Inspection Board (JIB), and academician. They are four male interviewees at the age of 40 to 60 old years. The researcher studied the effects of the political interference with the enforcement of IAA. The Court of Appeal judges are from big commercial cities which include Sana'a, Aden, and Hadhramout as these are the biggest cities in Yemen where there are many investment projects, and the academician is from the capital Sana'a. In addition, whereas the researcher adopted a doctrinal to conduct this research as it is generally relying on a library-based study, which means that the research depended on the materials and information that are available at the library, such as books, journals, and articles. The researcher analysed data collected from the interview questions using content analysis as the participants are of limited numbers of experts.

6. Findings

Based on the above discussion, it has found that the influence of political interference does impede the formation and function of competent courts towards the enforcement of international arbitral awards

in Yemen. It is commonly known that the court is the most fundamental element to enforce the IAA. Thus, the judiciary in the enforcing state has to be independent and impartial. However, the research found that some violation in the Yemeni Judiciary and the public system occurs. According to an interview conducted with the Court of Appeal judges to survey the practice of independence, good integrity, and transparency in the Yemeni judiciary as follows:

R1 stated that “Yes, [they are] practiced, but not in general because of the spread of corruption in the country,” R2 stated “There are violations such as attacks on judges, non-implementation of the judgments of the judiciary among government agencies, obstruction of some issues such as failing to cooperate with the judiciary to communicate with foreign diplomatic agencies and companies to implement judicial orders and judgments. This obstructs justice,” while R3 stated “Yes, interventions exist, such as the conviction and sentence according to the law, with the trial held in public.”

In addition, even the sources of financing for the judiciary is not independent of the executive. As far as the executive fund the judiciary, the executive is more likely to interfere with the judiciary. Through an interview with Court of Appeal judges, 2016. R1 stated that “the executive branch funds the judicial operations. R2 stated “the judicial budget is estimated by the executive. While R3 states that “the judiciary has an independent budget”. Thus, the majority of the respondents of the Court of Appeal judges at the rate of two out of three confirmed the theories that demonstrate political interference, and a lack of independence, good integrity, transparency, and non-independence of finance budget.

The independence of justice is very important to implement the international arbitral award. So, the political interference could be an obstacle towards the enforcement of the international arbitral award. According to an interview of the Court of Appeal judges. R1 stated “Some interference exists from politicians,” the R2 Stated “at the private level politicians did not interfere with my work, but on a general level, political interference in the judiciary happens,” R3 stated “There is no interference.” The majority of the respondent confirmed the theory that the politicians interfere in the judiciary. Even if there was rampant interference, many people would be reluctant to admit it, for fear of retaliation. Moreover, the Court of Appeal judge that is R1, academician R5, and a member of the Judicial Inspection Board R7, suggested that “to reform, the judiciary must separate it from any appointments and interventions of any intelligence service”. Thus, if the debtor party has a good relationship with politicians, they will interfere to in the judge's operations to stop any coercive actions towards the enforcement of the international arbitral award.

Furthermore, the Yemeni judiciary is weak and not independent from the executive. The politicians coerce judges to decide unfair decisions. Thus, the corrupt country is unsuitable for arbitration system. The researcher has found one case of arbitrary dismissal against the Court of Appeal Judge. The Court of Appeal judge states that “I have been exclusionary from office because of my opinion in case I was a member of a committee, until the Relieving the Head of the Supreme Judicial Council from office, which a new official issued a sentence to cancel the previous decision by Supreme Judicial Council decision.” So, the judge is not protected against any aggressive actions that may punish the judge for held a decision against politicians' favour. The independence of the judiciary and impartiality are fundamental

elements to achieve justice. Therefore, the creditor party will lose his rights to enforce the arbitral award in Yemen because of the judiciary's lack of independence and impartiality.

The enforcement of IAA in Yemen is more likely to fail because of the political interference in the judiciary, the politicians interfere to protect their partners' business or those who have the close tie of relationships with them. The court coercive enforcement is rarely be taken. The creditor party will face difficulties in enforcing the international arbitral award in case the debtor party is a political party or has any kind of political relations.

7. Conclusion

The enforcement of IAA in Yemen is more likely to fail because of the political interference in the judiciary, the politicians interfere to protect their partners' business or those who have the close tie of relationships with them. The court coercive enforcement is rarely be taken. The creditor party will face difficulties in enforcing the international arbitral award in case the debtor party is a political party or has any kind of political relations.

Acknowledgments

The presenter and Co-authors wish to express our heartfelt gratitude to Universiti Utara Malaysia for providing a postgraduate research grant to the researchers.

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