

A STUDY ON THE APPLICATION OF PUBLIC POLICY IN THE JUDICIAL REVIEW OF INTERNATIONAL COMMERCIAL ARBITRATION

ABSTRACT

Under New York Convention, public policy is one of criterions which can be used in the judicial review of international commercial arbitration. The recognition and enforcement of an arbitral award may be refused if the arbitral award is contrary to the public policy. Therefore, public policy is regarded as a safeguard to maintain fundamental interests of the state. However, public policy is also considered as a double edged sword for the reason that public policy might be abused determined by its ill-defined concept. With the development of economic globalization, it has become a common problem for states that how to make a balance between fostering the development of international commercial arbitration and maintaining fundamental interests of the state, and the main point concerning this issue is how to execute the rule of public policy correctly and rationally.

Starting from the concept of public policy, based on the related legislation and judicial practice, this article analyses the application of public policy in the judicial review of international commercial arbitration. It stresses the best way to limit the application of public policy in international commercial arbitration is make a difference between domestic public policy and international public policy, and points out that it should make a comprehensive analyses when applying public policy in the judicial review in the international commercial arbitration, combining the objective criteria and degree criteria. This article also makes a discussion on the application of public policy in the judicial review of

international commercial arbitration in China. It suggests that the rule of public policy still need to be improved in legislation, and emphasizes that it should be more strict and prudent when making judicial reviews on Chinese interregional arbitral awards with the rule of public policy.

Key words: international public policy, public policy, international commercial arbitration, judicial review