

Meaning and legal effect of Remission under Kosovo Arbitration Law in comparative perspective

Mentor Ejup Bislimi

European Centre for Peace and Development

Abstract

In this work, it will be discussed definition, meaning and legal effect of remission or re-arbitration procedure according to Kosovo Arbitration Law (hereinafter: KAL) comparing with UNCITRAL Model Law (hereinafter: Model Law) and different national arbitration laws. In particular, this paper will review two main points: Firstly, the purpose of remission. Secondly, Remission or re-arbitration objective is to suspend or set aside domestic award. Furthermore, the paper will assess, analyse and interpret KAL provisions of article 36 (4) and compare those to Model Law and other national legislations.

The purpose of this study is to elaborate, examine, analyse, compare and interpret provisions determining meaning, legal effect of remission and identify existing gaps in the KAL.

Article 36 (4) of the KAL which determine re-arbitration differs from article 34 (4) of the Model Law. The difference of remission under the KAL with the Model Law provisions is substantial. Firstly, the first essential distinction is that, according to the KAL, the court ex-officio is empowered to set aside an award whereas according to Model Law, the court has jurisdiction to suspend arbitration proceedings.

Secondly, according to KAL, the court ex-officio may set aside arbitration award after the party has filed a claim, while under Model Law the parties are authorized to request that the proceedings be suspended and the case remit to arbitral tribunal.

In end, it could be concluded that remission provides for the temporary termination of the arbitration procedure in order to give the tribunal time to avoid the deficiencies that would lead to a setting aside an award.

Regarding the legal consequences of a setting aside award and the interest of the parties, the KAL remains silent. Nevertheless, because an award of the arbitral tribunal is set aside by the court, it can be concluded that that according to the KAL provisions, parties decide how the dispute resolution process will proceed.

Keywords: arbitration, remission, setting aside, suspend, UNCITRAL Model Law.

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Academic Journal of Business, Administration, Law and Social Sciences ISSN 2410-3918 (print)

ISSN 2410-8693 (online)

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