

Konrad-Adenauer-Stiftung e.V.

AUSLANDSBÜRO JORDANIEN

May 6, 2012

WARREN ALTOUNIAN

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Commercial Arbitration

Event: Regional Conference

Date, Place: Sunday, May 6, 2012, Talal Abu-Ghazaleh Graduate School of Business, Amman – Jordan

Organization: Konrad Adenauer Stiftung Amman, Talal Abu-Ghazaleh Organization

Program

Opening Session

Mr. Mustafa Nasereddin

Senior Executive Director
Talal Abu-Ghazaleh Organization
Amman - Jordan

Dr. Martin Beck

Resident Representative
Konrad Adenauer Stiftung
Amman Office
Amman - Jordan

HE Dr. Mustafa Al Assaf

Secretary General
Ministry of Justice
Amman - Jordan

Keynote Speech: Arbitration in the Real World and on the Internet

HE Talal Abu Ghazaleh

Chairman and Founder
Talal Abu-Ghazaleh Organization
Amman - Jordan

Discussion

The New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards

Dr. Firas Al-Malahmeh

Attorney-at-Law
Legal Counsel
Arbitrator
Amman – Jordan

Enforcement of Foreign Arbitral Awards

Dr. Firas Al-Malahmeh

Attorney-at-Law
Legal Counsel
Arbitrator

Konrad-Adenauer-Stiftung e.V.

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AUSLANDSBÜRO JORDANIEN Annulment of Arbitral Awards

May 6, 2012

Prof. Dr. Mosleh Tarawneh

Attorney-at-Law
Arbitrator
Professor of International Commercial
Arbitration
Mu'tah University
Amman – Jordan

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Discussion

Practical Problems in Jordanian Arbitration Law of 2001

Dr. Omar Al-Jazy

Aljazy & Co.
Advocates and Legal Consultant
Managing Partner
Amman – Jordan

Investment Arbitration

Dr. Yazan Haddadin

Legal Consultant
Arbitration and Alternative Dispute
Resolution (ADR) at
Simmons & Simmons LLP
Abu Dhabi – United Arab Emirates

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Introduction

Legal council and court proceedings for business disputes can be time consuming and difficult to access. Arbitration is an alternative and viable legal process, providing businesses with a channel to resolve commercial disputes outside of a courthouse. Arbitrators are third-party mediators who have legal authority and whose decisions are binding. Through arbitral awards they provide a similar, and sometimes more effective service as a judicial court. There are several advantages of using this practice, as it is often faster than court litigation, and can generally be easier to enforce in an international dispute using arbitration rather than court settlements. Jordan's business community can use arbitrators to facilitate agreements and improve the country's ever-increasing business environment. There is, however, a need to raise awareness on the use and benefit of it.

In cooperation with Talal Abu-Ghazaleh Organization, Konrad Adenauer Stiftung Amman organized the one-day conference on commercial arbitration. Drawing from the expertise and invaluable knowledge of the presenters, the objective of the conference was to promote comprehensive understanding in the use of arbitration for the Jordanian business community. Beginning with the keynote speaker, HE Talal Abu Ghazaleh, the conference aimed to look at arbitration from a pragmatic perspective. It then delved into both domestic and international practices and application; and finally reviewed Jordan's Arbitration Law.

Opening speeches

Mustafa Nasereddin opened the conference, noting the significance of Talal Abu-Ghazaleh Graduate School of Business as a successful model of cooperation between the German and Jordanian governments and private sectors. Mr. Nasereddin continued, recalling many successful workshops in the past with KAS

Amman, and stated his optimism for future activities.

Dr. Martin Beck expressed his gratitude to HE Talal Abu-Ghazaleh and TAG-Org for coming together for the workshop. He noted that explaining the technical and legal aspects require individuals of authority and thorough experience on the subject. Dr. Beck stated his belief that the speakers present at the workshop were of the most qualified to do so. He affirmed KAS Amman's pleasure to partner with TAG-Org, saying he looked forward to the presentations and discussions.

HE Dr. Mustafa Al Assaf deputized for the Minister of Justice. He commended the joint efforts of TAG-Org and KAS Amman: "Holding such a conference embodies the efforts exerted to support commercial arbitration and the need to promote legal awareness of this issue on the country level and internationally."

Keynote Speech: Arbitration in the Real World and on the Internet

HE Talal Abu-Ghazaleh presented his vision on the future of arbitration and its relationship with online businesses.

Historically, arbitration set the precedent to courts and litigation, but its future is an online existence. The Internet Corporation for Assigned Names and Numbers (ICANN) is only one authoritative body to regulate or settle conflicts online. When TAG-Org had to settle an online dispute, it was favored because it is a well-known name in business; the problem is that ICANN protects those who are well known names. But what can be done for startup companies, and those without international recognition? Because of this experience TAG-Org completed the necessary procedures for becoming a center to settle cyber conflicts - the only organization in the region to do so. HE Talal Abu-Ghazaleh attended an Internet governance forum at the UN, but the forum was unable to develop a control system. Today, over 80% of global GDP is based on service rather

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than industry, and a company like Google is worth more than 20 national economies. Cyberspace is to become the realm in which almost all business will be conducted. To safeguard online services, Internet arbitration will protect intellectual property and privacy rights.

The New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards

Dr. Firas Al-Malahmeh presented on the history of arbitration and its role in Jordan.

Commercial arbitration is one of the most important tools to settle disputes. Jordan began recognizing foreign arbitral awards after the New York Convention of 1958 - one of the first countries to do so. Jordan's adoption of the international convention makes arbitral decisions binding and recognized as soon as they are awarded by the arbitration actor. The settlement process transfers the burden of proof from the applicant to the objecting party when there is a discrepancy. Therefore no party can be denied their arbitral award unless compelling evidence is produced to suggest it was ill-gained.

Article 5 in the New York Convention of 1958 contains vague language, when it comes to enforcing foreign awards. In 1996, there was a maintenance contract between an American company and the Egyptian Air Force, in which there was an arbitration dispute. The Egyptian Air Force lost, but had the decision annulled in Egypt. The American company went to the courts in Washington DC to have the decision reversed. The American court argued that administrative law was applied in the case. The lesson from this event is that foreign enforcement is incredibly difficult because as long as the decisions of competent courts are not respected, parties will seek the decision they desire in their home country.

Annulment of Arbitral Awards

Prof Dr. Mosleh Al Tarawneh recognized the close relationship between annulment

and resolution. In general, arbitration begins with agreement and ends with award, and thus there is nothing compulsive about it. Parties agree to accept the decision of the arbitrator before the award is given. In terms of annulment, it is regulated at the national level, and must be dealt with within the judiciary and no longer through an arbitrator. If an annulment case is filed, there is no external monitoring body of the judiciary. Therefore, the court's ruling is the final decision.

In the discussion session, one participant said that it is not a requirement for the arbitrator to be an attorney, thus any party of conflict can apply arbitration, including technical experts, engineers, etc. Another participant suggested that, at very least, the head of arbitration tribunals should be an attorney to facilitate proceedings. In addition, a court of appeal could look at formalities rather than subjective observations.

Practical Problems in Jordanian Arbitration Law of 2001

Dr. Omar Al-Jazy stated that regarding national versus international laws, in the case of arbitration the international law supersedes. The problem Jordan so frequently faces is that when a draft law is written it is forgotten in a drawer for ten years. This makes updating or amending the law very difficult. Furthermore, while neutrality and impartiality of arbitrators in Jordan is not being called into question; the level of their experience and to whom they are assigned is a difficult issue to assess. In Jordanian law, there is no distinction of what makes someone an arbitrator - they must be independent, and therefore can have objections filed against them, or even be dismissed.

Investment Arbitration

Yazan Haddadin stated that Jordan has 52 bilateral agreements to increase investment from national and international actors. Once parties agree to arbitrate, they cannot withdraw, thus their sovereignty is waived.

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For example, Jordan's agreement with Egypt requires a 12-month period to resolve an investment issue before resolution through arbitration. The agreement with Italy, however, is only a 6-month time period. To fix inconsistencies akin to the aforementioned, Jordan should sign uniform bilateral agreements. Not all cases can be presented and disputed on contractual investments, and thus have to be relegated to the courts, defeating the original purpose of the process.

In the discussion session, one participant argued that improvement of the judicial system was critical, rather than forcing people to resort to arbitration. While arbitration is effective, it is not necessarily an improvement. If the judiciary is competent, there is no need for arbitration. Furthermore, why is there no arbitration center in Jordan, despite having so many arbitration cases?

Dr. Martin Beck said that when it comes to disputes which can be resolved through arbitration, it should be done. At the same time, it is important to have a strong judiciary as well. Yet, if two parties agree to go to arbitration it is preferable because it is very often more effective and also less expensive for the community.

4. Conclusion

KAS Amman's partnership with Talal Abu-Ghazaleh Organization has been productive over recent years, and the cooperation has generated several successful publications, conferences, and workshops. Talal Abu-Ghazaleh Organization expressed its intention to develop a draft law to update the 2001 Jordanian Arbitration Law. In addition, it intends to start a national arbitration center for Jordan.

The conference was positively received by participants, actors and audience members; it generated a great deal of media coverage, which can be found at the link below: