

PhD thesis on “Internal and international arbitration law
(XXVII Cycle)

THE PEREMPTORY NATURE OF THE APPEAL CASES
OF THE RITUAL ARBITRATION AWARD
AND THE ARBITRATORS ERROR OF FACT

English Abstract

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Abstract

The PhD thesis starts from a general overview on the system of appeals of the arbitration award, which, albeit reformed in 2006, has, within it, serious gaps. The main of them is the relationship between the desired "assimilation" of the arbitration award to a Court decision, in respect to the effects and the difference, still easily perceivable in the code of civil procedure, between the appeal of a Court's decision and of an arbitrators' decision. While in fact there is no restriction on the reasons for the review of a Court decision, the appeal of the arbitration award is possible just by using certain tools and for specific reasons, mentioned in a list to be considered exhaustive. The above makes problematic a full assimilation, at least of effects, between the arbitration award and the Court decision.

The work provides a summary on the position of the doctrine and case law regarding the cases of appeal of the arbitration award. The aim of the work is to determine whether, in the silence of the law, it is possible to extend the cases of appeal of the arbitration award, in order to reduce the gap between this latter and Court decisions and to allow a minimum control on the facts evaluated by the arbitrators.

The first chapter deals with the relevance of the appeals within the system of arbitration award and includes a short overview about the issue of the firmness of the arbitration award, also in respect to its effects.

An outline on the legislative changes that have taken place over the years and, in particular, on the 2006 reform, reveals a legislative current which confirms the firmness of the arbitration award.

The gap between the opportunity to appeal the arbitration award in front of domestic Courts and the autonomy that should be granted to private judges, needs to be analysed in the light of the lack of a second level of arbitrators judgment whose admissibility is controversial and still left to the autonomy of the parties which, in case, must expressly allow it.

The second chapter outlines a comparative analysis of appeal models of arbitration award used in some European Countries and in the UK. For each one,

a brief summary of the Law system is provided, with particular regard to the appeal of the arbitration award. The overview shows the arbitration award has the same effects of a Court decision with restricted case for appeal. Even Italy goes towards that direction but with the difference that Italy does not confer to the arbitration award any “*res judicata*” effectiveness.

The third chapter analyzes the limitations imposed by Italian Law to the appeal of the arbitration award. It shows the practical application, in the framework of case law, of the preemptory nature of the appeal. The first limit lies in the difference, of procedure and qualification, between partial arbitration award and final arbitration award.

The analysis continues by examining the relationship between the assimilation of the arbitration award to the Court decision, with reference to the effect, and the (unchanged) preemptory nature of the grounds of appeal. However, this assimilation, formally stated by art. 824 bis of the Italian Civil Procedure Code, does not provide tools to expand the appealability cases of the arbitration award. Case law is very restrictive in this respect.

The aforementioned chapter also highlights the problems related to the application of the judicial regulation to the arbitration, specifically with regard to the new "filter" referred to in art. 348 bis of the Italian Civil Procedure Code.

Entering the central part of the discussion, the fourth chapter summarizes the revision (“*revocazione*”) provisions set by art. 831, paragraph I, of the Italian Civil Procedure Code, in particular with respect to the exclusion of the ordinary revision. The exclusion of revision pursuant to article 395, number 4, of the Italian Civil Procedure Code has a greater impact than the absence of possibility to appeal the arbitration award in case of contrast with a previous final decision (art. 395 n. 5, of the Italian Civil Procedure Code). Such possibility is expressly provided under number 8 of article 829 of the Italian Civil Procedure Code.

The study focuses in the end on the possible remedies in case of a mistake of the arbitrators on the facts of the case, with the aim to verify the possibility of allowing some control on the decision on the facts made in the arbitration award, especially in case of important errors. It’s difficult to expand the cases of appeal provided by art. 829 c.p.c. because of the binding nature of appeals of arbitration

award and the restrictive interpretation of the list of possible cases provided in article 829 c.p.c. Nevertheless the most important obstacle is the restrictive case law of the discipline of the error of fact also in respect to Court decisions and the general trend towards a limitation of the possibilities for appeal, in the view of limiting litigation.

The greatest possibility to challenge an error on the facts of the case is given by art. 829 n. 5 of the Italian Civil Procedure Code which requires a brief statement of the reasons which led the arbitrators to issue a particular arbitration award. Notwithstanding restrictive case law, the motivation of the arbitrators' decision should explain the logic of the reasoning of the arbitrators.

This provision should be read together with the provision of art. 829 n. 11 of the Italian Civil Procedure Code , which allows appeals in case of conflict occurred between parts of the arbitrators' decision.

Appreciable efforts have also been made to allow the appeal of the error on facts in arbitration awards in case of breach of the *audi alteram partem* rule. On the other hand, the efforts of the doctrine to correct the error in facts by means of the specific procedure which allows a correction of a material mistake in the arbitration award prove to be quite frail.

The concluding remarks show that, given the silence of the law, the main option for the appeal of the arbitration award in the above mentioned cases (and, specifically against those award that include significant errors on the facts of the case) lies in the request of declaration that the award is null and void.