Reflection and Improvement of the Error-Correction Mechanism of Commercial Arbitration

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Abstract: Commercial arbitration, as a relief means to solve commercial disputes together with litigation, arbitration is related to the substantive rights and interests of the parties, and is one of the important ways to solve civil disputes. The Arbitration Law has been revised twice since its implementation in 1995, both intended to protect the legitimate rights and interests of the parties concerned. However, at present, commercial arbitration has exposed significant problems in the mechanism of error correction: arbitration institutions actually lack of self-correction mechanism, and there are many unreasonable points in the institutional arrangement of judicial review, which is in conflict with the legislative purpose of protecting the rights and interests of the parties. In this regard, the paper reflects on the outstanding problems existing in the arbitration correction mechanism in China, and puts forward the countermeasures to improve the arbitration correction mechanism, in order to solve economic disputes fairly and promote the healthy development of commercial arbitration.

Keywords: Error-Correction Mechanism; Commercial Arbitration; Judicial Review; Economic Disputes

1. Introduction

The so-called commercial arbitration is a dispute settlement method in which both parties in the commercial relationship voluntarily submit the dispute to a third party, that is, the arbitration tribunal, who make an award in accordance with the principles of law and fairness, and promise to consciously fulfill the obligations determined by the result of the award[1]. Error correction mechanism refers to a reasonable and effective system design and institutional arrangement, under the premise of the conditions, within the scope of the law, a variety of or multiple subjects involved in it, to find and correct the problems encountered in some way[2]. At present the basic principles of arbitration is not open trial, high emphasis on confidentiality and respect the parties autonomy, but from another perspective, it is the three characteristics makes the arbitration award is likely for a defective award, at the same time and arbitration is different from the litigation two final a final system. Therefore, according to the current legislation, China's commercial error correction system has set up two error correction subjects: the people's court and arbitration institutions.

2. Problems Existing in the Arbitration Error Correction System in China

2.1 Problems Existing in the Error Correction Mechanism within the Arbitration Institution

2.1.1 False regulatory agencies

Article 15 of the Arbitration Law sets up an arbitration association. The original intention of the arbitration association is to publicize the arbitration legal system externally, and to assume the function of industry supervision internally, so as to promote the sustainable, healthy and orderly development of the arbitration cause. As a self-regulatory organization, the arbitration association only stipulates that it supervises the violation of discipline of the arbitrators, and its functional norms are too principled, making it impossible to effectively supervise the trial of cases. At the same time, as early as 1994, The General Office of the State Council issued the Notice on the Reconstruction of Arbitration Institutions and the Establishment of the China Arbitration Association, requiring the establishment of the China Arbitration Association, but the arbitration association has not yet been established. Therefore, the supervisory role of the association is actually empty talk, so it is impossible to expect the arbitration association to play a role in the correction of arbitration.

2.1.2 Lack of self-correction mechanism

Error correction is first of all necessary for the

arbitration system itself to practice the goal of justice[3].

According to the current arrangement of our system, the arbitration correction only judicial review of the court, but in fact, only judicial review is not enough. According to the selection table of arbitrators, the arbitration commission submitted by the two parties forms an arbitration tribunal in accordance with the relevant provisions of the arbitration rules, which shall be heard by experts. Different from the relatively fixed judges in litigation, the arbitration is heard by arbitrators from all walks of life and with various professional backgrounds. Therefore, if the arbitrator participates in the trial of the whole case and has enough knowledge of the information of the relevant case, it should be the function of the arbitrator to correct any mistakes. However, throughout the current arbitration legislation, although the establishment of the arbitration association, the arbitration association is not only abstract functions, but also not actually established, the rest of the provisions of the ruling supplement, once the award result is wrong, it will take the final decision, and can only take the road of judicial review. Obviously, the arbitration institution itself does not have a self-correction mechanism.

2.2 Problems Existing in Judicial Review

2.2.1 Or the adjudication or trial clause of the court

Article 7 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Arbitration Law of the People's Republic of China stipulates that if the parties agree that the dispute may be applied to an arbitration institution and the arbitration may also bring a suit in a people's court, the arbitration agreement shall be invalid[4]. That is to say, the adjudication clause is currently under the preferred jurisdiction of the court.

2.2.2 The form of the examination is inappropriate

At present, most countries in the world have stipulated that the courts shall not review the substance of the arbitration. The New York Convention and the Model Law on International Commercial Arbitration also reject substantive review. Therefore, it has become a common practice in all countries in the world. The form of judicial review of commercial arbitration awards by our courts is limited to procedural matters, which aims to guarantee only that the award is made and awarded in accordance with a fair procedure and does not violate public order, rather than to correct the errors in the determination of facts and application of law.

2.2.3 There are too few ways

According to the current law, the parties can only have two ways to apply to the court for the relief of the arbitration award. These two ways can overturn the enforceability of the arbitration award, so that one party can safeguard their rights and interests through judicial relief. But I don't think these two ways are good enough.

2.2.4 Lack of final error correction mechanism

As mentioned above, there are two ways in judicial relief. But after the parties to the court to cancel the arbitral award, the Supreme People's Court on arbitration judicial review case provisions of article 20 except shall not accept, rejected the application, jurisdiction objection ruling, the court ruling once served the legal effect, the parties to apply for reconsideration, appeal or apply for retrial, the court will not be accepted[5]. It is equivalent to the loss of further relief by the parties.

3. Suggestions on Improving the Arbitration Error Correction Mechanism in China

Article 9 of the Arbitration Law stipulates that arbitration is a final award, which is a significant mark in the arbitration procedure. Innovating the self-correction mechanism of arbitration institutions should first break through the final game of arbitration. Here breakthrough is not refers to "removed the cut, cut and withdraw", thus into endless cycle, simply is to give the arbitration institution itself a error correction opportunity, if the arbitration institution can not just exercise of power, can again by the court out to the parties, it also corresponds to the judicial is the last line of defense to safeguard social fairness and justice. Of course, such design will certainly reduce the efficiency of arbitration, but we should not deny the advantages of this mechanism, but use the advantages to support the reduction of efficiency. We should always remember that the fair decision is the final goal. The parties cannot choose between the arbitration and correction of error and judicial review, and give priority to the correction of the arbitration institution. The final ruling of the court represents the final settlement of the dispute between the parties. The parties cannot seek arbitration and judicial relief for the same dispute, but can reach a new arbitration

agreement.

As a supervisory body, the arbitration association has not been actually established, which is very unfavorable to the correction of arbitration. Referring to the correction of litigation cases, in addition to the court itself can correct the error, the procuratorate can still lodge a protest, and in the arbitration, the arbitration institution itself cannot correct the error, and the arbitration association undertaking the supervision responsibility cannot play a role, which obviously means that the parties only have the way of judicial relief. In order to effectively and quickly solve civil and commercial disputes, should form an arbitration association as soon as possible, give play to its supervisory role, association can learn from the functions of the judicial committee, can develop the arbitration industry specification, disciplinary supervision, from the source, reduce the possibility of error, also can correct case errors, self correction of arbitration industry, strengthen internal supervision, give the judicial error correction relief way.

4. Transition from Absolute Confidentiality To Relative Confidentiality

Arbitration shall be kept confidential, and cases shall not be heard in public. Without the unity of the parties and the permission of the arbitration tribunal, the arbitration procedure and the substantive content shall not be disclosed to the outside world, which is stipulated in Article 40 of the Arbitration Law. From the perspective of trade secrets and business reputation, this advantage makes arbitration become the first choice in commercial disputes. No matter how the society develops, the need of the parties will always exist, so the confidentiality of arbitration will always have its existence and development soil. Therefore, the confidentiality of arbitration should be regarded as a basic principle of arbitration[6].However, this does not affect the principle of confidentiality, and the implementation of absolute confidentiality also faces many challenges. For example, when both parties maliciously collude to damage the interests of the third party, the protection of the rights of the interested parties outside the case, the public interests involved in the case, the difficulty of the confidentiality of the court, etc. Therefore, the arbitration institution should also take into account the reasonable expectations of the parties for the confidentiality of the arbitration and conform to the trend of The Times. In order to better protect the rights and interests of the third party and the parties outside the case.

As for the validity of the arbitration clause, a contradiction is to emphasize the respect of the parties, and to give priority to the jurisdiction of the court. After analysis, the author thinks that the existence of arbitration or trial clause does not mean that the parties want to reject the court of the jurisdiction of the arbitration, but the parties are eager to give yourself a relief way, and the jurisdiction of the parties is actually agreed, so the judicial position or embodies the characteristics of the litigation center. In fact, the validity of the arbitration clause should be guaranteed first, rather than saying that the arbitration clause is invalid.

If the court is not granted the qualification of substantive review during the judicial review, and only reviews the procedural issues, which should be contradictory to the original intention of setting up the judicial review mechanism. The error of the ruling is not just a procedural issue. If the ruling is correct only because the procedure is legal and reasonable, the author thinks that the ruling should also be "false and true". Current law is judicial review is given priority to with form review is out of respect for the arbitration independence and the parties mean autonomy, even if the arbitration has their own independence, is different from litigation, but since the purpose is to solve the dispute, the facts and procedural errors should be reviewed, can truly realize the error correction, get more fair and more reasonable ruling.

As mentioned above, the current judicial review lacks a mechanism for final error correction, and this institutional arrangement is unreasonable. Judicial review itself is a relief channel set up for the parties, so if the review behavior is not supervised, judicial review is the review on paper. If the relief mechanism for the relief procedure will affect the efficiency of the case, justice should be the most important, in the realization of substantive justice and in the protection of the rights and interests of the parties, the efficiency can be behind. Therefore, the retrial procedure can be set up by taking into account the efficiency, and the appeal can be abandoned, so that the ruling can be finally corrected.

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