

Ethiopia's Ratification of Convention on the Recognition and Enforcement of Foreign Arbitral Awards: A reflection

Written by Bebizuh Mulugeta Menkir, Lecturer of Laws, University of Gondar

babimulugeta@gmail.com

Ethiopia, located in east Africa, is the second most populous country in the continent. The Ethiopian parliament has recently ratified, through proclamation No 1184/2020[1], the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" which is commonly known as "New York Convention" (here after referred as "the Convention"). This short piece aims to reflect some points in reaction to this ratification proclamation, specifically changes that this will bring to the approach to arbitration in Ethiopia.

As stated in the Convention, state parties are obliged to recognize and give effect to arbitral agreements including an arbitral clause; and ordinary courts are precluded from exercising their jurisdiction on the merits of the case.[2] In addition, unless in exceptional circumstances recognized under the convention, foreign arbitral awards shall be enforced just like domestic arbitral awards.[3]

By ratifying the Convention, Ethiopia undertakes to perform the above-mentioned and other obligations of the Convention. As a result, some of the hitherto debatable issues are addressed by the terms of the Convention. For instance, the Ethiopian Supreme Court cassation bench had previously passed a decision that rejects the parties' agreement that makes the outcome of the arbitration to be final.[4] In its decision, the cassation bench contends that its mandate given by the Ethiopian constitution as well as the "Federal Courts Proclamation re-amendment Proclamation No 454/1997" cannot be limited by an arbitration finality clause. But now, this power of cassation can be taken to have ceased at least in relation to cases falling under the scope of application of the Convention.

The declarations and reservation that Ethiopia has entered while ratifying the

Convention should not be forgotten though. As such, Ethiopia will apply the Convention only in relation to arbitral awards made in the territory of another contracting state.[5] In the Civil Procedure Code of Ethiopia, Art 458 and Art 461(1) (a), the law that had been in force before the ratification of the Convention, reciprocity was one of the requirements that need to be fulfilled before recognizing and giving effect to the terms of foreign judgments as well as foreign arbitral awards.

Ethiopian courts require the existence of a reciprocity treaty signed between Ethiopia and the forum state whose judgment is sought to be recognized or enforced.[6] It is fair to assume that Ethiopian courts would have the same stand in relation to foreign arbitral awards. And Art 2(1) has fulfilled this requirement because the arbitral award has been given in the member state to the Convention by itself warrants the recognition and enforcement of the award in Ethiopia.

Moreover, Ethiopia also declares that “the convention will apply on differences arising out of legal relationships, whether contractual or not, which are considered commercial under the National Law of Ethiopia.”[7] But here, a national law that provides a comprehensive list or definition of commercial activities hardly exists. As a result, while giving effect to the terms of the Convention, Ethiopian courts are expected to answer what sort of activities shall be deemed to be commercial activities according to Ethiopian law.

The definition contained under Art 2(6) of the “Trade Competition and Consumers Protection Proclamation” will provide some help in identifying “commercial activities” in Ethiopia. Accordingly, “Commercial activities are activities performed by a business person as defined under sub-Art 5 of this article.”[8] And Art 2(5) defines a business person as “any person who professionally and for gain carries on any of the activities specified under Art 5 of the Commercial Code, or who dispenses services or who carries those commercial activities designed as such by law”. [9] Moreover, it is to be noted that the “Commercial Registration and Licensing Proclamation (Proclamation No. 980/2016)” also provides the same kind of definition for commercial activities.[10]

From the combined reading of the above provisions, commercial activities are those activities listed under Art 5 of the Commercial Code, when they are performed by a person professionally and for gain. However, this cannot be a comprehensive answer to the question, as there can be areas other than those

listed under Art 5 of the Commercial Code that can be characterized as commercial activities. In addition, there are numerous service deliveries that can be considered as commercial activities. In such cases, Ethiopian courts will have to consult other domestic laws and decide whether the activity in question can be considered as commercial or not.

Last but not least, even if ratified treaties are declared to be an integral part of the law of Ethiopia[11], the domestic application of treaties whose contents have not been published in domestic law gazette has been a debatable issue for long. As there are points that are not incorporated under the ratification proclamation, the same problem may probably arise in relation to the New York Convention. To avoid this challenge, the Ethiopian parliament should have published the provisions of the Convention together with the ratification proclamation.[12] As per its responsibility under Art 5 of the ratification proclamation the Federal Attorney General, should at least have the Convention translated to Ethiopian working languages.

[1] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards Ratification Proclamation, Proclamation No 1184/2020, Federal *Negarit* Gazette, 26th year No 1, Addis Ababa, 13th March 2020.

[2] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), Art. II(1),(2),(3)

[3] *Id.* Art I and V

[4] National Mineral Corporation Plc. vs. Danni Drilling plc., Federal Supreme Court, cassation bench

[5] Ratification Proclamation, *supra* note 1, Art 2(1)

[6] See *paulos papassinus* case, Federal Supreme court File no 1769/88; *Yosera Abdulmuen et al. vs. Abdulkeni Abdulmuen*, Federal Supreme Court of Ethiopia, Cassation Bench , Fed Sup. Court File No 78206

[7] Ratification Proclamation, *supra* note 1, Art 2(2)

[8] Trade Competition and Consumers Protection Proclamation, Proclamation No 813/2013, Federal *Negarit* Gazette, 20th year No 28, Addis Ababa, 21st March 2013, Art 2(6)

[9] *Id.* Art. 2(5)

[10] The Commercial Registration and Licensing Proclamation, Proclamation No 980/2016, Federal *Negarit* Gazette, 22nd year No. 101, Addis Ababa, 5th August 2016, Art 2(2)&(3)

[11] Constitution of Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, Federal *Negarit* Gazette, 1st year No.1 , Addis Ababa, 21st August 1995, Art 9(4)

[12] International Agreements Making and Ratification Procedure (Proclamation No 1024/2017) states that “The House of Peoples’ Representatives may decide to publish the provisions of the international agreements with the ratification proclamation.”(Art. 11)