Role of Courts in arbitration in the Arab Countries

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Arbitration receives its efficiency from the judicial authority since arbitration is described as private courts exerting their competence outside the judicial authorities, based on the agreement between the parties, regarding disputes settled by arbitrators not empowered by the State with the judgment authority but chosen on the basis of trust given by the parties to the dispute. In other words, the arbitrators' power to resolve the dispute is founded upon the common will of the parties thereto.

Nevertheless, the arbitration process is held under the shelter of the State's legal system. In order to meet the requirements of its efficiency and enforce its decisions and awards, the arbitration process requires the interference of the State Courts deemed to be a public authority solely empowered to impose on the parties to the dispute the execution of the arbitrators' decisions and arbitral awards. The Courts have the exclusive authority to impose the execution of awards unlike the arbitral awards.

Therefore, the judicial courts grant arbitration the requirements of its efficiency in order to seek justice.

In this respect, arbitration laws in the Arab Countries provided for the efficient role of the State courts in the arbitration process whether:

a) Before the commencement of arbitral proceedings.
b) During the arbitration proceedings.
c) After the issuance of the award.

Hence, we will make an overview of the above three stages where the arbitration process is tightly related to the judicial courts.

However, we should first take a quick look at the map of the arbitration laws in the Arab countries where each law has its own characteristics with regards to the connection between arbitration and State courts.

There are four groups of arbitration laws in the Arab countries:

1- **The Group of Islamic, old French and English laws** which were highly cautious with respect to arbitration like: Sudan, Libya and Iraq.
2- **The Group of laws inspired by the Model law for commercial international arbitration laid down by UNCITRAL** which was adopted literally by Bahrain then by Egypt on 1994 with some amendments. The Egyptian Arbitration law was adopted by Jordan and Oman including some modifications, and there are drafts of arbitration laws in Yemen and Syria adopting the Egyptian Arbitration law including some modifications.
3- **The Group of laws inspired by the French law** including Lebanon, Algeria, Tunisia and Mauritania.
   There is currently a draft of arbitration law in Morocco adopting the French arbitration law.
4- **The Group of laws taken from the New York Convention** including Qatar, UAE, Kuwait and Saudi Arabia.
   The study will involve three stages:
   The First: Role of Courts before the commencement of arbitral proceedings.
   The second: Role of Courts during the arbitral proceedings.
   The third: Role of Courts after the issuance of the arbitral award.

First stage: Role of Courts before the commencement of arbitral proceedings.

This role reflects issues related to the judicial courts' control over the existence and validity of the arbitration agreement.

The Law of Saudi Arabia[1] requires the registration of the arbitration agreement firstly before the tribunal that has the jurisdiction to settle the dispute .This tribunal shall render the decision that makes the arbitration clause effective by recognizing the arbitration agreement which deprives the Courts of jurisdiction[2].

The Saudi Law of arbitration is unique in this regard.

[1] Articles 5 and 6 of the Saudi Arbitration Law.

[2] Articles 12 and 21 of the Jordanian Arbitration Law, articles 13 and 22 of the Egyptian Arbitration Law, article 203 (5) of the UAE Code of Civil procedure, article 236 of the Bahraini Code of Civil procedure and article 16 of the Bahraini International Commercial Arbitration Law, chapter 19 and 26 of the Tunisian Arbitration Law, article 458 (7 bis) of the Algerian Arbitration Law, article 154 of Sudan Code of Civil Procedure, article 253 of the Iraqi Code of Civil Procedure, articles 13 and 22 of the Omani Arbitration Law, art. 192 of the Qatari Code of Civil Procedure, art. 173 of the Kuwaiti Code of Civil Procedure, articles 785 and 767 of the Lebanese Code of Civil Procedure, articles 19 and 28 of the Yemeni Arbitration Law.

However the other Arab laws granted the arbitral tribunal the power to decide its own jurisdiction with respect to pleas to the non-existence of the arbitration agreement or its non-validity and confirmed that the arbitration agreement deprives the judicial courts from their competence.

In case the arbitral proceedings have started, it is up to the arbitrators to decide. However, as soon as the award is issued, the judicial courts decide whether to set aside or to enforce the arbitral award.

Nonetheless, if the arbitral proceedings have not yet commenced , any party to the dispute having interest in filing a case for annulment of the arbitration agreement is entitled to do so, before the judicial courts preventing the other party from holding on thereto.

As a matter of fact, it is logical that the judicial courts confer the arbitration agreement its legal effect by refusing to hear a case pertaining to disputes included in the arbitration clause.

Subsequently, in case one party resorts to the judicial courts, most of the Arab arbitration laws require that the other party claims an exception of form to evidence the existence of the arbitration agreement; otherwise the arbitration agreement will become null and void.
The Moroccan arbitration law stipulates that the arbitration clause in the commercial contract should be in hand writing.
However the case law has overcome that requirement after Morocco joined the New York Convention[1].

The Syrian case law considered that the requirement that the arbitration clause shall be solely in writing makes any other evidence impossible as for the admissions and oath.

Consequently, the writing is a requirement for the validity of the arbitration clause and not for giving evidence thereof[2].

The Egyptian case law considered that the effect of the arbitration agreement leads to prevent the recourse to the courts even if such recourse was by means of a non-litigious request or petition[3].

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[1] Casablanca Court of Appeal: decision no. 10850 dated 21/6/1983, Commercial file No 355/83 published in the Journal of Moroccan judgments no. 51 page 109.
[2] Decision of the Syrian court of Cassation no. 46 dated 21/1/1979 published in the Law journal of 1979 page 217.
[3] Egyptian Cassation dated 22/3/1999 No 2608 for the year 1967.

The Lebanese case law considered that even if the arbitration clause was firmly connected to the contract, the arbitration clause is autonomous from the contract that contains it; consequently, the arbitration clause remains valid notwithstanding the nullity of the contract[1].

The Jordanian Court of Cassation considered that the arbitration agreement is binding to the parties thereto. This agreement can only be revoked, rescinded or amended by mutual consent or by the Court's decision or by the law[2]. The Jordanian case law affirmed that the waiver of a Jordanian Court of its competence to rule on cases submitted thereto to the benefit of a foreign arbitral tribunal does not constitute a violation of the public policy since article 27 of the new Jordanian arbitration law allows the parties to arbitration to agree whether the place of arbitration is within or outside the kingdom.

Consequently, it may be agreed that the arbitration be conducted in a foreign country[3].

The Kuwaiti case law considered that even though the legislator stipulated that the arbitration issue should be raised on the first hearing if one of the parties has resorted the judicial courts despite the existence of an arbitration clause, and even though the arbitration clause deprived the judicial courts of the jurisdiction to rule on matters related to arbitration .However , the legislator did not stipulate that the judicial court may invoke the arbitration agreement ex-officio since it is not related the public policy and the court is not allowed to decide ex-officio on the validity thereof in case this issue was not raised by any of the parties[4].

<u>Second stage: Role of Courts during the arbitral proceedings</u>

Once the arbitral proceedings are commenced, the courts play an important role in supporting the arbitral process and eliminating the obstacles hindering its progress.

Arbitral tribunals lack the compulsion power .Therefore, the recourse to the courts is required in order to sue out decisions necessary to the arbitration process.

Even though the arbitral tribunals have the freedom to settle the issues submitted thereto, the following issues require the courts' interference:

[1] Beirut Court of Appeal – third chamber – dated 19/12/2000, Lebanese Review of Arbitration No 17 p. 78.
[2] Jordanian Court of Cassation decision No 3691, dated 7/2/2005,Markaz Al Aadala publishers.
[3] Jordanian Court of Cassation, decision No 335/2004 dated 5/7/2004 Markaz Al Aadala publishers.
[4] Kuwaiti Court of Cassation, decision issued on 8/6/1983 and the High Court of Appeal in Kuwait, Cassation circuit, No 93 of 1977, hearing dated 29/11/1978.

1- The appointment and challenge of arbitrators in case of a non-institutional arbitration[1].
2- The extension of the time limit to make the award[2].
3- The interim and provisional measures in case the arbitral tribunal was not constituted yet[3].
4- Compelling a witness to attend or examining him instead of the arbitral tribunal[4].
5- The presentation of written evidence.

In the international arbitration, the written evidence is undoubtedly important. Many arbitration rules provided for the possibility to conduct arbitral proceedings exclusively in writing if the parties agree thereupon.

Like the ICC arbitration rules as well as the AAA rules.

The Model Law for International Commercial Arbitration stipulates in article 24 (1) that:

"***Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials***."

[1] Article 16 (b) of the Jordanian arbitration law, article 17 (2) of the Egyptian arbitration law, articles 204 and 207 of the UAE Code of Civil procedure, article 235 of the Bahraini Code of Civil and Commercial procedure, chapter 18 of the Tunisian arbitration law, article 444 of the Algerian arbitration law, articles 10 and 12 of the Saudi arbitration law, article 141 (6) of Sudan Code of Civil procedure, articles 512 and 516 of the Syrian Code of civil procedure, article 256 (1) of the Iraqi Code of Civil procedure, article 17 of the Omani arbitration law, article 195 of the Qatari Code of Civil procedure, article 175 of the Kuwaiti Code of civil procedure, articles 764 and 770 of the Lebanese Code of civil procedure, articles 746 and 749 of the Libyan Code of Civil procedure, articles 309 of the Moroccan Code of Civil procedure, article 22 (c) of the Yemeni arbitration law.

[2] Article 37 (b) of the Jordanian arbitration law, article 45 (2) of the Egyptian arbitration law, articles 9 and 15 of the Saudi arbitration law, article 144 of the Sudan Code of Civil procedure, article 263 of the Iraqi Code of Civil procedure, article 197 of the Qatari Code of Civil procedure, article 773 of the Lebanese Code of Civil procedure.

[3] Article 40 of the Jordanian arbitration law, article 14 of the Egyptian arbitration law, chapter 19 of the Tunisian arbitration law, article 458 (9bis) of the Algerian arbitration law, article 14 of the Omani arbitration law.

[4] Article 8 of the Jordanian arbitration law, article 37 of the Egyptian arbitration law, article 209 of the UAE Code of civil procedure, article 27 of the Bahraini international commercial arbitration law, chapter 72 of the Tunisian arbitration law, article 458 (11bis) of the Algerian arbitration law, article 143 of the Sudan Code of Civil procedure, article 526 of the Syrian law of civil procedure, article 269 of the Iraqi Law of civil procedure, article 37 of the Omani arbitration law, article 201 of the Qatari Code of civil procedure, article 180 of the Kuwaiti Code of civil procedure, article 779 of the Lebanese Code of procedure law, article 759 of the Libyan Code of civil procedure, article 43 of the Yemeni arbitration law.

In the Civil Law systems, the written evidence is used to weaken or strengthen a legal argument or a fact raised by one of the parties to the dispute.

Since the burden of proof lies on the claimant, each party produces all documents necessary to support its claims or defense.

Each party is entitled to withhold any evidence that does not support its legal argument unless the judge orders such party to disclose it. The Civil Law systems has extensively fought against ordering any party to the dispute or a third party to unwillingly produce to the tribunal and to the other party, an evidence which is relevant and essential for the dispute.

In the Anglo-Saxon custom systems, each party shall automatically and not under duress, notify the other party of any document or information it possesses, even if it was not to its own interest. This concept is described by the Anglo-Saxon doctrine as the “Discovery” which implies:“ The duty to submit all evidence”. If a party fails to submit such evidence, the judge shall order it to do so.

This duty is one of the most important means to endeavor to seek justice.
Hence, the tribunal issues an order to both parties in a litigation to disclose under oath all documents they hold related to the matters in dispute.

The arbitration laws in the Arab Countries follow the Civil Law system in the matters of evidence and the judge plays an important role in ordering the parties to submit documents notably when held by a third party.

Third Stage: Role of Courts after the issuance of an award

Right after its issuance, the award has the *res judicata* effect.
However it shall only be enforced by a judicial order from the State Courts of the country where the award will be executed. Therefore, the courts of the place where the award was made has the jurisdiction to rule on the action to set aside the arbitral award.

First:The enforcement order of the award

The law specifies the courts with territorial jurisdiction in ordering the enforcement of an award, which are usually the courts with jurisdiction for granting enforcement of domestic awards and not international or foreign awards.

Most of the Arab countries already joined the New York convention of 1958 for execution of foreign arbitral awards whereby article 3(2) stipulates:

“***Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards***.”

Thus, Cairo Court of Appeal has drawn the conclusion that the rules for execution of domestic awards shall apply to the execution of foreign awards to which the Code of Civil Procedure used to apply; provided that the requirements of the arbitration law are less strict than those stipulated in the Code of Civil Procedure even though such rules were contrary to the provisions of the said law;
For the reason that conventions prevail over laws.

The Court of Appeal adduced valid reasons and concluded from the terms of the Egyptian Legal system that the above decision “reveals the civilized aspect of this system that is bound by the treaties signed by the State”.

Article 1 of the arbitration law provides that, in case of conflict, the international conventions prevail over the provisions of the arbitration law.

In the context of the efficient role of the judiciary in arbitration matters, I would like to mention the decision related to the claim to rule on the dispute concerning the execution of two final and contradictory decisions; the first decision taken by the Criminal Court; the second taken by the Arbitral Tribunal relative to cheques drawn by an American company (drawer) in favor of the “Réfrigération d’Alexandrie” company (beneficiary), by virtue of which the Chairman of the first company was condemned to an imprisonment penalty for having issued returned cheques, while the Arbitral Tribunal, when the dispute was submitted to it, took the decision, on the grounds of the contract concluded between the two companies, to order the beneficiary company to return the drawn cheque to the drawer, subject of the dispute, after proving the clearing of its amount.

When the problem of conflict between the two decisions was submitted to the Constitutional Council, the latter opted, by virtue of its rights stipulated by the Law No. 48/1979 (M25/3) , between both decisions based on the obligatory competence rule and consequently determined the prevailing one to be executed. The tribunal declared in its decision

that both decisions agreed on one point, and also disagreed, thus preventing their execution. The court considered that the State tribunal while ruling on the direct lawsuit examines the question of clearing the Claimant's debt against payment of the cheque contrary to the arbitral tribunal's decision by virtue of its jurisdiction as to what both parties' agreed in the arbitration agreement – to liberate the Claimant from the debt, after recourse to the principle of clearing the debt, thus making the seizing of the cheque by the beneficiary transitory preventing him from presenting the cheque for payment at maturity; the Criminal Court would thus have usurped the jurisdiction retained by the arbitral tribunal notwithstanding the parties' agreement to submit themselves to arbitration, and to the extent of law. Consequently, the award issued by the arbitral tribunal prevails as to the execution over the state court judgment[1].

Second- Actions to set aside the award or appeal against a decision granting enforcement order in case of a foreign award

The role of courts in arbitration was confirmed by allowing actions to set aside the awards before the courts in order to make sure it is legitimate.

The Laws of Arab countries allowed actions to aside the award and specified the grounds thereof.

As for the foreign awards, the grounds for setting aside are not the same; however they are not addressed to set aside the foreign award but to set aside the enforcement order given by the national judiciary to the foreign award.

The actions to set aside are not a second degree recourse against the award in the cases exclusively specified.

In all cases, the Courts are not allowed to interfere in the basis of the arbitrator's conviction. This is why the arbitration in the Arab countries is unstable when it comes to the actions to set aside the award given that the said actions are no more than a judicial control over the arbitrator's respect of the essential elements of the arbitration case, such as the existence of an arbitration agreement, the conformity with due process, the restriction of arbitration to the arbitration agreement, the constitution of the arbitral tribunal pursuant to the arbitration clause, the compliance with the public policy.

[1] The decision of the high constitutional council in Egypt, case No 8 dated 4/8/2001.

For instance, the State Council in Syria set aside an arbitral award for the reason that it did not include the following expression:
“In the name of the Syrian people[1].

1- Egyptian case law

The Egyptian courts rendered a decision deemed to be a turning point that specified the grounds to set aside the awards, and whether the actions to set aside the award are considered an appeal or not, and whether the Court hearing the above actions is entitled to interfere in the arbitrators’ conviction.

In the arbitration case where the above decision was rendered, the arbitration clause provides that the parties shall firstly have recourse to conciliation; in case of failure of the conciliation, they shall have recourse to arbitration.
The Claimant though did not have recourse to conciliation but directly to arbitration.

The Courts refused to set aside the award and confirmed the following rules:

1- The control of the judge hearing the actions to set aside the award shall not extend to the review of the accuracy or validity of grounds on which the arbitrators were based.
2- The actions to set aside the award does not entitle the judge to reassess the subject-matter of the dispute.
3- The authority of the judge does not extend to evaluate the arbitrators’ reasoning, understanding and adaptation of facts, or the interpretation of the law and its application or the accuracy, or validity of grounds ;while the court of appeal is solely competent to determine these matters.
4- The grounds for setting aside the award set forth in article (53) of the Egyptian Arbitration Law are exclusively specified. Therefore, these grounds do not bear further interpretation or analogy.
   Moreover, the failure of the arbitral tribunal to deal with the breach of not resorting first to conciliation before arbitration (FIDIC) is not one of the grounds stipulated in article 53 for setting aside the award; otherwise, it will constitute a new ground not decided or intended by the legislator.

5- Pursuant to article 8 of the arbitration law, the company is no more entitled to take actions to set aside the award since it continued the arbitral proceedings being aware of the above failure.

[1] ad-hoc arbitration case between Stal AG and Alloys (a Swiss Company) and General Fertilizer Co. (a governmental company).

Hence, the abovementioned decision rendered by Cairo Court of Appeal has recognized a rule in the Egyptian case law which will have an effect on the case law in the Arab countries .

It provides that actions to set aside the award are not considered as an appeal, but as an exceptional recourse exclusively limited to grounds set forth in article 53 of the Egyptian arbitration law as follows:

1- In case there was no arbitration agreement, or the agreement was null or subject to annulment, or void for contract expiry.
2- In case one of the parties was incapacitated at the conclusion of the arbitration agreement pursuant to the law applicable to the capacity.
3- In case one of the parties could not present its defense for not being properly notified of the arbitrator's appointment, or of the arbitral proceedings, or due to any other reason beyond its control.
4- In case the award excluded the application of a law that was agreed upon by the parties to be applicable to the dispute.
5- In case the appointment of an arbitral tribunal or of the arbitrators was contrary to the law or to the parties' agreement.
6- In case the award decided on matters not included in the arbitration agreement or that are beyond the limits thereof.
   Nevertheless, in case the parts of the award relating to matters included in the arbitration agreement could be separated from the other parts relating to matters that are beyond the arbitration agreement, the setting aside of the award shall fall solely on the latter parts.
7- In case the award was null and void, or the nullity of the arbitral proceedings has affected the award.

It is remarkable that the above decision relies on a decision made by the French Court of Cassation in 2003 published in "La Revue de l'Arbitrage", and on professor Charles Jarosson's comment thereon; which indicates the tendency of the Egyptian case law in arbitration towards the European, mainly the French legal concepts .

The French Court of Cassation played an important role in establishing the arbitration rules included in laws that were not apt for the freedom of arbitration.

Later on, the French legislator adopted the French Court of Cassation case law and laid down an arbitration law inspired by the most recent case law of the Court of Cassation.

Accordingly, the case law of the French Court of Cassation had an effect the civil laws in Europe and the Arab Countries.

This tendency looks promising for arbitration in the Arab countries.

2- The Egyptian doctrine supports the Courts

The tendency in the Egyptian case law is inspired by the Egyptian doctrine. Professor Muhsen Shafeek,(who laid down the new Egyptian arbitration law), mentioned in his book: The International Commercial Arbitration (Al Nahda publishers) p. 308-309:

"*Its is known that the Courts' judgments are basically not subject to annulment, does this principle also apply on the arbitral awards?*

Even though the arbitral award is generally considered as a judgment, most of the legislations allow setting aside the awards on the basis that the arbitrator does not receive his authority from the legislator but from the arbitration agreement.
***In case this agreement was null or void, the basis on which the arbitrator took his authority shall become null. Consequently, the award issued by such arbitrator shall be null and void. The details of the above principle vary from a legislation to another*".**

Professor Muhsen Chafeek also compares between the Old Egyptian law and the Old French law as follows:

"*It is noteworthy that the Egyptian provisions– similarly to the French – forbid actions to set aside the award on the grounds of the error in applying the law even if the arbitrator was bound to rule on the dispute according to the law. The matter is more critical in the Egyptian law than it is in the French law given that the appeal is permitted in the French law entitling the party to rectify an error by the appeal. While the appeal is not permitted in the Egyptian law which hinders all ways to rectify the error*".

3- The Case law in Lebanon

In Lebanon, the judicial courts are influenced by the case law of the French Court of Cassation which played a great role in establishing, developing and defending the fundamentals of the modern international arbitration as well as the freedom of contract. The Lebanese arbitration law is hence inspired by the French arbitration law. However the administrative courts do not really get along with arbitration

since the Council of the State[1] considered the arbitration clause included in the two agreements between the state and both cell phone companies Libancell and Cellis null and void provided that the arbitration law did not allow arbitration as regards administrative contracts.

Subsequently, the legislator promulgated a law on 1/8/2002 allowing arbitration in administrative contracts.

The Case law in Lebanon The president of Beirut Court of Appeal Judge Marwan Karkaby has expressed its position towards the setting aside of the award in his book: "Code of civil procedure and arbitration"[2] stating that:

"***It is acknowledged that when the Court of Appeal hears the actions to set aside the award , it does not look into the ordinary grounds for appeal unless it is the case of appeal against an arbitral award. The Court of Appeal is not entitled to review the arbitrator's interpretation of the law, or the application of the legal rules, or the interpretation of documents and finally, the conclusions drawn by the arbitral award.***

The Court should essentially examine the arbitrator's respect of the provisions of the article 800 of the code of civil procedure (providing for the grounds for setting aside the award) which violation constitutes a ground for setting aside the arbitral award".

………..

"***It is acknowledged that article 800 of the code of civil procedure has specified the grounds for setting aside the award that one of which causes to set aside the arbitral award.***
Thus, these grounds may only be raised before the court of appeal during the procedure of actions to set aside the award."

However the parties might be aware of such grounds during the arbitral proceedings.
In this case, if they fail to raise this issue before the arbitrator, could they raise it for the first time before the court of appeal?
The recent case law is undisputedly refusing to raise this issue for the first time before the court of appeal, if the party taking actions to set aside the award was aware of the grounds during the proceedings and had not raised it earlier.

[1] The judgment was rendered on 1/7/2001.
[2] Page 398 of the afore-mentioned book.

It was decided[1] that the parties may not raise the issue of validity of the arbitration clause before the court competent to set aside the award since they have not raised it earlier before the arbitrator, which constitutes a violation of the principle of good faith.
For instance, raising the issue of grounds for challenging the arbitrator makes the award rendered by such arbitrator contrary to the law; and the Claimant to set aside the award had not filed for the challenge of the arbitrator although he was aware of the grounds for challenge".

The Judge Karkaby confirms the position of the Lebanese case law and clarifies it as follows:

"***The grounds for nullity provided in article 800 of the code of civil procedure are exclusively specified. Therefore, these grounds may not be expanded, and grounds not included therein cannot be construed; which is clear from the provision of article 800 (2)of the code of civil procedure[2]:***
"Award can be subject of an action to set aside only in the following cases….".

For instance, one cannot claim to set aside the arbitral award according to article 790 of the code of civil procedure i.e. on the ground of not mentioning the place of issue of the award, or the names of the parties to the dispute or their representatives, or on the ground of the arbitrator's breach pertaining to the merits of the dispute which can only be heard in the recourse for appeal[3].

In application to the aforementioned, it has been decided[4] that even if the legislator considered that the place of issuance of the award should be mentioned pursuant to article 790 of the code of civil procedure .
However the failure to do so does not cause setting aside the award, given that article 800(5) exclusively specified the particulars which the failure to meet one thereof causes to set aside the award .But the place of issuance of the award is not mentioned in the above particulars".

Judge Karkaby added that:

"***The grounds to set aside the award are exclusively limited and cannot be construed .This is comprehensible since the action to set aside the award is not a regular but an exceptional recourse. So the failure to evaluate the facts, the failure to apply or to interpret the provisions of law, are absolutely not grounds for setting aside the award listed in article 800 of the code of civil procedure.***

[1] Civil Cassation on 26/8/2004, the Lebanese review of arbitration 2004, No 32, page 12.
[2] Beirut Appeal, third chamber, on 22/1/2004, the Lebanese Review of Arbitration 2004, No 29 p. 45.
[3] Beirut Appeal, third chamber, on 22/1/2004,Lebanese Review of arbitration 2004,no29,page 45.
[4] Beirut Appeal, third chamber, on 3/5/2001, Lebanese Review of Arbitration 2001, No 18 p. 35.

***Therefore, the parties are not entitled to invoke these grounds in order to set aside the award*".

4- In Egypt, a step forward then a step backward

The administrative Courts in Egypt issued a judgment whereby an arbitration clause was declared null in an arbitration case between a British company and the Egyptian State[1], in addition to an order to discontinue the arbitral proceedings which were proceeding normally although the arbitrators have the jurisdiction to determine the validity of the arbitration clause pursuant to the Egyptian arbitration law.

The administrative courts in Egypt set aside an award issued in Cairo in the famous "Chromalloy" case on the grounds that the arbitrators applied the civil law while they considered that the administrative law is the law applicable to the dispute.

5- Egypt and Lebanon in the front; Tunisia, Jordan and Kuwait stepping forward

Egypt and Lebanon stand at the front in protecting arbitration and the Courts in both countries are walking towards this protection. In particular, the Courts to set aside the awards refuse to consider the action to set aside the award as an appeal and also refuse to review the award unless one of the requirements to set aside the award exclusively provided by the law is met.

The rule is that the Courts protect arbitration in Lebanon and Egypt. However there are some exceptions….

In Tunisia[2] the Courts are heading in the same direction. In Kuwait[3] .In Jordan[4], the Courts are making big steps towards the protection of arbitration… However

[1] State Council, administrative Court, case No 59, 18628, the Minister of Civil Aviation vs Malicorp Ltd.

[2] Court of Appeal, decision No 44,857, issued on 3/7/95, Lebanese Review of Arbitration 2000, No 13 p. 25.

[3] It is worth noting that the failure in the factual grounds of the award causes its setting aside. However the failure or the error in the legal grounds does not cause its setting aside but makes it vitiated of the error in the application of law. The award is not faulty if the grounds are included in general therein except if it was substantially violating the law.

[4] The Court of Cassation considered that the grounds to set aside the award are exclusively specified. No stipulation allows actions to set aside the award in case the arbitral tribunal refuses the request for rectification of error submitted by one of the parties to the arbitration dispute. Decision of the Court of Cassation No 2101/2005 dated 21/11/2005, Markaz Al Aadala publishers.

these steps did not yet become a constant case law in the field of setting aside the awards.

Thus, we are still on the way…