
THE PRINCIPLE OF IURA NOVIT ARBITER AND ITS LIMITATIONS IN INTERNATIONAL COMMERCIAL ARBITRATION

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ABSTRACT

Scholars and practitioners have recognized the *Iura Novit Arbitrator* as one of the most remarkable advancements in international commercial arbitration. It comes from the civil law doctrine known as "*iura novit curia*," which means "the court knows the law." The UNCITRAL Arbitration Rules and other institutional provisions implicitly adopt this principle. The author makes an effort to explore the subtleties of this idea and the constraints it presents. It is recognized that this idea is still in its infancy and that there are a number of aspects that will affect how useful this concept will be for an arbitral tribunal. The employment of this principle in practicality navigates through the perilous waters of the award resulting from it not being recognized and enforced by states due to violations of party autonomy, due process, and the right to be heard as envisaged under Article V of the New York Convention. To ensure that the awarded amount can effectively fulfil the parties' rights without creating any issues, the author presents an objective standard based on the legal precedents of industrialized nations. In a slight deviation, the author relies on reports with respect to a few other countries that ultimately derives a conclusion that apart from these objective criteria, the tribunal must consider the law of the seat or procedural law and if there is support towards enforcing the award that is to be rendered.

Introduction

The phrase "judge knows the law," or *iura novit curia*, is the source of the *iura novit arbitrator* principle². This dictum recognizes that the court or tribunal is knowledgeable about the laws that it must follow and is able to guarantee that the laws are applied correctly, which will result in the efficient administration of justice³. It implies that the tribunal may draw its own independent legal conclusions different from what the parties argued in front of it by using the facts that the parties to a dispute have submitted⁴. Despite academics' opinions that the principle

¹ The Author is a Graduate from Symbiosis Law School, Pune.

² Aaron X. Fellmeth & Maurice Horwitz, Guide to Latin in International Law (1st ed.), "Iura Novit Curia".

³ See Supra note. 1 at p. 14.

⁴ See Supra note. 3 at p. 465.

does not apply to arbitrators⁵, It is thought that the arbitrators' discretion serves as a helpful instrument to make an award that is well-reasoned and takes into account all relevant factors. According to Article V of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (henceforth referred to as the "**New York Convention**"), misuse of this could, nevertheless, result in the annulment of the award at the arbitration's place for reasons of party autonomy, due process, and the right to be heard⁶. An arbitrator's responsibility is to provide an enforceable award; in order to achieve this, the arbitrator, or a panel of arbitrators, must take into account a number of criteria related to *iura novit arbiter*, which will be further discussed in this paper.

Analysis

Iura novit arbiter leads to the tribunal's autonomous thinking in response to the facts as given by the parties. The tribunal would determine the relevant legal sources, evaluate the facts, and apply the findings to the facts deviating from the arguments put up by the parties. Seeking the source, or the law from which the principle can be conceptually inferred, is essential before engaging in a detailed investigation.

Legislative Analysis

Even though these sources usually include a clause, they frequently neglect to discuss the difficulties in putting this theory into practice. As the word of the law leaves situations unanswered, the discretion accorded to tribunals increase. For instance, Article 35(1) requires the tribunal to apply the laws that the parties have recognized to be applicable to the merits of the case. In the absence of such a designation, the tribunal may apply any applicable law. This provision, when read together with Article 15(1), gives the tribunal the authority to conduct the arbitration in a manner it sees fit, provided that all parties are treated equally. This suggests the idea of *iura novit arbiter*⁷. With the exception of LCIA and English Arbitration Rules, which expand on the application of this principle in accordance with the suggestions made by the International Law Association Recommendations on Determining the Contents of the Applicable Law in International Commercial Arbitration (Resolution Number 6/2008), a number of institutional and domestic arbitration rules offer comparable principles.

⁵ Fathy Waly, *Arbitration in National and International Commercial Disputes* 463, Monsha'at Al-Maaref (2014).

⁶ See Supra note 1 at p. 15.

⁷ Julian D.M. Lew QC, *Iura Novit Curia and Due Process*, Queen Mary University of London

The New York Convention or other arbitration laws that closely resemble the criteria outlined in the convention are violated when the tribunal introduces new independent legal reasoning that goes beyond the mandates specified in the arbitration agreement, the jurisdiction's scope, the governing law, due process, and the right to be heard is denied to the parties. These legal actions constitute a pathological scenario in the context of non-enforcement⁸. Each of which, will be looked at from the perspective of jurisprudence.

The incapacity of the arbitrators to be knowledgeable about the provisions of the governing law or other laws that may be relevant to the dispute is yet another significant issue raised by researchers. But according to the author, these restrictions are overcome when arbitrators are appointed because it is reasonable to assume that the parties will designate arbitrators who are knowledgeable about any applicable laws. Furthermore, in order to build its own logic, the tribunal is able to carry out a thorough inquiry with the assistance of the parties, expert opinions, and their own knowledge⁹.

Jurisprudential Analysis

In numerous instances, the presence and importance of *iura novit arbiter* have been acknowledged. The ICSID Annulment Committee in the framework of international investment arbitration in *Enron Creditors Recovery Corporation and Ponderosa Assets L.P. v. Republic of Argentina*¹⁰, required that the tribunal take into account the relevant law and that it not ignore plausible arguments that the parties did not bring up. This is an approach that has been adopted in the context of public international law in the *Fisheries Jurisdiction* case¹¹.

In the development of its reasoning, the tribunal must take into consideration the following aspects that supplement the text of various provisions.

i. Ne Ultra Petita

Party autonomy is made concrete by this principle. It recognizes that the parties' claims, remedy requests, and subject matter place restrictions on the tribunal. Naturally, the *iura novit arbiter*

⁸ Centro De Arbitrage <https://www.arbitrajeccl.com.pe/en/reflections-on-the-application-of-the-iura-novit-curia-principle-in-international-arbitration/> (last visited May. 7, 2025).

⁹ See supra note 2 at p. 10; 2020 IBA Rules of Evidence Review Task Force, 'Commentary on the Revised Text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration' (IBA, January 2021) www.ibanet.org/MediaHandler?id=4F797338-693E-47C7-A92A-1509790ECC9D accessed 5 July 2021, 12; Prague Rules, Arts 2.5, 3.

¹⁰ *Enron Creditors Recovery Corporation and Ponderosa Assets L.P. v. Republic of Argentina*, ICSID Case No. ARB/01/3.

¹¹ *United Kingdom v. Iceland*, I.C.J. Pleadings, *Fisheries Jurisdiction*, Vol. I. Available at: <https://www.icj-cij.org/sites/default/files/case-related/55/9409.pdf>

exercise cannot go beyond this. Undoubtedly, the misuse may result in possible annulment procedures¹². The Swiss Supreme Court in the case of *ATA Insaat v. Bank Saint Petersburg* held that when the award that results from the application of the principle is founded on legal considerations different from those stated by the parties, *ne ultra petita* is not breached¹³.

ii. The Award should not come as a Surprise.

The phrase stipulates that the parties involved should not be surprised by the award. Transparency and predictability are included in this. This does not mean, however, that the award cannot be made if the legal rationale the tribunal established significantly deviates from the parties' position and could result in a different conclusion. In such a case, the tribunal extends an invitation to the parties to submit further claims or arguments that could influence the panel's decision. If this isn't done, the New York Convention's Article V(1)(b) may be invoked in annulment proceedings. The case of *X. SA v. Y. SA*, It was determined that the award could be enforced provided the legal reasoning used by the tribunal was foreseeable¹⁴.

iii. Due Process

The tribunal must remember the criteria of due process when trying to apply their own legal reasoning. It involves the chance to put forward the parties' argument and the right to be heard. All parties must be given fair opportunity to submit comments and arguments when the tribunal applies a different element of the law that they have not argued or presented. The right to due process and the right to be heard are violated when this isn't done. The parties must be able to offer new information or arguments that have the potential to change the legal conclusion reached by the tribunal as a consequence of *iura novit arbiter*. Similar constraints are imposed on the same by several countries, and as a result, the jurisprudence that results is reasonably uniform. The English Courts have determined that if due process is not followed and the parties are not given an opportunity to be heard, the case may be annulled in *JD Wetherspoon plc. v. Jay Mar Estates*¹⁵. A similar decision can be found under the French law in the case of *Thyssen Stahlunion v. Maaden*¹⁶.

¹² Nathalie M. Fabre, *Arbitrators, Don't Overdo It Without Involving the Parties!*, Paris J. Int'l Arb. 185 (2012).

¹³ Swiss Federal Supreme Court, BGE 4P.260/2000, Decision of 2 March 2001; Gary B. Born, *International Commercial Arbitration*, Vol. 2, at p. 2608 (2009).

¹⁴ *X. SA v Y. SA*, Swiss Federal Supreme Court, 4A 254/2010, Decision of 3 August 2010.

¹⁵ *JD Wetherspoon plc. v. Jay Mar Estates*, 113 Con LR 101.

¹⁶ *Thyssen Stahlunion v. Maaden*, 1995 Rev. Arb. 448.

Certain jurisdictions impose additional conditions such as characterisation of the legal reasoning. In the French case of *Société VRV v. Pharmachim*, a court decided that arbitrators are not required to present the legal justification for their ruling to the parties for discussion, provided that the legal justification is founded on the facts and legal elements that the parties were able to debate or have had a reasonable opportunity to discuss¹⁷. In addition, awards made by iura novit arbitrator are only set aside by English courts in cases when a procedural irregularity has resulted in a significant injustice. Therefore, unless the party that was wronged can demonstrate that the irregularity was severe and resulted in substantial injustice, the award will not be invalidated when an arbitral tribunal uses legal authorities, cites legal sources, or adopts reasoning that neither party has used, relied upon, or was given the chance to comment on. This implies that there is no need to ask the parties for their input if the tribunal's legal reasoning only supports the legal claims made by the parties. On the other hand, the parties must be informed if it has the potential to significantly change the decision's trajectory. This standard was upheld in the case of *Sanghi Polyesters Ltd. (India) v. International Investor*¹⁸.

Differences between Sovereign Nations

It is crucial to consider additional requirements imposed by countries in addition to the aforementioned conditions for exercising iura novit arbiter. The underlying issue with national sovereignty is that it makes it impossible to adhere to a single school of thinking. In a report, *Cordero-Moss* specifically addresses this¹⁹. In the paper, the author provides a questionnaire that certain reporters responded to. On the basis of the responses provided by reporters from other nations, he conducts a comparative analysis. One significant statistical finding from his research, for instance, is that the ability of the tribunal to perform iura novit arbiter based on whether the arbitration is held in a civil law or common law nation is insufficient. For instance, it is mentioned that, as was previously mentioned, the tribunal's investigation powers are recognized by English law but are restricted in countries like Canada and Argentina. Argentina is a civil law country.

Concerns for recognition and enforcement arise simply from the fact that different jurisdictions have varied interpretations of the tribunal's authority. Therefore, it is crucial that the tribunal hearing the case considers the opinion of the iura novit arbiter in the arbitration's seat and bases its ruling on the expansive or restrictive interpretation that has been accepted in that

¹⁷ *Société VRV v. Pharmachim*, 1998 Rev. arb. 684 (Paris Cour d'appel).

¹⁸ *Sanghi Polyesters Ltd. (India) v. International Investor*, [2000] 1 Lloyd's Rep. 480.

¹⁹ See *Supra* note. 3 at p. 467.

jurisdiction. This adds a complicated subjectivity that needs to be justified before decisions are made.

Filterable Criteria for Application

In the exercise of *iura novit arbiter*, the tribunal has to keep in mind the following requirements.

- a. Enough time should be given to the parties to submit their case and supporting legal arguments. The tribunal is not able to create new facts; it can only create new legal reasoning.
- b. The petitem and the factual foundations for the claim do not justify applying the principle in this case.
- c. The tribunal complies with the arbitration agreement's purpose, upholds due process, and allows the parties to offer feedback on the revised legal theory.
- d. The tribunal must take into account varying interpretations of *iura novit arbiter* as well as the subjectivity of the recognition and enforcement standards in various jurisdictions. This serves as the boundary that prohibits the tribunal from using its authority.

Importance of Iura Novit Arbiter

Effective dispute resolution in commercial arbitration depends on the tribunal being given authority under the *iura novit arbiter* concept. This principle ensures that the right legal standards are followed by empowering arbitrators to independently investigate and apply the law, even if it is not brought up by the parties. *Iura novit arbiter* improves the tribunal's capacity to render well-informed verdicts by enabling arbitrators to delve into the relevant legislation, particularly in complicated international disputes where numerous legal systems may be involved. Due of their autonomy, arbitrators are able to provide clarity on legal ambiguities, resulting in equitable and fair decisions while upholding the integrity and effectiveness of the arbitration procedure. For instance, the tribunal's broad authority could result in the application of foreign laws that are mandatory and overriding, which the parties may not have taken into account and which may be relevant to the legal issue. If it isn't taken into account, that jurisdiction may annul it.

Conclusion

Maintaining the integrity of the arbitral process while honoring the parties' autonomy is a delicate balance that arbitrators must carefully maintain when using the *iura novit arbiter* concept. Divergent practices have resulted from the absence of clear and uniform direction

from institutional rules and national legislation. In each case, arbitrators must navigate the particulars to decide the right scope of their authority to apply the law on their own motion. Notwithstanding the general requirements of due process, the arbitrator's evaluation of the parties' reasonable expectations, the need to prevent "pollution of the law," and other factors frequently determine the final outcome, even though there are trends toward convergence between civil and common law approaches. *Iura novit arbiter*'s inherent flexibility guarantees that, as the debate progresses, its application will remain extremely contextual, requiring arbitrators to use good judgment and pay close attention to the particulars of each dispute.