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Review Paper

THE ENFORCEMENT OF ARBITRAL AWARDS UNDER THE ICSID CONVENTION AND PUBLIC POLICY

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Abstract. *International arbitration emerged as a response to cross-border trade and foreign investments. It is an instrument which enables the uninterrupted flow of foreign capital which has a significant impact on the national economy, particularly considering that arbitral awards are enforced in national jurisdictions. The profit-oriented economic trend and its impact on individual states is even more visible in international investments, given that the foreign investor who operates on the territory of a Host State is included not only in economic but also in social affairs of that State. This poses a challenge: how should a State preserve national interests? Referring to the relevant provisions of the New York Convention (1958) and the ICSID Convention (1965), the author elaborates on the idea that public policy may be used in the enforcement stage as justification for non-compliance with the rendered arbitral award. The author introduces relevant arbitration practice that has challenged the interpretation of Article 54 of the ICSID Convention, and analyzes the impact it has had on the ICSID system.*

Key words: *international investment arbitration, ICSID, public policy*

1. INTRODUCTION

The 20th century economy was marked by the conceptual framework of liberal economy, which shaped the development strategies of countries worldwide. The concept of liberal economy entailed the liberalization of national markets and openness of domestic economies to facilitate international trade. Legal framework had to adapt to the changing trends in economics. International arbitration developed as a response to the emerging developments in international trading system. Perceived as a method for faster and cheaper resolution of trade disputes, international arbitration favored the development of the profit-driven economy through cross-border business operations. This trend is even more apparent in the context of foreign investments.

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In the 1960s, the influx of foreign capital through direct investments was considered the best financial instrument for economic development; thus, this period was marked by the expansion of investment projects into the undeveloped or developing countries. Foreign investments were exposed to unstable political systems, or the unsophisticated legal orders, which made them vulnerable to uncommercial risks. Such surrounding in the host states created uncertainty regarding the realization of investment projects. Consequently, the capital-exporting countries strived to provide an efficient mechanism for protecting investors' rights.

International arbitration emerged as a compromise between the sovereign state powers and domestic legal and judicial system (on the one hand), and the need for business to maintain their profit-seeking activities (on the other hand). This idea is underlined in the Investor-state dispute settlement (ISDS) system, in which the States derogate part of their sovereignty (to arbitration) and grant investors the right to directly bring claims against the States. This system was originally built on the idea to provide a mechanism for undisturbed flow of private investments.

Unlike the commercial relations which imply the right of access to a foreign market, the international investment projects imply the investors' right to be present in a foreign market (Schneiderman, 2000: 759). Consequently, the investor participates in the market of the host state, affecting not only the economic affairs but other issues as well, such as the environment, labor, public health, etc. By signing investment treaties or becoming a member of international organizations, the States have created a legal framework in which certain standards of treatment are granted to investors or to foreign trade partners. This treatment is usually led by the prerequisite of creating a favorable business and investment environment, which is guaranteed by access to international arbitration. Such an environment poses a huge challenge for the States: how to preserve national interests?

The challenge to preserve national interests is even more enhanced by international arbitration, which challenges the traditional concept of dispute resolution mechanisms, the notions of jurisdiction, decision-making authority, as well as the legal corpus underlying these concepts and the general idea of legality and legitimacy of the process. The issues which were resolved under the auspices of courts or governmental bodies, and guarded by the patronage of state sovereignty, have been shifted into the areas of private regime. International arbitration is, at its core, a private institute based on the principle of party autonomy. This allows the parties to create the system for their dispute resolution, not only by opting for specific rules of procedure but also by agreeing upon the substantive law to be applied to their relations (Donovan, 1995: 647).

The State's regulatory power still allows for some control over the international trade flow in the context of preservation of national non-economic interests. However, regulatory powers in the open economy are affected by the international input. This input may be the institutional one (obtained through membership in international organizations or by signing international treaties), or *de facto* input (reflected in constructed domestic regulation aimed at attracting profits. In such circumstances, the question of how far the party autonomy may go becomes even more important. Referring to the relevant provisions of the New York Convention (1958) and the ICSID Convention (1966), this paper elaborates on the idea that the public policy may function as a corrective force which may reach a compromise between two clashing interests: those of the business community and the non-economic interests of the society (Buchanan, 1988: 511-532).

2. Placing Public Policy in the Focus of International Arbitration

Modern arbitration is based on a premise that it should accommodate the needs of the international business community. As such, it strives to position itself as a neutral dispute resolution forum, in which parties to a dispute are isolated from the State's national interests. This is one of the tools to circumvent uncommercial risks, but also to stress the latent aspirations to minimize judicial interference with the arbitral process (Donovan, 1995: 649). This is in line with a principle *Interest republicae ut sit finis litium*, which means that it is in the public interest to preserve the finality of arbitral awards (Poon, 2021: 188).

International arbitration is viewed as an autonomous system (independent from states), where disputes are resolved in a private regime set by the parties. But, the disputing parties' activities are reflected on the national market, and have a social impact as well. So, the question remains how domestic or even local authorities can enforce national laws and cope with their impact not only on economic but also on social and political interests (Donovan, 1995: 649)

Arbitral awards are enforceable through national judicial systems. This calls for a compromise between the finality of arbitral awards and national interests, given the fact that courts have the authority to supervise arbitral practice and the application of substantive law chosen by the disputing parties to govern their relations and dispute resolution (Buchanan, 1988: 512). In the area of commercial arbitration, the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter: the New York Convention, 1958)[1] put public policy in focus as an instrument for achieving this compromise (Gibson, 2008: 1229).

Public policy sets the standards and principles governing the corpus of legal rules in each country and serves to protect the basic values in a community (Buchanan, 1988: 519). Public policy comprises regulations which cannot be altered by the parties' arrangement and cannot be affected by the party autonomy principle (Buchanan, 1988: 513).

In the context of the New York Convention, public policy may be used by courts to defend national interests in two ways. Article V (2) of the New York Convention prescribes:

"Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country." (Article V(2) of the NY Convention).

The first part of the cited rule concerns the arbitrability of a dispute. In certain subject matters, it is preferred for state's judicial body to have exclusive jurisdiction, which is often determined on the basis of public policy (Buchanan, 1988: 516). The second part of the rule invokes public policy on more specific grounds; it entitles national courts to refuse the enforcement of an arbitral award which is inconsistent with the public policy. This justifies the idea which describes the courts as the exclusive gatekeepers of the state's public policy (Poon, 2012: 194). The problem arises when it comes to the scope of public policy. While there is a consensus that public policy protects the basic convictions and notions of justice that a given community is based upon (Trakman, 2018: 213), public policy is believed to be a dynamic concept, which constantly adapts itself to the changing needs of the society. In that respect, public policy is "inconsistent in nature and unpredictable in application"

[1] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958; https://www.newyorkconvention.org/

(Trakman, 2018: 213). In addition, neither the *travaux preparatoires* to the New York Convention nor the arbitration jurisprudence since 1958 have resolved the uncertainty about the content of public policy (Trakman, 2018: 211). It is perhaps for this reason that public policy is considered to play a greater role in arbitration theory than in practice (Buchanan, 1988: 519).

3. PUBLIC POLICY THROUGH THE LENS OF INTERNATIONAL INVESTMENT ARBITRATION

International investment tribunals were created to protect foreign investors from the unilateral actions of the State. But, in turn, international arbitration for resolving investment disputes is often perceived as being biased towards the investors. It should be noted that the investment flows have changed. In the 1980s, there was a rush of foreign investors from developed countries to invest in the undeveloped ones, which generated the growing requests for openness and liberalization. But, modern investments are more likely to flow into the developed countries, which asks for new legal framework that should balance the competing interests of the States and foreign investors with greater sensitivity. In practice, there is a gap between the corporative practices and the State sovereignty (Shan, 2006: 662). It ultimately calls for distancing the theoretical background from liberal economy towards a more conservative approach to regulating the international capital flows. One of the aspects of such an approach is the possibility to refuse the enforcement of awards rendered in international investment disputes if the awards are contrary to public policy.

The International Centre for Settlement of Investment Disputes (ICSID)[2] plays a significant role in shaping the system of investment disputes resolution. It was created as a means of providing stable and efficient protection to foreign investors, enabling them to plan and manage long-term investment projects. The ICSID is a system for resolving disputes with unique features in the international arena. It allows private investors to initiate proceedings directly against a State. It was envisioned as a neutral, depoliticized forum with "rule-based" model for rendering decisions. One of the most peculiar ICSID features is that it is a "self-contained" system because the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter: the ICSID Convention, 1965) does not allow any other review of awards but the one envisaged within the system itself. Article 53(1) of the ICSID Convention provides that "the award shall not be subject to any appeal or to any other remedy except those provided for in the Convention".[3] There are several remedies and review procedures that the ICSID Convention offers to the parties[4], but the distinctive characteristic of these procedures is that there is no external review of the awards. The ICSID system is "insulated from domestic laws and court involvement" (Bermann, 2020: 312).

In international arbitration, there is usually some discretion left for the national courts to decide about the enforcement of the arbitral awards, but the ICSID Convention is very restrictive in that regard. The enforcement provisions are described as the most important ones (Schreuer, 2009: 1117). Article 54 of ICSID Convention reads as follows:

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[2] the International Centre for Settlement of Investment Disputes (ICSID) was created by Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 1965.

[3] Article 53 of the ICSID Convention

[4] Supplementing the award and rectifying errors (Article 49-2); Interpretation of the award (Article 50); Revision upon discovery of new decisive facts (Article 51); and Annulment (Article 52 of the ICSID Convention).

"(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought."[5]

Unlike the New York Convention (1958), the ICSID Convention does not provide the possibility for domestic courts to review the award in the enforcement stage. It does not envisage any objections that may be raised by a State concerning either the enforcement of awards or the national public policy. Therefore, the enforcement mechanism under the ICSID Convention is considered its distinctive feature (Schreuer, 2009: 1117). The provisions of Article 54 of the ICSID Convention have created belief that it is easier to obtain enforcement of the award under the ICSID Convention than under the New York Convention. Furthermore, Article 54 is interpreted in a manner that the enforcement stage is understood as a practically automatic part of the procedure (Schreuer, 2009: 1115-1150). In a case brought before the ICSID Tribunal, *Vivendi v. Argentina* (II), the Tribunal remarked that "one of the fundamental issues which the drafters of the ICSID Convention were keen to achieve was a total divorce from the recognition and enforcement system which prevailed under domestic laws or under the 1958 New York Convention governing commercial arbitration in the Member States".[6]

The history of drafting the ICSID Convention shows that automatic enforcement system was subject to many debates. Some commentators thought that this was an innovative approach while some insisted on the same enforcement regime as the one provided by the New York Convention. There were also ideas to leave the States the right to refuse the enforcement of an award on the basis of public policy (Bermann, 2020: 322-326). Negotiations among the drafters of the ICSID Convention show that there was a common belief that it is highly unlikely that the States would not comply with the award (Schreuer, 2009: 1115-1150). The international reputation of that State would be at stake, along with the effects on investment climate and the attractiveness of the national market to future inflow of foreign capital. Moreover, a failure to comply with the award would enable diplomatic protection of State nationals (and the right to file any international claim), and it would politicize the relations between the Contracting States (Article 27 of the ICSID Convention). Given the fact that the ICSID Convention was negotiated right after the New York Convention came into effect, it was necessary to provide compelling arguments for departing from the system established therein. As a compromise, the ICSID

[5] Article 54 of the ICSID Convention

[6] *Compañia de Aguas del Aconquija SA & Vivendi Universal SA v Argentine Republic,* Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award Rendered on August 20, 2007, ICSID Case No ARB/97/3 (Annulment Proceeding), 4 November 2008, para 35.

Convention introduced the obligation to enforce only pecuniary obligations contained in the arbitral award (Schreuer, 2009: 1115-1150).

The past 50 years seem to justify the expectations of the ICSID Convention drafters. But, when compared to the expectations of governments, the ensuing economic circumstances and theoretical approaches, the foreign investors' practice has been demonstrating a paradigm shift in practice. The understanding of Article 54 of the ICSID Convention and the concept of enforcement of arbitral awards provided therein are being challenged. There is a call for rethinking the interpretation and application of Article 54 of the ICSID Convention, and implicitly *de novo* introducing the importance of public policy in the arena of international economic relations.

3.1. The peculiar case of Argentina

In the universal rush to embrace the principles of liberal economy, open the national markets and attract foreign capital through private investment projects, Latin American countries were, at first, reluctant to do so. But in the 1980s, there was a shift in their economic strategies, and some Latin American countries privatized their energy companies and opened their industry to foreign investors. This new policy implied signing bilateral investment treaties (BITs) to stimulate investments by providing treatment standards guarantees to foreign investors. Even though it took some time to overcome the ideology and governing principles of the "Calvo doctrine", BITs exposed these countries to the international dispute resolution forums. Many of the Latin American countries joined the ICSID system.

Argentina is one of the most striking examples of how foreign investors and the ICSID system impacted the national economy. Argentina attracted many investments in the energy sector and in the sector of public services. In the 2000s, Argentina faced a severe economic crisis, which even lead to civil unrest; thus, Argentina was forced to introduce measures to deal with the situation. Some of these measures were unpopular with foreign investors (mainly those relating to dollar-to-peso convertibility and the devaluation of currency), and led to a number of claims filed before the ICSID Tribunal. In these cases, foreign investors claimed BIT violations; in a large number of cases, the ICSID arbitral awards were rendered in their favour (Gomez, 2011: 198). However, it was estimated that if Argentina was found liable in all these cases, it would have to compensate the amount that goes up to hundreds of billions of dollars (Kasenetz, 2009: 710). The officials stated that Argentina would not be able to comply with the awards and pay the awarded compensation (Goodman, 2007: 453). For that reason, Argentina started to develop strategies to avoid payment. Some of these strategies were referred to as "legal and political ways in which Latin American nations are opposing the ICSID system from outside of its framework" (Gomez, 2011: 200).

Relying on the provisions of the ICSID Convention, Argentina promoted the conception that ICSID awards may be subjected to review before national courts, which would have such an authority in the enforcement stage. According to this conception, Article 54(1) of the ICSID Convention deals with the validity of ICSID awards in the country where enforcement is sought, while Article 54(3) subjects the enforcement of arbitral awards to the jurisdiction of national procedure laws. Specifically, in Argentina, national laws require all the rulings of foreign adjudicative bodies to comply with the national public policy. It means that national courts are obliged to decide whether ICSID awards may be enforced on the basis of the national public policy requirements (Kasenetz, 2009: 739-742).

Although Argentine scholars were aware that their interpretation of the ICSID Convention would not be supported either by other ICSID member states or by the ICSID tribunals (Kasenetz, 2009: 742), their struggle posed a great challenge to the ICSID system.

Firstly, it shows that provisions that were taken for granted for many years may be subjected to greater scrutiny, called into question, and applied in a manner not at all predicted when drafting the ICSID Convention. The economic circumstances and future practice might contribute to developing stronger arguments in favour of the Argentine point of view and add to its social legitimacy and persuasive power. A shift from automatic enforcement of arbitral awards to introducing the authority of domestic courts in the enforcement stage (all under the ICSID Convention provisions) is perceived as a great paradigm shift which cannot be disregarded.

Secondly, the case of Argentina illustrates (in a fairly picturesque manner) that the ICSID Convention was drafted under the unquestionable assumption that the effects and spillovers of foreign investments contribute to the economic development of the Contracting States. Schreuer states that the history of drafting the ICSID Convention shows that the original motive for including the enforcement provision was to protect the States against defaulting investors (Schreuer, 2009: 1119). Among other arguments, it is perhaps one of the prevailing factors that contribute to the non-inclusion of public policy objection to the enforcement of awards. But, as shown in the case of Argentina, pecuniary obligations under the ICSID awards may amount to public policy issues, if they pose a threat to maintaining the level of economic development of the country or even bankruptcy of the state.

3.2. Going a step further: EU and the Miculas

The EU regime goes even further in challenging Article 54 of ICSID Convention. A particularly good example is the ICSID case *Micula v. Romania*[7]. In this case, prior to the EU accession, Romania had granted some incentives for foreign investors, but the EU regulations considered such incentives to be illegal state aid, so Romania withdrew them. Micula brothers, operating in Romania, filed a claim before the ICSID Tribunal on the ground of violation of the Romania-Sweden BIT. The ICSID Tribunal rendered an award in favour of Micula brothers, but the European Commission issued an injunction prohibiting Romania to pay damages awarded to Micula brothers by the ICSID Tribunal, on the ground that such payment would constitute illegal state aid (Bermann, 2020: 316).

The Miculas tried to get the ICSID award enforced in numerous jurisdictions but failed. In the context of interpreting and applying Article 54 of the ICSID Convention, the reasoning of the Swedish court was the most problematic. The Swedish court held that, even though the injunction was addressed to Romania only, each Member State is bound by the Commission's decision, otherwise they would be responsible for not acting in accordance with the EU legal system (Bermann, 2020: 329). This decision may be understood as an act in accordance with the basic rules and principles of the EU legal order, or even the matters of public policy. More importantly, the legal reasoning in the Swedish court decision had legal grounds in Article 54 of the ICSID Convention stating that national courts may deny the enforcement of domestic judgments on the basis of requirements of domestic or EU laws. Under Article 54 of the ICSID Convention, ICSID awards must be treated in a same manner as if they were the final judgement of a domestic court. Thus, the court would not allow

[7] *Ioan Micula, Viorel Micula and others v. Romania* (ICSID Case No. ARB/05/20)

the enforcement of a domestic judgement which was characterized as an illegal state aid; the court must not allow the enforcement of an ICSID award that would constitute a breach of EU competition laws (Bermann, 2020: 329).

4. The Possibility of Interpreting Article 54 of the ICSID Convention in Consideration of Public Policy

In the provided examples[8], the selected views which challenge the understanding and application of Article 54 of ICSID Convention are yet to show how far-reaching their implications will be. There are some predictions that departure from the mechanism of automatic enforcement is not to be expected (Kasenetz, 2009: 742), but the challenge to the ICSID Convention provisions should not be easily neglected. Notwithstanding the said predictions, the fact is that some of the Latin American states are leaving the ICSID membership. If the EU authorities rule that the enforcement of ICSID awards would constitute a breach of EU law, it may be assumed that the ICSID member States are to be expected to withhold and comply with the enforcement (Bermann, 2020: 332).

The approaches taken by the Argentine scholars and the EU did have an echo in theoretical considerations about a true meaning of Article 54, its objective and purpose, as well as the scope of its application. A good standpoint for arguing in favor of challenging the "automatic" enforcement of the arbitral awards under Article 54 of the ICSID Convention is the *effet utile* principle, which requires that treaties be interpreted in such a manner that all provisions are given meaning and that they are applicable in practice within the scope of that meaning. Interpreting any provision of the ICSID Convention in such a way as to deprive it of its legal effect would be contrary to the Vienna Convention interpretation rules embodied in the Vienna Convention on the Law of Treaties (1969).[9]

As noted in relevant literature, when State obligations had to be limited by national laws, it was done by expressly prescribing that the State shall be subject to some restrictions, thus leaving no room for uncertainty (Bermann, 2020: 340). When put in that context, it is hard to imagine that the ICSID Convention drafters failed to envisage the objections to enforcement of the awards (which were envisaged in the New York Convention) and the ones based on public policy but left to the will of the States to challenge the awards on other grounds envisaged in the national laws of the States (Bermann, 2020: 341).

Even if the enforcement of ICSID awards is considered automatic under the self-contained ICSID system of dispute resolution, Article 54(1) of the ICSID Convention clearly provides that the national courts must treat an ICSID award as if it were a final judgment of the court of that State. This means that the award can be subjected to the same enforcement requirements as national judgments. Otherwise, Article 54(1) of the ICSID Convention lacks meaning and has no practical effect (Bermann, 2020: 342).

[8] The examples of Argentina and EU law explained in the sections 3.1. and 3.2 of this paper.
[9] The Vienna Convention on the Law of Treaties, Vienna, 1969, UN Treaty Series, vol. 1155, available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

5. Concluding Remarks

Public policy is a vague and broad category which may consist of a whole series of specific rights and obligations. But, it is also the most fundamental framework governing legal, economic and social organization in each State. National courts are often perceived as guardians of that framework. If public policy is viewed as a counterforce to oppose the international input that may not always serve the best interest of the national community, institutionalizing the authority of national courts to refuse the enforcement of arbitral awards does not contradict this idea. The New York Convention upholds this conception. It seems that international investment arbitration is not as open to introducing *ordre public* into the framework of this dispute resolution system. As suggested, "any exception on the basis of public policy was supplanted by a carve-out for non-pecuniary awards" (Bermann, 2020: 325). The example of Argentina shows that pecuniary awards may be regarded as the public policy, where values which go well beyond the economic amount of the compensation are at stake. The EU example once again introduces the notion of public policy as the concept that must be at the root of all and every legal action undertaken by the EU Member States.

So, were the ICSID Convention drafters short-sided when construing Article 54? Or was the faith in the compliance with the awards justified, as it shows the rationale for bypassing the public policy as a means to reject enforcement of arbitral awards?

Article 54 of the ICSID Convention provides the opportunity for States to use different tools in the enforcement stage which are immanent to its legal order. It is a means for reconciling different legal traditions under the provisions of the ICSID Convention. Treating an arbitral award as if it were a final judgement of the national court, or the enforcement as it is regulated by the domestic laws, means that the enforcement methods provided by the national laws should be in compliance with Article 54 of the ICSID Convention. The history of drafting the ICSID Convention, as well as the objective, purpose and the very nature of the ICSID system, provide no grounds for interpretation that Article 54 of the ICSID Convention envisages a substantive standard of review before the national courts (Schreuer, 2009: 1148). As nicely noted by Bermann: "In sum, Article 54(1) essentially performs the function of filling the ICSID Convention's enforcement procedure gap" (Bermann, 2020: 342).

Challenging Article 54 of the ICSID Convention, at least for the time being, does not undermine the basic ideas that shaped the ICSID system itself. But, it does add to the debate of who should be responsible for guarding the public policy in international investment arbitration. It stands as a reminder that all the actors in international arbitration are to take into account the interests that might be affected by its outcomes, before reaching the final stage of enforcement of arbitral awards.

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IZVRŠENJE ARBITRAŽNIH ODLUKA PREMA *ICSID* KONVENCIJI I JAVNI POREDAK

Međunarodne arbitraže su se razvile kao odgovor na prekograničnu trgovinu i strane investicije. One omogućavaju neometani tok stranog kapitala, ali ujedno imaju i značajan uticaj na nacionalnu ekonomiju država, naročito imajući u vidu da se arbitražne odluke izvršavaju pred domaćim sudovima. Uticaj ekonomije orijentisane ka sticanju profita je još značajniji kroz realizaciju stranih investicija, jer kroz realizaciju investicije u državi domaćinu, investitor se uključuje ne samo u njene ekonomske, već i u šire društvene tokove. Ovo predstavlja izazov: kako da država očuva ncionalni interes? Autor razmatra ideju da država može odbiti da se pridržava donete arbitražne odluke pozivajući se na javni poredak u fazi izvršenja, čak i pod okriljem odredbi Konvencije o rešavanju investicionih sporova između država i državljana drugih država (ICSID Konvencije). Autor opisuje relevantnu praksu koja već preispituje tumačenje člana 54 ICSID Konvencije i analizira uticaj koji je imala na ICSID sistem.

Ključne reči: *međunarne investicione arbitraže, Konvencija o rešavanju investicionih sporova (ICSID), javni poredak.*