

An Empirical Analysis of Application to Set Aside the Arbitration Mediation

Zhou Shuxi

*School of Law and Humanities, China University of Mining and Technology-Beijing, Beijing, China
shuxi_zhou@sina.com*

Abstract: *This article analyzed 126 cases on the cancellation of arbitration mediation, to sort out and summarize different position of courts on whether arbitration mediation decision are within the jurisdiction of the court. In judicial practice, the courts with a negative attitude generally dismiss the application for setting aside, while the supportive courts refer to the relevant provisions of setting aside arbitration awards to deal with the mediation decision. Based on the results of empirical research, it is legitimate for the court to accept the cancellation of the mediation decision, relevant laws also gradually determine the judicial nature of mediation decision. However, there are flaws in directly copying the provisions of setting aside the arbitration award, that more setting aside rules should be formulated for the mediation decision in the future.*

Keywords: *mediation decision; application of revocation; legislative analysis*

1. Introduction

With the development of the reform of diversified dispute resolution mechanisms, in order to build and build a legal framework for national diversified dispute resolution mechanisms, judicial reform has the demand to expand to new areas. Arbitration is an important part of China's dispute resolution mechanism, and the arbitration mediation system has been gradually established with the even-increasing of China's economic and trade activities. Since the 18th CPC National Congress, arbitration, an efficient and convenient dispute resolution mechanism, has solved the problems of more people, and the Judicial Review of arbitration by the courts has gradually improved, but there are still many disputes related to the review of arbitration mediation.

At present, there is a criticism over whether the revocation of arbitration mediation document within the scope of the case accepted by the court, the Supreme People's Court has not yet formed a unified view, and the attitude between district courts is also different. When the court handled the action for the revocation of arbitration mediation statement, the legal basis cited was mainly the relevant provisions of the Arbitration Law. However, the Arbitration Law only stipulates the circumstances of applying for the revocation of arbitration awards.

2. Sample Analysis of Revocation of Arbitration Mediation Documents

2.1 Case Collection

Through the China Judgment Documents Network and Jufa website, search 'Arbitration Mediation' and 'Revocation of Arbitration Mediation', select the collected cases and exclude the following types of cases. First, cases involving the revocation of arbitration mediation documents but without clear attitudes. Second, cases in which the parties withdrew their applications. Thirdly, cases that were converted to re-arbitration by arbitration commission. A total of 126 cases from 2014 to 2021 were collected as research data on cases applying for revocation of arbitration mediation documents, 45 cases of application for withdrawal of arbitration mediation documents were supported, and only 10 arbitration mediation documents had been withdrawal in fact. These cases involve experiences from 27 provincial-level administrative regions and 63 prefecture-level and county-level administrative regions in China. 21 cases heard by Basic people's courts, 87 cases heard by Intermediate People's Courts, 16 cases heard by High people's courts, and 2 cases heard by the Supreme People's Court. The trial procedures include procedure of first instance, the second instance, special procedures, enforcement procedures, retrial procedures, and retrial review and trial supervision procedures.

2.2 Case Overview

2.2.1. Position of the Courts

Of the 126 judgment documents randomly selected, the opposing courts accounted for the majority of the sample, and only 45 ruled that arbitration mediation document fell within the scope of the case accepted by the court. The positions of the courts vary considerably, and this status quo differs not only in courts of different regions and levels, even in courts of the same level, at different times of the same court, even the same adjudicator's cases, the views and attitudes are very different.

2.2.2 The Court's Judgment Results on Each Case

Comparing the judgment results made by the courts with different positions, most of the courts rejecting the application. Among the courts that support the right to accept, there are also fewer judgments that directly make a decision to revoke the mediation statement, and in the 126 samples collected, only 9 courts finally revoked arbitration mediation statement, 1 case revoked part of the mediation statement, some courts adopted the practice of revoking the original ruling or judgment, and other courts generally adopted inadmissibility and rejected the litigation or litigation claim.

2.2.3 Review Result of the Court Deemed Entitled to Accept

After accepting the action for the withdrawal of arbitration mediation statement, the court will examine the grounds for application for revocation, refer to the requirements of arbitration award in the Arbitration Law. Arbitration mediation statement is generally an agreement reached under the principle of the parties' Voluntary and Legality, and through the review of the court, most courts have concluded that there are no revocable methods. As the Table 1 illustrates below, among the 45 cases in which the court was recognized to accept the action for the revocation of arbitration mediation statement, 20 cases were found to be inconsistent with the withdrawal after review, 4 applications exceeded the time limit stipulated in the law, 5 subjects who applied for revocation were not qualified, 6 courts did not review the content of arbitration mediation document directly, and revoked the original ruling and designated a court to hear it, or revoked the original ruling, and did not enforce or suspend the enforcement of arbitration mediation statement.

Table 1: The revocation of arbitration in different court

	2014	2015	2016	2017	2018	2019	2020	2021
Sample (counts)	2	15	17	25	16	24	21	6
<i>Criteria: Acceptance attitude</i>								
Negative (counts)	0	10	12	19	8	17	14	1
Positive (counts)	2	5	5	6	8	7	7	5
Trial rate (%)	100.00	33.33	29.41	24.00	50.00	29.17	33.33	83.33
<i>Criteria: Court level (Trial rate)</i>								
Basic Court (%)	0.00	13.33	5.88	8.00	12.50	16.67	42.86	16.67
Intermediate Court (%)	100.00	73.33	70.59	92.00	62.50	62.50	42.86	83.33
The Higher And Supreme People's Court (%)	0.00	13.33	23.53	0.00	25.00	20.83	14.29	0.00
<i>Criteria: Trial procedure (Trial rate)</i>								
The First trial (%)	0.00	60.00	5.88	8.00	12.50	12.50	4.76	16.67
The Second trial (%)	0.00	26.67	41.18	12.00	25.00	20.83	23.81	16.67
The Retrial (%)	50.00	6.67	5.88	0.00	6.25	0.00	9.52	0.00
Special procedures (%)	50.00	6.67	47.06	72.00	56.25	66.67	57.14	50.00
<i>Criteria: trial results</i>								
Rejection Rate (%)	50.00	80.00	100.00	76.00	87.50	87.50	90.48	83.33
Revocation (counts)	1	3	0	4	1	0	0	1

2.3 Sample Analysis

2.3.1 Court Trials of Different-Levels

Construct an analysis sample for cases, one taking the cases of the basic level courts as a sample, and the other taking the cases of the courts (including the intermediate courts) above the intermediate people's courts as the sample. When reviewing an arbitration mediation statement, the court generally examines whether it is suitable for avoidance in accordance with the legal provisions on the revocation

of arbitration award. Applicants generally submit applications to intermediate courts and above to withdraw mediation, and in practice there are fewer cases in which applications are filed in basic courts. The data of people's courts at or above the intermediate level are more representative. The total sample size was 105, with only 41 cases supporting the fact that the court should accept an application for withdrawal of arbitration mediation.

2.3.2. Handling of Different Trial Procedures

However, since arbitration mediation documents often involve substantive issues of specific arbitration content, and the application for revocation of arbitration mediation statement is only one of the litigation claims, many cases are heard through ordinary procedures on other grounds of civil disputes. There are also a small number of case parties who have submitted applications for retrial, and a small number of case parties have submitted enforcement claims to the court in response to arbitration mediation documents that have already taken effect. In the sample of cases handled under retrial and enforcement proceedings, the courts supported the application for revocation of arbitration mediation in the majority.

2.3.3. Acceptance of Different Regions

Among the 27 cases involved in the provincial-level administrative regions, Zhejiang Province (19), Guangdong Province (16), Anhui Province (13) ranked the top three in the number of cases. Among the 63 prefecture-level administrative districts, the top three cases are Jiaying (9), Guangzhou (7), Ma'anshan (7). Courts in various provincial-level administrative regions generally denied accepting applications for revocation of mediation, but different localities also showed different attitudes, and among the samples of Guangdong Province, Jiangsu Province and Inner Mongolia Autonomous Region, the number of samples accepting applications for revocation of arbitration and mediation was relatively large. In the samples of county-level administrative districts, the samples of different places presented a "one-size-fits-all" attitude, while others showed inconsistent internal attitudes.

3. Dispute over the Adjudication of Arbitration Mediation Document

3.1 Dispute over the Legal Basis for the Revocation of Arbitration Mediation Document

In judicial practice, the court that denies accepting the withdrawal of arbitration mediation statement is mainly based on the revocation provisions of the Arbitration Law in the judgment documents and only explicitly targets arbitration award. These courts held that the applicant should not adopt an expanded interpretation in accordance with the method of application, and the object of revocation in Article 58 of the Arbitration Law did not include arbitration mediation. The revocation of arbitration mediation statement requires the court to review it in the form of judicial supervision, and have no right to carry out judicial review activities beyond the authorization of the law. Although in cases concerning the enforcement of arbitration, court includes arbitration mediation document within the scope of arbitration award enforcement case, in other articles are still not comparable. In 2012, the Supreme People's Court Research Institute expressed its opinion of revocation that the court should supervise arbitration limited.^[1]

Arbitration mediation statement determines through the law that it is not only a civil agreement reached by the two parties to arbitration, but also has judicial attributes. This is due to the fact that both arbitration mediation statement and arbitration award have undergone arbitration procedures, but mediation agreement reached by the both-side parties may go beyond the scope of arbitration request and have the contractual spirit of party autonomy. In practice, Arbitration Commission also reviews the content of the agreement, and according to the Arbitration Rules of the Shanghai Arbitration Commission and the Guangzhou Arbitration Commission, the content of the mediation agreement shall not harm the public interest or the interests of third parties. In 2022, the Supreme People's Court made clear its position on the revocation of arbitration mediation statement, that if a party applies for revocation of arbitration mediation document, the court should accept it, and the foreign-related arbitration mediation document involves some cases of non-enforcement, and the parties can also obtain relief by applying for revocation, but this method faces a dispute of double relief.

3.2 Key Points of the Judgment on the Revocation of Arbitration Mediation

In the sample civil ruling collected, after the court determines that the application for revocation of arbitration mediation statement can be accepted, it is generally also believed that the procedures and

applicable laws followed in the judicial review of arbitration mediation statement should be reviewed with reference to the relevant provisions of arbitration award.

3.2.1 No Arbitration Agreement

According to the circumstances where the court determines that there is no legal and valid arbitration agreement, whether the content of arbitration agreement is reviewed in accordance with Article 17 of the Arbitration Law is beyond the scope of arbitration, and whether the parties to the agreement are fully capable of civil conduct and are in a state of unforced state.

When the parties to a dispute in the contract resolve the dispute through litigation, if one party directly applies to arbitration commission to resolve the dispute without reaching a written agreement, the problem of the conflict between litigation and arbitration jurisdiction will arise. In one sample case, there was a conflict between litigation and arbitration jurisdiction, and one of the parties applied to arbitration tribunal to resolve the dispute and prepare a mediation statement, and the court reviewed and found that there was no arbitration agreement in the case, and signature of arbitration agreement was forged, that lead to revoked. Where the mediation statement has not yet taken legal effect, the applicant applies for the revocation of arbitration mediation document, which is the absence of the object of revocation, and the court generally rules to dismiss the lawsuit.

3.2.2 The Matter of Mediation does not Fall within the Scope of Arbitration Agreement or Arbitration Commission does not have the Power to Arbitrate

It is critical to apply revocation due to this reason. According to the scope of cases that can be accepted by arbitration in accordance with the provisions of the law, and arbitration matters agreed upon by the parties in arbitration agreement, arbitration content involved in arbitration mediation statement may be determined. Compared with arbitration awards, arbitration mediation documents will reflect the characteristics of the parties' autonomy of intention in civil activities to a greater extent. In cases, the court will also consider the law and the Arbitration Rules of each arbitration commission to examine whether it is suitable for avoidance. In two cases in the Guangdong court, court revoked both two arbitration mediation statements is completely rely on the rules of arbitration award. Author believes that the limit of arbitration mediation statement can be much less than award rules.

3.2.3 Arbitration Mediation Violates Statutory Procedures

The acceptance, hearing, and adjudication of cases by Arbitration Commission shall be carried out in accordance with the relevant provisions of the Arbitration Law, and the specific situation may be self-examined in accordance with the judicial interpretation issued by the Supreme People's Court, and whether it is a statutory violation of arbitration procedure. Arbitration commissions have reached a basic consensus on respecting the autonomy of party's testimony, and if the parties have other agreements on procedures and regulations, they shall fully respect the intentions of the parties and follow their agreements. The court reviewed arbitration procedures, and there was a situation in which arbitration tribunal failed to serve the relevant legal documents to the applicant, heard in absentia, mediated and produced arbitration mediation statement, depriving the applicant of its legitimate right to defend. In a sample case in Zhanjiang City, the applicant was not notified to participate in arbitration, and cross-examination of evidence were not carried out, and the basic procedural rights of the applicant in this case were not guaranteed. The mediation statement was only made according to the mediation agreement signed before the dispute submitted by the respondent.

3.2.4 Evidence in Arbitration

Parties shall provide evidences according to arbitration matters proposed, and the source of the evidences shall be stated in the application for arbitration, and mutual cross-examination shall be carried out under the organization of arbitration tribunal. There are two revocable circumstances in which an arbitration conciliation is related to evidence, including arbitration based on falsified evidences and the other party concealing evidences sufficient to affect impartiality. An unfair outcome of an arbitration based on falsified evidence, or a party concealing some of the facts that affected the outcome of arbitration, would also result in arbitration commission making an erroneous conciliation statement in the case. In the sample, the court found that the respondent concealed the fact that the relevant agreement was signed with the applicant, which led to arbitration tribunal making an erroneous mediation statement, which unfairly harmed the legitimate rights and interests of the applicant, and the court revoked some of the contents of the mediation statement related to it.

3.2.5 Situations Contrary to the Public Interest

The public is the main subject of interests, however it is difficult to determine in cases. It is hardly find an arbitration mediation statement to be revoked due to the public good. Disputes generally resolved by arbitration are common civil disputes between the parties and do not involve the social public interest. Arbitration mediation statement is essentially a civil agreement, and the person subject to enforcement or a person outside the case may also apply to the court for relief from enforcement. However, there is an overlap between the avoidance and non-enforcement proceedings for arbitration, and there is room for double relief. In the Arbitration Law (Draft for Solicitation of Comments), when it is contrary to the public interest, only the court may decide not to enforce it.^[2]

3.2.6 Other Circumstances of Revocation of the Mediation Statement

Arbitrators are a key part of arbitration procedure, and if the arbitrators have corruption problems, pervert the law and make rulings, and disregard the legitimate interests of the parties for their own selfish interests, it will affect the fairness and independence of arbitration result. After arbitration tribunal is constituted, it shall inform the parties in writing that if the arbitrator may be involved in the above circumstances and has reasonable doubts, it may submit an application for withdrawal or apply for the replacement of the arbitrator, and may also apply for the revocation to obtain relief after arbitration.

In addition, arbitration mediation shall follow the principle of voluntary. Arbitration tribunal may follow the requirements of the parties to organize mediation, and parties participate in such civil activities according to their own intentions, and resolve disputes under parties' real willingness. This situation may also overlap with other dispute in which arbitration mediation statement is revoked.

4. Conclusion

Without clear provisions, the court still relies mainly on the discretion of the judge to decide whether to accept the withdrawal of arbitration mediation statement. The author believes that it should be clearly stipulated that arbitration mediation document falls within the scope of cases accepted by the court.

In the 45 cases where it was considered acceptable to apply for the revocation of arbitration mediation statement, the review method adopted by the court was to refer to the provisions on the revocation of arbitration award in the laws, regulations and relevant normative documents. In the author's view, there is some unreasonableness in referring directly to the provisions of arbitration awards. First, there are differences in the nature of mediation and award, both are specific legal documents prescribed by law, but it is inappropriate for judges to exercise discretion. Most courts reject the application for revocation of arbitration mediation statement because they believe that it is not the object of the legal provisions that the lawsuit can be revoked, so the application for revocation is not supported.^[3] Second, there should be a distinguish between the procedure and content of the two reviews. Mediation between the two parties is to reach an agreement of intent under the condition of voluntary consultation, with corresponds of both sides.^[4] While arbitration award is generated in accordance with the law after arbitration of arbitration commission. And many mediation documents do not include evidence and fact determination, and it is difficult to directly copy the rules of arbitration award when the court examines it. Thirdly, the grounds for revocation should be distinguished. The revocation of the mediation statement will involve a violation of the agreement reached by the parties themselves, and the mediation statement reflects the characteristics of civil private law more than the ruling. For example, 'the matters awarded do not fall within the scope of arbitration agreement or arbitration commission does not have the right to arbitrate'. Compared with the strict of award by the agreement and arbitration commission, the mediation document mainly depends on the both sides, thus could be reached beyond the scope of arbitration agreement. Consequently, the re-reached mediation agreement can be regarded as an update to the original arbitration agreement, which will be more conducive to the resolution of the dispute. This paper summarizes and discusses based on judicial empirical data combined with relevant legal provisions, and the exploration of the revocation of arbitration and mediation documents still needs to be continued with more discussion and concentration.

Reference

- [1] Liu Shan.(2021)*Judicial review of arbitration mediation and settlement awards*[J].*Journal of Fuyang Normal University(Social Science)*.(2):99-106
- [2] Ma DengKe.(2021)*The review logic and system improvement of execution credentials based on agreement* [J]. *Science of Law (Journal of Northwest University of Political Science and Law)*.39(6):174-183.
- [3] Li HaiTao.(2019)*An Empirical Analysis of the Court's Practice on Setting Aside the Conciliation Statement*[J].*Tianjin Legal Science*.(4):13-23.
- [4] Li XianSen.(2022)*Guarantee and limitation of autonomy of will in international commercial arbitration*[J]. *Law Science*.(4):179-192.