

Interim Order or Arbitral Award?

Judicial Review under Greek law
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1. Introduction – Scope of the Study

Interim relief in international commercial arbitration serves to preserve the effectiveness of the future arbitral award. The legal nature of the instrument by which an arbitral tribunal grants such relief, however, is not necessarily uniform. Depending on its content and function, the instrument may constitute an interim order or provisional measure, but may, in certain circumstances, resemble an arbitral award determining a distinct and autonomous issue.

The decisive question is therefore not the label attached to the instrument, but its legal character. That character determines, *inter alia*, its binding effect, enforceability, recognition and the judicial mechanisms available for its review. The present study examines the criteria for distinguishing between these categories and the consequences of such classification under Law No. 2735/1999 and the currently applicable Law No. 5016/2023.



2. The Applicable Legislative Framework

Law No. 2735/1999 incorporated into the Greek legal order, with the necessary adaptations, the UNCITRAL Model Law on International Commercial Arbitration. Article 1 defines its scope of application, while Articles 18 and 19 establish, respectively, the fundamental requirements of equal treatment and the parties' right to be heard, as well as the parties' freedom to determine the arbitral procedure.

Under Article 17 of Law No. 2735/1999, the arbitral tribunal was empowered, unless the parties had agreed otherwise, to order interim measures of protection. Such measures did not, however, possess autonomous coercive enforceability. Their enforcement required recourse to the competent state court, which could order the measures necessary for their implementation or require their modification.

Judicial review of an arbitral award under that regime was governed by Article 34 of Law No. 2735/1999. An award could be set aside only on the exhaustively prescribed grounds and not for the purpose of reconsidering the merits of the dispute. Such grounds included, *inter alia*, the validity of the arbitration agreement, excess of the arbitrators' authority, the constitution of the arbitral tribunal, compliance with the agreed arbitral procedure, and conflict of the award with international public policy.

Law No. 5016/2023 maintains the fundamental distinction between interim measures and arbitral awards. Article 25 regulates the power of the arbitral tribunal to grant interim measures and preliminary orders, whereas Articles 37 *et seq.* govern arbitral awards. Article 43 establishes the action for setting aside as the specific judicial remedy against an arbitral award, while Article 44 concerns its enforceability. Article 48 contains transitional provisions concerning arbitrations commenced before the entry into force of the new legislation.

Accordingly, the application of Article 43 necessarily presupposes that the impugned instrument constitutes an **"arbitral award"** within the meaning of the applicable legal framework. The mere existence of reasons, an operative part or a prior hearing of the parties is not, in itself, sufficient to establish such a classification.



3. The Concept of an Arbitral Award and the Functional Approach

An arbitral award constitutes a genuine adjudicative act. According to Greek case law, an award produces *res judicata*, subject to the conditions laid down in Article 896 of the Greek Code of Civil Procedure, and, in the case of domestic arbitration, is enforceable pursuant to Article 904(2) (b) thereof. State courts remain the ultimate guardians of fundamental procedural and jurisdictional guarantees, without thereby exercising appellate review over the merits of the arbitrators' determination (Areios Pagos 551/2025; Areios Pagos 295/2022).

In determining the legal character of an arbitral instrument, a number of factors should be assessed cumulatively, including the source and scope of the arbitral tribunal's authority; whether the instrument finally determines an autonomous issue or merely regulates a situation on an interim basis; the degree of its binding effect; whether it may be revoked, varied or reconsidered; its function within the arbitral proceedings; and the legal effects it produces between the parties.

The appropriate test is therefore functional rather than formal. The designation of an instrument as an "*order*", "*interim order*", "*provisional measure*" or "*award*" is not, by itself, determinative. What matters is the substance of the tribunal's determination and the legal effects that the tribunal intended the instrument to produce.



4. Interim Orders, Interim Measures and Interim Awards

An interim order is, as a general rule, ancillary and protective in nature. Its purpose is to preserve the status quo, prevent irreparable harm or safeguard the effectiveness of the final arbitral award. It does not ordinarily determine the merits of the dispute on a final basis, is generally capable of being revoked or varied, and remains in force until a subsequent determination is made or until the occurrence of an event specified by the applicable rules.

By contrast, an *interim* or *partial award* may finally and bindingly determine an autonomous issue, such as jurisdiction, liability or a distinct head of claim. The fact that the proceedings as a whole remain pending does not, in itself, prevent an instrument from constituting an arbitral award where the tribunal has finally determined a separable issue within its jurisdiction. Conversely, extensive reasoning or the holding of a hearing cannot, without more, transform an interim measure into an arbitral award.

Particular significance should therefore be attached to the possibility of revocation or variation. Such a possibility is a strong indication that the instrument is interim in nature, although it is not necessarily conclusive. It must be determined whether the power to revoke or vary concerns the reconsideration of a supposedly final adjudication or merely the adaptation of protective relief to changing circumstances.

This distinction is consistent with the broader architecture of the UNCITRAL Model Law, which expressly contemplates that an interim measure may take the form of an award **"or in another form."** The form of the instrument is therefore not necessarily decisive of its legal character.

5. Enforceability and Validity

Enforceability and validity are distinct concepts. The absence of autonomous coercive enforceability of an interim order does not necessarily mean that the instrument is legally non-existent or incapable of producing legal effects between the parties. Conversely, the fact that an interim measure may have significant proprietary or economic consequences does not, by itself, transform it into an arbitral award.

Under Law No. 2735/1999, interim protection under Article 17 required state-court assistance for its coercive enforcement. The distinction between the tribunal's power to grant the measure and the state's power to enforce it is therefore fundamental. The requirement of judicial assistance does not mean that the arbitral tribunal lacked authority to order the measure in the first place.

Under Law No. 5016/2023, the specific regulation contained in Article 25 makes the distinction between interim measures and arbitral awards even more significant. An instrument falling within Article 25 cannot automatically be challenged by means of the action for setting aside under Article 43. Judicial protection must instead be sought through the mechanisms provided by the applicable legislation, the rules governing the particular arbitration and, where appropriate, proceedings before the competent state court.



6. The Action for Setting Aside and the Declaration of Non-Existence

The action for setting aside constitutes a specific and limited mechanism for judicial review of an arbitral award. It is not an appellate remedy permitting substantive reconsideration of the dispute. Greek case law recognises that an erroneous interpretation or application of substantive law, inadequate reasoning or a different assessment of the evidence does not, in itself, constitute a ground for setting aside, unless the alleged error is connected with the violation of a fundamental rule of public policy (Areios Pagos 953/2024; Areios Pagos 1514/2021).

According to Areios Pagos 2111/2017, infringement of equal treatment and the parties' right to be heard may fall within the grounds for setting aside under Article 34 of Law No. 2735/1999 where the arbitral procedure fails to comply with the parties' agreement or with mandatory statutory requirements. The same applies where the arbitral tribunal exceeds the limits of the authority conferred upon it by the arbitration agreement.

A declaration of non-existence constitutes a distinct legal mechanism. Article 901 of the Greek Code of Civil Procedure concerns domestic arbitration and should not be transposed indiscriminately to international commercial arbitration. Areios Pagos 533/2024 recognises that both an action for setting aside and an action seeking a declaration of non-existence require a legitimate interest, connected with a specific adverse effect suffered by the claimant. Areios Pagos 1650/2025 further confirms the distinction between a declaration of non-existence and the setting aside of an arbitral award.

Accordingly, before any ground of challenge can properly be examined, a prior question must be answered: **does the instrument in question constitute an arbitral award or an interim measure?** Without an affirmative answer to the former, an action for setting aside may lack a proper subject matter.

7. Conclusion

The preferable approach is to avoid any categorical proposition according to which an interim order is invariably immune from judicial challenge or, conversely, invariably constitutes an arbitral award. Its legal classification depends on the applicable law, the arbitration agreement, the rules of the relevant arbitral institution, the content of the instrument, its degree of finality and the legal effects it is intended to produce.

The analysis should therefore proceed in the following sequence: first, identification of the applicable legislative framework and the date on which the arbitration commenced; second, examination of the scope of the arbitral tribunal's authority; third, functional classification of the instrument; fourth, distinction between validity, binding effect and enforceability; and finally, identification of the appropriate mechanism of judicial review.

The central proposition may accordingly be formulated as follows: **the classification of an arbitral instrument cannot be determined solely by its form or designation. What is decisive is the substantive and procedural function performed by the instrument within the arbitral process and the legal effects which the applicable law attributes to it.** This approach preserves the autonomy and effectiveness of international commercial arbitration while ensuring that judicial review remains available through the legally appropriate mechanism.



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