




**Domicile of an Arbitral Award –  
What Does and What Does Not Influence It**

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## Domicile of an Arbitral Award – What Does and What Does Not Influence It

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The distinction between a domestic and a foreign arbitral award is important because it affects the recognition, enforcement, and legal remedies available under Serbian law. The domicile of the award is determined by the seat of arbitration and the law applied to the arbitral proceedings. However, in practice there can arise a confusion what influences the domicile of an arbitral award. Hence, it is just as important to examine the factors that do not determine it, as overlooking them can lead to misunderstandings, unfounded arguments, and even legally incorrect court decisions. This article will assess the issue of what does and what does not influence the domicile of an arbitral award.

In a recently rendered decision, the Serbian Commercial Court of Appeals provided rationale that the award made in arbitration proceedings conducted under the ICC Rules of Arbitration is a foreign arbitral award. The court determined that the application of the ICC Rules of Arbitration means that the award is foreign because foreign law was applied to the arbitral proceedings . Driven by concerns over the incorrect application of the law, this article examines the factors that determine the domicile of an arbitral award, as well as various factors that do not affect it but are sometimes wrongly believed to do so.

Domicile of an arbitral award determines its legal nationality, which in turn affects key aspects of its enforcement, challenge, and recognition. In the Republic of Serbia, a domestic arbitral award has the same effect as a final judgement of the domestic court . It is enforceable in accordance with the law regulating enforcement procedure. Only domestic arbitral awards can be subjected to the procedure for setting aside before the Serbian courts . Unlike domestic arbitral award, a foreign arbitral award gains the effect of a final judgement of the domestic court after being recognized by the competent court in the Republic of Serbia.

A domestic arbitral award is an award made in internal or international arbitration in the Republic of Serbia . A foreign arbitral award is an award made by an arbitral tribunal, the place of which is outside the Republic of Serbia, as well as an award made by an arbitral tribunal in the Republic of Serbia, if foreign law was applied to the arbitral proceedings .

Considering the cited provisions, there are two criteria that affect the domicile of an arbitral award:

- (i) Place (seat) of arbitration
- (ii) Law applied to the arbitral proceedings.

In most cases, the place of arbitration is defined in the arbitral agreement. If this is not the case, it will be determined by the arbitral tribunal or in accordance with the rules of the chosen institutional arbitration . If it is not determined in either of the described manners, it shall be considered that the place of arbitration is the place that is indicated in the award as the place of its rendering .

In respect to the law applied to the arbitral proceedings, in the majority of the cases this is the law of the place of arbitration. Nevertheless, the parties have an option to envisage that the law applied to the arbitral proceedings will not be the law of the place of arbitration.

The easiest way to illustrate how the arbitral award's domicile is determined in accordance with the above described criteria is through an example. If the arbitration agreement envisages that the place of arbitration will be in Belgrade and that the law applied to the arbitral proceedings will be Serbian law, the arbitral award will be considered domestic. If the arbitration agreement defines that the place of arbitration shall be in Belgrade and is silent about the law applicable to the arbitral proceedings, the law applied to the proceedings will be Serbian law. Hence, in this case the award will also be domestic. If the seat of arbitration is in Belgrade but the parties opted that the law applicable to the arbitral proceedings will be the law of another country, the arbitral award will be considered foreign.

To conclude, the place of arbitration and the law applied to the arbitral proceedings are the factors that influence whether an arbitral award will be considered domestic or foreign. However, it is equally important to discuss which factors do not influence the domicile of the award, as they can result in misunderstandings, unsubstantiated arguments and even court decisions that are contrary to the law.

One of the factors that may mislead that the arbitration is foreign, and not domestic, is the language of arbitration. Choosing a language other than Serbian—such as English or another widely spoken language—can often be more convenient, particularly in international commercial arbitration involving parties from different countries. When businesses from different countries engage in arbitration, they frequently select a language common to both parties to ensure efficient communication, avoid unnecessary translation costs, and accommodate participants who may not speak the local language. Despite the practical advantages of conducting arbitration in a language that is common to both parties, it has no bearing on whether the arbitral award is considered domestic or foreign.

Another factor that does not influence the domicile of an arbitral award is the institutional rules. One can wrongly conclude that opting to conduct arbitration before a foreign institution will result in a foreign arbitral award. Yet another erroneous assumption is that the rules of a foreign institution located outside of the Republic of Serbia are in fact a foreign law applied to the arbitral proceedings. Both assumptions are incorrect. Institutional arbitration rules play a crucial role in ensuring that arbitration proceedings are conducted efficiently, fairly, and in accordance with best practices. They provide a structured framework for resolving disputes, offering procedural clarity and administrative support.

Parties in a dispute often choose to conduct arbitration under the rules of a well-known institution, such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), Swiss Arbitration Centre (SCAI), German Arbitration Institute (DIS) or the Vienna International Arbitral Centre (VIAC). However, the institutional rules are regulations of private organizations, and not the state law applicable to the procedure. If the agreed seat of arbitration is in Serbia and the Serbian Arbitration Act is applied to the proceedings, the resulting award is domestic, even if the rules of a foreign arbitral institution govern the proceedings.

Another issue that does not affect the domicile of the arbitral award is whether the arbitration is internal or international. Internal arbitration is an arbitration without an international element and awards rendered in such disputes are always domestic awards. International arbitration is an arbitration having as its subject matter disputes arising out of international business relations. Arbitral award is international if the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states. Award is also international if one of the following places is situated outside the Republic of Serbia in which the parties have their places of business :

- (i) the place of arbitration, if determined in, or pursuant to, the arbitration agreement, or
- (ii) the place where a substantial part of the obligations of the business relationship is to be performed or the place with which the subject matter of the dispute is most closely connected.

In this respect, there is one issue which can affect the domicile of an international arbitral award, and that is place of arbitration. If the place of arbitration in international arbitration is outside of the Republic of Serbia, the award rendered in such dispute will be a foreign arbitral award. Finally, an award is international if the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country .

The material law applicable in a dispute also does not influence the domicile of the arbitral award. Same as the state courts, the arbitral tribunals will apply foreign law in disputes when such law is designated in the contract as applicable or determined pursuant to the Law on Resolving the Conflict of Laws with Regulations of Other Countries. However, the application of foreign substantive law does not affect the legal seat or domicile of the award.

The location of the hearings can also give rise to confusion regarding the nationality of an arbitral award. Hearings usually take place in the seat of arbitration. However, there is no obstacle to organize the hearing in a different place it would be more convenient for the participants. Also, in recent years, there has been a rise in the use of online hearings. If the hearings take place in a foreign country, one might assume that the award itself will be considered foreign.

Despite the hearings being held in a foreign location, the domicile of the award will still be tied to the seat of arbitration, not where the hearings took place.



Finally, the nationality of the arbitrators can sometimes lead to confusion about the domicile of an arbitral award. If a tribunal is composed entirely or primarily of arbitrators from foreign countries, one might incorrectly assume that the award is foreign as well. This impression stems from the idea that the nationality of the decision-makers influences the character of the award, leading to a misconception that the award is bound to follow the legal norms and procedures of the arbitrators' home jurisdictions.

In conclusion, the domicile of an arbitral award is determined only by the place of arbitration and the law applied to the arbitral proceedings. Other factors, such as language of the arbitral proceedings, institutional rules, nationality of the arbitrators or the participants in the proceedings, or the substantial law applied in the proceedings do not influence the domicile of the award.

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