CENTRAL EUROPEAN UNIVERSITY

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN KYRGYZSTAN: COMPARATIVE ANALYSIS AND IMPACT OF RECENT LEGAL REFORMS

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ABSTRACT

This thesis explores the legal and institutional framework governing the recognition and enforcement of foreign arbitral awards in Kyrgyzstan. With the New York Convention serving as the cornerstone of international enforcement standards, the study assesses the extent to which Kyrgyz law aligns with its obligations, while also examining recent legislative reforms. The analysis combines doctrinal legal research with insights from comparative jurisdictions—including the United States, selected EU member states, Kazakhstan, and Uzbekistan—to highlight areas where Kyrgyzstan's enforcement practice diverges from established norms. In addition to identifying key legislative and procedural gaps, the thesis considers the broader implications for Kyrgyzstan's development as a reliable seat of arbitration and its attractiveness to foreign investors. Special attention is given to the country's evolving stance on the annulment of arbitral awards and the challenges posed by ambiguous definitions within domestic law. The research ultimately underscores the importance of aligning local practice with international standards to enhance legal predictability and investor confidence in Kyrgyzstan.

AUTHOR'S DECLARATION

I, the undersigned, **Daniel Maniiazov**, candidate for the LLM degree in Global Business Law and Regulation declare herewith that the present thesis titled "Recognition and Enforcement of Foreign Arbitral Awards in Kyrgyzstan: Comparative Analysis and Impact of Recent Legal Reforms" is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography.
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I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 16 June 2025

Daniel Maniiazov

TABLE OF ABBREVIATIONS

NYC	New York Convention
EU	European Union
U.S	United States
KR	Kyrgyz Republic
KZ	Republic of Kazakhstan
UZ	Republic of Uzbekistan
Art.	Article
UNCITRAL	The United Nations Commission on International Trade Law
ICA CCI KR	International Court of Arbitration of the Chamber of Commerce and Industry of the Kyrgyz Republic
ZPO	Zivilprozessordnung (Code of Civil Procedure)

INTRODUCTION

Arbitration has become one of the most preferred methods of resolving commercial disputes in both domestic and international contexts.[2] Its appeal lies in its flexibility, confidentiality, relative speed, and the expertise of arbitrators.[3] Most importantly, arbitration offers the potential for the resulting award to be enforced across national borders through international instruments such as the *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter "New York Convention" or "Convention"),* to which more than 170 countries are party.[4]

For countries with developing economies, such as Kyrgyzstan, arbitration plays a vital role in attracting foreign investment and facilitating cross-border trade.[5] Investors and multinational corporations often insist on arbitration clauses in contracts as a safeguard against uncertain or inefficient national court systems.[6] In this context, the ability of a legal system to recognize and enforce arbitral awards efficiently and reliably becomes a crucial factor in assessing its attractiveness for business.[7]

[2] Macfarlanes LLP, 'Arbitration: Global Overview' (Lexology, 4 March 2024) https://www.lexology.com/library/detail.aspx?g=7eb49378-ab02-4c52-a843-08598cbe4ef5 accessed 1 April 2025. .

[3] Nigel Blackaby, Constantine Partasides and Alan Redfern, 'Introduction' in *Redfern and Hunter on International Arbitration* (7th edn, Oxford Academic 2022) para 1.01 https://doi.org/10.1093/law/9780192869906.003.0001 accessed 1 April 2025. .

[4] United Nations, 'Status of Treaties: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (United Nations Treaty Collection) https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXII-1&chapter=22 accessed 1 April 2025.

[5] 'Kyrgyz Authorities Consider Establishing Independent Arbitration Based on English Law' (translated from Russian) *Economist.kg* (12 March 2025) https://economist.kg/vlast/2025/03/12/vlasti-kyrghyzstana-rassmatrivaiut-vozmozhnost-sozdaniia-niezavisimogho-arbitrazha-po-normam-anghliiskogho-prava/ accessed 1 April 2025.

[6] Redfern and Hunter, *Introduction* (n 3) para 1.23.

[7] Redfern and Hunter, Recognition and Enforcement of Arbitral Awards (n 3) para 11.05.

Kyrgyzstan ratified the New York Convention in 1997, formally committing to recognize and enforce foreign arbitral awards.[8] The country has also adopted national legislation, including the Law on Arbitration Courts of the Kyrgyz Republic (hereinafter "Arbitration Law of KR")[9], to regulate the functioning of arbitration within its borders.[10]

The aim of this thesis is to provide a structured and critical analysis of the legal framework governing the recognition and enforcement of arbitral foreign awards in the Kyrgyzstan. The thesis explores both international obligations and domestic legislation, with a particular focus on the extent to which Kyrgyztan's law aligns with the New York Convention. It also examines recent legislative developments—specifically, the introduction of an annulment mechanism in 2025—and evaluates their impact on the broader landscape of arbitration in Kyrgyzstan.

The first chapter examines the recognition and enforcement of foreign arbitral awards under Kyrgyzstan's legislation, assessing the extent to which it aligns with the standards and principles established under the New York Convention. It analyzes the grounds on which enforcement may be refused, as well as other key aspects such as the nationality of the award and documentary requirements. The chapter also draws on comparative insights from selected jurisdictions, including the United States, the European Union, Kazakhstan, and Uzbekistan, to evaluate whether Kyrgyzstan's framework follows international practice or presents inconsistencies that may hinder enforcement.

The second chapter focuses on the legislative reform adopted in April–May 2025, whereby Kyrgyzstan introduced, for the first time since independence, a procedure for the annulment of

[8] United Nations, *'Status of Treaties: Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (United Nations Treaty Collection) https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXII-1&chapter=22 accessed 2 April 2025.
[9] Law of the Kyrgyz Republic on Arbitration Courts, No 135, adopted 30 July 2002, as amended through 26 July 2024, Official publication of the Ministry of Justice of the Kyrgyz Republic https://cbd.minjust.gov.kg/4-1040/edition/1241009/ru accessed 2 April 2025.
[10] Chamber of Commerce and Industry of the Kyrgyz Republic, *'About the Kyrgyz Republic'* (translated from Russian) https://cci.kg/o-kyrgyzskojj-respublike.html accessed 2 April 2025.

arbitral awards. This reform marks a significant departure from the country's prior arbitration model, which did not allow for setting aside awards rendered by domestic arbitral tribunals. While the new mechanism aligns—at least nominally—with international standards such as Article 34 of the UNCITRAL Model Law[11] (hereinafter "Model Law") the final adopted version restricts access to annulment proceedings solely to state agencies. The chapter evaluates the rationale and implications of this limitation, considers its potential incompatibility with the principle of procedural equality, and explores how this reform might affect the enforceability of arbitral awards rendered in Kyrgyzstan, abroad. Additionally, the chapter addresses structural and legislative coordination problems raised by this reform.

Overall, this thesis aims to offer a clear and structured overview of how foreign arbitral awards are treated under Kyrgyzstan's law. By examining both the current enforcement framework and the recent introduction of an annulment procedure, the study seeks to identify existing gaps and areas for improvement. The analysis is intended to be useful for students, practitioners, and anyone interested in the development of arbitration law in Kyrgyzstan.

[11] UNCITRAL Secretariat, UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006 (United Nations 2008) https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf accessed 1 April 2025., art.34

1 CHAPTER I. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN KYRGYZSTAN: GAPS, CHALLENGES, AND ALIGNMENT WITH THE NEW YORK CONVENTION

The enforcement of arbitral awards is one of the most legally significant phases of the arbitral process, particularly in cross-border disputes where enforcement is often sought in a jurisdiction other than the seat of arbitration.[12] While arbitral tribunals themselves lack coercive power, the authority to recognize and enforce their awards rests with national courts.[13] This reliance on domestic legal systems introduces a layer of complexity, particularly when awards must be enforced internationally.[14] To address this challenge, a unified legal framework has developed through international treaties, the most prominent of which is the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly referred to as the New York Convention.[15]

Given that Kyrgyzstan is a contracting state to the New York Convention, its domestic legal framework must be interpreted and applied in a manner consistent with the aforementioned convention's core obligations. The Convention sets out minimum international standards that member states are expected to incorporate into their national legislation, particularly concerning the recognition and enforcement of foreign arbitral awards and the limited grounds for refusal.[16] Since Convention does not operate automatically in many legal systems, including Kyrgyzstan, states must implement corresponding domestic laws to give full effect to its provisions.[17] Additionally, when a state ratifies an international convention, it is generally required to bring

[12] Redfern and Hunter, Recognition and Enforcement of Arbitral Awards (n 3) para 11.01.
[13]Ibid
[14]Ibid
[15]Ibid
[16] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) https://www.newyorkconvention.org/english accessed 2 April 2025. arts I–V.
[17]Emmanuel Gaillard and George A Bermann (eds), *Guide to the New York Convention* (International Council for Commercial Arbitration 2017) 6–7.

its domestic legislation into conformity with the obligations set forth in that treaty.[18] Analyzing Kyrgyztan's law without considering the Convention may result in a fragmented or misleading understanding of how enforcement mechanisms function in practice. Moreover, the Convention leaves room for national courts to interpret key concepts—such as "public policy" or "competent authority"—thus making the relationship between international and national norms critical to legal certainty and consistency.[19] Therefore, a thorough analysis of Kyrgyz enforcement rules in light of the Convention is essential to determine whether the country's legal regime facilitates or hinders the international enforcement of arbitral awards.

This chapter focuses primarily on the legal framework of Kyrgyzstan governing the recognition and enforcement of foreign arbitral awards, while analyzing its alignment with the key provisions and standards established by the New York Convention. Particular attention is given to how the Convention's core elements—such as its scope procedural requirements, and the limited grounds for refusal—are incorporated into and applied under Kyrgyzstan's law. In addition, the chapter draws comparative insights from other jurisdictions where arbitration law and practice are more developed, in order to highlight interpretive divergences and assess the degree to which Kyrgyzstan's approach is consistent with international standards.

1.1 Scope of Application of the New York Convention

As suggested by its title, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards applies to arbitral awards rendered outside the jurisdiction where

[18] Anthony Aust, Modern Treaty Law and Practice (Cambridge University Press 2000) 187..
[19] Albert Jan van den Berg, 'Interpretation of the 1958 New York Convention by National Courts' in Emmanuel Gaillard and Domenico Di Pietro (eds), *Enforcement of Arbitration Agreements and International Arbitral Awards: The New York Convention in Practice* (Cameron May 2008) 143–145.

recognition and enforcement are sought, as well as to awards that are not regarded as domestic under the law of that state. This scope is defined in Article I of the Convention.[20]

Convention's applicability is not absolute and may be influenced by two optional declarations that states are permitted to make. According to Article I(3) of the New York Convention, a state may choose to apply the Convention only to disputes that arise from legal relationships—whether contractual or otherwise—that are classified as commercial under that state's domestic law.[21] Furthermore, a state may elect to apply the Convention exclusively to arbitral awards issued within the territory of another contracting state. This latter limitation, known as the reciprocity reservation, has lost in significance over time due to the Convention's widespread global adoption.[22] Kyrgyzstan made both the commercial reservation and the reciprocity reservation upon ratifying the Convention.[23]

1.2 Nationality of Awards: Implications for Enforcement

Article I(1) of New York Convention provides:

"This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought."[24]

[20] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.(n 16) Article I(1).
[21] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.(n 16) Article I(3)
[22] Franco Ferrari, Friedrich Rosenfeld and Charles Kotuby, 'Chapter 1: The New York Convention as an Instrument of Uniform Law' in Recognition and Enforcement of Foreign Arbitral Awards (Edward Elgar Publishing 2023) 4 https://doi.org/10.4337/9781035302079.00004 accessed 3 April 2025.
[23] Ministry of Justice of the Kyrgyz Republic, 'Law of the Kyrgyz Republic on Ratification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958' (No 178, 10 July 1995) https://cbd.minjust.gov.kg/17586/edition/297643/ru accessed 3 April 2025.
[24] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (n 16) art. I(1).

The initial wording of Article I of the New York Convention identifies foreign arbitral awards as those rendered outside the jurisdiction where recognition and enforcement are sought.[25] This territorial approach appears more straightforward than the alternative notion of awards that are "not considered as domestic," which introduces interpretive ambiguity. Kyrgyzstan's national legislation does not provide a definition of 'non-domestic' awards, nor does it offer any guidance on the concept of the nationality of an arbitral award, prompting the need to explore how these concepts are addressed in other jurisdictions and to analyze the resulting gaps in Kyrgyzstan's law.

The legal framework of the Kyrgyzstan governing arbitration and the recognition and enforcement of arbitral awards is primarily contained in two legislative acts: the Arbitration Law of KR, adopted on 30 July 2002,[26] and the Civil Procedural Code of the Kyrgyz Republic (hereinafter, "Procedural Code of KR"), adopted on 25 January 2017 (new edition).[27]

Neither of these legal instruments provides a definition or classification of what constitutes a non-domestic arbitral award, nor do they offer a conceptual framework for determining the nationality of arbitral awards. Notably, the Arbitration Law of KR is silent on the recognition and enforcement of foreign arbitral awards and appears to apply solely to domestic arbitral institutions, particularly the International court of Arbitration in affiliation with the Chamber of Commerce and Industry of the Kyrgyz Republic (hereinafter, "Arbitration Court of the KR").[28] This omission raises doubts about its applicability to awards issued by foreign or international arbitral tribunals.

[25] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (n 16) art. I(1)
[26] Arbitration Law of KR (n 9).
[27] Civil Procedural Code of the Kyrgyz Republic, No 14, adopted 25 January 2017, as amended through 11 January 2025, Official publication of the Ministry of Justice of the Kyrgyz Republic https://cbd.minjust.gov.kg/3-29/edition/1261675/ru accessed 5 April 2025.
[28] International Arbitration Court at the Chamber of Commerce and Industry of the Kyrgyz Republic, arbitr.kg https://www.arbitr.kg/index.php?act=view_material&id=4 accessed 5 April 2025.

A limited reference to the territorial criterion of arbitral awards can be found in the titles of Chapters 46 and 48 of the Procedural Code of KR. Chapter 46 is entitled "*Proceedings on the Issuance of a Writ of Execution for the Enforcement of Decisions of Arbitration Courts,*" while Chapter 48 is titled "*Proceedings on Recognition and Enforcement of Judgments of Foreign Courts and Foreign (International) Arbitration Awards.*"[29]

Article 418 of Chapter 46 provides that the "…issuance of a writ of execution for the enforcement of decisions rendered by arbitration courts within the territory of the Kyrgyz Republic is conducted in accordance with general civil procedure rules, subject to the specific provisions of that chapter.".[30] In contrast to Chapter 48, Chapter 46 makes no reference to international treaties to which the Kyrgyz Republic is a party.[31] The phrase "decisions of arbitration courts adopted on the territory of the Kyrgyz Republic" suggests that all awards rendered within national territory are considered domestic. Thus, it may be interpreted that Kyrgyz law determines the nationality of awards exclusively by the seat of arbitration.

While at first glance the separation of Chapters 46 and 48 in the Procedural Code may suggest a coherent territorial classification, practical application has revealed significant issues. In preparation for this thesis, a phone interview was conducted with N. Alenkina, a prominent arbitrator in the Kyrgyz Republic and Central Asia. Her insights will be referenced throughout the thesis. She described an instance where a Kyrgyzstan's court mistakenly applied Chapter 48 (concerning foreign arbitral awards) to enforce an award rendered by a local arbitral tribunal involving Kyrgyz parties and subject matter.[32] According to her, such confusion stems from two factors. First is the lack of a precise definition of the nationality of arbitral awards.[33] A

[29] Procedural Code of *KR* (n 27) Chapters 46 and 48.
[30] ibid art.418
[31] ibid
[32] Interview with Natalia Alenkina, Arbitrator at the International Arbitration Court at the Chamber of Commerce and Industry of the Kyrgyz Republic and Associate Professor at the American University of Central Asia. Conducted on 8 Apr. 2025.
[33] ibid

second contributing factor may be the nomenclature of the Arbitration Court of the KR, which includes the term "*International Court.*" Simultaneously, Chapter 48 of the Civil Procedural Code, which governs the recognition and enforcement of foreign awards, refers to "*Foreign (International) Arbitration Awards".* A third contributing factor is the limited awareness of arbitration law and arbitral institutions among judges in Kyrgyzstan, particularly in the area of recognition and enforcement of foreign and domestic arbitral awards, compounded by a general lack of judicial practice in this field.[34] In the absence of a statutory definition of "international arbitration" in the national legislation, this parallel terminology may lead domestic courts to misapply the relevant provisions. This misapplication highlights a broader concern regarding the level of awareness and understanding of arbitration among local judges.[35] Furthermore, in the course of research conducted for this thesis, a review of the official website of the Supreme Court of the Kyrgyz Republic — where resolutions of the Plenum addressing various aspects of Kyrgyz law and judicial practice are published — revealed that no interpretative guidance or judicial clarification has been issued regarding the nationality of arbitral awards.[36]

The absence of a clear legal definition or interpretative guidance concerning the nationality of arbitral awards in Kyrgyzstan may arguably create challenges for the enforceability of such awards. This ambiguity becomes particularly significant given the procedural differences in how courts treat domestic and foreign arbitral awards. Under Kyrgyz law, arbitral awards rendered abroad may be refused recognition and enforcement on the basis of public policy, as provided in Chapter 48 of the Procedural Code.[37] In contrast, domestic arbitral awards are subject to a narrower set of grounds for refusal, as outlined in Article 421 of the Code, which does not include public policy as a basis. In a situation described by N. Alenkina, a court in

[34] Interview with N.Alenkina.(n 32)
35 ibid
36 Supreme Court of the Kyrgyz Republic, 'Plenum Resolutions' https://sot.kg/acts_cat/postanovleniya-plenuma/ accessed 8 April 2025.
37Procedural Code of KR (n 27) art.439

Kyrgyzstan mistakenly applied the procedural rules for foreign awards to a domestic arbitral award, raising the risk that the court could have improperly applied the public policy exception, which is available only in the enforcement of foreign arbitral awards. Without a consistent framework for distinguishing domestic and foreign awards, courts may risk procedural misclassification and exceed their statutory limits, ultimately weakening the credibility of Kyrgyzstan as a jurisdiction that reliably respects arbitral outcomes.[38]

From a comparative perspective, other jurisdictions offer more developed understandings. An example of jurisdiction that explicitly defines a nationality of an award can be Slovenia, Slovenian arbitration law offers a useful contrast. It defines the nationality of arbitral awards based on their seat. [39] According to Article 1(1) of Slovenia's Arbitration Act, a domestic award is one rendered by an arbitration seated in Slovenia, while a foreign award is one rendered in another jurisdiction.[40] The exact text of latter Article is : "*(1) This Law applies to arbitrations that have their seat in the Republic of Slovenia irrespective of whether the parties to the proceedings are domestic or foreign persons (hereinafter: domestic arbitration).*"[41] Moreover, the Slovenian Arbitration Act provides a clear structural distinction between the recognition and enforcement of domestic and foreign arbitral awards.[42] This is achieved through two separate provisions: Article 41, which governs the recognition and enforcement of domestic

[38] Elijah Putilin, 'A "Golden Age" of International Commercial Arbitration in Central Asia: Quo Vadis, Kyrgyzstan?' (2022) 298 Arbitration at the Turning Point: Traditions, Technologies, Trends. Annual Collection of Articles of the International Court of Arbitration at the Chamber of Commerce and Industry of the Kyrgyz Republic https://www.arbitr.kg/documents/materials/154.pdf accessed 23 May 2025.
Note: This article discusses the CIArb London Centenary Principles, one of which is "Enforceability." Adherence to international treaties and recognition/enforcement of arbitral awards is considered a cornerstone of a jurisdiction's status as a "safe seat" in international arbitration.
[39] Aleš Galič, 'Recognition and Enforcement of Foreign Arbitral Awards in Slovenia' in Arbitration at the Turning Point: Traditions, Technologies, Trends. Annual Collection of Articles of the International Court of Arbitration at the Chamber of Commerce and Industry of the Kyrgyz Republic (Turar 2022) 298 https://www.arbitr.kg/documents/materials/156.pdf accessed 5 April 2025.
[40] ibid
[41] *Arbitration Act,* Official Gazette of the Republic of Slovenia, no 45/2008, art 1(1) https://www.sloarbitration.eu/Portals/0/Arbitrazno-pravo/Law%20on%20Arbitration%20of%20Slovenia.pdf accessed 5 April 2025.
[42] Ibid, art. 41–42.

awards, and Article 42, which specifically regulates the recognition and enforcement of foreign arbitral awards.[43] This legislative approach enhances legal clarity and reduces the likelihood of judicial misinterpretation in matters related to the nationality of arbitral awards. Unlike Slovenia, however, the Kyrgyz legal system does not explicitly codify this distinction, leaving it subject to judicial interpretation.

Another example could be a French jurisdiction. Historically, at the time of the adoption of the New York Convention, France subscribed to the view that the nationality of an arbitral award could be determined based on the procedural law governing the arbitration, rather than exclusively on the seat of arbitration.[44] Under this interpretation, an award rendered pursuant to English procedural rules could be regarded as an English award, even if the arbitral tribunal was seated in Switzerland. However, contemporary French law has moved away from this approach. Article 1492 of the *Nouveau Code de Procédure Civile* now provides that "an arbitration is international when it involves the interests of international trade." shifting the focus to the commercial nature of the dispute. [45]

The United States offers another important interpretation. Hans Bagner, in his commentary on Article I(1) of the New York Convention, refers to the decision of the United States Court of Appeals for the Second Circuit in *Bergesen v. Joseph Muller Corporation* as an important illustration of the interpretation of the term "non-domestic award.". [46] The court concluded that an arbitral award rendered in New York under New York law, but involving exclusively foreign parties—namely, a Norwegian and a Swiss entity—could be classified as a non-domestic award. This classification applies both under the terms of the New York Convention and within

[43]Arbitration Act of Republic of Slovenia (n 41)
[44] Markus Petsche, The Growing Autonomy of International Commercial Arbitration (2005) p.102..
[45]ibid, p. 139. Referring to Article 1492 of the Nouveau Code de Procédure Civile (France).
[46]Hans Bagner, 'Article I' in Herbert Kronke and others (eds), Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention (Kluwer Law International 2010) 24, citing Bergesen v Joseph Muller Corporation 710 F.2d 928 (2d Cir 1983).).

the framework of Chapter 2 of the United States Federal Arbitration Act, which incorporates the Convention into domestic law.[47]

In this case, the US Court of Appeals adopted standard: "[A]wards 'not considered as domestic' denotes awards which are subject to the Convention not because made abroad, but because made within the legal framework of another country, e.g., pronounced in accordance with a foreign law or involving parties domiciled or having their principal place of business outside the enforcing jurisdiction."[48] The *Bergesen* ruling was welcomed by several U.S. legal scholars, as it confirmed that American courts are inclined to adopt an expansive interpretation of what qualifies as a foreign arbitral award under the New York Convention.[49]

In conclusion, the absence of a statutory definition of "nationality of awards" in Kyrgyzstan creates substantial legal uncertainty and opens the door to judicial misclassification of arbitral decisions. This gap not only contradicts the flexible and inclusive interpretation endorsed by jurisdictions such as the United States and France, but may also undermine Kyrgyzstan's compliance with its obligations under the New York Convention. According to principles of international law, when a state fails to fulfill its commitments under a treaty, it is deemed to have violated its obligations toward the other treaty participants, thereby triggering potential issues of international responsibility for that breach.[50] Comparative legal models, including Slovenia's clear seat-based approach and the expansive U.S. understanding of the "non-domestic" concept, offer valuable guidance. To align its practice with international standards and promote legal certainty, Kyrgyzstan should consider legislative clarification or judicial guidance on the criteria for determining the nationality of arbitral awards.

[47]Hans Bagner, (n 46) p.24
[48] Ibid p. 24, citing *Bergesen v. Joseph Muller Corp.*
[49] Ibid p. 24.
[50] Anthony Aust, 'Pacta Sunt Servanda' (Max Planck Encyclopedia of Public International Law, February 2007) para 12 http://opil.ouplaw.com accessed 23 May 2025.

1.3 Documentary Requirements for Recognition and Enforcement

Article IV(1) of the NYC states :

"1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof."[51]

From this point onward, the analysis of the compatibility of the Kyrgyz Republic's legislation with the New York Convention will focus on Chapter 48 of the Civil Procedural Code of the Kyrgyz Republic. Article 438 of the Code sets forth requirements that closely mirror those established in the New York Convention: the party seeking enforcement must submit either the duly certified original arbitral award or a duly certified copy thereof, along with the original arbitration agreement or a duly certified copy.[52] While prima facie this provision appears consistent with international standards, arbitration friendly jurisdictions often apply these formal requirements with greater flexibility due to the reason that these requirements often cause difficulties for parties seeking an enforcement.[53]

For instance, German legislation imposes significantly less stringent requirements in this regard. Pursuant to Section 1064 of the Zivilprozessordnung (ZPO), a party seeking enforcement is required to submit only the original arbitral award or a certified copy thereof.[54]There is no requirement to provide a duly certified original award or the original

[51] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (n 16) art. IV(1).
[52] Procedural Code of KR (n 27) art.438
[53] Aleš Galič, "Recognition and Enforcement of Foreign Arbitral Awards in Slovenia," (n 39) The author notes that "it is a well-known fact that these requirements cause difficulties in practice."
[54] Ihab Amro, Recognition and Enforcement of Foreign Arbitral Awards in Theory and in Practice: A Comparative Study in Common Law and Civil Law Countries (Cambridge Scholars Publishing 2014) 111. The author refers to Section 1064 of the Zivilprozessordnung (ZPO).

arbitration agreement.[55] This position was affirmed by the Hamm Court of Appeal in its decision of 27 September 2007, where the court accepted a simple copy of the arbitration agreement and granted enforcement of the arbitral award in favor of the claimant, stating: "The formal conditions for a request for enforcement are met. The claimant supplied the authenticated original arbitral award of 28 May 2002 and interim arbitral award of 27 August 1999, as well as certified translations thereof, only a simple copy of the document containing the arbitration clause was first supplied by the defendant. However, that suffices, since the stricter requirements of Art. IV(1) New York Convention are superseded by the provisions of Sect. 1064 ZPO pursuant to Art. VII Convention".[56] A similarly less stringent approach is adopted in jurisdictions such as Austria and Slovenia. Under both the Austrian ZPO and the Slovenian Arbitration Act, it is sufficient for the party requesting recognition to submit either the original arbitral award or a copy thereof.[57] The original or a certified copy of the arbitration agreement is only required upon the court's request. While this more flexible approach may appear characteristic of distant EU jurisdictions, it is also reflected in the neighboring state of Uzbekistan. According to Uzbekistan's Law on International Commercial Arbitration, the party is required to submit a translated version of the original award or the arbitration agreement, and, if unavailable, a duly certified copy.[58] Notably, there is no requirement for certification if the originals are submitted.[59]

The fact that Kyrgyzstan's legislation in this respect aligns with the formal requirements set out in the New York Convention is undoubtedly a positive development. It shows that, although not fully comprehensive, the drafters of Kyrgyzstan's law considered the country's international

[55] Ihab Amro Recognition and Enforcement (n 54) p.111.
[56] Ihab Amro, *Recognition and Enforcement* (n 54) p.111. The author cites http://www.dis-arb.de, as reported in (2006) XXXI YB Comm Arb 685 (Germany, no 90, sub 1–3).
[57] "Aleš Galič, "Recognition and Enforcement of Foreign Arbitral Awards in Slovenia," (n 39) p. 298. The author refers to Article 42(4) of the Slovenian Arbitration Act and Section 614(2) of the Austrian ZPO.
[58] *Law of the Republic of Uzbekistan "On International Commercial Arbitration,"* Article 51. Available at: https://lex.uz/docs/5294087#5297006. Accessed 11 April 2025.
[59] ibid

obligations when formulating the relevant provisions. This partial conformity indicates a good effort toward harmonization with international standards. However, as illustrated by the aforementioned examples of jurisdictions such as Germany, Austria, Slovenia, and Uzbekistan, many states have adopted a more facilitative approach by imposing less stringent documentary requirements on parties seeking recognition and enforcement of foreign arbitral awards. In light of these comparative practices, it would be a prudent and forward-looking step for the Kyrgyzstan to consider reforming its procedural framework to ease the evidentiary burden on claimants. Such reform would not only enhance access to justice for foreign award creditors but also strengthen Kyrgyzstan's credibility as an arbitration-friendly jurisdiction committed to the effective implementation of the New York Convention.

1.4 Article V. Grounds for Refusal under NYC

The New York Convention places a binding pro-enforcement obligation on its Contracting States, requiring them to recognize and enforce foreign arbitral awards rendered in one Contracting State within the territory of another.[60] Consequently, the reasons for refusing enforcement are strictly limited to those expressly outlined in Article V of the Convention.[61] National courts generally acknowledge the exhaustive nature of these refusal grounds and tend to apply them restrictively, thereby honoring their obligation to facilitate enforcement.[62] The principal grounds for refusal under Article V(1) and (2) can be summarized as follows:

1. The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which

[60] Ihab Amro Recognition and Enforcement (n 54) p. 132.
[61] UNCITRAL Secretariat, Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (United Nations 2016) 124 https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2016_guide_on_the_convention.pdf accessed 20 April 2025..
[62] Ihab Amro Recognition and Enforcement (n 54) p. 132.

the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or.[63] *(Article V(1)(a))*

2. The party against whom the award is invoked was not properly notified of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present their case.[64] (*Article V(1)(b)*)
3. The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or.[65] (*Article V(1)(c)*)
4. The composition of the tribunal or the arbitral procedure was not in accordance with the parties' agreement or, failing such agreement, with the law of the country where the arbitration took place.[66] (*Article V(1)(d)*)
5. The award has not yet become binding on the parties or has been annulled or suspended by a competent authority of the country where it was made.[67] (*Article V(1)(e)*)

Alternatively, the competent court may, on its own initiative, refuse recognition and enforcement if it determines that:

1. The subject matter of the dispute is not capable of settlement by arbitration under the law of the country where enforcement is sought.[68] (*Article V(2)(a)*)

[63] New York Convention (n 16) art. V(1(a)).
[64] ibid. V(1(b)).
[65] ibid. V(1(c)).
[66] ibid. V(1(d)).
[67] ibid. V(1(e)).
[68] ibid. V(2(a)).

2. Enforcement of the award would be contrary to the public policy of the country where enforcement is sought.[69] (*Article V(2)(b)*)

1.5 Limits on Judicial Discretion to Refuse Enforcement

Under the discretionary language of Article V of the New York Convention, courts have the authority to deny recognition and enforcement of arbitral awards only if one of the specific grounds enumerated in that provision is established.[70] Importantly, courts are precluded from refusing enforcement based on reasons outside those expressly stated in Article V. This restrictive approach has been embraced by both common law and civil law systems.[71]

For instance, in the United States, the case of *Liberty Re (Bermuda) Ltd. v. Transamerica Occidental Life Insurance Co*. illustrates this position. [72] The U.S. District Court for the Southern District of New York dismissed the respondent's objections and ordered the enforcement of the arbitral award, emphasizing that under the New York Convention, a court must recognize the award unless one of the limited grounds for refusal under Article V is proven.[73]

The Procedural Code of KR provides two distinct procedural frameworks for the recognition and enforcement of arbitral awards: one for awards rendered within the territory of Kyrgyzstan and another for foreign arbitral awards.[74] In the case of foreign awards, the court may refuse recognition and enforcement *ex officio* if the award is contrary to the public policy of the Kyrgyz

[69] New York Convention (n 16) art. V(2(b)).
[70] Ihab Amro Recognition and Enforcement (n 54) p. 132
[71]ibid.
[72] Liberty Re (Bermuda) Ltd. v. Transamerica Occidental Life Insurance Co., as cited in Ihab Amro, Recognition and Enforcement (n 54) p. 132.
[73] Ibid
[74] Procedural Code KR (n 27) art.439 and art.421

Republic.[75] Additional grounds—such as the award not being binding, or having been annulled or suspended by a competent authority in the country where it was made or under whose law it was rendered—must be raised and proven by the party opposing enforcement.[76] These grounds for refusal, however, are not provided for awards rendered within the territory of Kyrgyzstan.

While analyzing the aforementioned provisions, particular attention should be paid to Part 1 of Article 421 of the Procedural Code of KR, which governs the grounds for refusal in the recognition and enforcement of domestic arbitral awards. The article states: "*The court refuses to issue a writ of execution for the enforcement of an arbitration court decision only in the cases provided for in this article.*"[77] This phrasing explicitly limits judicial discretion, permitting refusal solely on the grounds enumerated within the article. It appears to be consistent with the restrictive approach embodied in Article V of the New York Convention, but this consistency relates only to domestic awards, so it is proper to examine how this issue is addressed in the regulation of foreign awards.

A point of concern for a party seeking to enforce a foreign arbitral award in Kyrgyzstan is the absence of a similarly restrictive provision in Article 439 of the Procedural Code of KR, which governs the recognition and enforcement of foreign awards.[78] In contrast to Article 421,which explicitly limits the grounds for refusal to those enumerated within the provision for domestic awards—Article 439 lacks such limiting language.[79] Notably, the article states: "*Recognition and enforcement of a foreign (international) arbitration award may be refused at the request of the party against whom it is directed, if that party submits evidence to the court in which recognition and enforcement are sought that: ...*"[80] This wording suggests that no formal

[75]Procedural Code KR (n 27) art.439.
[76]Ibid
[77] Ibid, art.421
[78] Ibid, art 439
[79] Ibid
[80] Ibid

limitation is imposed on the court's discretion, potentially creating ambiguity regarding the scope of permissible grounds for refusal.

A comparative look at the procedure in the neighboring jurisdiction of Uzbekistan reveals a legislative approach more closely aligned with the objectives of Article V of the New York Convention**.** Article 51 of the Law on International Arbitration of Uzbekistan provides that "*an arbitration award, regardless of the country in which it was made, is recognized as binding and, upon filing a written application with the court, is enforced taking into account the provisions of this article and Article 52 of this Law.*"[81] Article 52 further outlines the grounds for refusal, and its wording explicitly states: "*Recognition or enforcement of an arbitral award, regardless of the country in which it was made, may be refused* ***only in the following cases****:…*".[82] This formulation suggests a clear legislative intent to limit judicial discretion strictly to the grounds enumerated in the law, thus reinforcing legal certainty and consistency with the restrictive grounds for refusal stipulated under Article V of the New York Convention.

Although Article 439 of the Civil Procedural Code of the Kyrgyz Republic does not explicitly limit the grounds for refusing recognition and enforcement of foreign arbitral awards to those listed therein[83]—unlike Article 421, which expressly confines judicial discretion in relation to domestic awards[84]—the principle of legality under Kyrgyz constitutional and procedural law prevents courts from relying on grounds not prescribed by law.[85] In theory, this should ensure that courts only apply the grounds provided within the article itself or in international treaties. However, for the sake of greater legal certainty and to minimize risks of inconsistent judicial interpretation, it would be preferable for Article 438 to incorporate an explicit clause—similar

[81]International Commercial Arbitration Law of UZ (n 58) Article 51.
[82] Ibid, art.52
[83] Civil Procedural Code of KR (n 27) art.439
[84] Ibid, art.421
[85] Ibid, art.15.1 states: The court is obliged to resolve civil cases on the basis of the Constitution, laws, other normative legal acts of the Kyrgyz Republic adopted in accordance with them and international treaties to which the Kyrgyz Republic is a party that have entered into force in accordance with the procedure established by law.

to that found in Article 421—clarifying that recognition and enforcement may be refused **only** on the grounds set forth therein. Additionally, the Model Law on International Commercial Arbitration likewise adopts restrictive wording by providing that recognition and enforcement of arbitral awards may be refused **only** on the grounds expressly listed therein.[86] The Model Law is widely regarded as one of the most authoritative instruments in the field of international arbitration and serves as a standard for harmonizing national arbitration laws.[87] This would ensure greater alignment with the New York Convention and enhance legal predictability and the uniform application of the Convention.

1.6 Capacity of Parties and Validity of the Arbitration Agreement

Article 439 part 1 (1) of Procedural Code of Kyrgyzstan states: " the parties to the arbitration agreement were in any way incapacitated by the law applicable to them, or this agreement was invalid by the law to which the parties subordinated this agreement, and in the absence of such indication - by the law of the country where the decision was made.;"[88]

Although this ground provided by the aforementioned law is fully consistent with the wording of Article V(1)(a) of the New York Convention, the phrase 'incapacitated under the law applicable to them' may raise interpretative difficulties, particularly concerning the potential application of conflicting choice-of-law rules. This concern is one of the reasons why a similar formulation was excluded from the UNCITRAL Model Law.[89] For example, Uzbekistan's

[86] UNCITRAL Model Law (n 11) art.36(1).
[87] Markus Petsche, *The Growing Autonomy of International Commercial Arbitration* (n 44) p.29, citing Pieter Sanders, 'Unity and Diversity in the Adoption of the Model Law' (1995) 11 *Arbitration International* 1.
[88] *Procedural Code of KR* (n 25) art.439 (1)(1)
[89] New York Arbitration Convention, 'Travaux préparatoires: United Nations Conference on International Commercial Arbitration, Summary Records of Meetings of the Committee of the Whole' footnote 623 https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=621&opac_view=-1 accessed 21 April 2025.

legislation adopts the Model Law approach and omits the phrase "by law applicable to them."[90] According to the travaux préparatoires of the New York Convention, the expression "law applicable to them" was intended to be interpreted as the law governing a party's personal status.[91] Some commentators have proposed simplifying the applicable conflict-of-laws rules by adopting a single, uniform standard—namely, applying the law of the country where the award was made.[92]

Both the national provision and the Convention refer to the incapacity of the parties and the invalidity of the arbitration agreement as valid grounds for refusing recognition and enforcement of an arbitral award. This comparison demonstrates that, while Article 439(1)(1) of the Procedural Code of KR mirrors the wording of Article V(1)(a) of the New York Convention, its reference to the "law applicable" to a party's capacity may introduce interpretative uncertainties. Such ambiguity could result in divergent approaches by courts when determining the relevant conflict-of-law rules. Although the drafters of the New York Convention intended this phrase to refer to the personal status law of the party, this is not self-evident from the text alone. The UNCITRAL Model Law's deliberate omission of this phrase reflects a preference for greater clarity and legal certainty. In this regard, the Uzbek approach—by avoiding the contested wording—may reduce the risk of inconsistent application. Therefore, while the Kyrgyz provision is formally aligned with the Convention, its ambiguous language may benefit from legislative refinement to avoid misinterpretation in practice and ensure greater consistency with modern standards in international arbitration law.

[90] Civil Procedure Code of the Republic of Uzbekistan, *art 370(1) https://lex.uz/docs/3517334#3522310 accessed 8 June 2025.*
[91] "New York Arbitration Convention, 'Travaux préparatoires,(n 89) footnote 625.
[92] Ihab Amro, Recognition and Enforcement (n 54) p. 137

1.7 Articles V(1)(b)–(d): Lack of Judicial Practice in Kyrgyzstan

The wording of the grounds for refusal in Article 439 of the Procedural Code of KR is identical to that found in Article V of the New York Convention. Unfortunately, there are currently no publicly available legal commentaries or court decisions in Kyrgyzstan that interpret or apply these grounds in practice. One noteworthy observation, however, concerns the apparent recognition by Kyrgyz courts of the principle of severability of arbitral awards—particularly in relation to *ultra petita* and *infra petita* rulings.[93] This is evident from the provision governing the enforcement of foreign and domestic arbitral awards, which states: "If the instructions on the issues covered by the arbitration agreement can be separated from those that are not covered by such an agreement, then the part of the arbitration court's decision that contains instructions on the issues covered by the arbitration agreement may be enforced and the issuance of a writ of execution for the execution of this part may not be refused."[94] The phrase "may not be refused" ensures that the enforceability of a partially valid award is safeguarded, thereby promoting procedural fairness and the efficiency of arbitral proceedings. This legislative approach reflects an arbitration-friendly stance, consistent with international standards, and offers a degree of protection against the blanket refusal of enforcement due to partial defects in the award.

[93] Born, Gary B. *International Commercial Arbitration*, 3rd ed., Kluwer Law International, 2021, pp. 3307–3313. See discussion of *infra petita* and *ultra petita* objections and their relevance to enforcement proceedings under the New York Convention.
[94]Procedural Code of KR (n 27*)* art.421(4) and art.439(3)

1.8 Article V(1)(e) NYC: Refusal of Enforcement Due to Annulled or Suspended Awards

Article III of the New York Convention provides that each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon.[95] This principle aims to eliminate the requirement of double exequatur**,** thereby enabling the enforcement of arbitral awards in jurisdictions other than the seat of arbitration.[96] However, Article V(1)(e) permits the party against whom enforcement is sought to request a refusal if the award "has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made." The Procedural Code of KR adopts a similar formulation in its national provisions.[97]

This raises a key interpretive question: what is meant by an award "not yet binding"? Jurisprudence from other jurisdictions offers helpful guidance. For instance, in *Schlumberger Technology Corporation v. United States*, the U.S. District Court for the Southern District held that a foreign arbitral award need not be enforced until the period to appeal judicial confirmation of the award has expired in the enforcing jurisdiction.[98] The U.S. Court of Appeals for the Fifth Circuit affirmed this reasoning, stating that a "fixed right to receive does not exist with respect to a foreign arbitral award until the award is judicially confirmed and no longer subject to appeal in the jurisdiction in which enforcement is sought."[99]

[95] New York Convention (n 16) art. III
[96] Ihab Amro, *Recognition and Enforcement*, (n 54) p. 108
[97] *Procedural Code of KR* (n 27) art.439
[98] Ihab Amro, *Recognition and Enforcement* (n 54) p.107 referring to *Schlumberger Technology Corporation v United States.*
[99] ibid

Article V(1)(e) of the New York Convention also addresses the issue of arbitral awards that have been annulled at the seat of arbitration.[100] Courts in established arbitration jurisdictions have consistently upheld this provision. For instance, the German Court of Appeal for Rostock, in a decision dated 28 October 1999, refused to enforce an arbitral award even though it met the formal requirements of both the German Code of Civil Procedure (ZPO) and the New York Convention.[101] The court reasoned that an award is no longer binding when it has been set aside by a competent court or appellate arbitral tribunal, even by a temporarily enforceable decision. In that case, the arbitral award had been annulled by both the Moscow City Court and the Moscow Court of Appeal.[102] Consequently, the German court held that the award was no longer binding and thus could not be recognized or enforced in Germany.[103]

What is particularly notable about Kyrgyz arbitration legislation is the absence of a formal procedure for challenging arbitral awards. Article 28 of the Arbitration Law of Kyrgyzstan provides that "the decision of the arbitration court is final and is not subject to dispute on the merits of the dispute."[104] In essence, this means that where parties submit their disputes to an arbitral institution based in Kyrgyzstan—such as the International Court of Arbitration at the Chamber of Commerce and Industry of the Kyrgyz Republic—they are precluded from initiating any challenge against the award. As noted by N. Alenkina, such awards rendered on the territory of Kyrgyzstan effectively possess a *quasi-constitutional* status due to their unchallengeable nature.[105] Currently, the Kyrgyzstan's Parliament is reviewing a legislative bill aimed at introducing a challenge mechanism.[106] However, the draft law raises concerns

[100] New York Convention (n 16) art.V(1)(e)
[101] New York Arbitration Convention, 'Germany: Higher Regional Court Rostock, 28 October 1999' https://newyorkconvention1958.org/index.php?id=247&lvl=notice_display accessed 22 April 2025.
[102]Ibid
[103]Ibid
[104]Arbitration Law of KR (n 9) Art.28
[105] Interview with Natalia Alenkina (n 32)
[106] Draft Law of the Kyrgyz Republic 'On Amendments to Certain Legislative Acts of the Kyrgyz Republic in the Sphere of Arbitration', https://kenesh.kg/ru/bills/657425 accessed 22 April 2025.

regarding the substantive grounds proposed for annulment. A detailed analysis of the bill will be presented in Chapter II of this thesis.

Nearly a decade ago, the Kyrgyzstan itself benefitted from the availability of an annulment mechanism in a foreign jurisdiction. On 22 January 2015, Kyrgyzstan filed an appeal before the Paris Court of Appeal seeking to annul an arbitral award rendered by an ad hoc tribunal in favour of investor Valeri Belokon, which had ordered Kyrgyzstan to pay USD 15 million.[107] The appeal was successful: by its ruling of 21 February 2017, the Paris Court of Appeal set aside the arbitral award on the basis of serious procedural irregularities and violations of public policy.[108] Ironically, while Kyrgyzstan took advantage of annulment proceedings abroad, its own legal framework at the time offered no comparable mechanism for challenging domestic arbitral awards.

This legislative shift suggests that the Kyrgyz Republic is beginning to align its domestic arbitration framework with international best practices. Nonetheless, the delay in implementing such a mechanism raises questions about the consistency of Kyrgyzstan's commitment to the principles it has relied on abroad.

1.9 Arbitrability of disputes in Kyrgyzstan

In the context of Article V(2)(a) of the New York Convention, which permits refusal of recognition and enforcement of an arbitral award if "the subject matter of the difference is not

[107] *Valeri Belokon v Kyrgyz Republic*, Paris Court of Appeal, Judgment of 21 February 2017, available at https://jusmundi.com/en/document/decision/en-valeri-belokon-v-kyrgyz-republic-judgment-of-the-paris-court-of-appeal-tuesday-21st-february-2017 accessed 23 April 2025.
[108] Ibid

capable of settlement by arbitration under the law of that country,"[109] Kyrgyzstan presents a notably restrictive approach to arbitrability.

According to Article 45 of the Law on Arbitration of the Kyrgyzstan[110], the following disputes are explicitly non-arbitrable:

- Complaints against decisions and actions (or inaction) of judicial officers;
- Establishment of facts having legal significance;
- Restoration of rights on lost securities;
- Bankruptcy (insolvency) matters;
- Compensation for harm caused to life or health;
- Protection of honor, dignity, and business reputation;
- Inheritance disputes;
- Matters related to the procedure and conditions for entering into and dissolving marriage;
- Personal and non-property relations arising within the family between spouses, parents and children, and other family members;
- Disputes arising from adoption, guardianship, and foster care;
- Disputes concerning the registration of civil status acts;

[109] New York Convention (n 16) art. V(2)(a)
[110] Law on Arbitration of KR (n 9) Art.45

This comprehensive list underscores the Kyrgyz legal system's inclination to reserve certain sensitive or public interest matters for state courts, reflecting a cautious stance towards arbitration in areas deemed to involve significant personal or societal interests.[111]

In contrast, other jurisdictions adopt a more permissive approach to arbitrability. For instance, in France, while certain family law matters are traditionally considered non-arbitrable in domestic contexts, the scope for arbitration expands in international settings.[112] French law allows for arbitration in family disputes involving international trade interests, provided that the rights in question are of a patrimonial nature and the arbitration does not contravene public policy.[113] This reflects a more flexible approach, accommodating arbitration in areas where parties have significant autonomy and the disputes have cross-border implications.

The divergence between Kyrgyzstan and France illustrates the varying interpretations and applications of Article V(2)(a) of the New York Convention across jurisdictions. While Kyrgyzstan maintains a broad exclusion of certain subject matters from arbitration, France demonstrates a willingness to permit arbitration in complex areas under specific conditions, particularly in the international context. This comparison highlights the importance for parties engaging in international arbitration to understand the arbitrability standards of the jurisdictions involved, as these standards can significantly impact the enforceability of arbitral awards.

[111] International Arbitration Court at the Chamber of Commerce and Industry of the Kyrgyz Republic, Арбитрабельность споров в Кыргызской Республике: некоторые правовые аспекты (Arbitrability of Disputes in the Kyrgyz Republic: Some Legal Aspects) https://arbitr.kg/index.php?act=view_material&id=110 accessed 25 April 2025.
[112] Arbitrating Family Disputes in France, Kluwer Arbitration Blog, available at: https://arbitrationblog.kluwerarbitration.com/2023/12/13/arbitrating-family-disputes-in-france/ accessed 26 April 2025.
[113] Ibid

1.10 The Elusive Nature of 'Public Policy' in Article V(2)(b) of the NYC

The public policy exception is widely regarded as one of the most contentious grounds for refusing the enforcement of arbitral awards.[114] New York Convention does not provide a definition of "public policy," leaving its interpretation to the discretion of national courts. For instance, in the landmark case *Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier (RAKTA)*, the U.S. Court of Appeals for the Second Circuit held that enforcement may be denied only where it would violate the forum state's most basic notions of morality and justice.[115] Due to its vague and flexible nature, this exception has become a central point of divergence under the New York Convention, often resulting in inconsistent judicial interpretations and a lack of predictability in its practical application.[116]

The Procedural Code of KR permits domestic courts to refuse the recognition and enforcement of foreign arbitral awards if such awards are found to violate the public policy of Kyrgyzstan.[117] In contrast, no such ground is available for arbitral awards rendered within the country. Notably, during the drafting process of the current Procedural Code of KR, the government proposed the inclusion of specific provisions allowing for the challenge of domestic arbitral awards, particularly in instances where such awards might contravene public policy.[118] This initiative reflected concerns that, under the existing framework, local courts lack the authority to set aside

[114] Anton G Maurer, *The Public Policy Exception under the New York Convention: History, Interpretation and Application* (Juris Publishing 2013) pp.3.
[115] New York Arbitration Convention, 'Article V(2)(b) – 1958 New York Convention Guide' footnote 1051. https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=626&opac_view=-1 accessed 30 April 2025.
[116] ibid
[117] *Procedural Code of KR* (n 27) art.439 (2)(2)
[118] Alexander Korobeinikov and Alissa Inshakova, 'Baker McKenzie International Arbitration Yearbook 2023–2024 Kyrgyzstan' (Global Arbitration News, 1 January 2024) https://www.globalarbitrationnews.com/2024/01/01/baker-mckenzie-international-arbitration-yearbook-2023-2024-kyrgyzstan/ accessed 27 April 2025.

domestic arbitral awards even in the event of a public policy breach. Nevertheless, the proposal was ultimately not adopted.[119]

Kyrgyzstan's legislation does not provide a definition of what constitutes the "public policy" of the state.[120] As noted by N. Alenkina during an interview, there is no authoritative interpretation of public policy in Kyrgyz legal doctrine or case law that could guide courts in applying this concept in arbitration-related matters.[121] In such circumstances, and in the absence of any statutory or judicial clarification, there is a theoretical risk that Kyrgyz courts might misuse the public policy exception as a means to deny enforcement of arbitral awards.[122] The absence of a clear legislative definition of public policy in Kyrgyzstan differs from the approach adopted in neighboring jurisdictions, where the concept is more defined. For instance, Uzbekistan's legislation specifies that recognition or enforcement may be refused if it would harm the sovereignty or security of the state or contradict the fundamental principles of Uzbek law.[123] Similarly, Kazakhstan defines public policy as "the fundamental principles of law and order enshrined in the legislative acts of the Republic of Kazakhstan."[124] In its *Recommendations of the Round Table on Certain Issues of the Application of the Law on Arbitration*, the Supreme Court of the Republic of Kazakhstan advised domestic courts as follows: "It should be noted that the application of the public policy doctrine is permissible only in exceptional cases where the enforcement of an arbitral award infringes upon the fundamental legal order of the Republic of Kazakhstan. In this regard, when refusing to enforce an award on

[119]Korobeinikov and Inshakova (n 118)
[120]Interview with N.Alenkina (n 32)
[121]Ibid
[122]Interview with N.Alenkina (n 32)
[123]*Procedural Code of UZ* (n 90) art.370(10)
[124]Law of the Republic of Kazakhstan "On Arbitration" (Zakon RK "Ob arbitrazhe") art 2, online: Zakon.kz https://online.zakon.kz/Document/?doc_id=35110250&pos=78;-60#pos=78;-60 accessed 15 May 2025.

this ground, courts must provide reasoned justification indicating which specific element of public policy has been violated and how it has been affected."[125]

In conclusion, the absence of a clear definition or interpretive guidance on the concept of public policy in Kyrgyz legislation raises concerns regarding the transparency, predictability, and fairness of arbitration enforcement proceedings. While the relevant provisions appear to align with the structure of the New York Convention, the lack of safeguards against potential misuse—particularly in politically sensitive cases—may undermine investor confidence and cast doubt on Kyrgyzstan's commitment to international arbitration standards.

The lack of judicial on this issue should not, however, be viewed as a barrier to proper interpretation. Pursuant to Article 202 of the Procedural Code of KR, courts are required to take into account the rulings of the Plenum of the Supreme Court of the Kyrgyz Republic that clarify judicial practice concerning the legal questions at issue.[126] Drawing from the example of Kazakhstan—where the Supreme Court has issued detailed recommendations on the application of the public policy exception[127]—it would be advisable for the Kyrgyz Supreme Court to issue similar guidance. Even in the absence of legislative reform, such interpretive clarification would significantly enhance legal certainty and prevent arbitrary or politically motivated application of this controversial exception.

[125] Supreme Court of the Republic of Kazakhstan, *Recommendations of the Round Table on Certain Issues of Application of the Law of the Republic of Kazakhstan "On Arbitration" (Astana, 30 June 2017)* http://sud.gov.kz/rus/content/rekomendacii-kruglogo-stolanekotorye-voprosy-primeneniya-zakona-respubliki-kazahstan accessed 15 May 2025.
[126] *Procedural Code of KR* (n 27) art.202
[127] n 125

1.11 Conclusion of Chapter I

This chapter has explored the core provisions of the New York Convention and their interaction with the domestic legal framework of Kyrgyzstan. While the country has formally embraced many of the Convention's principles, the analysis has identified several legal uncertainties that complicate their practical implementation. Chief among these is the absence of a statutory definition for "non-domestic" awards and the lack of clear guidance on determining the nationality of an arbitral award, which heightens the risk of procedural misclassification. In addition, overly rigid documentary requirements and the vague language of Article 439 of the Procedural Code of KR [128] may impose undue burdens on claimants and reduce legal predictability. Lastly, although Kyrgyzstan's law incorporates the public policy exception under Article V of the Convention, it fails to define the term or establish safeguards against its arbitrary application

Comparative perspectives from jurisdictions such as Germany, Slovenia, France, and the United States offer valuable models for legislative refinement. These systems demonstrate more flexible approaches to documentation, clearer distinctions between domestic and foreign awards, and narrowly defined public policy standards. Drawing inspiration from these examples, the Kyrgyzstan would benefit from targeted legal reforms and interpretive guidance—especially from the Supreme Court of KR—to enhance the legal certainty, reliability, and attractiveness of Kyrgyzstan as a seat of arbitration and a jurisdiction for enforcing foreign awards.

In sum, while Kyrgyzstan's legal framework reflects a commendable effort to comply with the New York Convention, further doctrinal clarification and judicial consistency are essential to

[128] *Procedural Code of KR* (n 27) art.439

ensure faithful implementation and to promote confidence among international investors and arbitration users.

2 CHAPTER II.THE EMERGENCE OF AN ANNULMENT MECHANISM IN KYRGYZ ARBITRATION LAW: IMPLICATIONS FOR THE RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

On 10 April 2025, the Jogorku Kenesh (Parliament) of the Kyrgyz Republic adopted, in its third and final reading, a bill amending the Law on Arbitration Courts.[129] Subsequently, President Sadyr Japarov signed the bill on 29 May 2025, officially enacting the first-ever procedure for annulment of arbitral awards in the country.[130] This legislative milestone brings Kyrgyzstan in line with the majority of modern arbitration jurisdictions, where the ability to appeal or challenge awards is a well-established safeguard against manifest procedural errors.[131]

The introduction of an annulment procedure is widely regarded as a positive reform, granting parties additional legal recourse and enhancing the legitimacy and reliability of the arbitral process. Notably, the initial draft of the amendment closely mirrored Article 34 of the Model Law, adopting substantially similar grounds for annulment. [132] As stated in the official explanatory note (*spravka-obosnovanie*) to the bill, the stated aim was "to harmonise the national legislation with Article 34 of the UNCITRAL Model Law, thereby enabling parties in arbitration proceedings to challenge arbitral awards before state courts.[133] This would help improve the efficiency and impartiality of arbitration proceedings, and protect the rights and legitimate interests of the parties." [134]

[129] *Zakon Krygyzskoi Respubliki o vnesenii izmenenii v Zakon o treteiskikh sudakh Kyrgyzskoi Respubliki*, adopted by Jogorku Kenesh, 10 April 2025 https://kenesh.kg/ru/bills/657425 accessed 6 June 2025.
[130] *"On Amendments to the Law on Arbitration Courts of the Kyrgyz Republic"*, signed by the President on 29 May 2025 https://www.president.kg/ru/news/zakony/39186 accessed 7 June 2025.
[131] See BIICL, Annulment in ICSID Arbitration (2021) 2, 3 https://www.biicl.org/documents/10735_annulment_in_icsid_arbitration_empirical_study.pdf accessed 7 June 2025
[132] *Spravka-obosnovanie* to the Draft Law on Amendments to the Law on Arbitration Courts of the Kyrgyz Republic (2025) https://www.kenesh.kg/ru/bills/657425 accessed 7 June 2025.
[133]Ibid
[134]Ibid

Nevertheless, the new framework is not without its complexities. In the final version of the law signed by the President, the right to initiate annulment proceedings was limited exclusively to public authorities.[135] This significant limitation raises concerns regarding party equality and access to justice, especially in commercial disputes involving private entities.

This chapter offers a critical assessment of the new annulment regime. It examines the legal and procedural parameters of the adopted amendments, identifies potential challenges and unintended consequences—particularly the implications of limiting annulment claims to state bodies—and evaluates their broader impact on how arbitral awards are recognized and enforced by Kyrgyz courts.

2.1 Insufficient Harmonisation with the Civil Procedure Code

In its opinion on the draft law introducing an annulment mechanism, the International Arbitration Court of KR (Arbitration Court under the Chamber of Commerce and Industry of the Kyrgyz Republic or ICA CCI KR) recommended rejecting the bill.[136] The primary concern was the absence of accompanying amendments to related legislation, particularly the Procedural Code of KR, which regulates procedural rules for civil cases in Kyrgyzstan's courts. According to Article 1 of Procedural Code of KR, any procedural norms introduced by other laws must align with the Code. [137] Since the annulment of arbitral awards involves fundamental changes to procedural rights and the arbitration process, a systemic legislative update is necessary.[138]

[135] KR Arbitration Law (n 9) Art.28(2)
[136] Jogorku Kenesh of the Kyrgyz Republic, 'Conclusion of the Committee on Constitutional Legislation – 1st Reading, State Structure, Judicial and Legal Issues and Regulations on the Draft Law Amending the Law on Arbitration Courts' (10 April 2025) https://kenesh.kg/ru/bills/657425 accessed 5 June 2025, p 4–6.
[137] *Procedural Code of KR* (n 27) art.202
[138] Conclusion of the Committee on Constitutional Legislation – 1st Reading (n 136)

The ICA CCI KR noted that the draft failed to clarify where in the Procedural Code of KR the new annulment procedure would be located. For instance, if the provisions were to be included in Chapter IV ("Review of Judicial Acts Entered into Legal Force")[139], this would be conceptually inconsistent—arbitral awards are not judicial acts, and arbitral tribunals are not part of the national judiciary.[140] Therefore, the ICA CCI KR suggested creating a separate chapter in Procedural Code of KR dedicated to court assistance and supervision in arbitration.[141] This approach would align with UNCITRAL's recommendations in paras. 15–17 of the Explanatory Note to the 1985 Model Law, which emphasize the need to clearly delineate the judiciary's supporting and supervisory functions in arbitration. [142]

For example, neighboring jurisdictions such as Kazakhstan [143] and Uzbekistan [144] have incorporated separate chapters within their civil procedural codes specifically dedicated to the challenge of arbitral awards**.** This structured approach ensures clarity and coherence in the interaction between general civil procedure and arbitral review mechanisms. In contrast, the Kyrgyz legislation lacks such codified integration. As a result, there is substantial uncertainty regarding how the newly introduced annulment procedure is to be implemented within the broader framework of Procedural Code of KR. It would be highly advisable for Kyrgyzstan to adopt a similarly structured approach by establishing a distinct procedural chapter regulating the annulment of arbitral awards.

[139] *Procedural Code of KR* (n 27) Chapter IV Review of Judicial Acts Entered into Legal Force
[140] Conclusion of the Committee on Constitutional Legislation – 1st Reading (n 136)
[141] Ibid
[142] Patrick Oliver Ott, 'UNCITRAL – United Nations Commission On International Trade Law' in Helmut Volger (ed), A Concise Encyclopedia of the United Nations (Brill | Nijhoff 2010) Explanatory Note paras 15–17 https://brill.com/view/book/edcoll/9789047444541/Bej.9789004180048.i-962_122.xml accessed 7 June 2025.
[143] *Civil Procedure Code of the Republic of Kazakhstan*, Chapter 56 (Proceedings on a Petition for Annulment of Arbitral Awards) https://online.zakon.kz/Document/?doc_id=34329053&pos=5261;-47#pos=5261;-47 accessed 8 June 2025.
[144] Procedural Code of UZ (n 9-) Chapter 39 (Proceedings on the Annulment of Arbitral Awards)

2.2 A One-Sided Remedy: Granting Annulment Rights Exclusively to State Bodies

During the second reading of the draft amendments to the Law on Arbitration and as reflected in the final version, deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic unilaterally introduced a provision that restricts access to annulment proceedings exclusively to state entities.[145] The revised law significantly departs from international standards, particularly the Model Law, which permits either party to initiate annulment proceedings.[146] Under the new provision, "The decision of the arbitral tribunal may be challenged in cases where the party to the dispute against which the arbitral decision was rendered is a state authority, a local self-government body, a state or municipal institution or enterprise, or another legal entity with state or municipal participation."[147]

This restrictive formulation raises important questions regarding the rationale behind such a deviation. According to the conclusion of the Committee on Constitutional Legislation of the Jogorku Kenesh, the justification lies in the fact that the Kyrgyz Republic frequently appears as either claimant or respondent in international arbitration proceedings.[148] The drafters argued that the inability to challenge arbitral awards could result in substantial financial losses to the republican budget, thereby necessitating greater legal protections for state interests.[149]

From a comparative perspective, research conducted by the author of this thesis did not identify any jurisdiction in which the right to annul arbitral awards is exclusively granted to government entities. The restriction appears to be a unique feature of the Kyrgyzstan's legislation and raises

[145]Draft law in the official language – 2nd reading (n 136)
[146]UNCITRAL Model Law (n 11) art 34(2(a))
[147]Arbitration Law of KR (n 9) Art.28
[148]Conclusion of the Committee on Constitutional Legislation – 2nd reading (n 136) p 1-2
[149]Ibid

concerns about procedural fairness and equal access to remedies for private parties involved in arbitration.

2.3 Impact on Procedure of Recognition and Enforcement of Awards

During the interview conducted with N. Alenkina, she explicitly noted that, as an arbitrator, lawyer, and advocate for alternative dispute resolution, she, along with many other professionals involved in arbitration—welcomed the introduction of an annulment procedure in Kyrgyzstan.[150] The main rationale lies in the fact that Article V(1)(e) of the New York Convention allows courts to refuse the recognition and enforcement of an arbitral award if it has been set aside at the seat of arbitration. [151]

Prior to the enactment of this annulment mechanism, parties who arbitrated through domestic institutions such as the International Court of Arbitration of the Chamber of Commerce and Industry of the Kyrgyz Republic (ICA CCI KR) lacked any procedural avenue to challenge an award within Kyrgyzstan.[152] As a result, parties lacked access to one of the key grounds for refusing recognition and enforcement—namely, the annulment of the award at the seat of arbitration—and were therefore compelled to argue other grounds, such as due process directly before foreign courts, which proved procedurally burdensome and often uncertain in outcome. [153] With the introduction of the annulment mechanism, parties now have the opportunity to first obtain an annulment in Kyrgyzstan and then present that decision as a ground for refusal of enforcement in other jurisdictions under Article V(1)(e), thereby reducing litigation costs and legal uncertainty.

[150]Interview with N.Alenkina.(n 32)
[151] New York Convention (n 16) art. V(1)(e)
[152] Interview with N.Alenkina (n 32)
[153] ibid

If the rationale behind the Kyrgyz legislature's decision to grant annulment rights exclusively to state entities was to prevent the enforcement of arbitral awards rendered against the state abroad, this reasoning fails to reflect the reality of international arbitration, where foreign courts may still choose to enforce such awards irrespective of their annulment at the seat. Courts in several jurisdictions have, under certain circumstances, enforced arbitral awards even after they were annulled at the seat of arbitration, by invoking Article VII of the New York Convention, which allows for enforcement based on more favorable national rules.[154]

A notable example is the decision of the U.S. District Court for the District of Columbia in *Chromalloy Aeroservices v. The Arab Republic of Egypt*.[155] In that case, the arbitral award in favor of a U.S. company was annulled by Egyptian courts.[156] Nevertheless, the U.S. court decided to enforce the award, holding that the annulment violated fundamental U.S. public policy and the parties' agreement to arbitrate.[157] The court relied on the discretionary nature of Article V(1)(e) and invoked Article VII to uphold the award, thereby affirming the pro-enforcement bias of the Convention even in the face of annulment at the seat.[158] This precedent underscores that a domestic annulment is not always dispositive and that enforcement may still be possible if the enforcing court finds the annulment decision to be contrary to fundamental principles of justice or international arbitration standards.

[154] For example In England and Netherlands, courts have enforced Yukos-related awards despite Russian annulments, reasoning that the seat's judiciary was "partial and dependent" and that UCC policy supported maintaining award integrity. Yukos Capital Sàrl v OJSC Rosneft Oil Co ('Yukos Capital'), Court of Appeal, Amsterdam, 28 April 2009 https://content.next.westlaw.com/practical-law/document/Ib9aa181a1c9a11e38578f7ccc38dcbee/Amsterdam-Court-of-Appeals-rules-on-enforcement-of-award-set-aside-by-Russian-courts accessed 9 June 2025.

[155] *Chromalloy Aeroservices v Arab Republic of Egypt*, District Court for the District of Columbia, 939 F Supp 907 (DDC 1996).

[156] Ibid

[157] Ibid

[158] Ibid

2.4 Conclusion of Chapter II

The introduction of an annulment procedure into Arbitration Law of KR represents an important step toward aligning national legislation with international standards. While the reform has the potential to improve procedural fairness and enhance the enforceability of arbitral awards abroad, its current formulation raises significant concerns. The lack of integration with the Procedural Code of KR creates legal uncertainty and risks inconsistent application by courts. More critically, the restriction of annulment rights exclusively to state entities departs from international best practices and undermines the principle of party equality in arbitration.

Although the newly enacted procedure may offer Kyrgyzstan a formal tool to resist enforcement of awards rendered against it, this approach overlooks the broader reality of international arbitration, where annulled awards may still be enforced abroad. Without further legislative refinement—particularly the extension of annulment rights to all parties and the proper codification of procedural rules—the reform risks falling short of its intended purpose and may ultimately weaken confidence in Kyrgyzstan as a credible arbitration seat.

CONCLUSION

This thesis has explored the legal framework for the recognition and enforcement of foreign arbitral awards in the Kyrgyz Republic, assessing the extent to which it aligns with the 1958 New York Convention. The first chapter demonstrated that while Kyrgyzstan has acceded to the Convention and incorporated its principles into national legislation, several ambiguities remain unresolved. These include the absence of a definition regarding the nationality of arbitral awards, a lack of interpretive guidance on the concept of public policy, and rigid formal requirements that may create unnecessary barriers to enforcement. Such gaps increase the risk of inconsistent judicial practice and legal uncertainty.

The second chapter examined both the initial draft and the final version of the legislative amendments to the Law on Arbitration Courts, which were adopted in May 2025. These amendments introduced an annulment procedure for domestic arbitral awards. While this reform marks a step toward aligning Kyrgyzstan's legal framework with international standards—particularly Article 34 of the UNCITRAL Model Law—the decision to allow only state bodies to initiate annulment proceedings raises concerns about procedural fairness and access to remedies for private parties.

Comparative references to jurisdictions such as the United States, EU member states, Kazakhstan, and Uzbekistan have helped to contextualize Kyrgyzstan's progress and highlight best practices in aligning national laws with the goals of Convention. These comparisons revealed that greater institutional clarity, more consistent judicial interpretation, and accessible annulment mechanisms contribute significantly to a jurisdiction's reliability in international arbitration.

Given the government's declared interest in attracting foreign investment and promoting sustainable economic development, ensuring a reliable and predictable arbitration framework is essential. A jurisdiction that aspires to become a trusted seat of arbitration must offer investors confidence that any potential disputes will be resolved fairly and that arbitral awards will be enforceable. For Kyrgyzstan, this means not only addressing the existing legal and institutional gaps, but also continuing to foster the development of arbitration as a viable and trusted mechanism for dispute resolution.

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