

Application of the “Public-policy” Exception under the New York Convention in China



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Overview

1. The New York Convention in China

2. Application of the “Public-policy” Exception in China

1. Incorporation of the New York Convention

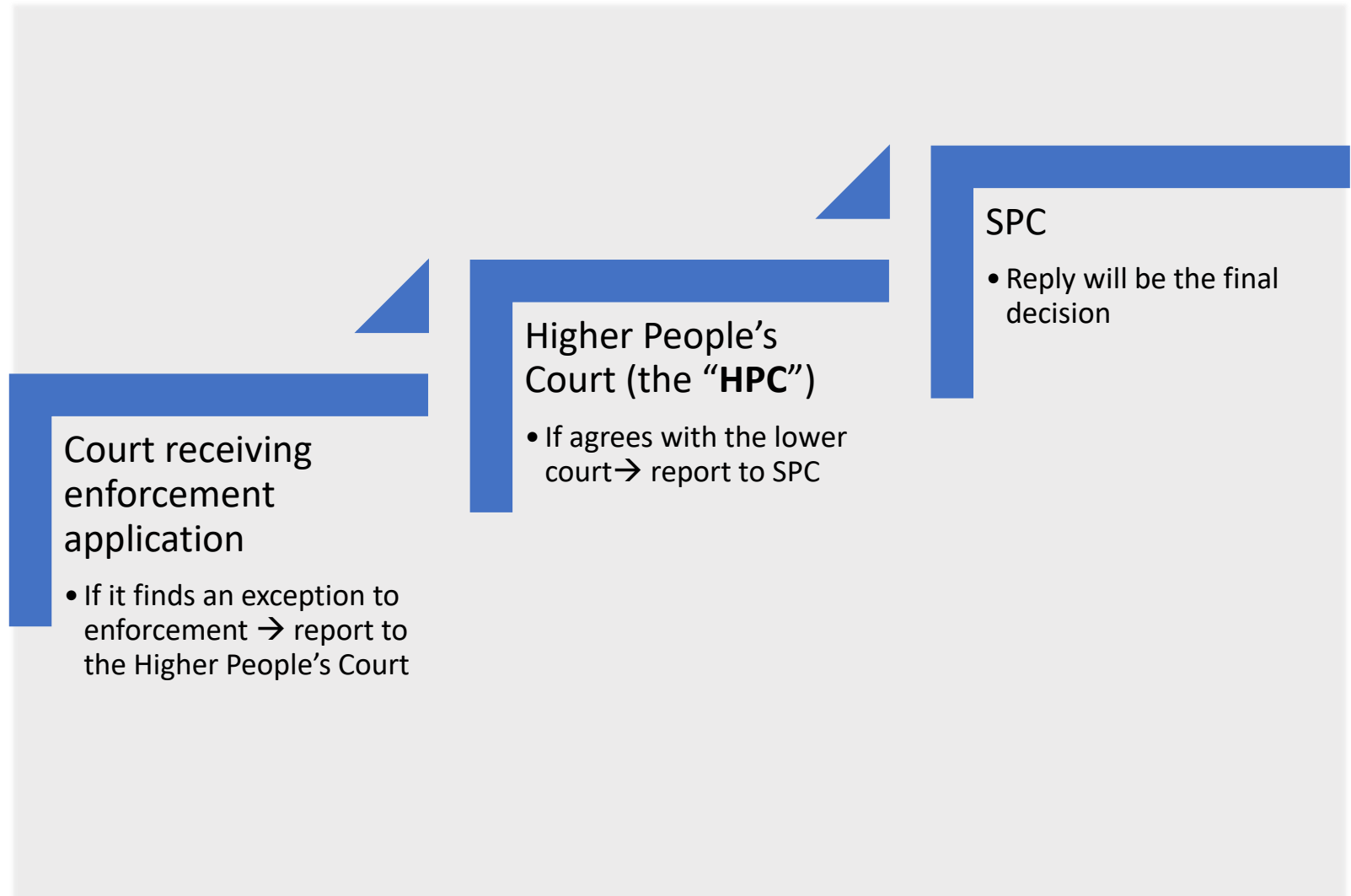
- 2 Dec 1987, the Standing Committee of the National People's Congress of China announced the decision to join the New York Convention
- On 22 Jan 1987, China ratified the New York Convention.
- China's with reservation on reciprocity and commercial relations.

2. “Commercial relations” reservation

The Supreme People’s Court (SPC) interprets “commercial relationship, whether contractual or not” to include the economic rights and obligations arising from contracts, torts or relevant legal provisions.

Examples: purchase and sale of goods, lease of property, project contracting, processing, technology transfer, equity or contractual joint adventure, exploration and development of natural resources, insurance, credit, labor service, agency, consultation service, marine, civil aviation, railway or road passenger and cargo transportation, product liability, environment pollution, marine accident, and ownership disputes, **except disputes between foreign investors and the host government.**

3. Court-reporting mechanism



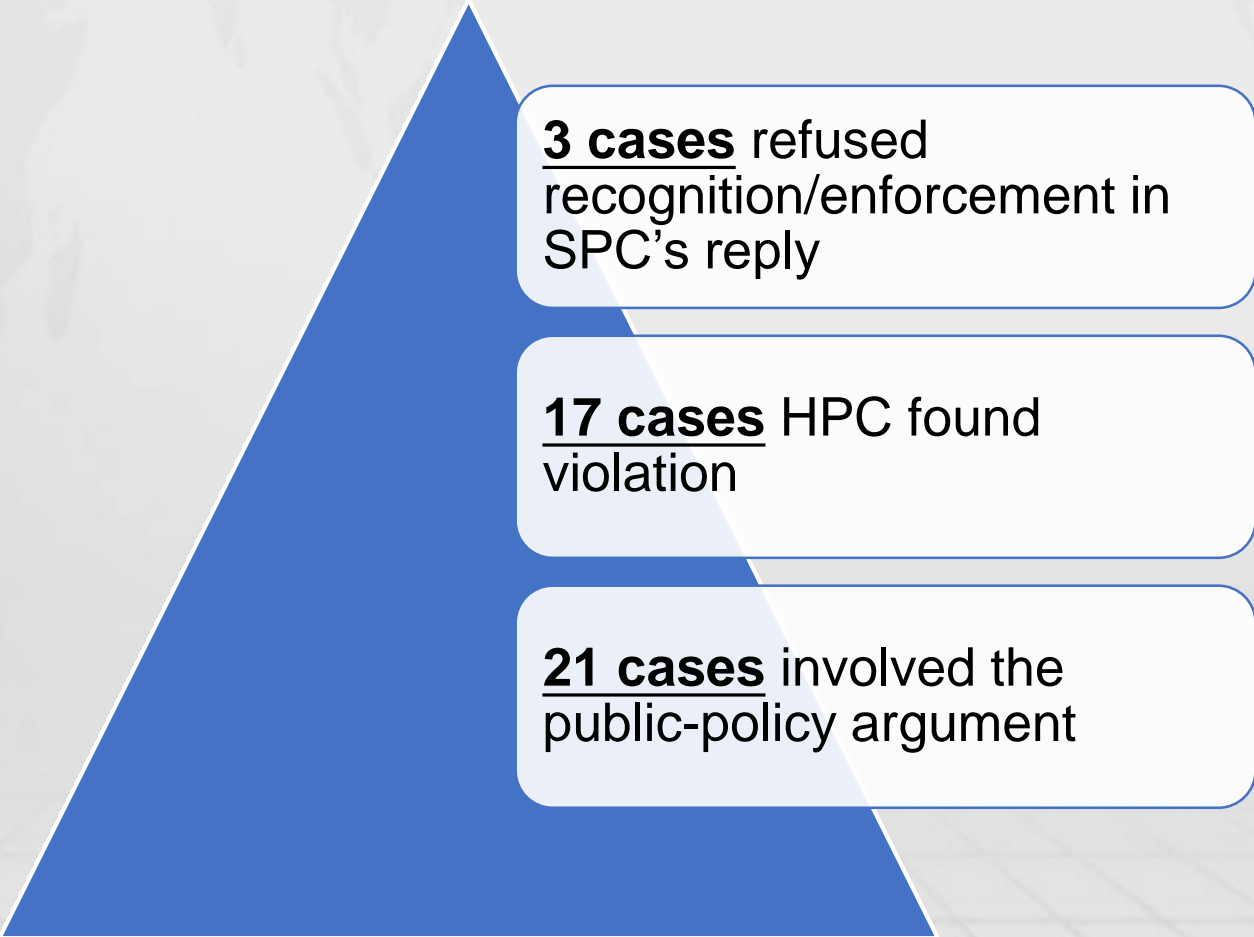


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1. Cases facing the “public-policy” exception



3 cases refused recognition/enforcement in SPC’s reply

17 cases HPC found violation

21 cases involved the public-policy argument

Note: statistics from 1995 to 2017, including awards made in Hong Kong and other foreign-related arbitral awards.

2. No clear and exhaustive definition

- SPC's reply in the Castel Case:
 - Violation of public policy means “*violation of the fundamental principles in law, infringement upon national sovereignty, jeopardizing social and public security, violation of good customs and endangering social and public interests.*”
- Example:
 - Violation of national sovereignty includes violation of judicial sovereignty
 - Res judicata? SPC's Reply in the Hemofarm case
 - Lack of foreign-related elements? Still disputable
 - Violation of social interests
 - No violation if enforcement of arbitral award may reduce state-owned assets (**not a New York Convention case**)

2. SPC's attitude: narrow interpretation and strict application

- Violation of mandatory law does not equal to violation of public policy.
- Whether the award is fair and reasonable on merit is not a standard for courts to consider under the “public-policy” exception.
- “Public-policy” exception is a residual ground.

Thank You!

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