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Арбитражный регламент ЮНСИТРАЛ // UNCITRAL Arbitration Rules

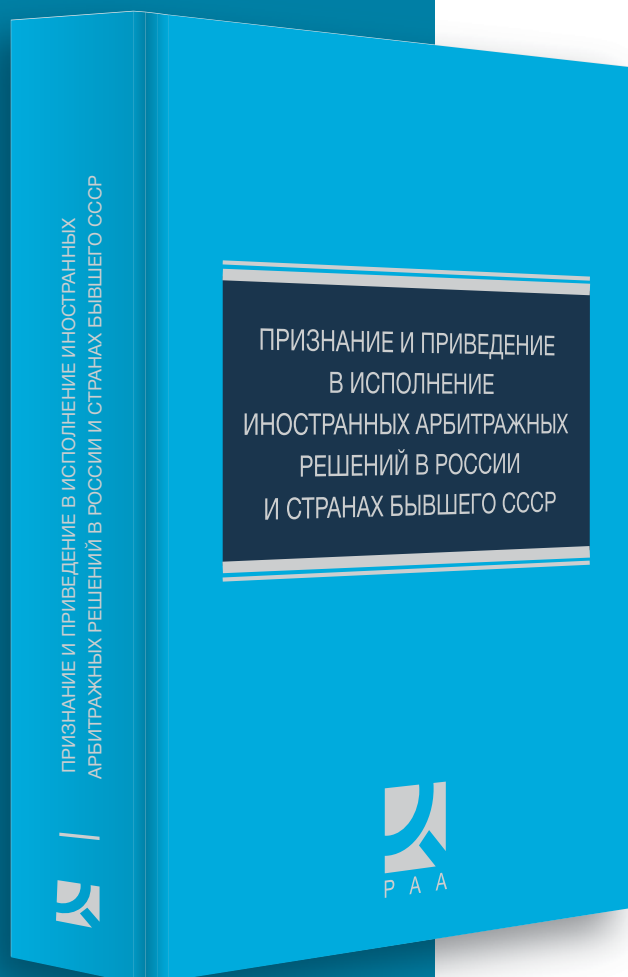
Аналитика

- Регламент ЮНСИТРАЛ – старейшина в мире арбитражных регламентов ad hoc
- Поправки в ФЗ «Об арбитраже»

- Итоги рейтинга РАА40
- Ad hoc – 2019: конец или начало?
- О Европейской арбитражной группе МТП (ICC)

English section

- ICC Central And Eastern European Institutional Arbitration Group
- UNCITRAL and ISDS reform
- Austria: case law



В 2018 году исполнилось 60 лет Нью-Йоркской конвенции о признании и приведении в исполнение иностранных арбитражных решений.

Арбитражная Ассоциация готовит к изданию книгу, посвященную вопросам признания и приведения в исполнение иностранных решений, оспаривания и исполнения внутренних арбитражных решений в России и странах бывшего СССР. В издание включен постатейный комментарий к Нью-Йоркской конвенции, Европейской конвенции о внешнеторговом арбитраже 1961, АПК, ГПК и Закону о международном коммерческом арбитраже. В книге будут также подробно освещены особенности правового регулирования в странах бывшего СССР.

Уникальной особенностью издания является подробный статистический анализ российских судебных актов об оспаривании, признании и приведении в исполнение арбитражных решений за последние 10 лет.

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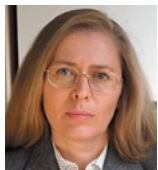
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ОТ РЕДАКЦИИ



Vladimir Khvalei
Russian Arbitration Association,
Chairman of the Board

Dear colleagues, two important events happened on the eve of the New Year 2019: (1) Russian parliament adopted changes to Russian arbitration laws and (2) Russia's Supreme Court published a Review of certain decisions related to arbitration.

The changes to arbitration laws are aimed to improve the regulation of arbitration proceedings in Russia after the 2016 reform. They soften the requirements for arbitrability of disputes arising under shareholders agreements as well as the requirements for foreign arbitral institutions to obtain the right to administer Russian disputes (see article on page 7). The changes also aimed to make it impossible for ad hoc arbitration to function in Russia, as starting with 29 March 2019 not only administration of ad hoc disputes is not allowed without a special permission from the Russian Ministry of Justice, but also other actions related to ad hoc proceedings, for example, providing on a regular basis premises for hearings in ad hoc arbitrations or the marketing of such services. Failure to comply with the prohibitions would result in awards issued in such ad hoc proceedings to be found issued in violation of the statutory arbitration procedure (see article on page 95).

Russian Supreme Court, in its turn, provided very useful clarifications to some important issues, which were not clear enough before. But what is important, it de facto corrected the uncertainty created by controversial Russian court decisions in the DMM case, when an ICC standard arbitration clause was found by courts to be unenforceable.



Дмитрий Артюхов,
главный редактор Arbitration.ru

Дорогие читатели! Первый в 2019 году выпуск Arbitration.ru посвящен Регламенту ЮНСИТРАЛ. Не скроем, что эта тема была выбрана задолго до новогодних праздников — и лишь потому, что нам хотелось посвятить январский выпуск Вене, уютному городу, в котором так приятно встретить Рождество. И в котором расположена та самая Комиссия ООН по праву международной торговли.

И тема неожиданно оказалась актуальной. Известно, что Регламент ЮНСИТРАЛ представляет собой свод наиболее популярных в мире правил разрешения споров в арбитражах ad hoc. Под конец года на форуме Ad Hoc Arbitration в Москве мы увидели видеообращение представителей Комиссии к тем российским юристам, которым интересен этот — пожалуй, самый свободный — вид арбитражного разбирательства. А буквально через три дня российские власти приняли поправки к закону об арбитраже, официально превратив ad hoc в маргинальное явление.

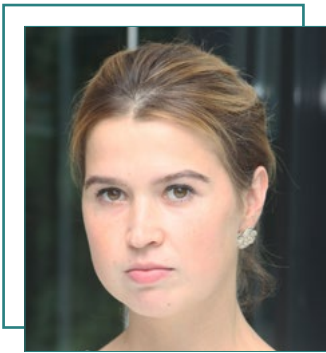
Понятно, что в остальных странах Регламент ЮНСИТРАЛ не потерял своей значимости. Но нам в Москве теперь приходится разбираться: российский ad hoc скорее мертв, чем жив? А если жив, то что это за форма жизни? Размышления об этом читайте на страницах русскоязычной части январского номера, а своими предположениями можете поделиться с редакцией по электронной почте editor@arbitrations.ru.

Что касается официальных третейских институтов, мы о них не забыли. В англоязычной части номера опубликован большой спецпроект — итоги деятельности восточноевропейских и некоторых скандинавских ПДАУ за 2017–2018 годы.

RUSSIA: ARBITRATION – RELATED DEVELOPMENTS



Vladimir Khvalei,
partner, Baker McKenzie



Irina Varyushina,
professional support lawyer,
Baker McKenzie

The end of 2018 saw certain important changes introduced to the Law on Arbitration in Russia (the “Law on Domestic Arbitration”),¹ which also apply to international commercial arbitration proceedings seated in Russia. ² The changes will take effect on March 29, 2019.

As per the changes, the rules for obtaining the license by arbitral institutions in order to administer arbitrations in Russia and the procedure for arbitration of certain types of corporate disputes were simplified. Thus, the license shall be issued by the Ministry of Justice and not by the Russian Government, as is currently the case. There is also greater certainty with regard to the application process. The changes provide *i.a.* for a list of documents that a foreign arbitral institution needs to submit with an application for obtaining the license. Among those documents are: a) Note detailing the background and activities of the institution; b) Excerpt from the register or a similar document confirming the legal status of the institution or its founding organization; c) Rules for administering corporate disputes (if the organization wants to administer Russian corporate disputes that require special rules). If a foreign arbitral institution intends to administer Russian domestic disputes, it will need to establish presence in Russia for such purposes (a branch office of the institution or its founding organization).

A significant change has been introduced with regard to arbitrability of corporate disputes. After the 2016 arbitration reform disputes under shareholder agreements have been arbitrable only under the conditions that:

- a) all shareholders of the company and the company itself are parties to the arbitration agreement;
 - b) the arbitration is administered by a “licensed” arbitration institution;
 - c) the arbitration is administered under special Rules for administration of corporate disputes (which means that information about the dispute is to be published at the website of the arbitration institution);
- and

¹ Federal Law No382-FZ on Arbitration (Arbitration Proceedings) in the Russian Federation dd. 29 December 2015.

² Federal Law No 531-FZ dd. 27 December 2018.

d) the seat is in Russia.

As from 29 March 2019 the requirements under a) and c) will be abolished.³

Further changes to the Law on Domestic Arbitration concern arbitrability of disputes arising out of or in connection with contracts entered into in accordance with Law on Procurement by State Legal Entities⁴ that have been subject of several court cases in 2018.⁵ Such disputes having their seat in Russia are to be administered by a licensed arbitral institution.⁶

Among recent arbitration-related developments is the issuance by Russia's Supreme Court on 26 December 2018 of a review of court practice on arbitration-related matters (the "**Review**").⁷ Though not of a binding nature, the Review expresses the position of the Supreme Court on applying relevant legal rules to the disputes related to arbitration. Among the key points of the Review are the following:

- 1) Upholding the enforceability of standard arbitration clauses recommended by arbitral institutions;⁸
- 2) Alternative dispute resolution clauses (*i.e.* which enable a claimant to choose between arbitration and state courts) are valid;⁹
- 3) Asymmetrical dispute resolution clauses (*i.e.* enabling only one party to choose between arbitration and state courts) are invalid because every party is to have the same scope of rights to refer the dispute both to arbitration and state courts;¹⁰

4) Any restrictions on arbitrability of civil-law disputes are to be expressly provided for in the law and not inferred by other means;¹¹

5) Where a creditor submits a claim based on an award in bankruptcy proceedings, the other creditors are entitled to object thereto on the same grounds that are provided by the law for refusing enforcement of the award. As regards the public policy ground, the Supreme Court found that the public law purpose of bankruptcy proceedings is to ensure the balance of rights and legal interests of all creditors. Therefore, creating an appearance of a private law dispute resolved by an arbitration court to enable the inclusion of a baseless debt into the register of creditors in order to influence the bankruptcy case shall be considered as a violation of public policy.¹² This provision is aimed at preventing claims confirmed by fictitious arbitrations from being submitted to the bankruptcy estate.

³ See Part 71 of Article 7 and Part 71 of Article 45 of the Law on Domestic Arbitration (as amended by Federal Law No531-FZ dd. 27 December 2018, in effect as from 29 March 2019).

⁴ Federal No 223-FZ dd. 18.07.2011 "On procurement of goods, works and services by certain types of legal entities".

⁵ See, for example, *Mosteplostroy JSC v. Mosinzhprojekt JSC*, A40-165680/2016, case file at: <http://kad.arbitr.ru/Card/692507fe-d800-4152-b90f-77af1b4a9444>.

⁶ See Part 10 of Article 45 of the Law on Domestic Arbitration (as amended by Federal Law No531-FZ dd. 27 December 2018, in effect as from 29 March 2019).

⁷ Review of Court Practice in Connection with Performing Functions of Assistance and Control with regard to Arbitration Courts, approved by the Supreme Court's Presidium on 26 December 2018, available at: <http://www.supcourt.ru/documents/all/27518/>

⁸ Item 5 of the Review.

⁹ Item 6 of the Review.

¹⁰ Item 7 of the Review.

¹¹ Item 16 of the Review.

¹² Item 25 of the Review.

REPORT FROM THE PRAGUE RULES LAUNCH CONFERENCE



Dmitry Artyukhov,
Arbitration.ru
Editor-in-Chief

The new set of Rules for taking evidence in international arbitration was officially signed on 14 December 2018 in Prague after four years of drafting.

The opening ceremony, organized by the Russian Arbitration Association (RAA), Global Arbitration Review (GAR) and The Law Offices of Prof. Dr. Alexander Bělohlávek, was held in the privately owned historical location Martinic Palace (*Martinický palác*) in Prague's Old Town.

Prof. Dr. Alexander Bělohlávek of The Law Offices of Prof. Dr. Alexander Bělohlávek, Prague, welcomed the guests.

He underlined that the development of the Prague Rules took nearly 4 years of hard work, the idea first being proposed at the meeting of arbitration practitioners in 2011 and ending up a collective contribution of a multitude of professionals. "I do not believe there is competition between the rules to be applied in arbitration," noted the lawyer. "No one





questions the importance of the IBA Rules. However, the Prague rules are not a rival to the IBA Rules,” he added. The Prague Rules are here to help and give a viable alternative where applicable. Dr. Bělohlávek also added that without the RAA, the Prague Rules would never come to light.

Vladimir Khvalei, Chair of the Board, RAA, Moscow, outlined the drafting history of the Prague Rules, which began with a meeting of the ICC arbitration academy. After that the working group was formed, and now consists of 15 members. The Prague Rules had undergone six drafts and are now published in four languages. The Rules were discussed at arbitration events in 15 countries, from US to China. More than 20 arbitral institutions and arbitral associations are supporting the Prague Rules today.

Initially, the Prague Rules were called the European Rules of Taking Evidence, but this name was eventually changed due to the presence of England, a common law country, in the EU, according to the arbitrator.

“Companies from civil law countries would prefer arbitration rules based on civil law,” noted Vladimir Khvalei, comparing the Prague Rules to the IBA Rules. “Besides, as international trade is decreasing, more and more cases are presented by in-house lawyers, and simpler arbitration rules are in demand. The Prague Rules fit these cases perfectly,” he noted. “The scope of the rules is broader than taking evidence – they are about the role of the tribunal in arbitration,” he underlined.

Khvalei named the key features of the Prague Rules, the most important of them being the active role of the arbitrators. He gave the example of a sale of goods dispute in which the arbitrators could guide

the parties on what specific documents should be presented as evidence to make the proceedings faster and more efficient.

Finally, Vladimir Khvalei presented the Signing Book of the Prague Rules and asked guests to sign it at the end of the evening.

Beata Gessel-Kalinowska vel Kalisz, Senior Partner at GESSEL, Warsaw, started the first session called “Showing a poker face. Limits of the tribunal’s role in the management of arbitration proceedings.”

She touched upon the legal backgrounds of the speakers and underlined the power of the judge in the civil and common law systems. She compared the judicial reforms in the UK and in France in the 1990s and their influence on understanding arbitration in these jurisdictions, and how parties understand fairness in different proceedings. She described the result of a legal experiment which determined that as “fair” are perceived proceedings, that are adversarial in nature, however, there should be some inquisitorial approach practiced by the judge. She gave an example of a relevant case from her practice in France.

“Prague Rules add an additional tool in the armoury of the parties,” said **Hilary Heilbron QC, Barrister, Brick Court Chambers, London**. The avoidance of extensive disclosure and other tools cannot be underestimated, according to her. “Witnesses which are not key to the final decision should be able to participate by means of video in the process, and the Prague Rules allow for that,” she added. She discussed the sanctions available to the tribunal under the Rules. Further, she discussed the expression of the preliminary views with regard to the burden of proof at the case management conference and the problems that arise, especially in connection with due process arguments.





In response, **Klaus Peter Berger, Director, Centre for Transnational Law (CENTRAL), Cologne**, discussed the parties' consent to give the preliminary view according to the Prague Rules and the DIS Rules. "In theory, giving a party a preliminary view should be more cost effective than rendering the final award only in the end of deliberations without informing the parties," he said. To contrast this argument, he described failed attempts of arbitrators to impose the preliminary view on parties in Germany. "I have never seen a case where I would be able to give a preliminary view at the case management conference."

He then addressed the problem of the deficit of settlement in arbitration. "The judge or the arbitrator should play an active role in reconciliation of the parties, and this is reflected in the Rules," he noted. "The tribunal needs to have the consent of the parties at every specific stage and in every case now," added the speaker.

Duarte Henriques, Partner, BCH Lawyers, Lisbon, added that there are no clear cuts between the arbitrator communicating with the parties and the preliminary view.

He addressed the problem of regulation. "Today we witness so many guidelines, and we are nearly on the edge of creating civil procedure for international arbitration," said Henriques. "Nowadays, less is more, and the Prague Rules reflect this approach."

Regarding the fact-finding, in the end, it depends what role is expected from the arbitrators. He referred to an English court setting aside an ICC award.

Henriques thanked the organizers of the conference and thanked the representatives of CIETAC for coming from China. The overarching effect of the Prague Rules is that the Chinese community favors civil law and may find the civil law based rules of ar-

bitration very relevant, so the Rules may bridge the eastern and western litigation cultures.

Roman Zykov, Secretary General, RAA, Moscow, opened the second session entitled, "*Let's not decide on anything until we decide everything. In-house expectations on the outcome of arbitration and the tribunal's role in facilitation of settlement*," underlining the discussion that was led by in-house council and dedicated to their view on the Prague Rules.

Susanne Gropp-Stadler, Lead Counsel Litigation, Siemens AG, Munich, noted that Siemens has a huge variety of disputes in complexity of the issue. The company has a presence in more than 150 countries as well, adding a variety of jurisdictions. She asked the panelists about the risks of different principles of arbitration being applied, which may lead to the arbitration award being unenforceable.

Addressing the issue of document production in arbitration proceedings, she noted that limited document production can cause problems with appealing the tribunal's award. Of course, "too broad a document production is not feasible," stated the speaker.



She asked the audience to speak about the categories of documents, and discussed whether a tribunal has the competence to ask for a very specific document.

Dr. Clemens-August Heusch, Head of European Litigation, Nokia, Munich, told the audience about technical disputes in Nokia, especially those connected with licensing issues. Those involve a lot of uncertainty and time, and engineers cannot be always engaged on the projects to assist lawyers. He touched upon a dispute settlement in Germany. The German Civil Procedure Code provides for state judges to call for settlement extensively. But in arbitrations, the parties should request the settlement procedure.

Michael McIlwrath, Senior Counsel, General Electric Company, Florence, noted that that the preliminary views often cause trouble in the process, as one party considers itself to be a winner and the other has to fight against a specific view of the tribunal nearly from the very beginning of deliberations. He pointed out how differently the Prague Rules are perceived by legal practitioners even in civil law countries. He noted that if the Prague Rules addressed the costs of document production, it would be very beneficial both for the litigators and the developers of the rules. The “cultural differences” between the viewpoint of arbitrators and the parties on the predictability of the dispute often lead to discontent with the arbitration procedure. Identical rules can be applied very differently by judges in different countries, especially when it comes to appointing experts. McIlwrath also described the process of selecting the arbitrator.

When moderating *Session 3 “Is the sky the only limit? The scope of discovery and e-discovery in arbitra-*



tion,” **Andrey Panov, Senior Associate, Norton Rose Fulbright, Moscow**, asked the speakers about the cultural differences in document production between common law and civil law jurisdictions. He asked the speakers about the rules of privilege in different legal traditions and then to elaborate on e-discovery in international arbitration. Together with the panelists, Andrey Panov discussed whether discovery in arbitration was or ought to be different in comparison to litigation, the tribunal’s role in document disclosure and the approaches in different jurisdictions.

Dorothy Murray, Partner, King & Wood Mallesons, London, told the participants about the peculiarities of disclosure in China and compared this with the common law system and cases when disclosure was definitely necessary. She described two disclosure cases from her practice. The speaker addressed the problem of gaps in document disclosure, which could be helpful to the opposing party.





Francisco C Prol, Partner, Prol & Associates, Madrid, mentioned that disclosure can threaten certain documents that are crucial to the life of a company (talking in particular about sensitive financial and corporate documents). However, “banking and financial contracts can be very complex and demand disclosure,” he added. A delicate balance has to be identified individually in each case so that disclosure leads to a reasonable decision.

Artem Doudko, Partner, Osborne Clarke, London, said that disclosure helps to “find the truth” but can be a very expensive and lengthy exercise. He emphasized that finding the right balance was dependent on having a strong tribunal who could control the parties, and provisions of instruments, like the Prague Rules, could provide the necessary support to tri-

bunals to feel empowered to be stronger and more pro-active. He went on to say that e-disclosure will continue to develop and become ever more efficient and inexpensive over time. If a request for disclosure was too wide, the tribunal could narrow the request down. However, where requests were obviously contrary to applicable rules, the tribunal could refuse them outright. He described various scenarios of document disclosure and corresponding costs.

In opening Session 4, “*Lie to me. Fact witnesses vs. documentary evidence: Can documents lie?*” **José Rosell, Arbitrator, Paris** introduced the guests. He spoke on the topic of the credibility test, which has been done by council, but with the Prague Rules this competence is being transferred to the tribunal.

Olena Perepelynska, Partner, INTEGRITES, Kyiv, said that the witness and documentary evidence was connected with psychology as well. Olena gave an overview of witness statements in history of litigation. The attitude is striking – the civil law trusts documentary evidence, the document prevails. In many civil law jurisdictions, the use of witness statements in commercial litigation was very unusual – in Ukrainian commercial litigation, they didn’t exist at all until the recent law system reform.

The national civil code even prohibits the use of witness testimony in certain circumstances. Among dozens of cases in her practice, only two included an





oral witness statement. “Memory of witnesses is a very unreliable instrument,” she concluded, and the modern methods of witness testimony in arbitration are to be reviewed.

“Oral witness evidence has a strong tradition in common law countries, and hearings can run for months,” said **Christopher Newmark, Partner, Spenser Underhill Newmark, London**. “An advocate can introduce the document by a witness statement,” he continued. He described the phenomenon of exposure of witnesses to post-event information that may influence their memory. The form of the questions can be a means of such influence as well, along with a draft of a witness statement written by somebody else and not the witness him- or herself.

“A robust cross-examination is the most effective way of producing evidence,” added **Homayoon Arfazadeh, Member of the Arbitration Court of the**



SCAI Swiss Chambers’ Arbitration Institution, Geneva. The arbitrator shared his experience of a construction dispute between a German and an Italian party, where the witness statement ended the proceedings and helped to render the final award. Witness statements are very useful in complex cases. He elaborated on tribunals role on appointing the witnesses, speaking on behalf of SCAI. “The “one size fits all” tradition of running the proceedings is no longer valid,” he said. “Arbitration is not of common or civil law traditions, but is a culture of its own, borrowing from different legal systems. The procedure can be tailored to parties’ expectations, including the presence of witnesses. In an ideal world, arbitration can have many codes of civil procedure.”

Alexandre Khrapoutski, Partner, SBH Law Office, Minsk, when moderating the Session entitled “*How much do hired guns contribute to the truth? Party ap-*



pointed vs. tribunal appointed experts” discussed the role of tribunal-appointed experts in civil law countries. Alexander asked how the usefulness of experts in arbitration proceedings can be maximized.

Peter Rees QC, Barrister, 39 Essex Chambers, London, mentioned that it is crucial that the experts agree on the terms, and the request of the experts have to be kept reasonable, so that the process does not become expert-driven. He named four instruments to find out the truth – witnesses of fact, documents, submission and expert’s statement. He also mentioned that often the expert’s bill matches the bill of an arbitrator.

Anthony Charlton, Partner, Deloitte, Paris, named the qualities of an expert. He noted that the expert has to be competent and impartial, and, finally, have the capacity to do the work. Early participation of the tribunal in improving expert instructions is, of course, beneficial.

Steven Law, Partner, BDO, London, spoke about the details of appointing an expert in arbitral proceedings. Answering the questions from the floor, he spoke about the duties of an expert.

Laurence Kiffer, President of UIA International Arbitration Commission & Teynier Pic, Paris, underlined the importance of instructions given to the expert. One of the techniques for making the proceed-



ings more efficient is that we should focus the parties and experts on the technical issues of interest to the tribunal.

Valery Knyazev, Partner, Haberman Ilett, London, underlined that timing is crucial for proper preparation of the expert, as well as having an expert meeting before producing the first expert report. “Specific topics given by the tribunal make the participation of the expert beforehand more efficient,” he added.

The conference was followed by the official signing ceremony of the Prague Rules signatory book, which will be situated in Prague.



ARBITRATION.RU

INTERNATIONAL REVIEW



Daria Zavershinskaya,
Higher School of Economics, LLM
student in international trade,
finance and economic integration

This month the international review offers to your attention a selection of landmark cases heard before ICSID tribunals and the High Court of Justice Business and Property Courts of England and Wales Commercial Court (QBD). The review is prepared by Daria Zavershinskaya, Higher School of Economics, LLM student in international trade, finance and economic integration, Moscow.

ICSID

Vattenfall and ors. v. the Federal Republic of Germany, Case No. ARB/12/12, Decision on Achmea issue

On 31 August 2018, the ICSID (“**Tribunal**”) rendered a separate decision in the proceedings between Swedish nuclear operating companies and Germany concerning Germany’s legislation under which nuclear power plants would be phased out by 2022. The decision concerned recently issued judgment of the Court of Justice of the European Union (“**CJEU**”) on the *Achmea* case, where the CJEU interpreted relevant articles of the Treaty of the Functioning of the EU (“**TFEU**”) as precluding application of dispute resolution provision in the intra-EU bilateral investment treaty (“**BIT**”). Since Germany is a member of the European Union (“**EU**”), and claimants are legal entities operating within the EU, respondent claimed the *Achmea* decision to be a “*new procedural situation*” objecting the Tribunal’s jurisdiction.

Arbitrators:

Professor Albert Jan Van Den Berg (Presiding Arbitrator), the Honourable Charles N. Brower (Arbitrator), Professor Vaughan Lowe (Arbitrator)

Secretary to the Tribunal:

Ms. Jara Mínguez Almeida

Claimants’ representatives:

Kaj Hobér, Jakob Ragnwaldh, Fredrik Andersson, Alexander Foerster, Friederike Strack (Mannheimer Swartling Advokatbyrå Ab), Richard Happ, Georg Scherpf (Luther Rechtsanwaltsgesellschaft MbH)

Respondent’s representatives:

Sabine Konrad, Arne Fuchs (Mcdermott Will & Emery Rechtsanwälte Steuerberater Llp), Hans-Joachim, Henckel, Annette Tiemann (Bundesministerium für Wirtschaft und Energie)

The Achmea dispute

The Achmea dispute, previously covered in our magazine (see article by M. Puchyna and V. Timofeeva, *Arbitration.ru*, №4 (4), 2018, pp. 63-66), arose from the Slovak Government's legislation, which prevented private health insurers from distributing profits to shareholders. The CJEU held that dispute resolution provisions in the Dutch-Slovak intra-EU bilateral investment treaty ("BIT"), invoked by Achmea to challenge Slovak regulation as discriminatory, are incompatible with the EU law. The CJEU's held that the dispute as relating to interpretation or application of the EU law should have been submitted for a preliminary ruling procedure to a court or tribunal of a Member State to "ensure the full effectiveness of EU law" and promote cooperation between the EU Member States.

Application of the Achmea decision in the Vattenfall dispute

The Tribunal rejected the very idea that the EU law was applicable to the dispute arising from the En-

ergy Treaty Charter ("ECT") under Article 31 (3) (c) of the Vienna Convention on the Law of Treaties ("VCLT"). Its application would "*potentially allow for different interpretations of the same ECT treaty provision*," which is contrary to the principle of systematic and coherent interpretation and which would impede an investor's right to dispute resolution. However, even if the EU law were to be applied, the ECT dispute resolution clause would prevail as *lex specialis*. Furthermore, the CJEU's observations in the *Achmea* case concerned a bilateral investment treaty, and not the ECT, a multilateral agreement to which the EU is a party itself. Finally, the Tribunal took into account the absence of a "disconnection clause", which is usually included to "*ensure that the provisions of a mixed agreement only apply vis-à-vis third parties and not as between EU Member States*."

As a result, the Tribunal rejected Germany's jurisdictional objection.

UP and C.D Holding Internationale v. Hungary, Case No. ARB/13/35, Award, 9 October 2018

The relevance of the *Achmea* decision became one of the cornerstone issues in the proceedings between French meals voucher companies and Hungary before the ICSID tribunal ("Tribunal"). Claimants argued that the Hungarian tax reforms destroyed the value of claimants' investment amounting to indirect expropriation and breached the fair and equitable treatment standard. Following issuance of the *Achmea* judgment, Respondent raised jurisdictional objections, which were extensively analysed by the Tribunal in the award rendered on 9 October 2018.

Claimants put forward the following arguments to contest relevance of the *Achmea* decision. First, they submitted that the European Union law ("EU") being autonomous does not form part of rules and principles of international law applicable to the underlying dispute. Claimants further contended that their claims were based on the bilateral investment treaty ("BIT") between France and Hungary, which left no room for the consideration of the *Achmea* decision, and not on the EU law. In any event, even if the Tribunal were to find the ruling of the Court of Justice of the European Union's ("CJEU") in *Ach-*

Arbitrators:

Professor Dr. Karl-Heinz Böckstiegel (Presiding Arbitrator), The Honourable L. Yves Fortier PC CC OQ QC, (Arbitrator), Sir Daniel Bethlehem KCMG QC (Arbitrator)

Secretary to the Tribunal:

Mr. Francisco Abriani

Claimants' representatives:

Ms. Isabelle Michou (Quinn Emanuel Urquhart & Sullivan), Mr. Laurence Shore (Herbert Smith Freehills Paris LLP).

Respondent's representatives:

Ms. Kiera S. Gans, Ms. Natalie Kanerva (DLA Piper LLP (US)), Dr. András Nemescói, Dr. Péter Győrfi-Tóth, Dr. Dávid Kőhegyi, Ms. Zsófia Deli (Horvath and Partners Law Firm DLA Piper), Dr. Beatrix Bártfai, Dr. András Lovas (Sárhegyi & Partners), Dr. Norbert Tátrai (Government Office of the Prime Minister).

mea applicable, the ICSID Convention and the BIT would prevail over the Treaty of the Functioning of the EU (“TFEU”) as *lex specialis*, specifically governing the procedure of investment protection. As a last resort, claimants argued the Tribunal’s possible refusal to exercise jurisdiction to be denial of justice on the ground that, having triggered the ICSID Convention dispute resolution clause, they lost the right to seek a relief elsewhere.

The Tribunal upheld claimants’ arguments, having clearly distinguished the *Achmea* decision from the underlying dispute, though, without delving into the autonomous nature of the EU law. The Tribunal

observed that its jurisdiction as based on the ICSID Convention and ICSID Arbitration rules “*was placed in the public international context and not in a national or regional context.*” The *Achmea* decision, in turn, contained no reference either to the ICSID Convention or to the ICSID Arbitration rules. The Tribunal also stated that being a Member State of the EU does not absolve Hungary from the obligations under the ICSID Convention and concluded that even denunciation of the ICSID Convention does not affect previously given consent to arbitration.

As a result, Hungarian jurisdictional objections based on the *Achmea* decision were rejected.

UNITED KINGDOM

The High Court of Justice Business and Property Courts of England and Wales Commercial Court (QBD), 11 October 2018, *Eastern European Engineering Ltd v. Vijay Construction (Proprietary) Ltd*, [2018] EWHC 2713 (Comm)

On 14 November 2014, the International Chamber of Commerce (“ICC”) seated in Paris issued an award favoring Eastern European Engineering Ltd (“EEL”) in the dispute arising out of its termination of 6 contracts on the construction work for a hotel called Savoy Resort and Spa. To set aside the award, defendants commenced proceedings in France and the Seychelles. They also challenged the order granting permission to enforce the award before the England and Wales High Court of Justice (“EWHC”). This application was stayed unless the courts of France and the Seychelles upheld validity of the award.

The grounds on which defendants challenged the award were essentially similar in all the proceedings: lack of the ICC’s jurisdiction, denial of the opportunity to present their case, claimant’s blackmail of witness and promises of payment contrary to public policy. Having found that almost all arguments gave rise to estoppel (except for the lack of jurisdiction),

Judge:

Mrs Justice Cockerill

Claimant’s representatives:

Mr Benjamin Pilling QC, Mr Daniel Khoo (Cooke, Young, & Keidan LLP)

Defendant’s representatives:

Mr Sandip Patel QC, Mr Muthupandi Ganesan (of Scarmans)

the EWHC yet analysed each of the ground and found them to fail on the merits. The EWHC concluded that in the absence of sufficiently compelling reasons, it would be unfair to allow defendants to raise substantially the same challenges for the third time.

As a result, the EWHC endorsed the “*pro-enforcement*” policy for the recognition and enforcement of arbitral awards” and upheld the validity of the award.

The High Court of Justice Business and Property Courts of England and Wales Commercial Court (QBD), 12 November 2018, Thai-Lao Lignite (Thailand) Co., Ltd., Hongsa Lignite (Lao Pdr) Co., Ltd. v. Government of the Lao People's Democratic Republic, Claim No. CI-2010-000169

On 12 November 2018, the High Court of Justice Business and Property Courts of England and Wales Commercial Court (“**English Commercial Court**”) set aside the order to enforce the UNCITRAL award against Laos arising out of Laos’ termination of the agreement to develop a lignite-fired power plant and related mining contracts.

After having obtained the US\$56 million award from the Kuala Lumpur Regional Centre for Arbitration (“**Tribunal**”) in 2007, claimants initiated proceedings to enforce the award in numerous jurisdictions, including New York, London, Paris, Singapore and Malaysia.

On 26 July 2011, the Court of Appeal of Malaysia extended the time limit for Laos to file an application for the annulment of the award. However, by that time claimants already won the proceedings in New York, London and Paris, confirming enforcement of the award.

By the end of 2012, the Malaysian High Court set aside the award, *inter alia*, based on the lack of

Judge:

Mr Justice Teare

Defendant’s representatives:

Dentons UK & Middle East LLP, Womble Bond Dickinson (UK) LLP.

Claimants were unrepresented and did not appear

the tribunal’s jurisdiction over the related contracts. While claimants filed an appeal with Malaysian courts, Laos managed to reverse the confirmation of the award before the Paris Court of Appeal. In 2013, the Singapore High Court also refused to enforce the award, joined by the Federal Court of Malaysia confirming the annulment of the award.

The underlying decision of the English Commercial Court favoring Laos ended an 11 year-saga of litigation.

THE HISTORY OF THE ICC CENTRAL AND EASTERN EUROPEAN INSTITUTIONAL ARBITRATION GROUP*



Dr. Emmanuel Jolivet**



Dr. Galina Zukova, Paris***

This article sheds light on the history and activity of the ICC Eastern and Central European Institutional Arbitration Group, which, despite its importance and role in development of arbitration in the region, is not always known to the arbitration community.

The International Chamber of Commerce (“ICC”) is committed to make business work for everyone, every day, everywhere. Since its inception in 1919, ICC has constantly worked to improve the economic and regulatory framework of business activities. ICC’s founders who called themselves the “Merchants of Peace” considered that fostering international growth and development through international trade was instrumental in ensuring peaceful relationships between countries and individuals. However, the ICC organizational principle, which limited membership to companies and individuals that believed in and promoted the free market economy and gave access to the ICC working groups only to these members, ignored a substantial share of other players involved in international trade. Within the ICC framework, its members were not in a position to exchange views with actors from countries that did not recognize the free market as a key economic principle.

Since the decision to set up ICC in 1919 international trade developed to unprecedented levels. This happened despite the tremendous diversity of countries’ political or social structures. ICC identified this increasing volume of business relationship and the lack of institutional channels to discuss topics of common interest with actors from countries with planned economies as a growing impediment to the further development of international trade. Therefore, in May 1964 ICC established the “East/West Committee” to address this situation.¹

Originally, the Committee was composed of ICC members and members of the Chambers of Commerce and Industry of Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the USSR. It operated through a number of working groups

* The text of this article is based on and is a follow up on a previous article titled “The European Arbitration Group” published in *Festschrift till Gustaf Möller*, Dan Frände, Lauri Railas and Eva Storskrubb (Eds), *Juridiska Föreningen i Finland, JFT*, 2011, pp. 487-494.

** General Counsel of the International Chamber of Commerce and of the International Court of Arbitration.

*** Belot Malan & Associates, Partner (Paris); Associate Professor, University of Versailles (Paris-Saclay); Associate Professor, Riga Graduate School of Law; ICC Court Member.

¹ See for example. *East/West Trade Report*. ICC Publication №309. 1977.



Meeting of the ICC Arbitration Group in Kyiv (2003).

From left to the right, in the first line: Dr. Andreas Reiner (Austria), Dobroslav Mitrovich (Belgrad), Prof. Igor Pobirchenko (Ukraine), Dr. Robert Briner (France, the President of the ICC Court), Dr. Bohuslav Klein (Czech), Prof. Alexander Komarov (Moscow), Prof. Sergei Lebedev (Moscow). In the second line: Ziedonis Udris (Riga), Tatjana Slipatchuk (Kyiv), Prof. Nikolai Yurkevitch (Minsk), Prof. Nina Vilko (Moscow), Dr. Silvy Chernev (Sofia), Dr. Dmitri Postovan (Kishinev), Dr. Babiuk (Bucharest), Dr. Ronkalia (Switzerland), Prof. Jerzy Rajski (Warsaw).

dealing with specific technical aspects of trade such as trade facilitation in general, joint ventures, banking, marketing² and dispute resolution.

Regarding dispute resolution the idea was to set up a system providing contractual partners from countries having different political and economic regimes with guaranties as to the efficient, impartial and confidential³ resolution of disputes arising during the performance of international agreements. Arbitration was felt to be the most appropriate legal mechanism to achieve this purpose. This led to the creation of the Working Group on Arbitration in 1975⁴, also referred at that time as the ICC “East-West” Working Group (the “Group”).

² European Arbitration Bulletin of the ICC International Court of Arbitration, №1, May 1990, p. 1.

³ It is interesting to point out that confidentiality was repeatedly emphasized as a fundamental feature of arbitration proceedings in this context.

⁴ Foreword in International Commercial Arbitration in Europe, Special Supplement, The ICC International Court of Arbitration Bulletin, December 1994, at 5. For more information, see for example, Jarvin, Sigvard, Commercial Arbitration in East-West-Relations: The experience of the ICC's arbitration court: choice of law; number of arbitrators and seat of arbitration, International trade law and practice, Masson, 1984,

In the 1980s, the Group focused its activities on three main topics: (i) cooperation between ICC and Chambers of Commerce of the Eastern European members of the Group in exchanging information about laws and regulations on arbitration, (ii) cooperation in exchanging information regarding the choice of competent arbitrators, and (iii) the study of the role of the pre-arbitral expert.

One of the Group's practical achievements was a proposal of a recommendation to the East/West Committee on the advisability of referring disputes arising out of or in connection with the East-West trade and economic cooperation contracts to arbitration. This recommendation, adopted by the East/West Committee in 1984 contemplated the suita-

117-138; Herman, Gerold, Overcoming Regional Differences: Arbitral Practice, Comparative Law and the Approximation of Laws, in Pieter Sanders (ed), Arbitration in Settlement of International Commercial Disputes Involving the Far East and Arbitration in Combined Transportation, ICCA Congress Series 1988 Tokyo, Kluwer Law International 1989, 291-299; Melis, Werner; Strohbach, Heinz, East-West Arbitration, in Pieter Sanders (ed), Yearbook Commercial Arbitration Vol. VII - 1982 VII, Kluwer Law International, 1982, pp. 395-406.

bility of offering an option to refer such disputes to the courts of arbitration attached to the Council for Mutual Economic Assistance (“COMCON”⁵) countries’ Chambers of Commerce and Industry, or to arbitration under the ICC Rules.

The Group held regular meetings and organized seminars and other events opened to the public or selected participants. The first seminars took place in Prague in 1978, in Budapest in 1980 (*Techniques in East/West Trade relations*⁶), in Paris in 1983 (Differences between arbitration under the ICC Rules and the Rules of Procedure of the Foreign Trade Arbitration Commission of the USSR Chamber of Commerce and Industry⁷), in Varna in 1986 (*Evidence in Arbitration in Eastern and Western countries*) and again in Paris in 1990 (Joint ventures between companies from COMCON countries and their foreign partners, the resolution of disputes arising out of such joint ventures’ activities by international arbitration).⁸

Following the geopolitical changes in Europe at the end of the 1980s and at the beginning of the 1990s, a question arose as to whether the work of the Group should be continued. The question was prompted by the setting up of ICC local chapters called “ICC National Committees” in many countries formerly classified as “Eastern countries”. In countries where such National Committees had not been established, local actors had the possibility to join ICC as direct members. This new organizational framework empowered ICC to rely on these National Committees to promote arbitration in the respective countries. However, the growing relevance of dispute resolution for East-West business transactions and the specific features of the Group led to the decision to maintain and further strengthen it, and to change its name to the “ICC European Arbitration Group”.¹⁰

At the same time, the composition of the Group had to take into account the political developments

affecting former socialist countries, the increased caseload and activities of the ICC International Court of Arbitration involving these countries, as well as the greater number of ICC Court members coming from this part of the world. The composition of the Group remained largely the same until 2015 (see below), and its membership was divided into three categories of participants.

The **first** category was composed of members designated by ICC. These members were former or current ICC Court members from Eastern and Central European countries, former or current ICC Court members from Western countries or former members of the Secretariat of the ICC Court who were actively involved in dispute resolution matters in the region.

The **second** category of members was composed of representatives of arbitration institutions of the chambers of commerce of Eastern and Central European countries. Traditionally only one chamber of commerce per country was invited to be part of the Group through the Chairman or President of its arbitration court. However, the question of whether it is appropriate to open up the Group to dispute resolution providers from other chambers has been debated regularly. The Group has been reluctant to accept arbitral institutions that do not have a long-standing track record of administering international arbitration proceedings or institutions which are not located in Central or Eastern Europe as members⁹.

A **third** category of participants, having an observer status, and who were invited on a case-by-case basis when it is uncontested that their knowledge or field of activity could be a useful resource for the Group.

The Group was chaired by the President of the ICC Court. The General Counsel of the ICC Court was the Secretary to the Group. The Counsel and Deputy Counsel of the Secretariat of the ICC Court whose team administers disputes involving Central and Eastern European countries were invited to take part in the yearly meeting of the Group when necessary.

Despite structural changes in the Group, the later continued holding its meetings and discussion about the recent developments in the region. Traditionally, the Group held two meetings a year.¹⁰ However,

⁵ <https://en.wikipedia.org/wiki/Comecon>

⁶ The discussion was focused at the main characteristics and differences between procedural rules of arbitral institutions from Eastern and Western countries.

⁷ *Third Seminar on East-West Arbitration: (Paris, December 6-8, 1983)*, Journal of International Arbitration, Vol. 1, Issue 1, 1984, p. 81.

⁸ European Arbitration Bulletin of the ICC International Court of Arbitration, No. 1, May 1990, p. 1.

⁹ With an exception of Kazakhstan, as historically Kazakhstan is closer to the European developments and traditions.

¹⁰ *European Arbitration Group: Keeping Ahead of Change*, The

for the last two decades the Group has convened only once per year. Locations were alternatively fixed in Paris and in a country previously characterized as an “Eastern country”.

Thus, the Group’s 1991 Paris meeting was devoted to the enforcement of arbitral awards. In 1992, the Group’s meeting in Sofia addressed the question of arbitrators’ fees in international arbitration and the future of the 1972 Moscow Convention. The same year a conference on Privatization and International Commercial Arbitration was held in Budapest. In 1993, the Group discussed the “Composition and the procedure of the Special Committee referred to in Article IV of the European Convention on International Commercial Arbitration” elaborated under the auspices of the Economic and Social Council of the United Nations as well as the programme of the seminar “Investment in Czech and Slovak Republics: After the Separation”.

In May 1990, the first issue of the European Arbitration Bulletin (the “EAB”) of the ICC International Court of Arbitration was published at the Group’s suggestion. The purpose of this newsletter was defined in the introduction to its first issue as “*promoting arbitration as a means of solving disputes in East-West trade and commerce*”. The first issue focused on three main topics: the new regulations and practice of international commercial arbitration in a number of COMCON countries, information about the seminar on East-West joint ventures and arbitration held in Paris in February 1990, and information about the new publications on East-West arbitration and arbitration regulations in COMCON countries. It seems that this first issue of the EAB was not followed by any substantive similar publication. One explanation was the profound desire of participants to keep the debates within the Group confidential and the complexity of the elaborative process required to prepare such a publication.

A short article on the Group’s works was published in the October 1993 issue of the ICC International Court of Arbitration Bulletin (the “Bulletin”).¹¹

ICC International Court of Arbitration Bulletin, Vol. 4/No. 2, October 1993, p. 4.

¹¹ *European Arbitration Group: keeping ahead of change*. The ICC International Court of Arbitration Bulletin, Vol. 4/No. 2, October 1993, pp. 4-5.

It contained very general information about the Group’s May 1993 meeting in Paris. As usual, the developments in arbitration laws and practices in Central and Eastern European countries were discussed. The article also mentioned that the Group was co-operating with the Bulletin on the preparation of a special supplement to the Bulletin on arbitration in Europe.

This special supplement entitled *International Commercial Arbitration in Europe* was published in December 1994. It focused primarily on describing the new arbitration laws adopted in the Czech Republic, Hungary, Italy, Moldova, Romania, Ukraine and Russia in 1993-1994.¹² The special supplement also provided information on arbitration legislation, case law and practice in certain other Western and Eastern European countries, such as Bulgaria, Croatia, Germany, England, Estonia, Poland and Slovenia. Arbitration within the legal framework of the European Community was also addressed.

Significant economic changes in 1990-2000 in the Central and Eastern European countries raised again the question about the future of the Group and its mission. Dr. Briner, the Chairman of the ICC Court in 1997-2006, launched the idea of revival of the Group’s works “*in a changed context*”. This idea was welcomed “*with great enthusiasm*” by the presidents of the courts of arbitration of the ex-COMCON countries.¹³

Since 2000, the Group’s meetings have each lasted a day and had similar agendas, enabling participants to measure and compare the evolution of the arbitration framework in the various countries represented. Each institution is required to submit a report setting out the main developments in arbitration and since the early 2000s in conciliation and other amicable dispute resolution proceedings in its country in advance of each Group meeting. The reports focus on statistical data, the modifications of the institutions’ dispute resolution rules, national laws and case law.

¹² *Foreword* in *International Commercial Arbitration in Europe. Special Supplement*, The ICC International Court of Arbitration Bulletin, December 1994, p. 5.

¹³ *Klein, Bohuslav*, Robert Briner’s Role in the Revival of Institutional Arbitration in Eastern Europe, in *Global Reflections on International Law, Commerce and Dispute Resolution Liber Amicorum* in honour of Robert Briner, ICC Publishing, 2005, p. 461.

Each institution is asked to present its report and answer questions from participants about these reports and presentations. The second part of the meeting is devoted to topics of common interest that have been chosen jointly by members. The homogeneous structure of the Group, the in-depth consultative process used in drafting the agenda and the confidentiality of the discussions ensure that the items discussed are highly relevant.

The meetings outside of Paris were held in Prague (Czech Republic, 2001), Kiev (Ukraine, 2003), Belgrade (Serbia, 2005), Warsaw (Poland, 2007), Bucharest (Romania, 2009), Budapest (Hungary, 2011), Sofia (2013), Bucharest (2015), Vilnius (2017).

Since 2015 at the suggestion of Alexis Mourre, the then President of the ICC International Court of Arbitration, the Group changed its name to “ICC Central and Eastern European Institutional Arbitration Group”. The new name was introduced with a view to more accurately reflect the new membership of the Group, leaving the ICC the leading role in coordinating activity of the Group. The ICC International Court of Arbitration Director for Europe, a position created in 2015, was appointed as the Secretary of the Group.

This brief description of four decades of the Group’s work is relevant to the evolution of international arbitration and ICC’s commitment to promoting knowledge and acceptance of international arbitration as a preferred and often most efficient means of solving international business disputes. The Group’s work has been instrumental in expanding the boundaries of international arbitration both geographically and in terms of the types and numbers of parties resorting to arbitration. One cannot seriously challenge that the number of arbitration cases involving both private parties and States and parastatal entities from former socialist countries is closely linked to the groundwork laid under the Group’s auspices. The Group’s success in building a common knowledge and understanding of arbitration mechanics in this part of the world has paved the way for the construction of a truly global culture of international arbitration. A noticeable result is the ever increasing number of young practitioners from Central and Eastern Europe involved in arbitration events and in international arbitration proceedings conducted not

only under the aegis of local arbitral institutions but also under the rules of institutions located outside the boundaries of former socialist countries.¹⁴

¹⁴ Two new ICC groups have been set up to involve this new generation of arbitration practitioners in knowledge sharing session and educational activities: the ICC Young Arbitrators Forum (YAF) was set up in 2008, and the new European Arbitration Group, whose members are arbitration practitioners in the Eastern and Central Europe, was set up in 2016.

ICC CENTRAL AND EASTERN EUROPEAN INSTITUTIONAL ARBITRATION GROUP REPORT OF THE ACTIVITIES in Bulgaria, Croatia, Estonia, Finland, Kazakhstan, Makedonia, Moldova, Romania, Russia and Ukraine in 2017–2018.

Prepared for publication
by **Irina Strelkovskaya** and
Dmitry Artyukhov, RAA

On 24 October 2018 a regular annual meeting of the ICC Central and Eastern European Institutional Arbitration Group was held in Paris (France). The ICC Central and Eastern European Institutional Arbitration Group annually gathers members of international arbitral institutions of Central and Eastern Europe in order to exchange information on current developments and best practices in the field of international commercial arbitration. The 2018 ICC Central and Eastern European Institutional Arbitration Group meeting was devoted to the presentation, exchange of views and questions on the activity reports of international arbitral institutions that are members of the Central and Eastern European Institutional Arbitration Group. In addition, the meeting brought up for discussion a separate question concerning institutions' "standard" documents.

This article presents a short reference on the activities of arbitration institutions from 10 countries: Bulgaria, Croatia, Estonia, Finland, Kazakhstan, Makedonia, Moldova, Romania, Russia and Ukraine in 2017-2018.

INTERNATIONAL COMMERCIAL ARBITRATION COURT ATTACHED TO THE CHAMBER OF COMMERCE AND INDUSTRY OF REPUBLIC OF MOLDOVA

Report of the activities for the period of 2017-2018 (until October)



Address: 151, St. Cel Mate Str
City: Chisinau
Country: Moldova
URL: <http://www.chamber.md>
E-mail: arbitration@chamber.md

Election/appointment method of governing bodies:

The International Commercial Arbitration Court attached to the Chamber of Commerce and Industry of Moldova has the Secretariat, Chairman and two Deputy Chairmen, elected for 4 years by the General Assembly, which is formed by all the appointed arbitrators. Arbitrators are appointed by the Counsel of the Chamber of Commerce and Industry of Moldova also for a term of 4 years.

Number of staff/members of the Court:

The Secretariat's functions are performed by one Secretary, employed by the Chamber of Commerce and Industry of Moldova. Administrative support (such as accountancy and maintenance of the building) is provided by CCI's staff, not engaged directly

in the Court's activity. Arbitrators are not Court's employees, but independent professionals in the exercise of their function.

Nationalities:

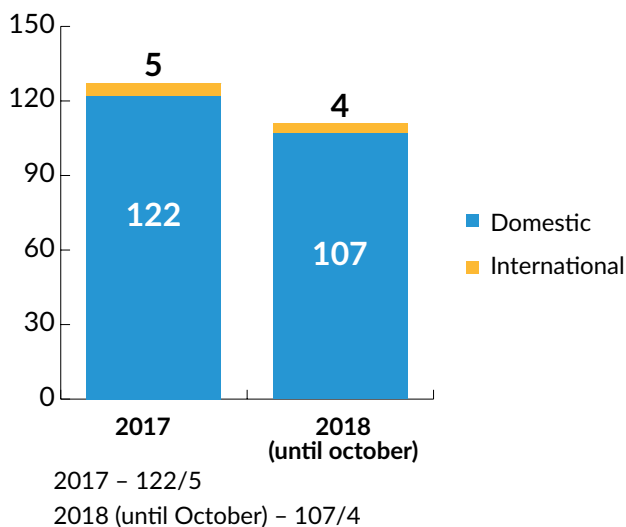
The staff of the Court's Secretariat is holding Moldovan citizenship.



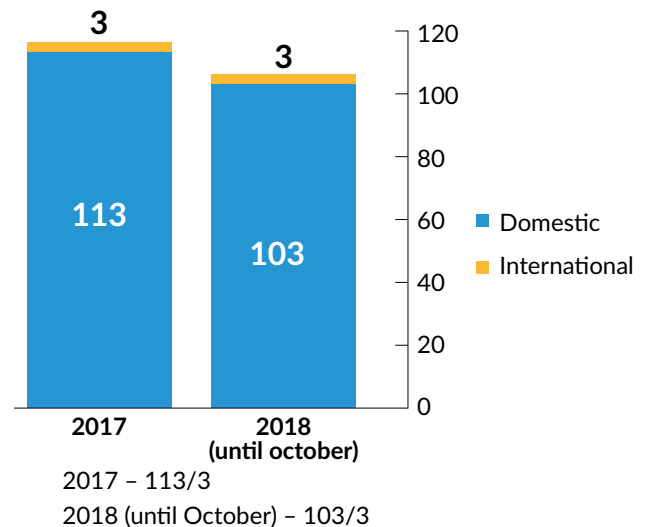
Working languages:

The working language of the Court is Romanian. According to the Court's Rules for Domestic Arbitration, oral debates are conducted in Romanian and all documents must be in Romanian, or if in another language, accompanied by a translation. In case of international arbitration, oral proceedings are held in either Romanian or the language parties have agreed on.

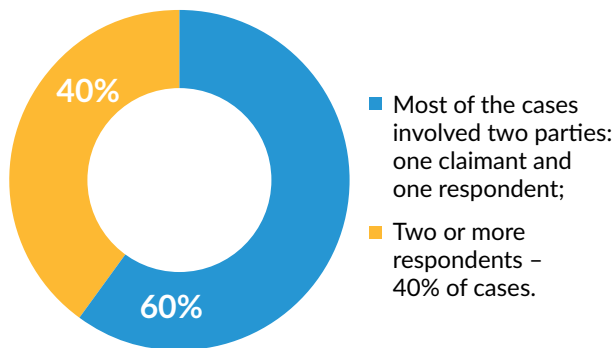
Number of cases registered:



Domestic/international awards ratio:



Number of parties involved:



Origin of the parties:

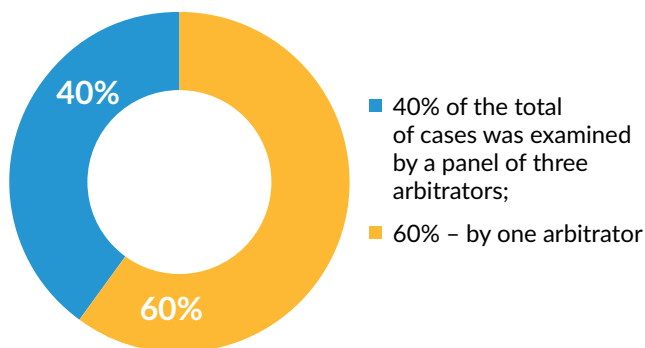
Most of the parties are Moldovan nationals;

Other parties are from Lithuania, Romania, Poland, Slovak Republic, Russia, Serbia and Ukraine.

Types of contracts:

Sale-purchase, delivery, carriage, supply.

Number of arbitrators involved:



Origin of the arbitrators:



The cases these years are referred to Moldovan arbitrators.

Number of arbitrators chosen from the list/ outside the list:

The arbitrators in most cases were chosen by the parties from the Recommended List, or appointed by the president of ICAC only based on the List.

In 2018 in two cases the arbitrator was chosen from outside the List.

Place/seat of arbitration:

The venue of the arbitration is the office of International Commercial Arbitration Court at the Chamber of Commerce and Industry in Chisinau, Moldova.

Name of the rules of arbitration applied:

- “ICAC CCI RM Rules on international commercial arbitration procedure”
- “ICAC CCI RM Rules on domestic arbitration procedure”

Version of arbitration rules in force:

April 1, 2009

Publication number and/or web site address where the rules can be found:

Monitor Official no. 19-21/69 of 03.02.09.

Web site: www.arbitraj.chamber.md

Legal framework:

The arbitral tribunal applies the procedural rules and, in addition, the civil procedural law.

As substantive law, the arbitral tribunal applies for the settlement of the domestic disputes – the Moldovan substantive law in force, and for the settlement of international disputes – law chosen by the parties.

Form of the arbitration text: specific law on arbitration procedure:

Law on arbitration no. 23-XVI of 22.02.08

Law on international commercial arbitration no.24-XVI of 22.02.08, (based on the UNCITRAL Model Law on International Commercial Arbitration)

(Both published in Monitor Official no. 88-89 of 20.05.08)

Number and names of other arbitral institutions active in the country:

There are some arbitral courts, organized by some professional associations, with a reduced activity:

- Court of Arbitration attached at the International Association of Automobile Transporters.
- Court of Aeronautical Arbitration at the Federation of civil aviation.
- Court of International Arbitration at the AMCHAM Moldova.

Sectors in which competitors are active:

Commerce, transport, agrarian, aviation.

COURT OF ARBITRATION AT THE BULGARIAN CHAMBER OF COMMERCE AND INDUSTRY

Report of the activities for the period of October 2017-September 2018



Address: 9 Iskar Str.
City: Sofia
Country: Bulgaria
URL: <https://www.bcci.bg/arbitration/>
Email: acourt@bcci.bg

Election/appointment method of governing:

The Court of Arbitration at the Bulgarian Chamber of Commerce and Industry („CA”) has the following bodies:

- Arbitral Collegium (consisting of all arbitrators – art. 3, para 2 of the Statute). Arbitrators are included in the lists of arbitrators by decision of the Presidency taken by a simple majority through secret vote;
- Presidency – 7 members elected by the Management Board of the BCCI;
- President – elected by the Management Board of the BCCI (in both cases the election is held by a simple majority of the members present at the meeting).

Number of staff/members of the Court:

The administration of the arbitration cases is carried out through a Secretariat.

Currently the staff members of the CA Secretariat are six: two legal experts; two technical secretaries and two technical assistants.

Nationalities:

All staff members are Bulgarian nationals. The members of the Presidency, the President and the three vice-presidents are also Bulgarian nationals.



Bulgarian nationals

Working languages:

The working language in domestic cases is Bulgarian; the working language in international cases is to be chosen by the parties. When no agreement on the language is reached by the parties the Tribunal determines the language of their proceedings.



Bulgarian

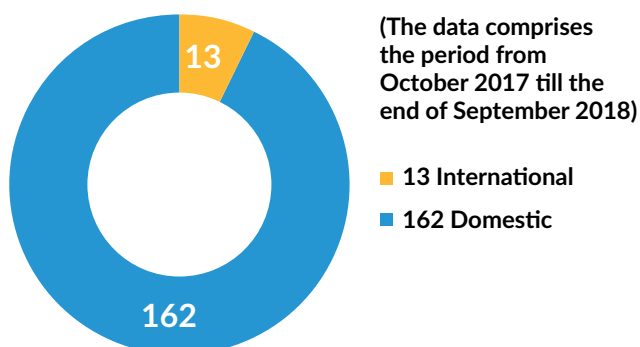
International cases:

The working language in international cases is to be chosen by the parties.

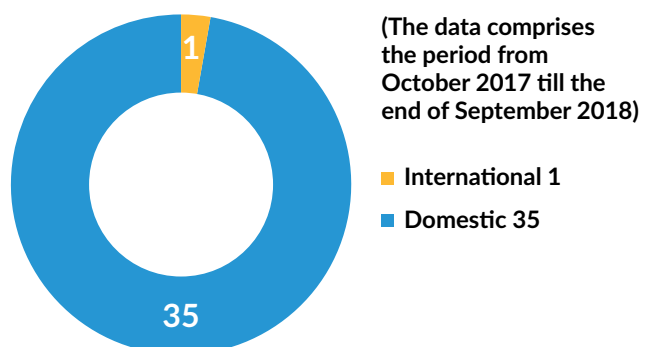
When no agreement on the language is reached by the parties the Tribunal determines the language.



Number of cases registered:



Number of awards rendered:



Number of post awards proceedings: recognition, enforcement, annulment:

From Oct. 1, 2017 until Sept 30, 2018 there have been 9 motions for setting aside of CA at the BCCI arbitral awards. One has been set aside. The rest of the motions have been denied.

A Domestic award is a title for forced execution under Bulgarian law. From the beginning of 2017 the venue for the issue of writs of execution was changed. Until that moment only Sofia City Court was competent to issue such while now all 28 regional courts and Sofia City Court are competent. No information about that process is available.

There is no official source of information concerning recognition and enforcement of CA awards in foreign countries. It is only through the parties to arbitration that such information could be obtained. In recent years there has been no information about a particular award that was denied recognition and/or enforcement under a foreign jurisdiction.

Parties:

During the above period the prevailing country of origin was Bulgaria both in domestic and international cases. There were parties from Austria, Croatia, Cyprus, France, Germany, Great Britain, Greece, Holland, Macedonia, Republic of Korea, Moldova, Poland, Romania, Serbia, Singapore, Slovakia, Spain, Turkey, Ukraine and USA involved in international cases. As a matter of fact, companies from all over the world have been involved in arbitration before the CA through their subsidiary companies registered in Bulgaria.

State, para-statal or public entities:

A significant number of such legal subjects participate in arbitrations before the CA. Those are ministries, public agencies, municipal bodies, as well as a great number of companies in which the capital or a part of it is held by the state or by municipalities.

Economic sector:

The CA services are sought after by subjects from literally all sectors of economy: production and construction business, financial, banking and insurance business, transportation and trade business, supermarkets and malls, leasing companies, etc. Parties with no profit profile and physical persons have also participated in arbitrations.

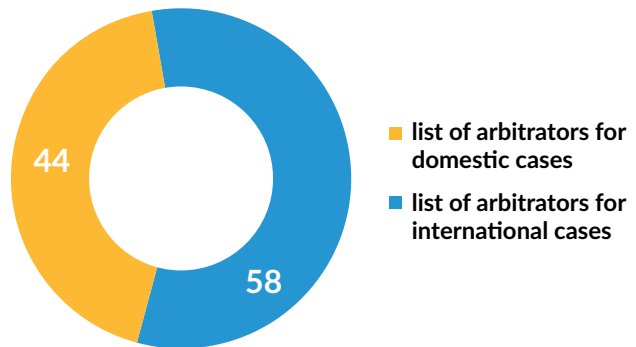
Types of contracts:

The prevailing number of contracts are commercial, there is a significant number of procurement, concession and some privatization contracts. Very often an arbitration clause is contained in General Conditions or in a separate agreement. Standard form contracts (such as FIDIC) are quite common.

Number of arbitrators involved:

There are two lists of arbitrators: A list of arbitrators for domestic cases (44 persons) and a list of arbitrators for international cases (58 persons from which Bulgarian citizens – 32 and foreign citizens 26). The list on international

cases is recommended. Parties to domestic cases where one or all parties are Bulgarian companies with prevailing foreign participation are not bound by the List of arbitrators for domestic cases. They can choose arbitrators outside the otherwise binding list.



Place/seat of arbitration:

The seat of CA is the city of Sofia, the Republic of Bulgaria. Sometimes parties on domestic arbitration agree on a seat of arbitration in some other Bulgarian cities – Plovdiv, Bourgas, etc. There have been arbitration clauses pointing to the CA as a competent arbitration body while the seat of arbitration is in a different country but no actual cases with this type of clause have occurred.

Name of the rules of arbitration applied:

The name is: "Rules of the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry" Since 01.01.2005 "Rules on Expedient Procedure in Arbitration Cases" have been in force. Gradually these Rules have become popular with the parties and currently between 10 and 15% of the cases are conveyed under these Rules.

Version of arbitration rules in force:

- The current Rules were adopted by the Management Board of the Bulgarian Chamber of Commerce and Industry under a resolution recorded in Minutes No. 1 of 31 March 1993 and came into force as of 1 July, 1993. They were amended by a resolution of the Executive Council of BCCI under No.47/3-2002 of 29.01.2002 in force as of February 1, 2002, with Resolution No. 95/1-2008 of the Executive Council of BCCI from 15.01.2008, that become effective as of 01.02.2008 as well as with Resolution No 67/21.11.2011, effective as of January 1, 2012.
- The latest version of the Rules of the CA has been in force since 01.01.2017.
- The latest version of the Bylaw (Statute) of the CA has been in force since 01.01.2017.
- A Unified Tariff for Arbitration Charges in Domestic and International Cases came into force as of 01.09.2015.

Publication number and/or web site address where the rules can be found:

www.bcci.bg

Important case law on arbitration:

Bulgarian law belongs to the continental legal system. No specific or binding case law on arbitration exists.

Form of the arbitration text: specific law on arbitration/incorporation into a code of civil procedure:

The very basics of the general legal framework of arbitration are contained in the Civil Procedure Code ("CPC").

The general law on arbitration is the Law on International Commercial Arbitration ("LICA").

There are special provisions on arbitration in other laws, for example, the Law on Collective Labor Disputes Settlement and the Law on Youth and Sports.

Thus, arbitration is regulated by a special law and this regulation is not a part of any general law or code.

The Republic of Bulgaria is a party to the Convention on Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"), to the European Convention on International Commercial Arbitration; to the ICSID ("the Washington Convention") as well as to the so called Moscow Convention of 1972 which has not been abrogated by a few countries like the Russian Federation and the Republic of Bulgaria. Nevertheless in Bulgaria this act is considered non-functional due to *disuetudo*. The Republic of Bulgaria is also a party to a number of bi-lateral international treaties that have certain effect on investment arbitration. Under the current Bulgarian Constitution (1991) the international treaties to which the Republic is a party (upon condition they have been ratified by the National Assembly and published in the Official Gazette) prevail over domestic legislation.

New laws and regulations related to arbitration:

The general law on arbitration is the Law on International Commercial Arbitration ("LICA") adopted in 1988. This law contains the prevailing part of the statutory regulation in the field of arbitration.

A preliminary general statement can be made that the legal regulation concerning arbitration in Bulgaria is almost identical with the solutions offered by the UNCITRAL Model Law on Arbitration prior to the revision as of 2006. This makes the matter of arbitration one of the legal spheres where Bulgarian law is harmonized with the international standards to the highest level.

The following could be outlined as peculiarities of the legal regulation concerning arbitration:

- A special law contains the regulations on arbitration;
- A single law is applicable for both international and domestic arbitration. The title of the law (the Law on International Commercial Arbitration) is almost totally misleading nowadays: since 1993 it regulates both international and domestic, and both commercial and non-commercial arbitration. This situation occurred because at the time the law was adopted in 1988 (during the communist rule) domestic and non-commercial arbitration were not admitted at all and the law became applicable to such types of arbitration only as a result of subsequent changes while the title was preserved;

As a result of an amendment of 2001 a provision allowing government bodies to be parties to domestic arbitration was introduced. This amendment has had a serious positive effect – a considerable number of government bodies prefer using arbitration than the state courts;

Before the change in 2001 (Official Gazette # 38 of 2001) government bodies were not allowed to agree on domestic arbitration. Nevertheless there were quite a number of cases when such arbitration was agreed to despite the existing ban.

Unfortunately, the amendment is not clear what procedural rules are to be followed in connection with nullity of awards. There was a legislative change in the beginning of 2017 which was reported in the previous report.

- The prevailing number of provisions of the LICA reproduce the rationale of and very often literally the procedural solutions offered by the UNCITRAL Model Law;
- Under the existing law, widely established doctrinal views and the constant state courts practice an arbitral award is generally considered as an equivalent of a state court decision. It is considered to have a *res iudicata* (or an analogous) effect and in principle enjoys the same enforceability. Dependent on the nature of the claim an arbitral award can result in a new legal situation in the case of a successful claim through which a potestative right is exercised;
- The grounds for review over arbitral awards coincide with those given in the UNCITRAL Model law. The last amendment of 2017 reintroduced absolute nullity of arbitral awards (concerning disputes involving consumers).
- The procedure for setting aside of arbitral awards is another specific feature of the legal regulation. A petition for setting aside of an arbitral award can be filed only within 3 months after the award was communicated to the respective party and the procedure comprises only one instance before the Supreme Court of Cassation ("SCC") - after the model of the Swiss Federal law.
- For certain grounds for setting aside of arbitral awards (in hypotheses predominantly related to faults concerning the work of the arbitral tribunal) the law provides that the SCC shall revert the case to the arbitral tribunal.
- LICA regulation provides for no specific requirements for persons and institutions or formations that would decide to act as arbitrations/arbitrators. And, of course, unfortunately there have been cases of abuse. Given this fact it appears quite strange that the same legislators have put forward a serious number of formal requirements before institutions and persons that would wish to offer mediation services.

It was such abuse that brought about the change in 2017 when all disputes involving consumers were left unarbitrable. The same change provided for powers of the Minister of Justice to impose sanctions on arbitrators who have not observed rules of arbitrability. These powers have provoked serious controversy in the arbitration community.

Competition:

As mentioned above the current Bulgarian law poses absolutely no requirements for the practising of arbitration activity.

Number and names of other arbitral institutions active in the country:

The most popular Bulgarian legal site (<http://lex.bg>) points to the existence of 21 arbitration institutions. The names and other details can be found at the same web site.

Sectors in which competitors are active:

The activity of the competitors can hardly be traced. A number of those institutions turn out to have mute web-pages while others do not release any reports. According to personally obtained information the most important have between 20 up to 40 cases per year. Many of the listed arbitrations have no real activity. There have been at least a few cases when parties have shown an arbitration agreement pointing to some arbitration institution but after a real dispute had arisen the interested party discovered that such an institution did not exist at all or had ceased its existence. Such parties have tried to refer their disputes to the CA at the BCCI.

PERMANENT ARBITRATION COURT AT THE CROATIAN CHAMBER OF ECONOMY

Report of the activities for the period of October 2017 – October 2018



Address: Rooseveltov trg 2
City: Zagreb
Country: Croatia
URL: <http://www.hgk.hr/>
Email: hgk@hgk.hr

Structure of the Court:

Permanent Arbitration Court at the Croatian Chamber of Economy (hereinafter: PAC CCE) is the oldest and largest institution in Croatia for resolving of commercial and business disputes through arbitration. The history of the PAC CCE dates back to 1853 when the first institutional arbitration court was established at the Chamber of Economy. The Arbitration Court was abolished at the end of World War II but re-established in 1965 as the arbitral institution competent to administer internal disputes (disputes between legal persons established in the former Yugoslavia). When the Republic of Croatia gained its independence in 1992, the PAC CCE expanded its jurisdiction to also include the administration of international disputes. This was confirmed by the Arbitration Rules of 1992 (Zagreb Rules 1992).

Election/appointment method of governing bodies:

Pursuant to Article 2 of the Rules of the Permanent Arbitration Court attached to the Croatian Chamber of Economy (Official Gazette, No. Nos. 129/15 and 50/17, in force as 6 November 2015) (Zagreb Rules) (hereinafter: PAC CCE Rules), the bodies of the PAC CCE are the Presidency, the President, Vice-Presidents and the Secretary of the PAC. The bodies of the PAC CCE are also arbitral tribunals when acting in proceedings before the PAC CCE.

Pursuant to Article 3 PAC CCE Rules, the Presidency of the PAC CCE consists of nine members: the President, three Vice-presidents and five members with no special functions. They are appointed for a period of four years by the Management Board of the Croatian Chamber of Economy.

Number of staff/members of the Court:

The Secretariat consists of a Secretary and three administrative assistants.

Working languages:

The PAC is equipped to administer proceedings in Croatian and foreign languages. A foreign language selected mostly by the parties is English. However, there were several cases administered in German language.

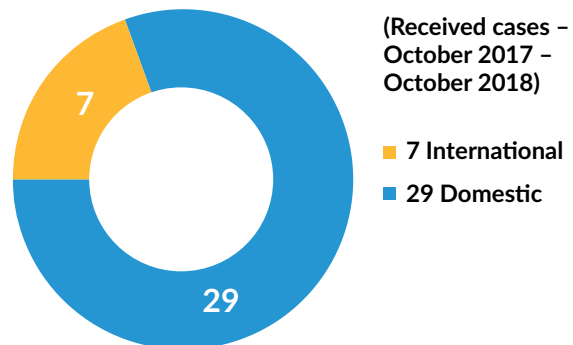


Nationalities:

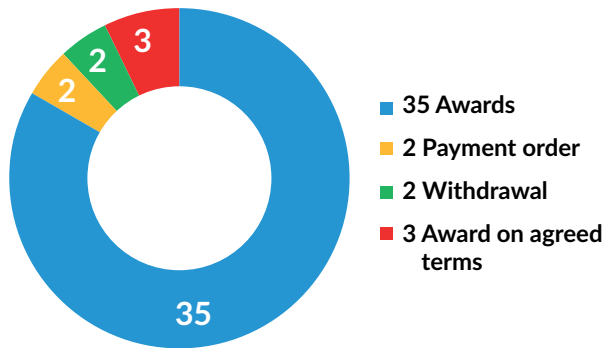
All members of the Presidency and Secretary are Croatian Nationals.



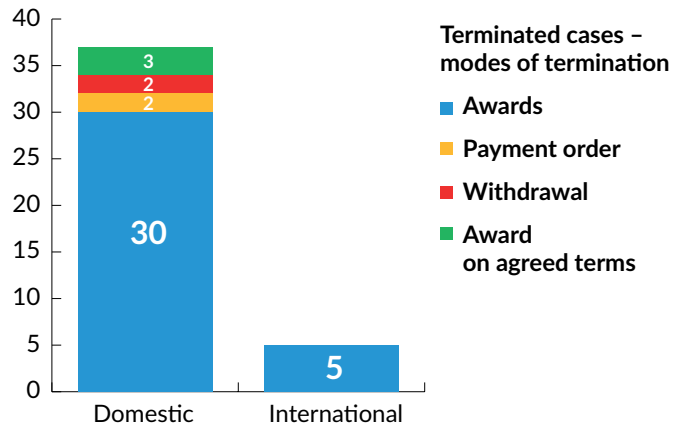
Number of cases registered:



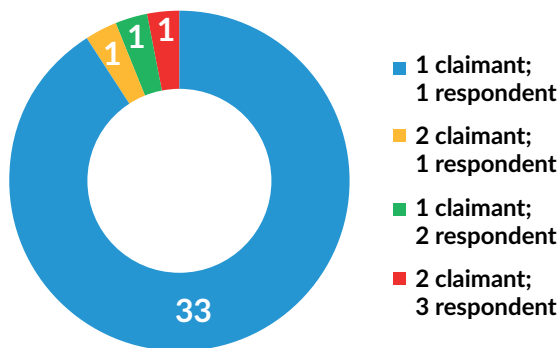
Number of awards rendered:



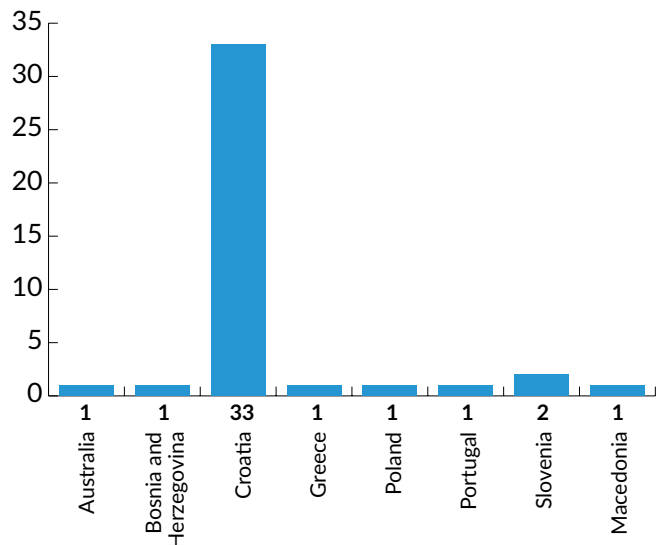
Distinction domestic/international awards:



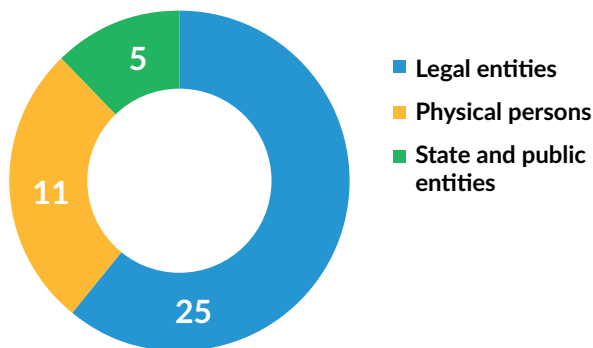
Number of parties involved:



State of origin:



State, parastatal or public entities:



Types of contracts:

Types of contract disputes arising out are: purchase contracts, sale contracts, contracts for provision of services, contracts of agency, insurance contracts, real estate contracts, contracts of commercial brokerage, employment contracts, rental of space contracts, building contracts, shipbuilding contracts, supply contracts and prospectuses.

Economic sector:

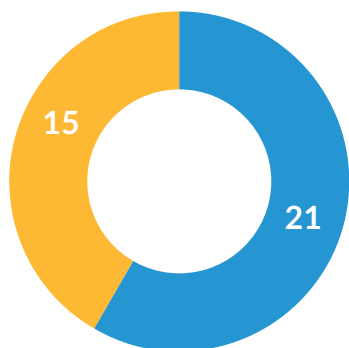
The economic sectors to which arbitral proceedings relate are: commerce, shipbuilding, building, constructing, hotel management, labour market, capital market, real estate market, insurance market and sport.

Arbitrators:

The PAC CCE has one list of arbitrators:

- List of arbitrators in disputes with and without international element (Official Gazette, No. 14/2017);
- List is not binding for the parties.

Number of arbitrators involved:



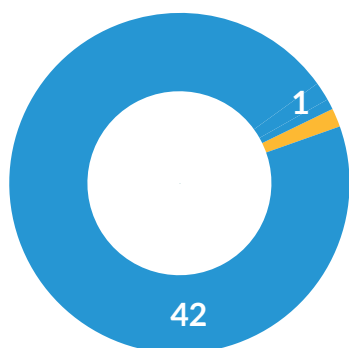
There are 43 arbitrators acting in panels in 21 cases. In 15 cases a sole arbitrator is nominated.

Origin of the arbitrators:

Most arbitrators are coming from Croatia.



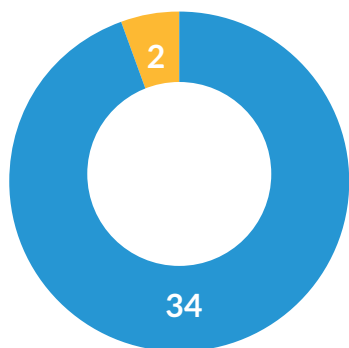
Number of arbitrators chosen from the list/ outside the list:



Out of 43 arbitrators, 42 arbitrators have been chosen from the Lists.

Place/seat of arbitration:

In 34 cases Zagreb is chosen by the parties or determined by the arbitral tribunals or sole arbitrator as a place of arbitration. Under the arbitration agreements, in two cases the seat of arbitration was Split.



Name of the rules of arbitration applied:

- The Rules of arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (Official Gazette, No. 150/02) – Zagreb Rules 2002;
- The Rules of arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (Official Gazette, No. 142/11) – Zagreb Rules 2011;
- The Rules of arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (Official Gazette, Nos. 129/15 and 50/17) – Zagreb Rules 2015.
- Rules of the Permanent Arbitration Court at the Croatian Chamber of Economy (Official Gazette, No. 50/17)
- Decision on the costs of arbitration proceedings (Official Gazette, Nos. 142/11, 37/15, 109/16 and 87/18).

Publication number and/or web site address where the rules can be found:

All rules cited here are available at the web site of the PAC CCE – www.hgk.hr.

Rules are published in Croatian and English in a booklet available at the PAC CCE.

Version of arbitration rules in force:

The Rules of arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (Official Gazette, Nos. 129/2015 and 50/2017) – Zagreb Rules 2015.

Important case law on arbitration:

Excerpts from arbitral awards rendered by the PAC CCE are published in Croatian Arbitration Yearbook, e.g.:

- Čavlina, Andreja, Arbitration Agreement in the Practice of the Permanent Arbitration Court of the Croatian Chamber of Economy, Croat. Arbit. Yearb. Vol. 21-22 (2014-2015), pp. 247-259.
- Matic, Tin; Čavlina, Andreja, Costs of Arbitration in the Practice of the Permanent Arbitration Court at the Croatian Chamber of Economy, Croat. Arbit. Yearb. Vol. 21-22 (2014-2015), pp. 259-277.
- Sikirić, Hrvoje, Arbitration Agreement in the Practice of the Permanent Arbitration Court of the Croatian Chamber of Economy, Croat. Arbit. Yearb. Vol. 12 (2005), pp. 45-78.
- Sikirić, Hrvoje, Lex arbitri in the Proceedings before the Permanent Arbitration Court attached to the Croatian Chamber of Economy – The Zagreb Rules and?, Croat. Arbit. Yearb. Vol. 17 (2010), pp. 145-182.
- Decision of the Constitutional Court of the Republic of Croatia with two dissenting opinions in a case where a constitutional complaint has been launched against arbitral award rendered by the PAC CCE is published in: Croat. Arbit. Yearb. Vol. 12 (2005), pp. 281-287.

Decisions of the High Commercial Court of the Republic Croatia, which is competent for appeals against decisions rendered by the Commercial Court in Zagreb in the annulment proceedings against awards of the PAC CCE are available in Croatian at the web site of the High Commercial Court – www.vtsrh.hr.

Form of the arbitration text:

Arbitration in Croatia is regulated under Arbitration Act (Official Gazette, No. 88/01) which is in force as of 19 October 2001. It relates to domestic and international disputes. It is based on the UNCITRAL Model Law on International Commercial Arbitration (1985).

English translation of the Arbitration Act is available at the web site of the PAC CCE – www.hgk.hr.

Number and names of other arbitral institutions active in Croatia:

Apart from the PAC CCE, there are two arbitral institutions active in Croatia: The Arbitration Court of the Croatian Football Association, The Sport Arbitration of the Croatian Olympic Committee, and the Litigious Arbitration Court (hereinafter: LCA).

Sectors in which competitors are active:

Arbitration Court of the Croatian Football Association and the Sport Arbitration of the Croatian Olympic Committee arbitrate disputes between sportsmen and their clubs or associations. Therefore they cannot be seen as competitors to the PAC CCE.

The LCA was established on 17 January 2015 in order to decide over all matters which are arbitrable under the Arbitration Act. Data on its activities are not available and it is not known whether the LCA is still active.

THE ARBITRATION COURT OF ESTONIAN CHAMBER OF COMMERCE AND INDUSTRY

Report of the activities for the period of 01.01.2017 – 12.10.2018



EESTI
KAUBANDUS-
TÖÖSTUSKODA

Address: Toom-Kooli 17
City: Tallin
Country: Estonia
URL: <http://www.koda.ee/>
Email: arbitraaz@koda.ee

Election/appointment method of governing bodies:

Arbitration Court is not separate legal entity and is attached to Estonian Chamber of Commerce and Industry (Estonian CCI). The Council of the Arbitration Court (6 members) are elected for 2-year period by the Board of Estonian CCI and is reviewing the submitted claims, arranging the formation of arbitral tribunal, deciding upon the applications, supervising the activities of the secretary of the Arbitration Court.

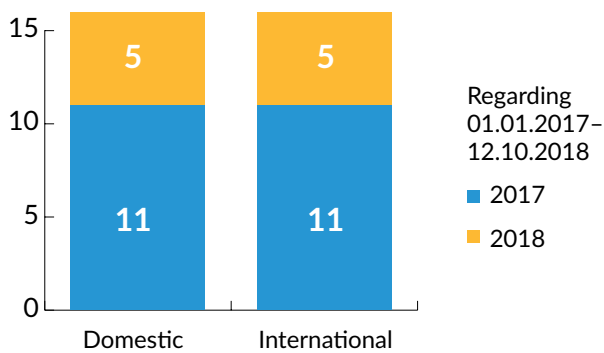
The Council members are elected as follows:

- 1 employee of Estonian CCI (Councillor of Estonian CCI);
- 1 acting judge (Justice of the Supreme Court);
- 1 representative from Ministry of Justice (Vice Chancellor of Ministry of Justice);
- 1 representative from Estonian Bar (starting from 2017);
- 2 other lawyers with at least the degree of magister (2 attorney-at-laws).

Number of staff/members of the Court:

6 council members, 1 secretary.

Number of cases registered:



Nationalities:

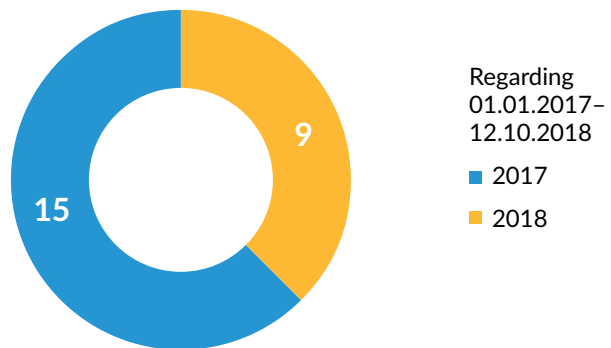


Working languages:

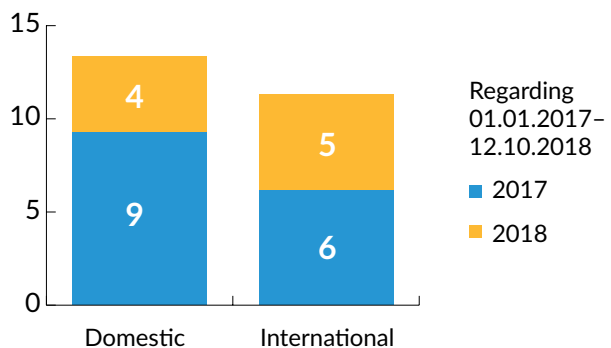
Estonian, English, Russian



Number of awards rendered:



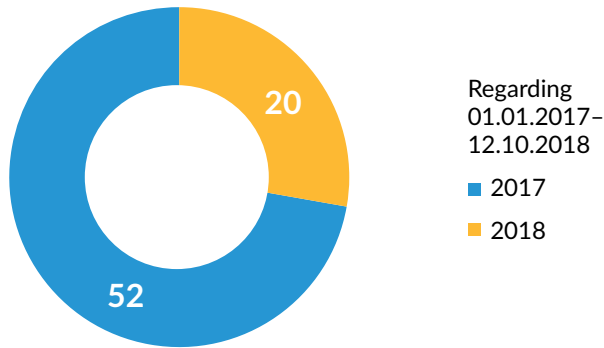
Distinction domestic/international awards:



Number of post awards proceedings: recognition, enforcement, annulment:

In 2017 or 2018 none of the final awards or awards regarding jurisdiction have been annulled.

Number of parties involved:

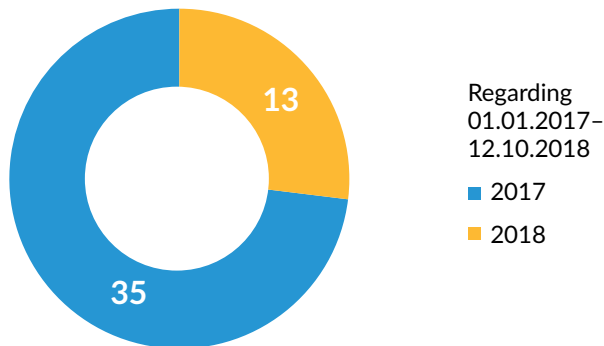


Origin of the parties:

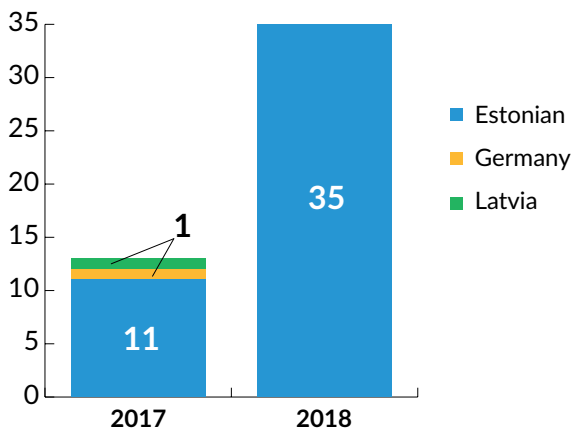
In 2018: Estonia, Russian Federation, UK, Norway, UAE (Dubai), Germany, Virgin Islands;

In 2017: Estonia, Kazakhstan, Sweden, Poland, Latvia, Switzerland, Belarus, Russian Federation, Finland, United Emirates, Turkey.

Number of arbitrators involved:



Origin of the arbitrators:



Place/seat of arbitration 2017/2018:

Tallinn, Estonia.

Name of the rules of arbitration applied:

Rules of the Arbitration Court of Estonian Chamber of Commerce & Industry.

Version of arbitration rules in force:

In force from February 1, 2013, third version
Publication number and/or web site address where the rules can be found: General information in English:
<https://www.koda.ee/en/about-chamber/court-arbitration>
Rules in English:
https://www.koda.ee/sites/default/files/content-type/content/2017-03/Reglement_2013- inglise_keelne_1.pdf

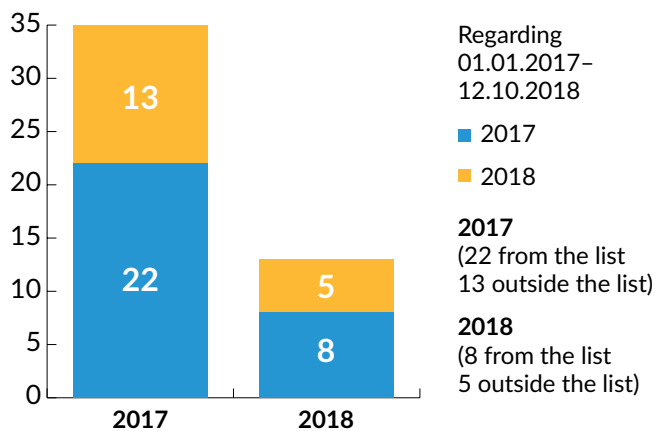
Economic sector:

Trade (sale of goods), construction, real estate, shipping, machinery building, legal laid, agriculture.

Types of contracts:

Sales contract, civil engineering contract, electricity plant construction contract, shares purchase contract, services agreement, loan agreement, charterparty.

Number of arbitrators chosen from the list/ outside the list:



Important case law on arbitration:

In the decision of the Tallinn District Court No 2-17-5977 (09.02.2018) the issues of party autonomy and applicability of the Rules of the Arbitration Court of Estonian CCI were discussed:

Background:

Arbitration agreement did not contain agreement on formation of arbitral tribunal, but claimant proposed to elect sole arbitrator, which was forwarded to the respondent. The latter was given the possibility to reply to the made proposal. The respondent proposed to elect 3 arbitrators. As the parties did not agree on the formation of arbitral tribunal, the Council

of Arbitration Court of Estonian CCI (Arbitration Court) nominated sole arbitrator to solve the dispute (according to the Rules of Arbitration Court).

Respondent applied to set aside the final award as was not given possibility to participate on the formation of the tribunal. Also, according to section 1 of § 721 of CCP (Code of Civil Procedure) if there is no agreement, a dispute is resolved by three arbitrators.

The District Court agreed with respondent and set aside the award. The National Court nullified the decision of the district court on the following grounds:

- The party autonomy includes the right of the parties to decide upon arbitral proceedings, including formation of arbitral tribunal. Therefore according to section 2 § 732 of CCP the parties have the right to agree on the arbitral proceeding or refer to the rules of some. In this case the rules of arbitration court become a part of the parties agreement and arbitral tribunal shall be formed according to the rules of arbitration court.
- In such situation respondent has no right to apply section 1 of § 721 of CCP, according to which the parties agree on the number of arbitrators and if there is no agreement, a dispute is resolved by three arbitrators.
- In this case section 1 of § 716 of CCP is applicable, according to which if the parties have agreed upon conduct of arbitration proceedings in a permanent arbitration court, it is presumed that the agreement of the parties also extends to the procedural rules prescribed by the rules of the arbitration court. Therefore such agreement should be viewed as agreement on the number of arbitrators.
- Therefore the second sentence of section 1 of § 721 of CCP is applicable only in the case when parties have no any agreement on the number of arbitrators, including to reference to the rules of some arbitration court.
- Accordingly the formation of the tribunal was made according to the Rules of the Arbitration Court and there are no basis for setting aside the award.

The District Court decided the case second time and according to the findings of National Court did not set aside the award of the Arbitration Court.

Form of the arbitration text:

Arbitration law is incorporated into Chapter 14 of Code of Civil Procedure (2006).

Competition:

No important changes compared with 2017. At the present time there are approximately 20 other institutional arbitration courts in Estonia. Up to 2009 there were only 2 institutional arbitration courts in Estonia: Arbitration Court of Estonian CCI and Arbitration Court of Tallinn Stock Exchange.

Sectors in which competitors are active:

- Arbitration Court of Tallinn Stock Exchange is solving only disputes connected with stock exchange transactions and relations between the stock exchange and participants, therefore is not competitor;
- Arbitration Court of Chambers of Notaries may solve all disputes and is therefore competitor. No information is available regarding the sectors of disputes;
- Association Estonian Arbitration Court is partially competitor as they may solve smaller claims up to EUR 25000. No information is available regarding the sectors of disputes.

THE ARBITRATION INSTITUTE OF THE FINLAND CHAMBER OF COMMERCE (FAI)

Report of the activities for the period of 2017 – until 10 October 2018



Address: Aleksanterinkatu 17, World Trade Center Helsinki
City: Helsinki
Country: Finland
URL: <https://arbitration.fi>
Email: info@arbitration.fi

Structure of the Court:

The Arbitration Institute of the Finland Chamber of Commerce (the "FAI") is an autonomous arbitration body of the Finland Chamber of Commerce. Although part of the organization of the Finland Chamber of Commerce, the Institute carries out its functions independently of the Finland Chamber of Commerce and its organs.

The FAI is composed of a Board of Directors and a Secretariat. The Board may set up one or more committees and delegate certain decision-making powers to such committees. The Board is assisted in its work by the Secretariat, which is responsible for the day-to-day administration of cases. The Secretariat may also take decisions on matters delegated to it by the Board.

Election/appointment method of governing bodies:

The FAI Board

The Board shall consist of a Chair, a maximum of three Vice-Chairs and a maximum of twelve additional members. The Board shall include both Finnish and non-Finnish nationals. The members of the Board shall be appointed by the Finland Chamber of Commerce. The term of office for the Members is three years and may be renewed twice.

The FAI Secretariat

The Secretariat consists of a Secretary General, case managers, an assistant and a trainee. The members of the Secretariat are employed by the Finland Chamber of Commerce.

Number of staff/members of the Court:

The FAI Board

The Board currently consists of 13 members with background in legal academia, justice system in addition to advocates and in-house counsel.

The Board is currently chaired by Ms Petra Kiurunen (Partner, Lindfors & Co Attorneys, Helsinki). The Vice-Chairs of the Board are Mr Marko Hentunen (Partner, Castrén & Snellman Attorneys, Helsinki) and Mr Mikko Kemppainen (Head of legal Affairs, Orion Corporation).

The FAI Secretariat

The Secretariat is headed by the Secretary General Ms Heidi Merikallä-Teir. The Secretary General is currently assisted by three case managers, an assistant and a trainee.

Nationalities:

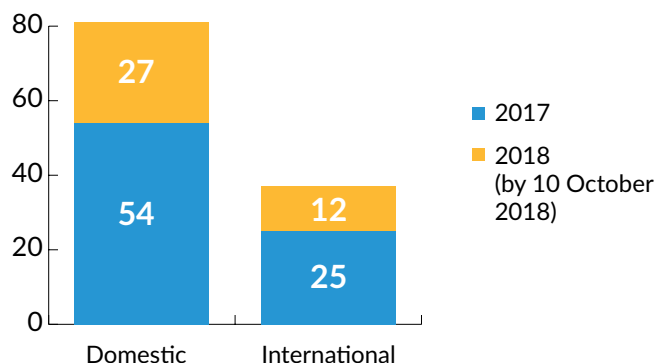
The members of the FAI Secretariat have Finnish nationality. Further, Case Manager Adriana Aravena-Jokelainen has dual nationality, Chilean and Finnish.

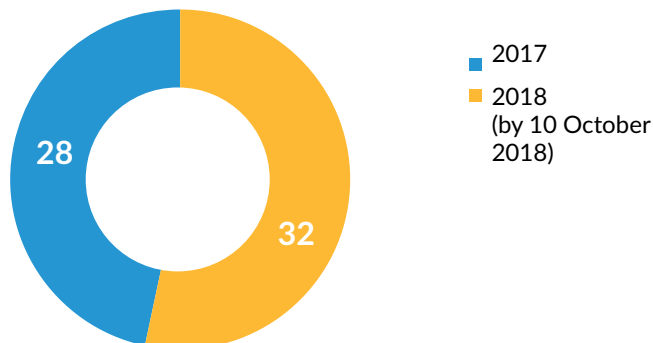
Working languages:

In principle, the FAI may administer cases in any language agreed by the parties or determined by the arbitral tribunal. The FAI's most common working languages are English, Finnish and Swedish. Further, the FAI Secretariat may be contacted in Spanish and German. If the language of the arbitration is other than any of these, the Secretariat may need to ask the parties to produce translations of relevant documents to be able to administer the arbitration in practice.



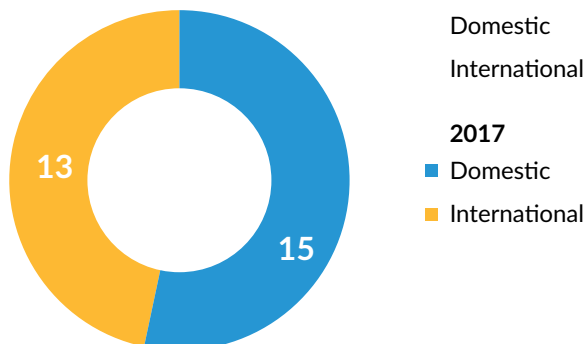
Number of cases registered:



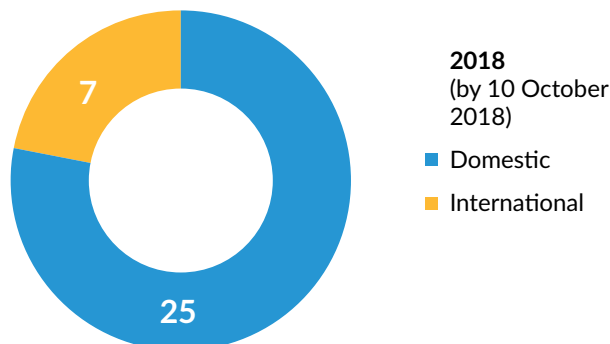
Number of Awards rendered:

In 2017, 28 final arbitral awards were rendered in arbitral proceedings under the FAI Arbitration Rules and Expedited Rules. In 11 cases, the arbitral proceedings were terminated before the final arbitral award was rendered.

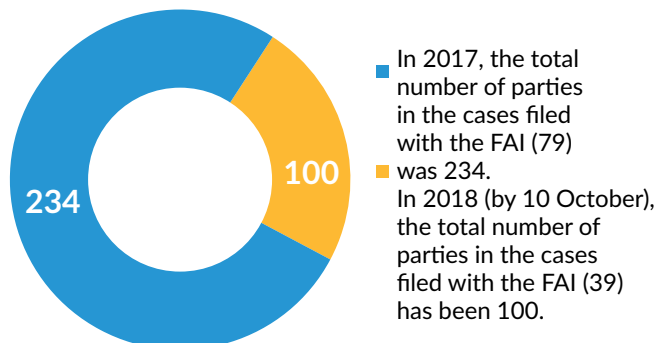
In 2018 (by 10 October), 32 final arbitral awards have been rendered under the FAI Arbitration Rules and Expedited Rules. In 11 cases, the arbitral proceedings have been terminated before the final arbitral award was rendered.

Distinction domestic/international awards:

In 2017, 46% (13 awards) of all the final arbitral awards under the FAI Arbitration Rules and Expedited Rules were rendered in international cases. The share of final arbitral awards rendered in domestic cases was 54% (15 awards).



In 2018 (by 10 October 2018), 22% (7 awards) of all the final arbitral awards rendered so far under the FAI Arbitration Rules and Expedited Rules have been in international cases. The share of final arbitral awards rendered in domestic cases is currently 78% (25 awards).

Number of parties involved**Origin of the parties:****In 2017, many parties were of European origin:**

Czech Republic, Denmark, Estonia, Germany, Ireland, Spain, The Netherlands, Norway, Poland, Sweden, UK. Further, there were parties from China, Russia, Singapore, South-Korea, Turkey, Vietnam and the USA.

In 2018, further to Finnish parties, many foreign parties come from Europe:

Belgium, Estonia, Italy, Latvia, Lithuania, Luxembourg, Norway, Sweden, The Netherlands.

Parties outside Europe come from Taiwan, Turkey and the USA.

Economic sector:

In 2017, the cases filed with the FAI originated from the following economic sectors:

Manufacturing, Construction, Wholesale and retail trade; repair of motor vehicles and motorcycles, Information and communication, Finance and insurance activities, Real estate activities, Professional, scientific and technical activities, Administrative and support service activities, others.

Types of contracts:

In 2017, the cases filed with the FAI had the following subject matters:

Franchising/Cooperation Agreement, IT Agreement, Director's Agreement, Real Estate Transaction, Consulting Agreement, Shareholders' Agreement, Service Agreement, Construction, Delivery/Supply Agreement, Lease Agreement, Company Acquisition/ Sale of Business, others.

Origin of the arbitrators:

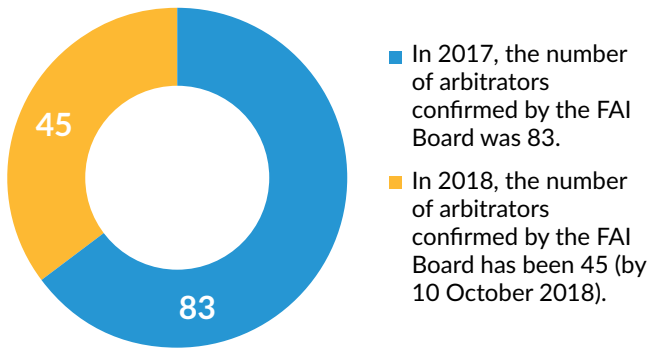
In 2017, the confirmed arbitrators were nationals of Denmark, Estonia, Finland, France, Germany, Iceland, Sweden, Switzerland, Vietnam and UK.

In 2018, the confirmed arbitrators are nationals of Finland, France, Germany, Lithuania, Sweden and Switzerland.

Number of arbitrators chosen from the list/ outside the list:

The FAI does not maintain a pre-established list of arbitrators. Instead, when appointing arbitrators, the Board will have an open discussion at the Board meeting on suitable candidates for each individual case.

Number of arbitrators involved:



Place/seat of arbitration:

In cases filed with the FAI, the seat of arbitration is often Helsinki, or some other city in Finland.

Version of arbitration rules in force:

The revised Arbitration Rules and Expedited Rules came into force on 1 June 2013. The Rules apply to all arbitrations commenced on or after that date, unless otherwise agreed by the parties.

If the arbitration agreement was concluded before the date on which the Rules came into force, certain articles do not apply, unless otherwise agreed by the parties (see Article 52.2 (a) of the Arbitration Rules), and the Institute may publish anonymous excerpts or summaries of awards, orders and other decisions only with the prior written consent of all parties to the arbitration (see Article 52.2 (b) of the Arbitration Rules).

On 1 June 2017, the FAI published revised fee tables A and B of Appendix II to the FAI Arbitration Rules and Expedited Rules regarding the determination of the FAI Administrative Fee and the arbitrators' fees. They replace the prior tables effective as of 1 June 2013, in respect of all arbitrations commenced on or after 1 June 2017, irrespective of the version of the Rules applying to such arbitrations. In this way, the FAI has endeavoured to meet both the arbitrators' and the parties' justified expectations as to a reasonable level of fees and costs. Accordingly, in arbitrations conducted pursuant to the FAI Arbitration Rules, the arbitrators' fees are increased to some extent, whereas the FAI Administrative Fee is raised only moderately. Further, in arbitrations pursuant to the FAI Expedited Rules, the arbitrators' fees are increased quite considerably, but the FAI Administrative Fee has remained virtually unaltered.

Rules of arbitration applied:

The Finland Chamber of Commerce adopted new Arbitration Rules and Expedited Rules on 16 May 2013. They entered into force on 1 June 2013. The Rules are available in several languages on the FAI's website: <http://arbitration.fi/arbitration/rules/>.

On 1 June 2017, the FAI published revised fee tables A and B of Appendix II to the FAI Arbitration Rules and Expedited Rules regarding the determination of the FAI Administrative Fee and the arbitrators' fees. They replace the prior tables

effective as of 1 June 2013, in respect of all arbitrations commenced on or after 1 June 2017, irrespective of the version of the Rules applying to such arbitrations. In this way, the FAI has endeavoured to meet both the arbitrators' and the parties' justified expectations as to a reasonable level of fees and costs. Accordingly, in arbitrations conducted pursuant to the FAI Arbitration Rules, the arbitrators' fees are increased to some extent, whereas the FAI Administrative Fee is raised only moderately. Further, in arbitrations pursuant to the FAI Expedited Rules, the arbitrators' fees are increased quite considerably, but the FAI Administrative Fee has remained virtually unaltered.

Important case law on arbitration:

There is only a limited amount of case law relating to arbitration. Finnish case law can be found at <http://www.finlex.fi/en/oikeus/>.

The FAI publishes anonymous case commentary articles addressing landmark decisions in FAI cases.

Form of the arbitration text: specific law on arbitration/incorporation into a code of civil procedure:

Arbitration has a long tradition as the preferred method of resolving commercial disputes in Finland. The inclusion of an arbitration clause in business contracts is the rule rather than the exception among Finnish companies.

Finland's legislative framework and national court system are considered hospitable to both domestic and international arbitration.

The Finnish Arbitration Act currently in force (967/1992; the "Act") was enacted in 1992. The Act is based on the same principles as the UNCITRAL Model Law. It is, for the most part, compatible with the Model Law irrespective of the fact that it applies to both domestic and international arbitration. There are some minor differences between the Model Law and the Act, but these are hardly substantial.

Finnish law is largely identical to the New York Convention—ratified by Finland in 1962. Finland has not made the reciprocity nor the commercial nature reservations provided for in the New York Convention. Therefore, the recognition and enforcement of foreign arbitral awards in Finland are not restricted to awards rendered in countries that have ratified the New York Convention, nor to matters of commercial nature.

The Act provides that the award rendered by the arbitral tribunal is a final award and will be recognized as binding and enforceable whether rendered in Finland or in a foreign state. A court may, however, refuse an application for the enforcement of an arbitral award on the basis that it is null and void within the meaning of section 40 of the Act, or if the arbitral award has been set aside by a court, or if a court, because of an action for declaring null and void or for setting it aside, has ordered that any enforcement of the award shall be interrupted or suspended. The Act includes only limited grounds for setting aside an arbitral award.

In Finland, there are no special courts for arbitration-related matters. These matters are heard by the Finnish state courts (district courts as the first instance). Finnish state courts are considered “arbitration friendly”. There is a high threshold for refusing the recognition and enforcement of arbitral awards.

New laws and regulations related to arbitration:

There is an on-going discussion about the need to revise the current Finnish Arbitration Act. The Act has been in force almost unchanged for over 25 years since its enactment in 1992. It is considered outdated and in need of reform, as it deviates in important aspects from today's international best standards reflected in the UNCITRAL Model Law on International Commercial Arbitration (1985; with amendments adopted in 2006).

The FAI and the Finland Chamber of Commerce have made a proposal to the Finnish Ministry of Justice regarding the needed revisions to the Act to bring it fully consistent with the UNCITRAL Model Law, thereby increasing Finland's attractiveness as a venue for international arbitrations. We hope that our active engagement in the promotion of the revision of the Act will be fruitful in the near future.

Number and names of other arbitral institutions active in the country:

The FAI is the most important arbitral institution in Finland. Besides the FAI, Turku Chamber of Commerce appoints arbitrators, and a research institute of the University of Helsinki (Conflict Management Institute Association ry/r.f.) has its own arbitration rules.

CENTER OF ARBITRATION OF THE NATIONAL CHAMBER OF ENTREPRENEURS OF THE REPUBLIC OF KAZAKHSTAN “ATAMEKEN”

Report of the activities for the period of October 2017 – October 2018



Address: 8 D. Kunayev Str., Block «B»,
17-floor, office 172
City: Astana
Country: Kazakhstan
URL: <http://www.aca.kz/>
Email: arbitration@palata.kz

Structure of the Court:

The Center of Arbitration of the National Chamber of Entrepreneurs of the Republic of Kazakhstan “Atameken” was established in 2014 as a result of the reorganization of the International and Domestic Arbitration Courts at the Chamber of Commerce and Industry of the Republic of Kazakhstan. This reorganization took place as a result of amendments to Kazakhstani law relating to the liquidation of the Chamber of Commerce and Industry and the establishment of the National Chamber of Entrepreneurs (“NCE”).

Whilst the CA of the NCE signed assignment agreements with the International and Domestic Arbitration Courts at the Chamber of Commerce and Industry of the Republic of Kazakhstan, technically, it is not a successor of these arbitration institutions. However, because, for most local companies, membership of the NCE is mandatory, and the CA of the NCE will open branches in all Kazakhstani regions, this institution will be the biggest in Kazakhstan.

The CA of the NCE handles all types of commercial disputes between local and foreign companies, except disputes that are non-arbitrable under Kazakhstani law (such as disputes relating to the registration of rights over immovable property, challenges to decisions of state authorities, etc.).

Election/appointment method of governing bodies:

Governing bodies are appointed by the NCE.

Number of staff/members of the Court:

Twelve.

Nationalities:

Kazakh.

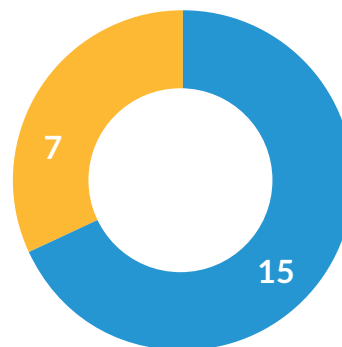


Working languages:

Russian, Kazakh and English.



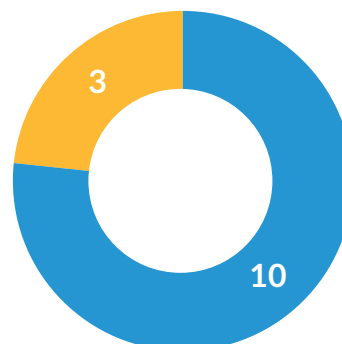
Number of cases registered:



October 2017 –
October 2018

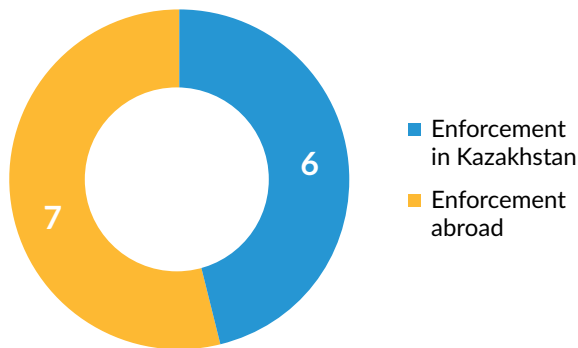
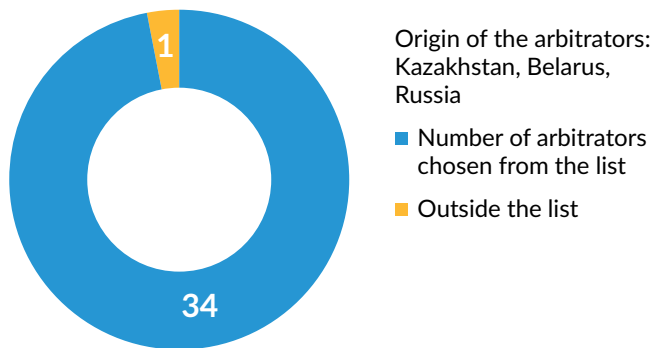
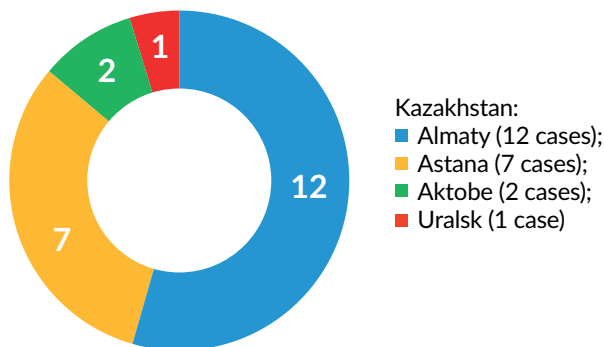
■ International
■ Domestic

Awards:



October 2017 –
October 2018

■ International
■ Domestic

Enforcement:**Arbitrators:****Place/seat of arbitration:****Parties:**

Kazakhstan, Russia, Azerbaijan, Cyprus, Seychelles Islands, China, Nevis Island

Rules of arbitration applied:

Rules of the Center of Arbitration of the National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken" Private Institution dated 16 May 2016.

<http://aca.kz/uploads/pages/acaruleseng-8e760fb435.pdf>

Legal framework:

In April 2016, as a result of the reform of the judicial system, the Law On Arbitration (the "New Arbitration Law") was adopted. This law is also based on the UNCITRAL Model Law. It governs both international and domestic arbitration proceedings.

In addition to unifying the procedural rules for international and domestic arbitration proceedings, the New Arbitration Law implements the following changes to the previous rules:

- i. State-owned companies may only execute arbitration agreements with Kazakhstani companies after getting consent from the superior state authority.
- ii. An arbitration agreement must set forth the name of the arbitration institution to be used. Due to this provision, it is not entirely clear whether arbitration agreements that refer to ad hoc arbitration rules will be valid.
- iii. A party has the right to terminate an arbitration agreement unilaterally before the origin of the dispute.
- iv. A new association of arbitration institutions and arbitrators — the Arbitration Chamber — was established. This chamber is responsible for maintaining a Register of Arbitrators and represents local arbitration institutions to local state authorities and foreign organizations.
- v. When reviewing disputes with state-owned companies, arbitrators are required to apply Kazakhstani law only, unless otherwise provided, in the international treaties of the Republic of Kazakhstan.
- vi. Parties have the right to seek the reconsideration of arbitral awards based on so-called "newly opened circumstances" (i.e., facts that are material to the case, but were not previously known to an applicant). This provision has been copied from the Civil Procedure Code, and it is not entirely clear how it should be applied by arbitrators.
- vii. In addition to the currently existing grounds for challenging an arbitral award, the New Arbitration Law will allow parties to challenge the award if there is a judgment or an award that has a *res judicata* effect on the subject matter of the challenged award.

Generally, while the unification of procedural rules for international and domestic arbitration proceedings is a positive change, other provisions of the proposed New Arbitration Law will make the regulation of arbitration proceedings in Kazakhstan more restrictive. Additionally, it is not entirely clear how these new provisions will interrelate with the provisions of international treaties ratified by Kazakhstan.

In addition, under the new version of the Civil Procedural Code of the Republic of Kazakhstan, adopted in October 2015 and in force since 1 January 2016, the procedure for enforcing domestic arbitration awards has become more complicated.

In particular, in addition to the grounds for refusing to enforce an arbitral award listed in Article V of the New York Convention, the enforcement of an award may now be rejected if: (i) there is a judgment or an arbitral award issued on the same dispute between the same parties and based on the same grounds (i.e., a judgment or award that has *res judicata* effect);

or (ii) an award is issued as a result of a crime confirmed by the sentence of a criminal court.

While it is not entirely clear, because Kazakhstan is a member of the New York Convention and the Geneva Convention, it is our understanding that these new grounds will be applied only to domestic arbitral awards.¹

However, this issue will need to be clarified by local court practice.

Under the most recent local court decisions, Kazakhstani courts refer to provisions of the New York Convention rather than to local rules and usually take a pro-arbitrable position. In particular, in June 2017 the Almaty City Court decided to enforce the ICC interim measures award based on provisions of the New York Convention.

Please note that some of the provisions of the New Arbitration Law (especially relating to the right of parties to terminate an arbitration agreement unilaterally before the origin of the dispute) were criticized by local scholars and practitioners.

As a result of the efforts of local arbitration institutions in February 2017, the provision of the New Arbitration Law that provides the above right was terminated.

In addition, new amendments to the New Arbitration Law are currently being considered by the parliament.

In particular, these amendments should cancel the mandatory application of Kazakhstani law to settle disputes with state-owned companies.

Competition

At present, there are around 20 arbitration institutions in Kazakhstan. The most famous of these competitors are the Kazakhstani International Arbitrage and the International Arbitration Court IUS.

¹ Please note that some local scholars and practitioners argue that Kazakhstan did not properly ratify the international treaties above (i.e., by a law adopted by the Kazakhstani Parliament) and, therefore, these treaties cannot prevail over national laws. However, there are a number of court decisions that confirm that the provisions of the New York Convention and Geneva Convention will overrule the national laws in the case of a conflict.

PERMANENT COURT OF ARBITRATION ATTACHED TO THE ECONOMIC CHAMBER OF MACEDONIA

Report of the activities for the period of 2017 – until 10 October 2018

Address: Dimitrie Cupovski 13
City: Skopje
Country: Macedonia
URL: <http://www.mchamber.mk/>
E-mail: tatjana@mchamber.mk

Structure of the Court:

The Permanent court of Arbitration attached to the Economic Chamber of Macedonia is a permanent arbitral institution functioning as a part of the Economic Chamber of Macedonia, using its spatial and administrative – technical conditions for performing arbitration activity.

Although the Permanent court of Arbitration attached to the Economic Chamber of Macedonia is without a status of a legal entity, according to the Rules of the Permanent court of Arbitration attached to the Economic Chamber of Macedonia, it is independent in its action.

Bodies of the Arbitration Court are: the Presidency, the President and the Secretary of the Arbitration Court.

Election/appointment method of governing bodies The Presidency:

The Presidency of the Arbitration Court shall consist of 7 members: President, Vice- President and 5 members with no special function appointed by the Management Board of the Economic Chamber of Macedonia. Mandate period of the members of the Presidency is 5 years. The Presidency performs general supervision of the work of the Arbitration, attends the proper application of the Rules of the Permanent court of Arbitration and other general acts of the Arbitration, participates in the deciding over the jurisdiction of the court, decides for the use and the disposition of the financial resources of the Arbitration, examines and approves the annual reports of the Arbitration and the plan of activities for the following year and performs other activities defined in the Rules and other general acts of the Arbitration.

A person can be appointed two times consequently at the most for the positions of President and Vice-president of the Arbitration Court. A person who has been appointed as President or Vice-president of the Arbitration Court twice consequently, may be appointed as a member of the Presidency of the Arbitration Court.

The President:

The President of the Permanent court of Arbitration attached to the Economic Chamber of Macedonia is appointed by the

Management Board of the Economic Chamber of Macedonia. The president of the Arbitration appoints the arbitrators and the presidents of the arbitral tribunals in the cases provided in the Rules, decides the exemption of the arbitrators, sees to the maintaining and development of cooperation with other institutions and organizations, whose course of action is within the interest of the Arbitration, signs the agreements for cooperation with other Arbitration institutions in the country and abroad, submits an annual program and an annual report for the work of the Permanent court of Arbitration to the Economic Chamber of Macedonia and performs other activities provided in the Acts of the Arbitration.

The Secretary:

The Arbitration Court has a Secretary, appointed by the President of the Economic Chamber of Macedonia. The secretary of the Arbitration prepares the activities of the presidency and the president and carries out their decisions, undertakes the administrative actions for the constitution of the arbitral tribunal and the preparation of hearings in a certain dispute, maintains the proper execution of the conclusions and other decisions of the arbitral tribunals, manages the activities of the Secretariat, prepares the annual activities report, annual financial report and the plan of activities of the Arbitration for the following year and performs other activities provided in the acts of the Arbitration.

Number of staff/members of the Court:

The Court consists of 8 members including the members of the Presidency and the Secretary. All members are prominent experts in their field of work.

Nationalities:

Within the current mandate period, all members of the Presidency and also of the Secretariat of the Permanent Court of Arbitration attached to the Economic Chamber of Macedonia are Macedonians.



Working languages:

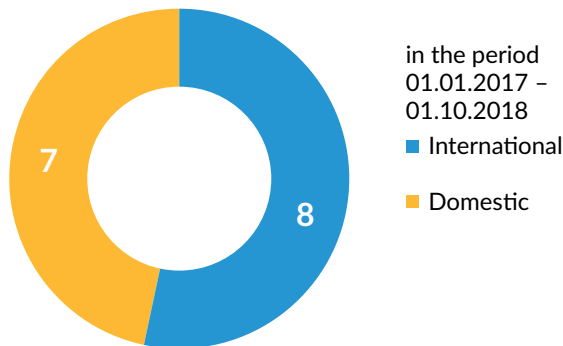
Working language of the proceedings is Macedonian, but the parties may agree for the proceedings to be conducted in another language. If the parties have not otherwise agreed, the sole arbitrator or the Arbitration panel immediately upon their appointment shall determine the language of the proceedings, especially taking in consideration the language or the languages of the main contract from which the arbitration arises.

That agreement or decision, unless otherwise provided in them, shall be applied to every written statement of the parties, any oral proceedings and any award, decision or other communication by the Arbitration Court.

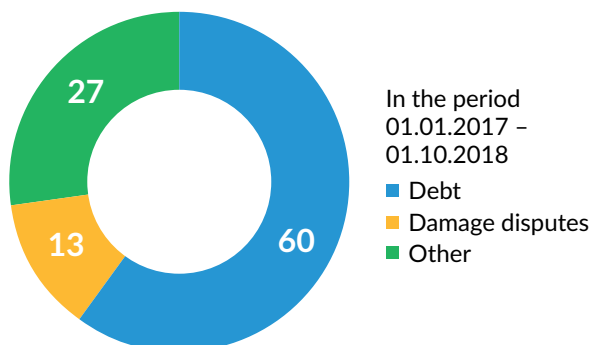
If the parties failed to reach an agreement, nor the arbitrators succeed to determine the language of the arbitration proceedings, the proceedings shall be conducted in Macedonian language and its Cyrillic alphabet.

In the last two years, proceedings in English language have also been conducted before the Permanent Court of Arbitration attached to the Economic Chamber of Macedonia. Hence all submissions, decisions of the Arbitration Court and written correspondence have been submitted and rendered, and hearings have been conducted in English. The arbitrators decided the language of the proceedings to be in English by taking into consideration the language of the main contract, as it is prescribed in the Rules of the Permanent Court of Arbitration attached to the Economic Chamber of Macedonia.

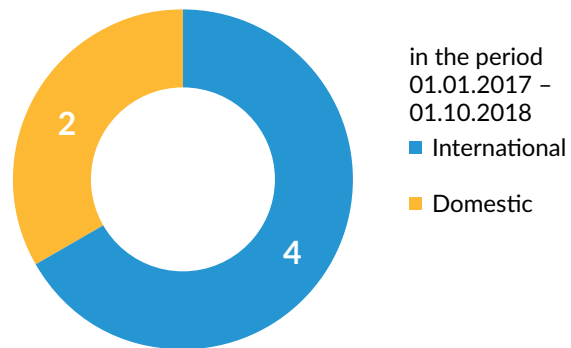
Number of cases registered:



Basis of the claims stated in disputes initiated before the Permanent court of Arbitration attached to the Economic Chamber of Macedonia:



Awards:



Types of contracts:

Sale of goods, construction, performing security services, shipping services; public procurements.

Number of arbitrators involved:

Until 01.10.2018, 15 arbitrators have been involved in the cases registered in the registry of the Permanent court of Arbitration attached to the Economic Chamber of Macedonia. However, in the current moment another two of the registered cases are in the stadium of constitution of the arbitral tribunal.

Origin of the arbitrators:

All arbitrators appointed in the registered cases are Macedonians.

Number of arbitrators chosen from the list/ outside the list:

All appointed arbitrators were chosen from the Lists of arbitrators (List of arbitrators for disputes with international element & List of arbitrators without international element).

Place/seat of arbitration:

The seat of the Permanent Court of Arbitration attached to the Economic Chamber of Macedonia is in Skopje, and the place of all registered arbitration cases in the period from 01.01.2017 to 01.10.2018 is in Skopje.

Name of the rules of arbitration applied:

Rules of the Permanent court of Arbitration attached to the Economic Chamber of Macedonia.

Rules on the costs in the proceedings before the Permanent court of Arbitration attached to the Economic Chamber of Macedonia.

Version of arbitration rules in force:

Rules of the Permanent court of Arbitration attached to the Economic Chamber of Macedonia (no.07-1177/8 from 20 April 2011, no.07-3479/8 from 15 December 2011 and no.02-2088/7 from 15 December 2016).

Rules on the costs in the proceedings before the Permanent court of Arbitration attached to the Economic Chamber of Macedonia (no. 08-2087/3 from 15 December 2016 and no. 02-585/4 from 11 April 2017)

Important case law on arbitration:

In Macedonia, the state courts have obligation to make all awards available to the public, including also the awards rendered in arbitration proceedings. In the recent period, the web pages of the state courts, have been upgraded and modified, so now significant amount of the awards that constitute the case law on arbitration are available to the public. However, important arbitral awards that may constitute new and seriously change the current case law on arbitration have not been rendered.

Form of the arbitration text: specific law on arbitration/incorporation into a code of civil procedure:

Macedonian legal framework makes distinction between domestic and international arbitration, resulting in two separate laws covering the arbitration.

The current legal framework for international arbitration in Macedonia has been laid down in the Law on International Commercial Arbitration of the Republic of Macedonia, enacted on 21 March 2006 and based on the UNCITRAL Model Law on International Commercial Arbitration of 1985 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. It did not take account of the amendments of the Model Law that took place in 2006 and therefore it calls for further slight revision and fine-tuning.

On the other hand, domestic arbitration is still under the regime of Law on Civil Procedure from 2005, based on the old provisions of Federal Law on Civil Procedure of former Yugoslavia of 1976 and is waiting to be updated for a long time.

New laws and regulations related to arbitration:

In Macedonia, there are not any new laws or regulations related to arbitration. However, in April 2017, upon a proposal of the Presidency of the Permanent court of Arbitration attached to the Economic Chamber of Macedonia, Amendments and Modifications of the Rules on the costs in the proceedings before the Permanent court of Arbitration attached to the Economic Chamber of Macedonia were made. These amendments envisaged the possibility for the party, by exception, when the total amount of the advance payment of the costs of the proceedings exceeds 25.000,00 EUR, in order to cover the advance payment, to post a bank guarantee. The bank guarantee shall be issued by any domestic bank or first class foreign bank, and shall be unconditional, irrevocable and payable on the first call made by the President of the Permanent Court of Arbitration attached to the Economic Chamber of Macedonia.

Number and names of other arbitral institutions active in the country:

In the current moment, the Permanent court of Arbitration attached to the Economic Chamber of Macedonia is the only functioning arbitral institution in the country.

COURT OF INTERNATIONAL COMMERCIAL ARBITRATION ATTACHED TO THE CHAMBER OF COMMERCE AND INDUSTRY OF ROMANIA

Report of the activities for the period of October 2017 – September 2018



The Court of International Commercial Arbitration

Address: 2 Octavian Goga Blvd.
City: Bucharest
Country: Romania
URL: <http://arbitration.ccir.ro/en/>
E-mail: ccir@ccir.ro

Structure, tradition and recent developments of the Court:

Established in 1953, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (CCIR) – firstly named “Committee of International Commercial Arbitration” – has built along 65 years of activity a remarkable practice and a good reputation. Under the aegis of this Court more than thirty thousand disputes have been solved, releasing a valuable case law, seldom quoted in the Romanian and foreign literature. Within the process of modernisation and liberalisation started in 1990, the Court of International Commercial Arbitration attached to the C.C.I.R. switched to the system of open roster, expanding in this manner the capacity of the parties in dispute to apply to the arbitrators which they know and trust. Also, within the recommended List of the Court arbitrators have been included well known names coming from outside Romania and representing different cultures and linguistic, juridical and economical customs from many continents.

On the 1st of January 2018, the new Rules of Arbitration of the Court of International Commercial Arbitration were adopted following the need to rally with the European and International standards. The Board of the Court of Arbitration is comprised of seven specialists in international arbitration, commercial law, public and EU law, financial law, international trade, practitioners in educational and research activities, attorneys-at-law, re-elected by the Management Board of the Chamber of Commerce and Industry of Romania during its last session held on the 19th of September 2018.

Also, pursuant to art 9 on the organisation and cooperation of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, the Management Board of the Court has a consultative body, namely the Scientific Board.

Attached to the Chamber of Commerce and Industry of Romania, the Court of International Commercial Arbitration is autonomous in exercising its functions. According to the law, it is authorised to arbitrate both domestic and international

commercial and civil disputes. As an expression of the institutionalised arbitration, the activity of the Court is coordinated by the Board conducted by a President and benefits of the specialised assistance of a Secretariat provided by CCIR.

Number of staff/members of the Court:

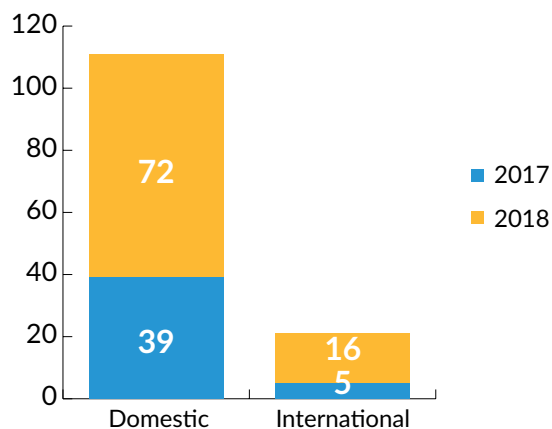
7 staff and 9 members

Number of cases registered:

The number of disputes referred for settlement to the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania* in the period October 2017 – September 2018 reaches the figure of 132.

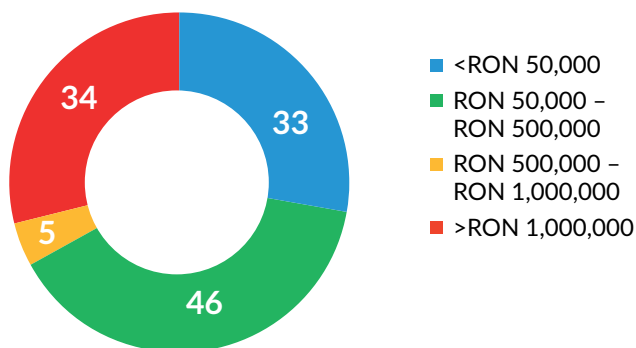
*The Court operates on the basis of Article 29,30 of the Law of chambers of commerce no. 335/2007 and of Title IV “On Arbitration” of the new Code of Civil Procedure in force since February 15th, 2013

Requests for arbitration registered at the Court of International Commercial Arbitration between October 2017 – September 2018:

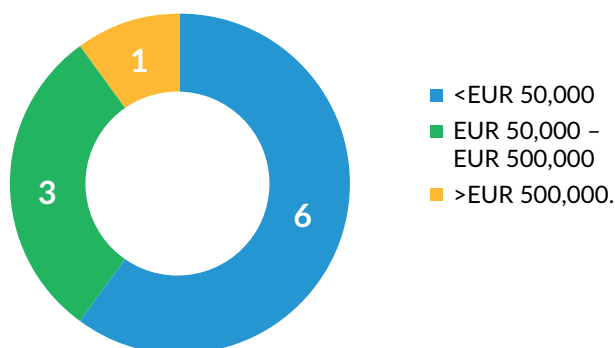


The requests for arbitration registered at the Arbitration Court between October 2017 – September 2018 varied both in terms of their value and in terms of currency of the claims – RON and EUR. In the referred period, we notice that the values of the object of claims in domestic disputes and international disputes with the claim matter value denominated in RON were up to RON 50,000 in 33 case files, in 46 cases was between RON 50,000 and RON 500,000, in 5 cases was between RON 500,000 and RON 1,000,000 and over RON 1,000,000 in 34 cases. In international disputes with the claim matter value denominated in EUR, 6 cases had the value of the object of the claim up to EUR 50,000, in 3 cases was between EUR 50,000 and EUR 500,000, in 1 case exceeded EUR 500,000.

Domestic disputes:



International disputes:

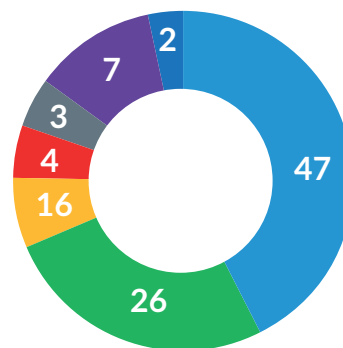


Awards:

Between October 2017 – September 2018, the Court rendered a total number of 108 final awards out of which 47 of admittance, 26 of partially admittance, 16 of rejection of claims, 4 awards were agreed in terms of taking note of the agreement concluded by the parties, in 3 awards it was taken note of judgement waiver as a consequence of the amiable settlement of the disputes, in 3 awards it was ascertained that the Court of Arbitration has no jurisdiction and the case was sent to the state court for competent settlement, in 7 awards it is acknowledged the expiration de jure, in 2 awards it was taken note that the request for arbitration become devoid of purpose.

Arbitral awards become irrevocable when the time limit of 30 days since the receipt of the award by the parties expired and

none of the parties used the petition of annulment provided by Art.608 of the Code of Civil Procedure. In the referred period, no arbitral awards were set aside by the competent court of law falling under the provisions of Art. 608 of the Code of Civil Procedure.



Working languages:

The language used during the proceedings of the litigations with international character, requested by the parties, was English language. There were situations in the domestic disputes when the parties, Romanian companies with foreign majority capital, agreed under the arbitration clause to perform the proceedings in the English language.

Origin of the parties:

Predominant foreign parties were from countries such as Spain, France, Hungary, United States of America, Bahamas, Bulgaria, Italy, India, Austria, and Moldova.

Economic sector:

The requests for arbitration referred to different sectors of economy such as: finance-banking, real estate, construction, agriculture, transport, technology of information etc. prevailing being the claims relative to due price, deductions, rents, penalties, interests, damages, requests for ascertaining of the existence or non-existence of certain rights and requests for ascertaining the contract cessation etc.

Types of contracts:

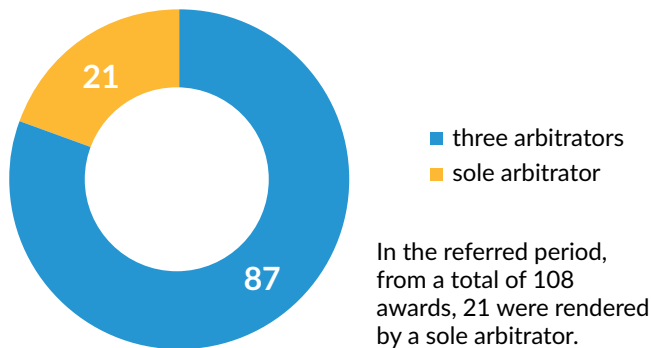
The litigations arose out from different types of contracts: construction, transport, enterprise, technical assistance, franchising, assignment of receivable, agency, manufacturing, leasing, partnership agreements, concession, loan, sell and purchase contracts, renting and lease.

The contractual relations referring to construction, sale and purchase and transports were situated on the first place. The construction field arose more disputes settled by our Court compared with the previous years.

Number of arbitrators involved:

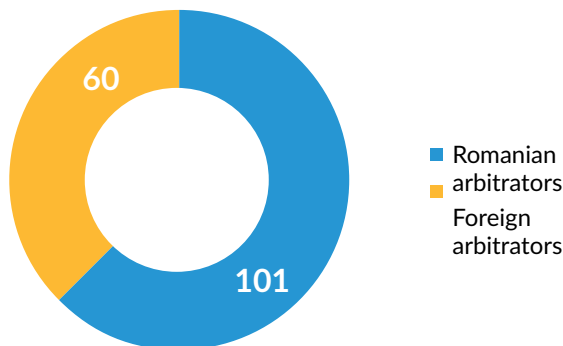
According to the provisions of the Rules of Arbitration in force since January 1st, 2018, the number of arbitrators shall be one or three. In case the parties fail to agree on the number of arbitrators or on another appointment method, there will be three arbitrators appointed, one by the claimant, one by the respondent and one chairman appointed by the two co-arbitrators.

In case one party fails to appoint an arbitrator in due time or the two co-arbitrators fail to agree on a chairman, the appointment is made by the President of the Court.



The List of Arbitrators of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania was updated on November 10th, 2017 following the provisions of the new Regulations on the organisation and operation of the Court, being comprised of 101 Romanian arbitrators and 60 foreign arbitrators.

Origin of the arbitrators:



Number of arbitrators chosen from the list/ outside the list:

According to the regulations, the parties may appoint arbitrators from outside the list of arbitrators only in case the name of a certain arbitrator was included in the arbitral agreement. In the referred period, there were no cases in which such an arbitrator was appointed.

Place/seat of arbitration:

The place of arbitration in all cases settled by the Romanian Court of International Commercial Arbitration in the referred period was in Bucharest, at the premises of the Court – 2, Octavian Goga St., 3rd District. In one of the files the parties and arbitrators decided that the witness hearings and the discussions on the merits of the case to take place in Paris.

Rules of arbitration applied:

The Rules of arbitration entered into force on January 1st, 2018 and comprises provisions in accordance with the new Romanian Civil Procedural Code in force since February 15th, 2013 and also with the international regulations.

Also, the Schedules of Arbitral Fees and Expenses in force were amended on January 1st, 2018.

The Rules of Arbitration, the Schedules of Arbitral Fees and Expenses, the Regulations on Organisation and Operation of the Court of International Commercial Arbitration attached to the C.C.I.R., the Rules of the Management Board and the List of arbitrators may be found on our web site: <http://arbitration.ccir.ro>.

Law applicable to the disputes:

Under the principle of *lex voluntatis*, in most cases the parties agreed on *lex contractus* in their contracts. Where the law governing the contract was not selected by the parties, the arbitral tribunal determined it by applying the provisions of the new Civil Code in force since October 2011. In cases with foreign elements, the applicable law was determined having in view the rules of international private law.

According to the Romanian Constitution, the unconstitutionality plea may be invoked also in arbitration courts.

As for the procedure rules, in most cases, based on the parties' agreement, the Rules of the Court of International Commercial Arbitration applied, sometimes supplemented by the IBA Rules as permitted by the set of procedural rules adopted in 2014 and 2018.

Competition:

In Romania, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania is the main arbitration institution in the country.

According to the Law no. 335/2007 of the chambers of commerce, any chamber of commerce and industry of any of the 40 counties of Romania may organise arbitration, but these courts are functioning at a regional level. Also, there are some specialised arbitration institutions organised according to specific laws in fields such as insurance-reinsurance, intellectual property, health insurance system.

THE INTERNATIONAL COMMERCIAL ARBITRATION COURT AT THE CHAMBER OF COMMERCE AND INDUSTRY OF THE RUSSIAN FEDERATION

Report of the activities for the period of October 2017 – October 2018



Address: Ulitsa Iliyinka 6
City: Moscow
Country: Russian Federation
URL: <http://mkas.tpprf.ru/en/>
E-mail: mkac_arbitration@tpprf.ru

Structure of the Court:

By virtue of the Law of the RF No 5338-1 dated 07.07.1993 "On International Commercial Arbitration" (with amendments dated 29.12.2015) (Appendix No. 1 to the Law) is an independent permanent arbitration institution, which administers arbitration in accordance with mentioned Law and the Federal Law No 382-FZ dated 29.12.2015 "On Arbitration (Arbitral Proceedings) in the Russian Federation". The Federal Law "On Arbitration (Arbitral Proceedings) in the Russian Federation" mostly regulates domestic arbitration proceedings.

In accordance with § 1 of the Regulations on organizational principles of activity of the ICAC (Appendix No. 1 to Order No. 6 of the RF CCI, 11.01.2017) (the Regulations) the ICAC may conduct the following types of activities in accordance with above mentioned laws:

- administering of international commercial arbitration;
- administering of domestic arbitration;
- administering of corporate arbitration;
- administering of sports arbitration;
- performance of certain functions on administering of ad hoc arbitration;
- administering of arbitration of other disputes in cases provided by international treaties of the Russian Federation or Federal laws.

Election/appointment method of governing bodies:

The ICAC Presidium

In accordance with §6 of the Regulations, the ICAC Presidium is comprised of the President of the ICAC and his/her Vice Presidents for relevant types of disputes, six persons from the List of Arbitrators elected for a period of six years by the General Meeting of Arbitrators, and three persons appointed by the President of the RF CCI. The President of the ICAC acts as a Chairman of the Presidium.

The ICAC Presidium is in charge of the analysis of arbitration practice, the practice of application of the ICAC Regulations

and Rules, as well as the review of issues related to dissemination of information about the activities of the ICAC, international links of the ICAC, and other issues relating to the activities of the ICAC.

The ICAC Presidium makes decisions by a simple majority vote, provided that at least six members of the Presidium, including the Chairman of the Presidium, are present at the meeting. In the event of vote parity, the Chairman of the Presidium has the decisive vote.

The Executive Secretary of the ICAC attends meetings of the Presidium with the right of a deliberative vote who acts in the capacity of secretary of the Presidium.

Nomination Committees

In accordance with § 7 of the Regulations, the Nomination Committees take decisions on issues related to nominations, challenges and termination of powers of arbitrators. The Nomination Committees are formed for a period of six years and shall operate until a new committee is elected by the General Meeting of arbitrators included in the new list.

The following Nomination Committees were formed within the ICAC:

- The Nomination Committee for arbitration of international commercial disputes consisting of six members elected by the General Meeting and three members nominated by the President of the RF CCI;
- The Nomination Committee for arbitration of domestic disputes consisting of six members elected by the General Meeting and three members nominated by the President of the RF CCI;
- The Nomination Committee for arbitration of corporate disputes consisting of four members elected by the General Meeting and two members nominated by the President of the RF CCI;
- The Nomination Committee for arbitration of sports disputes consisting of four members elected by the General Meeting and two members elected by the President of the RF CCI.

The Nomination Committee makes decisions by a simple majority vote provided that at least half of its members are present at the meeting. In the event of vote parity, the Chairman of the Nomination Committee has the decisive vote.

The ICAC Secretariat

According to §9 of the Regulations, the Secretariat fulfills its duties in accordance with the Regulations, including the duties related to organizing arbitral proceedings and relevant paperwork.

The Secretariat is headed by the Executive Secretary of the ICAC who is appointed by the President of the RF CCI. The Executive Secretary of the ICAC has four deputies for international commercial disputes, domestic disputes, corporate disputes and sports disputes appointed by the RF CCI.

All Secretariat staff members belong to the personnel of the Center of Arbitration and Mediation of the RF CCI. In the course of performing functions related to administering arbitration of disputes the Secretariat is subordinated to the President of the ICAC.

ICAC Branches

By virtue of the Law of the RF "On International Commercial Arbitration" (Appendix No. 1 to the Law) the ICAC may open branches outside of its place of location.

In 2017-2018 eight ICAC branches in different regions of Russia (Rostov-on-Don, Ufa, Irkutsk, Kazan, Nizhny Novgorod, St. Petersburg, Tyumen, Voronezh) were opened.

Number of staff/members of the Court:

The Secretariat currently consists of 19 members.

Nationalities:

All the Secretariat staff members are Russian citizens.

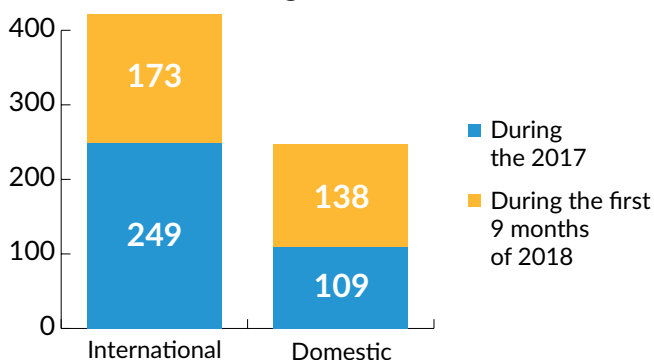


Working languages:

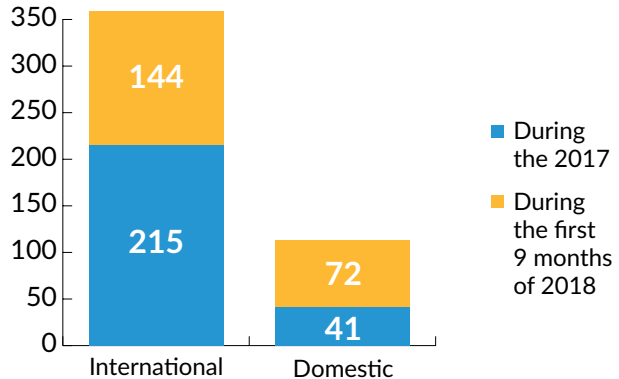
As a rule the main working language of arbitration proceedings is Russian and in the majority of cases the hearing is conducted in Russian. However, the parties may choose other languages of arbitration, and a number of arbitral proceedings were conducted in English.



Number of cases registered:



Number of awards rendered:



Parties (international):

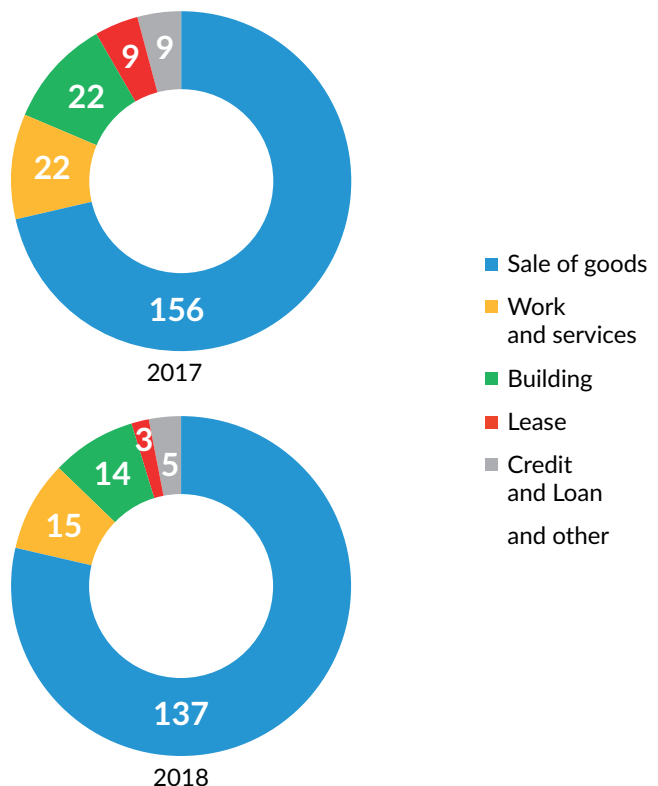
Number of parties involved (2017)

As mentioned above during the 2017 there were 249 claims brought by companies from 50 different countries.

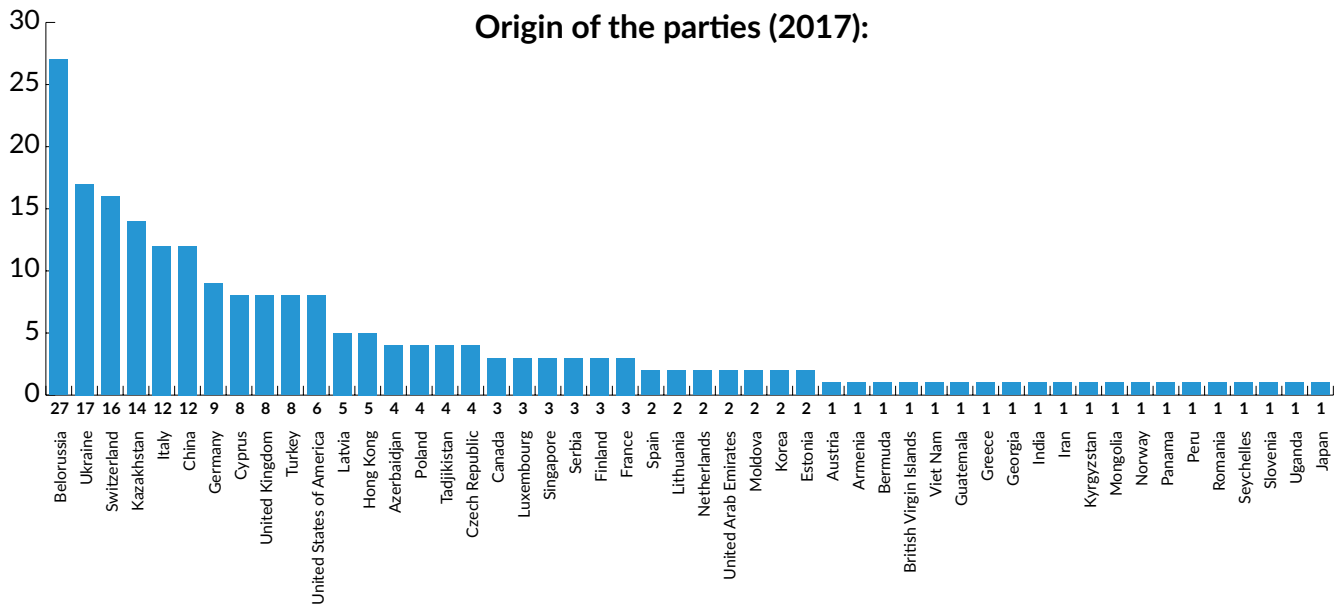
Economic sector:

Parties mainly represent the following economic sectors: industry, trade, communication, construction, transportation, finance and insurance, etc.

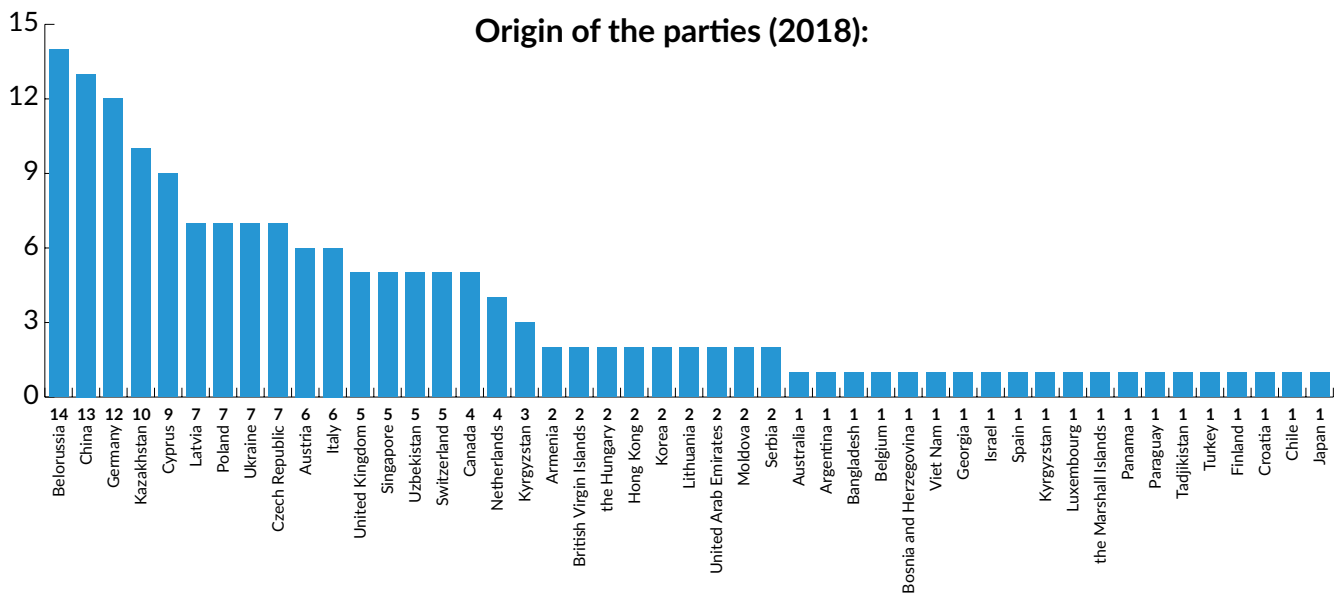
Types of contracts:



Origin of the parties (2017):

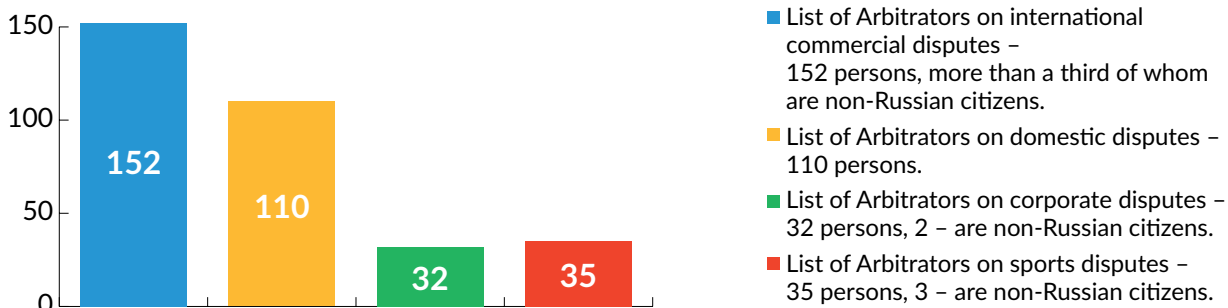


Origin of the parties (2018):



Number of arbitrators involved:

The following Lists of Arbitrators were approved by the RF CCI President on February 3, 2017.



Place/seat of arbitration:

According to the ICAC Rules, the place of arbitration is Moscow, Russia, unless the parties agreed otherwise. All cases in 2017 and the first 9 months of 2018 took place in Moscow, Russia.

Rules of arbitration applied:

The Regulations and the Rules of the ICAC approved by Order No. 6 of the RF CCI dated 11.01.2017.

The Regulations on organizational principles of activity of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (Appendix No. 1 to Order) The Rules of Arbitration of International Commercial Disputes (Appendix No. 2 to Order No. 6)

The Rules of Arbitration of Internal Disputes (Appendix No. 3 to Order) The Rules of Arbitration of Corporate Disputes (Appendix No. 4 to Order) The Rules of Arbitration of Sports Disputes (Appendix No. 5 to Order)

The rules can be found on the ICAC official web site: mkas.tpprf.ru

New laws and regulations related to arbitration:

The Federal Law "On Arbitration (Arbitral Proceedings) in the Russian Federation" came into force on September 1, 2016, which regulates domestic arbitration proceedings. Also the Federal Law provides for the mandatory permission to be granted by the Russian Government in order to exercise functions of a permanent arbitral institution in the RF. The ICAC and the Maritime Arbitration Commission at the RF CCI are exempted from the duty to obtain such governmental permission.

Russia preserved dualistic legislative framework with separate federal laws for domestic and international commercial arbitration. As for the legal framework regarding the conduct of arbitral proceedings, both Russian laws follow very closely main approaches of the UNCITRAL Model Law on International Commercial Arbitration.

ICAC representatives were playing active role in the drafting activities with regard to the Russian arbitration reform.

INTERNATIONAL COMMERCIAL ARBITRATION COURT AT THE UKRAINIAN CHAMBER OF COMMERCE AND INDUSTRY

Report of the activities for the period of 01.01.2018-10.10.2018



Address: 33 Velyka Zhytomyrska Street
City: Kyiv
Country: Ukraine
URL: <https://icac.org.ua/en/>
E-mail: icac@icac.org.ua

Election/ appointment method of governing bodies:

The International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (the ICAC) as an independent permanent arbitration institution consists of the arbitrators, ICAC Presidium, ICAC President, Vice Presidents and ICAC Secretariat.

In accordance with Art. 8 of the ICAC Rules the ICAC President and his Vice Presidents shall be appointed by the Presidium of the Ukrainian Chamber of Commerce and Industry on the proposal of the ICAC Presidium for a period of five years from the number of persons included in the Recommendatory List of ICAC Arbitrators.

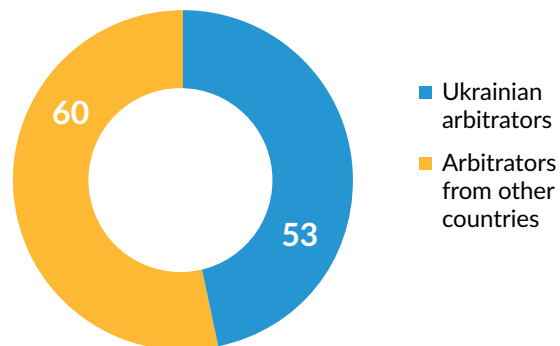
The ICAC Presidium shall comprise ex officio of the President and Vice Presidents of the ICAC, and also of seven members appointed by the Presidium of the Ukrainian Chamber of Commerce and Industry on the proposal of the President of the ICAC among persons of the Recommendatory List of the ICAC Arbitrators for a period of five years. The President of the ICAC shall act as Chairman of the ICAC Presidium. Arbitrators can be persons appointed in accordance with the ICAC Rules (by the parties or by the President of the Ukrainian Chamber of Commerce and Industry).

The Secretary General of the ICAC, who is the head of the Secretariat, shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry on the proposal of the ICAC President. The Secretary General of the ICAC shall have two deputies. The employees of the ICAC Secretariat shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry on the proposal of the ICAC President.

Number of staff/members of the Court:

President, 2 Vice Presidents, Advisor to President, Secretariat (4 employees), Arbitrators (113).

Nationalities:



The ICAC President, both Vice-Presidents and all employees of the ICAC Secretariat are citizens of Ukraine. Among 113 arbitrators included into the Recommendatory List of the ICAC Arbitrators, there are 53 Ukrainian arbitrators and 60 foreign arbitrators from 32 countries (Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, China, Croatia, Czech Republic, Estonia, Finland, France, Germany, India, Kazakhstan, Latvia, Lithuania, Hungary, Macedonia, Moldova, the Netherlands, Norway, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Sweden, Turkey, United Kingdom and USA).

Working languages:

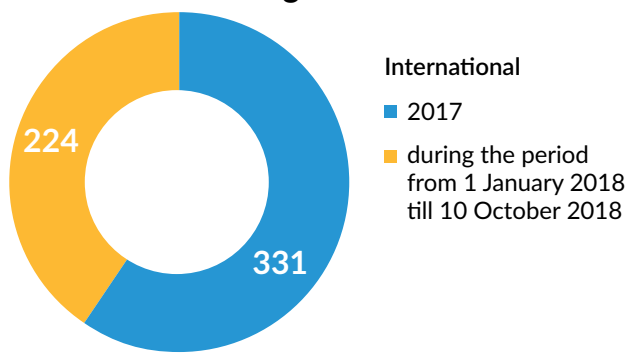
In accordance with Article 40 of the ICAC Rules the parties are free to agree on the language or languages to be used in the arbitral proceedings. When failing such agreement, the Secretary General of the ICAC upon the receipt of the Statement of Claim shall determine the language or languages to be used at the stage of the preliminary case preparation. The issue of the language of the arbitral proceedings is finally decided upon by the Arbitral Tribunal.



The working languages of the ICAC are Ukrainian, Russian and English.

From a total number of cases considered by the ICAC within a period from 1 January 2018 till 10 October 2018 (153 cases) the arbitral proceedings in 37 cases have been conducted in the Ukrainian language, in 8 cases – in the English language, in 4 cases – in the English language and in the rest of cases – in the Russian language.

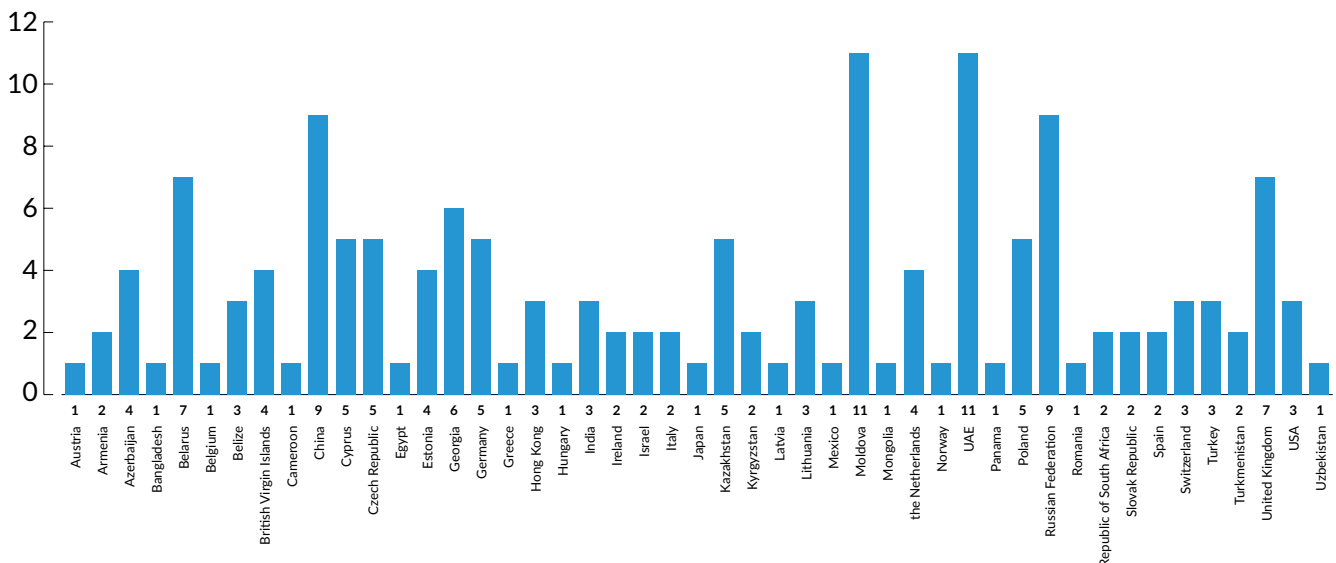
Number of cases registered:



Domestic

By virtue of the Statute on the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (Annex 1 to the Law of Ukraine “On International Commercial Arbitration”) and the Rules, the ICAC does not accept for arbitration domestic commercial disputes.

Parties from far-abroad countries were as follows:



Number of awards rendered:

During the period from 1 January 2018 till 10 October 2018 – 153 awards.

Distinction domestic/international awards:

As it is already mentioned above, the ICAC does not accept for arbitration domestic commercial disputes.

Number of post awards proceedings: recognition, enforcement, annulment:

Within the reporting period 10 applications for setting aside were filed to the state court. 1 arbitral award of the ICAC at the UCCI was set aside, 2 applications are left without satisfaction, and consideration of the remaining applications is pending.

The ICAC has not information as to the number of awards recognized and enforced.

Number of parties involved:

In accordance with the ICAC Rules, two parties participate in the arbitral proceedings – the claimant and the respondent. At this, the Rules provide for the possibility of involvement of several claimants or respondents. Thus, in the reporting period 2 cases involved two claimants, 2 cases involved two respondents and 1 case involved 3 respondents.

The ICAC Rules (Art. 22) provide for the possibility of the participation of a third party in the arbitration. However, in the reporting period the cases with the participation of a third party were not considered by the ICAC.

Origin of the parties:

Parties to the cases, which were considered by the ICAC in the reporting period (153 cases), were from 47 far-abroad countries and Ukraine.

State, parastatal or public entities:

From a total number of cases considered by the ICAC in the reporting period state entities were parties to 17 cases (as Claimants in 12 cases and as Respondents in 5 cases).

Economic sector:

Parties mainly represent the following economic sectors: industry (heavy, light, extractive, pharmaceutical, manufacturing, food, etc.), agriculture, transportation, etc.

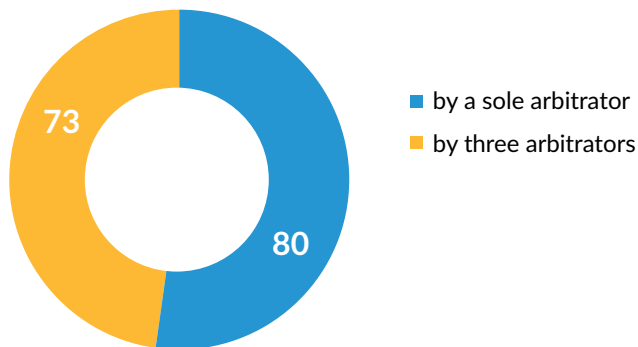
Types of contracts:

The majority of cases, considered by the ICAC in the reporting period as well as in previous years arose out of the sales contracts and concerned the breach of contractual obligations as to the opportune payment or delivery of goods as well as to the quality of delivered goods. To a lesser extent the disputes dealt with provision of services, work and labour, surety agreements, loan agreements, etc.

From the total amount of cases considered by the ICAC in the reporting period (153 cases), the overwhelming majority of cases – 131 cases (i.e. 85,6%) related to the contracts of international purchase and sale/delivery of goods, 10 cases related to the contracts of provision of services, 5 cases – to work and labour contracts, 3 cases – to surety agreements, 1 case related to lease agreement and 1 case related to loan agreement.

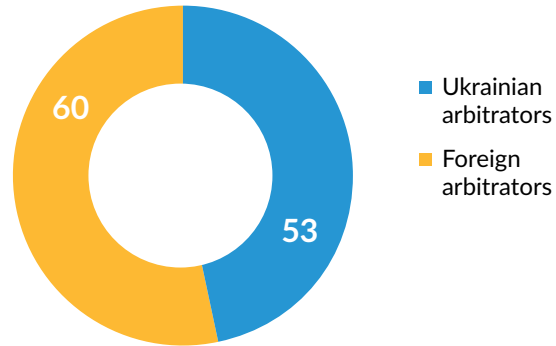
Number of arbitrators involved:

In accordance with Art. 30 of the ICAC Rules the parties are free to determine the odd number of arbitrators, including one arbitrator. Failing such determination, three arbitrators shall be appointed, unless the ICAC Presidium or, on its behalf, the ICAC President, taking into account the complexity of the case, the price of the Claim and other circumstances, decides that the dispute shall be subject to be resolved by a sole arbitrator.



Origin of the arbitrators:

Among 113 arbitrators included into the Recommendatory List of the ICAC Arbitrators there are 53 Ukrainian arbitrators and 60 foreign arbitrators from 32 countries (Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, China, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, India,



Kazakhstan, Latvia, Lithuania, Macedonia, Moldova, the Netherlands, Norway, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Sweden, Turkey, United Kingdom and USA).

In the reporting period most of the ICAC cases have been considered by the Ukrainian arbitrators. At the same time, foreign arbitrators from Belarus, Bulgaria, Latvia and Moldova also took part in the consideration of a number of cases.

Number of arbitrators chosen from the list/ outside the list:

All arbitrators who participated in the arbitral proceedings in the reporting period have been chosen from the Recommendatory List of the ICAC Arbitrators.

Place/seat of arbitration:

The place of arbitration in all cases, which were considered by the ICAC in the reporting period, was Kyiv, the premise of the ICAC at the UCCI (33, Velyka Zhytomyrska street, Kyiv, Ukraine).

Name of the rules of arbitration applied:

Rules of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry.

Version of arbitration rules in force:

The actual version of the ICAC Rules was approved by the Decision of the Presidium of the Ukrainian Chamber of Commerce and Industry of 27 July 2017, is effective as of 1 January 2018 and applied to cases accepted by the ICAC from the above date.

Publication number and/or web site address where the rules can be found:

As mentioned above, the actual version of the ICAC Rules was approved by the Decision of the Presidium of the Ukrainian Chamber of Commerce and Industry of 27 July 2017. The previous two versions of the ICAC Rules were approved by the Decisions of the Presidium of the Ukrainian Chamber of Commerce and Industry of 17 April 2007 and of 25 August 1994.

The actual version and the previous version of the ICAC Rules are available on the web site of the ICAC:

<https://icac.org.ua/wp-content/uploads/Rules-of-the-ICAC-at-the-UCCI.pdf>

(the actual version of the ICAC Rules)

<https://icac.org.ua/wp-content/uploads/Rules-of-the-ICAC-at-the-UCCI-2007.pdf> (the previous version of the ICAC Rules).

Form of the arbitration text: specific law on arbitration/ incorporation into a code of civil procedure:

The ICAC operation in Ukraine is regulated by a separate law - the Law of Ukraine "On International Commercial Arbitration" of 24 February 1994 based on the UNCITRAL Model Law, the New York Convention (1958) and the European Convention (1961) and annexed by the Statute on the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (Annex I) and the Statute on the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (Annex II).

In accordance with Article 6 (2) of the Law of Ukraine "On International Commercial Arbitration" and part 4 of Article 454 of the Code of Civil Procedure of Ukraine, the ICAC and MAC awards may be set aside by the Kyiv Court of Appeal (general appellate court at the place of arbitration) in the manner provided for by Section VIII of the Code of Civil Procedure of Ukraine.

The enforcement of the ICAC and MAC awards in the territory of Ukraine shall be carried out by the Kyiv Court of Appeal in the manner prescribed by Section IX of the Code of Civil Procedure of Ukraine.

Separate provisions concerning the arbitrability of disputes are set forth in Articles 20, 22 of the Code of Economic Procedure of Ukraine.

New laws and regulations related to arbitration:

The Law of Ukraine "On Amendments to the Code of Economic Procedure of Ukraine, the Code of Civil Procedure of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts" No. 2147-VIII of 3 October 2017 adopted the new edition of the Code of Economic Procedure of Ukraine and the Code of Civil Procedure of Ukraine, as well as amended a number of laws of Ukraine, including the Law of Ukraine "On International Commercial Arbitration". The novelties contained in the new editions of the Code of Economic Procedure of Ukraine and the Code of Civil Procedure of Ukraine are aimed at supporting the international commercial arbitration by the state and contributing to the establishment of an arbitration-friendly climate and increasing the investment attractiveness of Ukraine:

- for the first time at the state level, a pro-arbitration policy on the development of alternative methods of dispute resolution has been declared and the procedure for performing by courts the functions of assisting and control in regard to international arbitration has systematically been regulated in the procedural legislation;

- the number of judicial authorities in the consideration of all issues of judicial control and the assistance of international commercial arbitration has been reduced.
- General appellate courts (at the place of arbitration) as courts of first instance consider applications for setting aside, recognition and enforcement of awards of the international arbitration, as well as petitions for interim measures, discovering and securing evidence, examination of witnesses.
- Considering that the ICAC and the MAC at the Ukrainian CCI have their location in Kyiv, the court of first instance in cases of the above category is the Kyiv Court of Appeal. The appeal body in these cases is the Supreme Court;
- the possibility of consideration in one joint proceeding of the application for permission to enforcement of the arbitral award along with the application for its setting aside is provided; the clear terms for such consideration are established;
- the powers of the competent court to suspend proceedings on challenging the award of international commercial arbitration are procedurally ensured in order to enable the composition of the Arbitral Tribunal to resume the arbitral proceedings and to avoid grounds for setting aside the award of international commercial arbitration;
- the legal regulation gap is filled and the right of the parties to arbitration to re-apply to international commercial arbitration in case of setting aside of the arbitral award by the court is provided;
- procedures for the assistance of state courts to international commercial arbitration in granting interim measures have been regulated, and the institution of counter security is introduced;
- procedures for the assistance of state courts to international commercial arbitration for the securing of evidence have been regulated;
- the jurisdiction of the court to recover money in the currency of the arbitral award and determine the interests and/or penalty to be paid before the enforcement of the award of international commercial arbitration, the final amount of which will be calculated according to the rules specified in the court decision is provided.

the arbitrability of disputes has been expanded and the legal uncertainty regarding the arbitrability of certain categories of disputes has been eliminated. Thus, in accordance with Articles 20, 22 of the Code of Economic Procedure of Ukraine, disputes arising out of corporate relations are deemed to be arbitrable, provided that such disputes arise out of a contract and an arbitration agreement between the legal entity and all its participants has been concluded; as well as civil aspects of disputes arising:

- at the conclusion, amendment, termination and execution of public procurement contracts;
- at property privatization, except disputes on privatization of the state housing stock;
- out of relations connected with the protection of economic competition, restriction of monopolism in economic activity, and protection from unfair competition;

- out of relations connected with protection against unfair competition regarding: unlawful use of signs or goods of another manufacturer; copying the appearance of the product; collection, disclosure and use of trade secrets.

Hope that the judicial reform and the procedural legislation reform made in Ukraine in 2017-2018 will contribute to the development and popularization of arbitration, will make Ukraine an attractive platform for commercial disputes resolution.

Since 1 January 2018 the new ICAC Rules approved by the Decision of the Presidium of the Ukrainian Chamber of Commerce and Industry of 27 July 2017 came into force.

The main provisions of the organization of arbitration in the ICAC (the procedure for filing the claim in the ICAC, the main stages of arbitral proceedings, the procedure of the constitution of the Arbitral Tribunal, the rates of registration and arbitration fees) remain unchanged. At the same time, new provisions to improve the efficiency of arbitral proceedings, to make arbitral proceedings faster, more cost-effective and more comfortable for the parties have been added.

The novelties of the ICAC Rules:

- the procedure for the application of the Rules is determined;
- the institution of interim measures is thoroughly regulated;
- the procedural legal succession is regulated;
- organizational meetings to prepare the case for consideration are introduced;
- the expedited arbitral proceedings are introduced;
- the rules of evidence in the ICAC are clarified and the concept of “electronic evidence” is defined;
- the status of witnesses and rules for involvement of witnesses to participate in the proceedings are regulated;
- two categories of experts (experts appointed by the party and experts appointed by the Arbitral Tribunal) are distinguished;
- the use of online technologies in arbitration proceedings is provided;
- the stage of rendering of the award is introduced and the approach to determining the date of the arbitral award is changed;
- the control of the draft text of arbitral award is introduced;
- a more flexible approach to determining arbitration fees and costs is established.

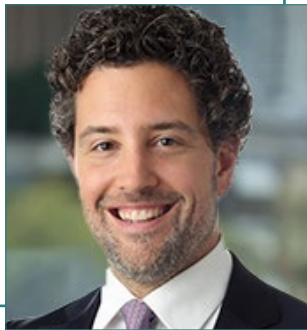
Number and names of other arbitral institutions active in the country:

The peculiar feature of the international commercial arbitration in Ukraine is that at the legislative level the operation of two permanent international arbitration institutions has been arranged. These are the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry. These two arbitration institutions as well as ad hoc arbitration have jurisdiction over consideration of foreign economic disputes.

Sectors in which competitors are active:

The domestic disputes, by agreement of the parties, shall be considered by the arbitration tribunals (the third-party tribunals) established and operating under the Law of Ukraine No. 1701-IV of 11 May 2004 on Arbitration Tribunals. This law does not apply to international commercial arbitration. More than 900 arbitration tribunals have been established in Ukraine, about 100 of which are functioning; however, the consideration of foreign economic disputes does not fall within their jurisdiction.

ARBITRATION IN AUSTRIA: LEGISLATION AND RULES



Filip Boras*



Florian Ettmayer**

Recent Case Law

Among the cases decided during last years, two decisions of the Austrian Supreme Court (the “OGH”) are of particular practical relevance. First, it ruled that an award cannot be set aside if it is clear from the reasoning of the award that the violation of the right to be heard or the procedural ordre public was irrelevant to the outcome of the decision. Second, it ruled that an arbitration agreement is ineffective if the tribunal constituted under this agreement will not give effect to the mandatory rights enjoyed by a self-employed commercial agent who operates in the European Union.

Right to be heard

The decision of the OGH of 6 December 2016¹ dealt with the following facts:

The defendant sold shares in a construction company for EUR 53 million to the plaintiff. The company became insolvent. In arbitration proceedings, the defendant claimed the outstanding purchase price of EUR 3.7 million. The plaintiff challenged the purchase agreement arguing, among other things, that it was deceived by the defendant.

The arbitral tribunal granted the claim. While accepting that the defendant had concealed certain irregularities, the arbitral tribunal found that the plaintiff would also have concluded the agreement if it had been fully informed. The arbitral tribunal found that when concluding the agreement, the plaintiff was aware that the defendant had twice been convicted for bribery and that, therefore, knowledge of the other irregularities would not have changed anything.

The plaintiff requested to set aside the award. It argued that the defendant only invoked the plaintiff’s knowledge of the convictions in its post-hearing brief and that this was too late since the arbitral tribunal had set an earlier cut-off date for such arguments. By basing its decision on this factual argument without offering the plaintiff the opportunity to comment, the arbitral tribunal violated the plaintiff’s right to be heard as well as the procedural ordre public.

The OGH dismissed the claim and upheld the award. The most important point that the OGH made is that although under Austrian law,

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¹ OGH, 6 December 2016, docket no. 18 OCg 5/16h (published on 30 January 2017).

in principle, a violation of the right to be heard or the procedural ordre public results in an automatic setting aside of the award, an award cannot be set aside if it is clear from the reasoning of the award that the violation was irrelevant to the outcome of the decision.

In this case, the arbitral tribunal also based its decision to grant the claim on a second reason, independent of the first. It found that the plaintiff would have, in any event, concluded the agreement (even if it had known of the irregularities) due to internal company guidelines.

It was therefore clear to the OGH that the award itself showed that any violation of the right to be heard or the procedural ordre public could not have had any bearing on the outcome of the decision itself because the arbitral tribunal would have made the same decision.

Invalidity of an arbitration agreement due to a possible violation of the EU Directive on Self-Employed Commercial Agents

In its decision of 1 March 2017,² the OGH held that an arbitration agreement is ineffective if the tribunal constituted under the agreement does not give effect to the mandatory rights enjoyed by a self-employed commercial agent who operates in the European Union.

1. In state court proceedings, the plaintiff, a commercial agent based in Vienna, requested compensation pursuant to Section 24 of the Austrian Commercial Agents Act because the agency agreement with the defendant, which was governed by New York law, had been terminated by the defendant.
2. The defendant objected to the Austrian court's jurisdiction, arguing that the parties had agreed on arbitration. Arbitration had already been initiated by the defendant against the plaintiff before an arbitral tribunal seated in New York and the arbitral tribunal had already rendered a partial award.
3. The lower courts rejected the claim, reasoning that they lacked jurisdiction because of the agreement to arbitrate. The OGH overturned these decisions and found that the state court had jurisdiction for the following reasons.

² OGH, 1 March 2017, docket no. 5 Ob 72/16y.



City: Vienna

Country: the capital of Austria

Year: ca. 500 B. C.

Area: 414,6 km²

Population: 1 794 000 people

The highest point: DC Tower, 220 m

Sight: The Vienna International Centre (VIC) is the campus and building complex hosting the United Nations Office at Vienna (UNOV; in German: Büro der Vereinten Nationen in Wien). It is colloquially also known as UNO City.

The VIC, designed by Austrian architect Johann Staber, was built between 1973 and 1979 just north of the river Danube. The initial idea of setting up an international organization in Vienna came from the Chancellor of Austria Dr. Bruno Kreisky. Six Y-shaped office towers surround a cylindrical conference building for a total floor area of 230,000 square metres. The highest tower stands 127 metres tall, enclosing 28 floors.

The VIC is an extraterritorial area, exempt from the jurisdiction of local law.

About 5,000 people work at the VIC, including The United Nations Commission on International Trade Law (UNCITRAL).

Arbitration Institute: Vienna International Arbitration Centre (VIAC)

Pursuant to Article II(3) of the New York Convention, a court must refer parties to arbitration if the matter is subject to an arbitration agreement unless the arbitration agreement is null and void, inoperative or incapable of being performed. A court may fully review the validity and effectiveness of an arbitration agreement and is not limited to a *prima facie* review. The corresponding provision in Austrian law (Section 584(1) sentence two of the Austrian Code of Civil Procedure) stipulates that a claim may not be rejected if the court finds that the alleged arbitration agreement is ineffective. An arbitration agreement may be considered ineffective if the parties' intention was to exclude the application of mandatory procedural or substantive provisions.

The OGH referred to the case law of the Court of Justice of the European Union, according to which apparent violations of fundamental EU law provisions constitute an *ordre public* violation. The CJEU in *Ingmar*³ ruled that the EU Directive on Self-Employed Commercial Agents, which is implemented by the Austrian Commercial Agents Act, is applicable irrespective of the parties' choice of law if the underlying facts have a strong EU connection. It is generally understood that the CJEU classifies certain rights of commercial agents as being internationally mandatory in character.

Parties cannot exclude these rights by agreement and they apply even if such rights are unknown under the applicable law.

However, the arbitral tribunal seated in New York had already expressed in its partial award that it would not give effect to those rights as they are unknown under New York law. Since the plaintiff's mandatory right to compensation would not be recognized by the arbitral tribunal, the OGH declared the arbitration agreement ineffective.

³ Case C-381/98.

UNCITRAL AND ISDS REFORM: HAS THE SYSTEM OF INVESTOR-STATE ARBITRATION GONE WRONG AND IS THERE A WAY TO FIX IT?



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Khrapoutski LLC
Coordinator at Young
ADR – Belarus

At its 50th session (3-21 July 2017), UNCITRAL granted its Working Group III (WG III) a mandate to: (i) identify and consider concerns regarding ISDS (Investor state dispute settlement); (ii) consider whether reform was desirable in light of any identified concerns; and (iii) if the Working Group were to conclude that reform was desirable, develop any relevant solutions to be recommended to the Commission.

The discussion of this topic started during the UNCITRAL 2016 session. At that session, UNCITRAL considered a report by the Geneva Center for International Dispute Settlement (CIDS), which suggested a road map for the possible reform of ISDS, including the potential of using the opt-in mechanism of the Mauritius Convention as a model for reform.

During its third session in Vienna from 29 October to 2 November 2018, UNCITRAL Working Group III decided that multilateral reform is desirable to address various concerns regarding ISDS.

What's wrong with ISDS?

The reform of ISDS is motivated by the need to rebalance investor and state rights and by the need to address numerous procedural and legitimacy deficiencies of investment arbitration, criticized by states and other stakeholders. The agenda for reform within UNCITRAL is largely

framed by the concerns that Working Group III had identified in its sessions¹:

1. Concerns pertaining to consistency, coherence, predictability and correctness of arbitral decisions by ISDS tribunals

The number of states and institutions suggests that ISDS contradicts the principles of equality under the law between foreign and domestic investors; fails to protect the rights and interests of nonparties; lacks transparency; and allows legal and factual incorrectness of awards and inconsistent and broad interpretations of the law.

Some states even reported experiencing investment treaties with similar provisions being interpreted differently by tribunals, including in concurrent proceedings in which the facts, parties, treaty provisions and applicable arbitration rules were identical².

Due to these issues, states lost trust in the ISDS process and legitimacy of specific awards. In turn, broad interpretations reduce the possibility of a state to regulate in the interests of the general public (e.g., protection of human rights and the environment) or through legitimate domestic processes.

2. Concerns pertaining to arbitrators and decision-makers

States expressed their concerns on the legality of ISDS due to the fact that public-law disputes are considered by private persons - arbitrators. The system of party appointments, as well as the absence of a code of ethical rules raise questions about the independence and impartiality of arbitrators. Moreover, there is no possibility of appeal or judicial review of arbitral awards.

3. Concerns pertaining to cost and duration of ISDS cases

Monetary awards issued by arbitral tribunals during 2017 amount to sums from \$15 million (*Arin Capi-*



Cartoon by Jen Sorensen.

tal and Khudyan v. Armenia) to \$1.5 billion (*MAKAE v. Saudi Arabia*)³. However, besides the monetary award, the legal fees and related costs incurred by parties in investment proceedings were also excessive. As a result, in some cases, the governments had to spend significant amounts of money to defend legitimate public policies. Such a heavy burden especially affected low-income countries, which were unable to defend themselves properly against wealthy transnational corporations.

Arbitration proceedings would also be too lengthy. There may be a number of explanations for why the cost and duration of ISDS proceedings have become so high and lengthy⁴: complexity of disputes; behavior of the parties and their legal counsels aimed at delaying the process; delays in composing the tribunal and conducting the proceedings.

4. Other concerns

Besides these concerns, the delegates to the UNCITRAL Working Group III mention the lack of transparency in ISDS, disrespect of domestic procedures, etc.

How it may be fixed?

Given the problems with ISDS identified above, the delegates to the UNCITRAL Working Group III discussed options, such as (1) implementation of a sys-

¹ Possible reform of investor-state dispute settlement (ISDS), Note by the Secretariat A/CN.9/WG.III/WP.149, 5 September 2018 // Available at: http://www.uncitral.org/pdf/english/workinggroups/wg_3/WGIII-36th-session/149_main_paper_7_September_DRAFT.pdf

² Possible reform of investor-state dispute settlement (ISDS), Note by the Secretariat A/CN.9/WG.III/WP.150, 28 August 2018 // Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/V18/056/80/PDF/V1805680.pdf?OpenElement>

³ Investor-State Dispute Settlement: review of developments in 2017, UNCTAD, June 2018 // Available at: https://unctad.org/en/PublicationsLibrary/diaepcbinf2018d2_en.pdf

⁴ Possible reform of investor-state dispute settlement (ISDS), Note by the Secretariat A/CN.9/WG.III/WP.153, 31 August 2018 // Available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/V18/057/51/PDF/V1805751.pdf?OpenElement>

tematic and multilateral reform through creation of a standing multilateral investment court or appellate body, and (2) improvement of particular procedural aspects of the existing ad hoc investor–state arbitration regime (further improvement of transparency, approval of code of conduct for arbitrators).

Such path of reform as the abolishment of ISDS as a form of dispute resolution altogether is not included in the WGIII agenda; though a number of NGOs and UN specialized bodies support this position.

The CIDS reported on analyses and road maps for the possible reform of ISDS⁵ and recommended to UNCITRAL the implementation of a systematic and multilateral reform through creation of a standing multilateral investment court or appellate body. Both of these bodies would be composed of elected, qualified judges, which would not later act as experts and/or counsels.

On the one hand, the creation of both of these bodies would improve the consistency, predictability and legal correctness of investment awards, independence and impartiality of decision-makers and the credibility of ISDS in general.

On the other hand, the introduction of an appeal procedure would increase the costs and the length of proceedings, which are already expensive and long. In addition, it is doubtful whether there would be enough individuals with the proper qualifications, who could be appointed as a judge in a permanent body and would, at the same time, abstain from all other activities that could challenge his/her impartiality. Establishment of a permanent investment court or an appellate body also raises the question of the how to enforcement of the decisions of such bodies.

How could states fix the ISDS?

WGIII studied the issue of Transparency in ISDS from 2010 until 2016 and, although it partly achieved the stated objectives by adopting the UNCITRAL Rules on Transparency⁶ and opening the Mauritius

Convention⁷ for signature, the effect of these documents on ISDS is quite limited. By comparison, we cannot expect to have effective results from the WGIII discussion on reform of ISDS soon.

Nevertheless, some of the states have already taken action to reform the international investment regime and ISDS. As delegates of states explained during the high-level IIA Conference (24 October 2018, Geneva), the negotiation of the text of the treaty is regarded more as a technical process, and therefore it is rather difficult to agree on innovative provisions. Mostly states use joint interpretations and apply subsequent practice in order to reform the existing regime.

The most vivid example of new reformed agreements is Netherlands Model BIT⁸, which provides for a narrower definition of investor, the right of the host state to regulate in the public interest, enhanced transparency, appointing authorities for arbitrators, and no “double hatting”.

The Republic of Belarus, as well as most of the CIS states, does not have Model BIT, all the provisions are negotiated on a case-by-case basis. The most recent BITs of the Republic of Belarus dated 2010–2014 do not reflect any innovative provisions. During the last five years, Belarus directed its investment policy to the improvement of its domestic investment climate *inter alia* through modification of national legislation on investment. In 2013, because of the change in investment legislation, Belarus provided investors with the opportunity of applying to international arbitration tribunals for resolution of disputes, without previously applying to state courts. Curiously enough, the delegates of WGIII have mentioned that such opportunity shall be limited within the framework of the ISDS reform.

In 2018, Belarus faced three ISDS proceedings, as one may argue, as a result of this change in legislation. Taking into account the importance of this proceeding for the investment image of Belarus in

⁵ Available at: http://www.uncitral.org/pdf/english/CIDS_Research_Paper_Mauritius.pdf

⁶ UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, 1 April 2014 // Available at: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2014Transparency.html

⁷ United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, New York, 2014 // Available at: http://www.uncitral.org/uncitral/uncitral_texts/arbitration/2014Transparency_Convention.html

⁸ Netherlands draft model BIT // https://globalarbitrationreview.com/digital_assets/820bcd9-08b5-4bb5-a81e-d69e6c-6735ce/Draft-Model-BIT-NL-2018.pdf

the international arena, it is also interesting to see whether the recent developments could influence the course of such proceedings and consideration of the cases by arbitrators.

To conclude, at present, there is no specific roadmap for how to reform ISDS. From the discussions in WGIII, it is clear that there are differences of opinion among Delegations on how to act. Some advocate gradual change (Chile, Japan and the US). Others are openly supporting a multilateral investment court (EU Member States, Canada and Mauritius). And many remain undecided or undeclared (like Russia and India).

UNCITRAL Working Group III's next session is scheduled to take place in New York from 1-5 April 2019 and will focus on preparing a *work plan* to develop solutions. This session will show whether UNCITRAL will focus on a single multilateral reform or a package of specific procedural reforms.

РЕПОРТАЖ С КОНФЕРЕНЦИИ, ПОСВЯЩЕННОЙ ПОДПИСАНИЮ ПРАЖСКИХ ПРАВИЛ

Дмитрий Артюхов,
Arbitration.ru
главный редактор

14 декабря 2018 года в Праге были официально подписаны Правила получения доказательств в арбитражном процессе – документ, разработка которого потребовала четырех лет.

Церемония подписания Пражских правил и посвященная этому событию конференция прошла в ренессансном Мартиницком дворце в историческом центре столицы Чехии. Организаторами мероприятия выступили Арбитражная ассоциация (PAA), Global Arbitration Review (GAR) и Адвокатское бюро профессора Александра Белоглавека.





Открывая конференцию, профессор Белоглазков рассказал, что идея создания такого рода правил была впервые озвучена в 2011 году на конференции арбитров под эгидой **ИСС**, а сам документ стал результатом упорной работы специалистов в сфере арбитража из разных стран мира. Адвокат заявил, что, вопреки некоторым мнениям, Пражские правила не заменят правил ведения арбитражного процесса **ИВА**, их задача — предложить достойную альтернативу. Также Белоглазков отметил, что Пражские правила никогда бы не увидели свет без участия **РАА**.

В свою очередь председатель **РАА** Владимир Хвалец более подробно остановился на истории создания Пражских правил и уточнил, что документ претерпел шесть редакций, а его проекты обсуждались на мероприятиях арбитражного сообщества в 15 странах — от США до Китая. Идею принятия Правил одобрили более чем 20 арбитражных институтов, и количество поддерживавших институций растет. Пражские правила



будут востребованы участниками арбитражей из стран континентальной правовой семьи, а также в процессах небольшой сложности, в которых сторону представляют юристы, не обладающие достаточным опытом в международном арбитраже. Также Хвалец отметил, что Пражские правила регламентируют не только процесс получения доказательств, но и роль состава арбитража в управлении разбирательством, усиливая роль арбитров и поощряя их активно участвовать в процессе. Затем председатель **РАА** представил участникам конференции Книгу Пражских правил, в которой все присутствующие могли поставить свои подписи в знак согласия с положениями нового документа.

На последовавшей конференции первую сессию «*Показывать ли каменное лицо? Ограничение роли трибунала в управлении арбитражным разбирательством*» начала **Беата Гессель-Калиновска** вел **Калиш**, старший партнер **GESSEL**, Варшава. Она рассказала о юридическом бэкграунде спикеров и остановилась на полномочиях судей в континентальной и общей правовых семьях. Гессель-Калиновска сравнила судебные реформы в Великобритании и Франции в 1990-х годах и их влияние на то, как стороны в этих юрисдикциях понимают справедливое разбирательство. Она описала результат юридического эксперимента, позволившего установить, что справедливым считается судебное разбирательство, которое носит состязательный характер. Однако, по ее мнению, судья тоже должен в определенной степени подключаться к процессу получения доказательств. Гессель-Калиновска привела



соответствующий пример из своей практики во Франции.

Пražские правила — это еще одно оружие в арсенале спорящих сторон, заявила **Хилари Хейлброн**, QC, юрист Brick Court Chambers, Лондон. Нельзя недооценивать исключение широкого раскрытия доказательств и других инструментов, предусмотренных Правилами. Свидетели, показания которых не являются ключевыми для принятия окончательного решения, должны иметь возможность участвовать в процессе с помощью видео-конференц-связи, и Пражские правила допускают это, сказала Хейлброн. Кроме того, юрист осветила проблему выражения предварительного мнения арбитров относительно распределения бремени доказывания между сторонами на конференции case management и вопрос надлежащего ведения процесса.

Клаус Питер Бергер, директор Центра транс-национального права (CENTRAL), Кельн, в своем выступлении отметил согласие сторон на получение предварительного мнения в соответствии с Пражскими правилами и Правилами DIS. По словам спикера, теоретически выражение предварительной точки зрения должно быть более эффективным с учетом затрат, чем вынесение окончательного решения в конце обсуждений, без информирования сторон. Однако он высказал сомнение, что это можно сделать на самой ранней стадии процесса. «В моей практике не было случая, когда я мог бы дать предварительное представление на конференции case management», — сказал Питер Бергер. Затем он обратился к проблеме дефицита медиации в арбитражном процессе. Судья или арбитр должны играть активную роль в примирении сторон, и такая возможность отражена в Правилах, отметил спикер.

Дуарте Энрикес, партнер VCH Lawyers, Лиссабон, добавил, что между коммуникацией арбитра со сторонами и выражением предварительного мнения далеко не всегда можно провести четкую границу. Затем юрист обратился к проблеме регулирования: по его мнению, сегодня в мире так много разных регламентов и рекомендаций, что уже можно вести речь о создании гражданско-процессуального кодекса для международного арбитража. В эпоху избытка регулирования особенно ценна лаконичность, и Пражские пра-





вила воплощают в себе этот подход. Энрикес поблагодарил организаторов конференции и делегатов от СІЕТАС, приехавших из Китая. Юрист отметил, что, так как Китай отдает предпочтение континентальной системе права, граждане этой страны наверняка будут заинтересованы в применении Пражских правил. А значит, новый документ поможет объединить западную и восточную культуру третейского разбирательства.

Роман Зыков, генеральный секретарь РАА, Москва, открыл вторую сессию *«Давайте не будем ничего решать, пока мы не решим все? Внутренние ожидания относительно результатов*



арбитража и роли арбитров в содействии урегулированию». Модератор подчеркнул, что главную роль в этой дискуссии будут играть юристы in-house и их точка зрения на Пражские правила.

Сюзанна Гропп-Штадлер, ведущий юрисконсульт Siemens AG, Мюнхен, отметила, что споры Siemens колоссально разнятся по своей сложности. Компания также присутствует более чем в 150 странах, что расширяет и спектр применимых юрисдикций. Спикер уточнила у панелистов, не приведет ли применение некоторых принципов Правил к неисполнению арбитражного решения. Касаясь вопроса истре-





бования документов в арбитражном процессе, Гропп-Штадлер отметила, что ограничения на истребование документов могут повлечь за собой проблемы с обжалованием решения трибунала. Конечно, слишком широкое раскрытие документов невозможно, заявила она. Спикер попросила аудиторию назвать самые необходимые арбитрам категории документов и обсудила с участниками вопрос о том, обладает ли трибунал компетенцией запрашивать у стороны строго определенный документ.

Доктор Клеменс-Август Хойш, глава практики европейских споров Nokia, Мюнхен, рассказал аудитории о технических спорах в Nokia, в том числе связанных с вопросами лицензирования. Такие споры отличаются большой непредсказуемостью и временными затратами, а инженеры не всегда могут быть вовлечены в проекты, чтобы помочь юристам. Хойш коснулся вопроса урегулирования споров в Германии. Гражданский процессуальный кодекс Германии предусматривает активное содействие государственных судей примирению сторон. Однако в арбитраже

стороны должны специально запросить процедуру медиации.

Майкл Макилврат, старший юрисконсульт General Electric Company, Флоренция, отметил, что предварительное мнение арбитров часто создает проблемы для процесса: одна сторона считает себя победителем, а другая вынуждена бороться с определенным мнением арбитров практически с самого начала разбирательства. Макилврат обратил внимание аудитории на то, как по-разному Пражские правила воспринимаются практикующими юристами даже в странах гражданского права. Он отметил, что, если в Пражских правилах будут отражены вопросы затрат на истребование документов, это будет очень выгодно как для спорящих сторон, так и для разработчиков Правил. Спикер также заявил, что культурные различия между точкой зрения арбитров и сторон на предсказуемость спора часто приводят к недовольству арбитражной процедурой. Юрист предупредил, что положения одних и тех же правил могут по-разному применяться судьями в разных странах, особенно когда дело касается назначения свидетелей и экспертов. Макилврат также описал процесс выбора арбитра.

Модерируя третью сессию *«Масштабы раскрытия доказательств и e-discovery в арбитраже»*, старший юрист Norton Rose Fulbright **Андрей Панов**, Москва, задал докладчикам вопрос о культурных различиях в предоставлении документов между странами общего и континентального права, правилах применения привилегии в различных правовых традициях, а затем попро-





сил их рассказать о раскрытии электронной информации (e-discovery) в международном арбитраже. Вместе с участниками дискуссии Панов обсудил, должно ли раскрытие доказательств в арбитраже отличаться от судебного процесса, каковы роль арбитров в раскрытии документов и подходы к этому в различных юрисдикциях.

Дороти Мюррей, партнер King & Wood Mallesons, Лондон, рассказала присутствующим об особенностях раскрытия доказательств в Китае и привела в пример два случая из своей практики. Спикер затронула проблему пробелов в раскрытии документов, которые могут быть полезны противной стороне.

Франциско К. Прол, партнер Prol & Associates, Мадрид, отметил, что раскрытие может поставить под угрозу определенные документы, которые имеют решающее значение для жизни компании (в частности, когда речь идет о важных финансовых и корпоративных документах). Однако, например, банковские и финансовые контракты часто очень сложны, и арбитраж будет требовать их раскрытия. Тонкий баланс между конфиденциальностью и необходимостью изучения документа должен определяться в каждом случае индивидуально, заключил спикер.

Артем Дудко, партнер Osborne Clarke, Лондон, отметил, что раскрытие помогает установить истину, но может быть очень долгой и дорогой процедурой. Спикер подчеркнул, что поиск правильного баланса между интересами сторон в конфиденциальности, затратами и результативностью раскрытия доказательств зависит от наличия сильного состава арбитров, который

сумеет контролировать стороны. Положения таких документов, как Пражские правила, могли бы поддержать арбитров в активном управлении разбирательством. Если сторона требует раскрытия слишком многих документов, арбитраж мог бы сузить запрос. А в случаях когда запрос явно противоречит применимым правилам, арбитры имели бы право отклонить его полностью. Дудко описал различные сценарии раскрытия документов и соответствующие расходы. В заключение выступающий заявил, что электронное раскрытие доказательств будет развиваться и со временем станет еще более эффективным и недорогим.

Открывая четвертую сессию *«Обмани меня. Показания свидетелей против документальных доказательств: могут ли документы лгать?»*, арбитр **Хосе Роселл** обратил внимание аудитории на то, что проверка достоверности доказательств традиционно считалась прерогативой представителей сторон в арбитраже, однако в соответствии с Пражскими правилами эта компетенция передается трибуналу.



Елена Перепелинская, партнер INTEGRITES, Киев, остановилась на психологическом аспекте показаний свидетелей и представила обзор свидетельских показаний в истории судебных разбирательств. Континентальное право в первую очередь доверяет документальным доказательствам, отметила Перепелинская. Еще недавно во многих странах континентального права использование свидетельских показаний в коммерческих судебных процессах было очень ограниченным: так, до реформы правовой системы



в украинских коммерческих судебных процессах их вообще не было. ГК запрещает использование свидетельских показаний при определенных обстоятельствах. Юрист уточнила, что в ее практике только в двух случаях из десятков в государственных судах Украины заслушивались устные показания свидетелей. Перепелинская также указала, что память свидетелей очень ненадежный инструмент для установления фактов, поэтому современные методы оценки свидетельских показаний в арбитраже должны быть пересмотрены.

Устные свидетельские показания традиционно играют важную роль в процессах в странах общего права, и слушания могут длиться месяцами, отметил **Кристофер Ньюмарк**, партнер Spenser Underhill Newmark, Лондон. Адвокат

может представить письменное доказательство на основании свидетельских показаний. Ньюмарк также описал феномен воздействия новой информации на память свидетелей. Например, средством влияния может быть формулировка предложенных свидетелю вопросов, а также проект свидетельского заявления, написанного кем-то другим, а не самим свидетелем.

Перекрестный допрос является наиболее эффективным способом получения доказательств, добавил **Хомайун Арфазаде**, член Арбитражного суда Арбитражного института Швейцарских палат SCAI, Женева. Спикер поделился своим опытом разрешения спора между Германией и итальянской стороной о строительстве, в котором показания свидетеля помогли арбитрам вынести окончательное решение и завершить длительный процесс. Свидетельские показания очень полезны в сложных разбирательствах. Выступающий также подробно остановился на роли арбитров в назначении свидетелей. По его словам, концепция универсальности арбитражного процесса больше не действует. Арбитраж в разных странах не имеет общих или гражданско-правовых традиций, но является собственной культурой, заимствующей из разных правовых систем. Процедура рассмотрения дел в арбитраже может быть адаптирована к ожиданиям сторон, в том числе в отношении заслушивания свидетелей. В идеальном мире арбитраж может



иметь много разных «гражданских процессуальных кодексов», отметил арбитр.

Модератор сессии *«Насколько наемные специалисты способствует правде? Назначенные стороной и назначенные арбитрами эксперты»* Александр Храпуцкий, партнер Адвокатского бюро SBH, Минск, обсудил с панелистами роль назначенных трибуналом экспертов в странах континентального права. Александр попросил присутствующих высказать свое мнение о том, как максимально повысить эффективность участия экспертов в арбитражном процессе.

Питер Рис, QC, барристер 39 Essex Chambers, Лондон, заявил, что экспертам необходимо заранее договориться об используемой терминологии. Их требования к сторонам и арбитрам должны быть разумными, чтобы эксперт не превратился в «дирижера» разбирательства. Спикер обратил внимание присутствующих на то, что есть всего четыре инструмента, при помощи которых арбитраж может установить истину: показания свидетелей, рассмотрение документов, объяснения сторон и заключение эксперта. Рис также отметил, что гонорар эксперта часто сопоставим с гонораром арбитров.

Энтони Чарльтон, партнер Deloitte, Париж, назвал важнейшие качества эксперта: он должен быть компетентным, беспристрастным и располагать временем на составление своего за-

ключения. Заблаговременное информирование эксперта о ключевых вопросах дела со стороны арбитров, безусловно, делает разбирательство более эффективным, отметил Чарльтон.

Стивен Лоу, партнер BDO, Лондон, рассказал о деталях назначения эксперта в арбитражном разбирательстве, а также, отвечая на вопросы из зала, перечислил обязанности эксперта.

Лоренс Киффер, президент Арбитражной комиссии Международной ассоциации юристов и компании Teunier Pic, Париж, подчеркнула важность инструкций, которые дают эксперту стороны и арбитры. Чтобы повысить эффективность арбитража, необходимо сосредоточить внимание сторон и экспертов на технических вопросах, представляющих интерес для трибунала, сказала Киффер.

Валерий Князев, партнер Haberman Plett, Лондон, заявил, что своевременная подготовка и информирование стороной имеет решающее значение для выступления эксперта. Не менее важна встреча с ним перед подготовкой первого экспертного заключения. И конечно, конкретные вопросы, заданные арбитрами заблаговременно, делают работу эксперта более эффективной, добавил спикер.

После конференции состоялась официальная церемония подписания Книги Пражских правил, которая будет храниться в чешской столице.



ЛУЧШИЕ МОЛОДЫЕ СПЕЦИАЛИСТЫ В ОБЛАСТИ АРБИТРАЖА – 2018

Этот конкурс РАА40 проводит с 2014 года, и число участников и номинантов постоянно растет. В 2018 году в опросе приняло участие свыше 400 человек, были предложены кандидатуры более 70 молодых специалистов в

области международного арбитража, и 25 декабря РАА40 подвела итоги ежегодного голосования. Члены совета РАА40 торжественно огласили список лауреатов на праздничном вечере в московском Gournest Wine Bar.



Голосование проходило следующим образом: каждый голосующий имел право выбрать пять кандидатов — молодых специалистов в области арбитража из списка, составленного РАА40, или предложить свою кандидатуру. К номинантам предъявлялся ряд требований:

1. Предлагаемый кандидат не должен быть партнером, профессором, доктором наук (однако обладатели степеней LLD и PhD могут быть выдвинуты в качестве кандидатов) или руководителем какой-либо организации.

2. Он должен практиковать в области международного арбитража, связанного с Россией, в России или за рубежом.
3. Номинант вправе работать в юридической фирме или быть внутренним юристом компании.
4. Он не может быть сопредседателем РАА40.

В 2018 году по результатам голосования в десятку лучших специалистов в области арбитража вошли (в алфавитном порядке):



Сергей Алексин
(Willkie Farr & Gallagher,
Париж)

Сергей Алексин специализируется на международном арбитраже и зарегистрирован в адвокатских палатах России и Франции. Он действовал в арбитражах, проводимых в соответствии с Арбитражным регламентом Международной торговой палаты (ICC), Международного центра по урегулированию инвестиционных споров (ICSID), а также в ходе специальных процедур, в том числе в соответствии с Арбитражным регламентом ЮНСИТРАЛ (UNCITRAL).

Получил степень магистра по юридической и экономической глобализации в Университете Париж I Пантеон-Сорбонна, а также степень магистра права в Российской академии государственной службы и диплом по специальности «Международные отношения» в Воронежском государственном университете.

Является сопредседателем Young Institute of Modern Arbitration (Young IMA, Россия), а также членом Форума молодых арбитров ICC (YAF) и LCIA (YIAG).



Юрий Бабичев
(Bryan Cave Leighton Paisner,
Москва)

Основными направлениями работы Юрия Бабичева являются международные арбитражные разбирательства и трансграничные судебные процессы. Он обладает опытом в коммерческих и инвестиционных арбитражах, исках о мошенничестве и сговоре, косвенных исках, акцио-

нерных спорах, сделках M&A, осложненных корпоративными конфликтами, и внутренних расследованиях. Юрий консультировал клиентов по судебным процессам в разных юрисдикциях, включая Англию, БВО, Бермуды, Кипр, Францию, Мальту, Турцию и Нидерланды, и по арбитражным разбирательствам в основных арбитражных центрах, таких как Лондон, Париж, Стокгольм и Гаага. Среди его клиентов были российские и иностранные компании, физические лица и Российская Федерация.

До присоединения к Bryan Cave Leighton Paisner (ранее в России — Goltsblat BLP) десять лет работал в юридической фирме Cleary Gottlieb Steen & Hamilton.

Дипломированный российский юрист и адвокат штата Нью-Йорк. С отличием окончил юридический факультет Московского государственного университета им. М. В. Ломоносова в 2007 году, а в 2010 году также с отличием (Harlan Fiske Stone Scholar) окончил Колумбийский университет (Нью-Йорк), получив степень магистра права (LL.M.).



Дмитрий Давыденко
(Центр арбитража
и посредничества ТПП РФ)

С 2017 года Дмитрий Давыденко — главный эксперт Центра арбитража и посредничества ТПП РФ, ответственный секретарь Морской арбитражной комиссии при ТПП РФ.

Включен в рекомендованные списки арбитров МКАС и МАК при ТПП РФ, а также в список лучших молодых практиков в сфере арбитража в России в 2017 и 2018 годах Who's Who Legal и Global Arbitration Review. Участвовал в качестве арбитра в международных арбитражах по регламентам Международной торговой палаты (ICC), МКАС и МАК при ТПП РФ. Директор интернет-проекта «Аналитика об арбитраже в СНГ» (CIS Arbitration Forum), посвященного разрешению внешнеэкономических споров в странах бывшего СССР. Автор более 80 профессиональных публикаций в области разрешения споров и международного частного права. Свободно владеет английским, французским и итальянскими языками.



Михаил Калинин
(Norton Rose Fulbright,
Москва)

Михаил Калинин — юрист московской практики Norton Rose Fulbright по разрешению споров. Специализация Михаила охватывает международный арбитраж и судебные, в том числе трансграничные, споры. Есть опыт участия в арбитражных разбирательствах по регламентам ICC, LCIA и SCC, а также в судебных делах, связанных с международным арбитражем, включая дела по исполнению арбитражных решений и принуждению к исполнению арбитражного соглашения.

С отличием окончил юридический факультет Московского государственного университета им. М. В. Ломоносова, а позже — магистратуру НИУ «Высшая школа экономики» по программе «Международное частное право».



Анна Козьменко
(Schellenberg Wittmer,
Цюрих)

Анна Козьменко — партнер практики по разрешению споров фирмы Schellenberg Wittmer (на момент голосования в 2018 году Анна являлась советником этой фирмы). Имеет опыт работы в нескольких юрисдикциях, в том числе в России, Франции, США и Швейцарии, и представляет государства, государственные и частные компании в крупнейших международных спорах, включая комплексные судопроизводства, коммерческие и инвестиционные арбитражные процессы. Консультирует клиентов по всем вопросам, связанным с международным арбитражем, в частности касающимся приведения в исполнение и отмены арбитражных решений, а также по вопросам международного инвестиционного и публичного права. Обладает большим опытом в области споров по вопросам природных ресурсов, телекоммуникаций, строительства и инжиниринга, а также выступает в качестве арбитра и активно практикует в области спортивных споров.

Считается одним из ведущих юристов своего поколения в области международного права. Ее имя внесено во все ежегодные рейтинги Who's Who Legal: Future Leaders Arbitration в категории «Наиболее признанные юристы».



Андрей Панов
(Norton Rose Fulbright,
Москва)

Андрей Панов является старшим юристом московского офиса Norton Rose Fulbright. Его практика охватывает споры в области корпоративного и коммерческого права, строительства, энергетики, технологий. Специализируется на международном коммерческом и инвестиционном арбитраже, а также на судебных спорах, связанных с арбитражем. Представлял интересы клиентов в значительном количестве сложных трансграничных споров по английскому, швейцарскому, французскому, немецкому, голландскому, российскому и кипрскому праву в российских судах всех уровней и арбитражных разбирательствах по регламентам ICC, SCC, LCIA, SIAC и МКАС при ТПП РФ. Также выступал в качестве арбитра по внутренним и международным спорам, в том числе по регламентам ICC, МКАС при ТПП РФ и Арбитражного центра при РСПП. Советник Европейского совета пользователей LCIA (LCIA European Users' Council), сопредседатель LCIA YIAG, действительный член Королевского института арбитров (FCIArb).



Юлия Попельшева
(«Яндекс»,
Москва)

С августа 2018 года Юлия Попельшева занимает должность директора юридического департамента ООО «ЯНДЕКС». С 2003 г. она работала в практике разрешений споров и арбитража Clifford Chance CIS Limited, с 2012 г. занимала должность советника. Является действительным членом Королевского института арбитров (FCIArb).



Максим Пырков
(Freshfields Bruckhaus Deringer,
Москва)

Максим Пырков специализируется на международном коммерческом и инвестиционном арбитраже, а также на российских и мультисудебных разбирательствах. В последние годы он представлял крупнейшие компании во множестве знаковых дел в различных секторах, включая строительство и инфраструктуру, нефть, газ и энергетику, банковский и финансовый секторы, коммуникации, ретейл и др.



Евгения Рубина
(Freshfields Bruckhaus Deringer,
Лондон)

Евгения Рубина имеет квалификацию юриста в Англии и Уэльсе, России и американском штате Нью-Йорк. Представляла интересы клиентов в международном коммерческом арбитраже по регламентам LCIA, ICC и SCC, а также интересы инвесторов и государств в инвестиционном арбитраже. Отмечена как «юрист следующего поколения в области международного арбитража» в Великобритании в рейтинге Legal 500 за 2019 год.



Олег Тодуа
(White & Case,
Москва)

Олег Тодуа имеет квалификацию юриста в России, Англии и Уэльсе и специализируется на международном арбитраже и судебных разбирательствах. Представляет интересы клиентов в сложных международных спорах, затрагивающих несколько юрисдикций; обладает опытом сопровождения арбитражных разбирательств по регламентам ведущих арбитражных институтов. Региональный представитель YIAG (молодежной организации под эгидой LCIA) в России. Упомянут в качестве будущего лидера в сфере арбитража в рейтинге Who's Who Legal: Arbitration за 2018 и 2019 годы.

НОВОГОДНИЕ ЗАДАЧКИ ОТ ДЕДА МОРОЗА



Наш Дед Мороз и его Олень подготовили загадки для самых пытливых и любознательных читателей.

1. Как звучит на латыни принцип «Суд знает закон»?
2. Чьи это слова: «Если пристав говорит «садись», как-то неудобно стоять»?
3. Какой документ в сфере арбитража был подписан 14 декабря 2018 года?
4. Предусматривают ли Пражские правила:
 - а) document disclosure;
 - б) письменные свидетельские показания;
 - в) возможность арбитров высказывать предварительную точку зрения на предмет спора;
 - г) возможность для арбитра выступать в роли медиатора.
5. У меня есть секретарь, есть помощник у меня – называюсь я...
6. В синей форме я террор, я – районный...
7. Еще с тридцатых знают нас, наш арбитраж зовется...
8. Серый бастион на Тульской, очереди здесь длинны...
9. Назовите знаковое дело, поставившее вопрос об арбитрабельности споров внутри ЕС из ДИД – двусторонних инвестиционных договоров.
10. Сегодня, завтра и вчера – за арбитраж в России бьется...
11. «Если встретите человека белее мела, Худющего, худей, чем газетный лист, – Умозаключайте смело: Или редактор, или ...»
12. Громкое дело об арбитрабельности споров из госзакупок.
13. Наш закон не очень прост: можешь сесть ты за...
14. Европейский арбитраж по спору из контракта 1932 года, длившийся с 1975 по 2005 год.
15. Арбитр, который приезжал в Москву и сказал: «Articles and books are forever».
16. Он приходит в зимний вечер Зажигать на елке свечи, Он заводит хоровод – Это праздник...
17. Как хорошо прогуляться зимой! Кто же нас с улицы гонит домой? Колет иголками щеки и нос Он не злодей. Это просто...
18. В морозном воздухе летают, Лежат на ветках, на газоне, Но почему-то быстро тают, Упав в раскрытые ладони. А если варежки надеть, Тогда их можно рассмотреть.

Ответы вы найдете на стр. 101

НОВОГОДНЯЯ ВЕЧЕРИНКА РАА40 & YIAG TOP YOUNG ARBITRATION PRACTITIONERS

Фото с вечеринки по случаю вручения наград победителям Рейтинга
РАА40 – 2018 в Gournest wine bar, Москва, 25 декабря 2018 года







ЗАПРЕТИЛИ С ПОНИМАНИЕМ



Дмитрий Артюхов,
главный редактор
Arbitration.ru

27 декабря 2018 года Президент России В. Путин подписал федеральный закон о внесении поправок в законы об арбитраже и о рекламе. Поправки решают вопросы арбитрабельности корпоративных споров и споров из госзакупок, но практически запрещают арбитраж ad hoc. Главный редактор Arbitration.ru и эксперты разбираются в изменениях законодательства.

Обратимся к новому тексту поправок, оформленных в виде закона¹, который официально опубликован в «Российской газете» 29 декабря 2018 года² и вступит в силу 29 марта.

¹ Федеральный закон от 27 декабря 2018 года № 531-ФЗ «О внесении изменений в Федеральный закон “Об арбитраже (третейском разбирательстве) в Российской Федерации” и Федеральный закон “О рекламе”» // Собрание законодательства РФ от 31 декабря 2018 года № 53, часть I, ст. 8457. СПС «Гарант», <http://ivo.garant.ru/#/document/72139508>.

² <https://rg.ru/2018/12/29/reklama-dok.html>.

Корпоративные споры могут быть рассмотрены третейским судом

Согласно поправкам, к ст. 7 «Определение, форма и толкование арбитражного соглашения» ФЗ «Об арбитраже»³ добавляется новая ч. 7¹. В ней говорится, что *«достаточно заключения арбитражного соглашения между сторонами <...> соглашения участников юридического лица или сделки»* для рассмотрения третейским судом споров участников юридического лица по поводу управления этим юридическим лицом, *«включая споры, вытекающие из корпоративных договоров, а также споров по искам участников юридического лица о признании недействительными сделок, совершенных юридическим лицом, и (или) применении последствий недействительности таких сделок»*.

Последнее слово: от правительства – Минюсту

В обновленной ст. 44 «Образование постоянно действующих арбитражных учреждений в Российской Федерации и осуществление ими деятельности» право на осуществление функций постоянно действующего арбитражного учреждения теперь предоставляется *«актом уполномоченного федерального органа исполнительной власти»*. То есть Минюстом, а не правительством, как было в прошлой редакции.

ФАС не уполномочен

Ст. 44 дополняется ч. 1¹, которая гласит: *«Отношения, связанные с деятельностью постоянно действующего арбитражного учреждения по администрированию арбитража, не являются предметом регулирования антимонопольного законодательства Российской Федерации»*. Третейские суды не войдут в сферу компетенции ФАС.

Нет лицензии – нет арбитра

Раньше ч. 20 ст. 44 запрещала выполнение функций по администрированию арбитража судом *ad hoc* — «третейским судом, образованным сторонами для разрешения конкретного спора» или организацией, «не получившей <...> права на осуществление функций постоянно действующего арбитражного учреждения».

Сейчас законодатель спустился на уровень ниже, от организаций — к отдельным лицам. Обновленная ч. 20 ст. 44 предусматривает: *«Лицам, не получившим <...> право на осуществление функций постоянно действующего арбитражного учреждения, запрещается выполнение отдельных функций по администрированию арбитража, в том числе функций по назначению арбитров, разрешению вопросов об отводах и о прекращении полномочий арбитров, а также иных действий, связанных с проведением третейского разбирательства при осуществлении арбитража третейским судом, образованным сторонами для разрешения конкретного спора (получение арбитражных расходов и сборов, регулярное предоставление помещений для устных слушаний и совещаний и другие)»*.

Также им запрещено рекламировать (везде, кроме личной беседы!) свои услуги по администрированию споров: *«Лицам, не получившим <...> право на осуществление функций постоянно действующего арбитражного учреждения, запрещается рекламировать в том числе в информационно-телекоммуникационной сети “Интернет” и (или) публично предлагать выполнение функций по осуществлению арбитража, включая функции по осуществлению арбитража третейским судом, образованным сторонами для разрешения конкретного спора»*.

Примечательно: сама по себе профессиональная деятельность арбитров *ad hoc* по разрешению споров не запрещается. Может быть, авторы поправок вспомнили ч. 1 ст. 37 Конституции РФ: «Каждый имеет право свободно распоряжаться своими способностями к труду, выбирать род деятельности и профессию». А признавать деятельность арбитров *ad hoc* общественно опасной или нарушающей основы морали и т.д. пока не стали.

³ Федеральный закон от 29 декабря 2015 года № 382-ФЗ «Об арбитраже (третейском разбирательстве) в Российской Федерации» // Собрание законодательства РФ от 4 января 2016 года № 1, часть I, ст. 2. СПС «Гарант», <http://ivo.garant.ru/#/document/71295378>.

Работать арбитром *ad hoc* вроде бы можно, однако реклама такой деятельности с весны 2019 года запрещена, что прописано в отдельной ст. 30², добавленной в ФЗ «О рекламе»: «Реклама деятельности лиц, не получивших в соответствии с законодательством Российской Федерации право на осуществление функций постоянно действующего арбитражного учреждения, по осуществлению арбитража, включая деятельность по осуществлению арбитража третейским судом, образованным сторонами для разрешения конкретного спора, в том числе в информационно-телекоммуникационной сети “Интернет”, не допускается».

Дорога в Россию

В обновленной редакции установлены этапы подачи заявления на администрирование споров в РФ иностранными арбитражными центрами. Им необходимо пройти фильтр Совета по совершенствованию третейского разбирательства при Минюсте и самого Минюста.

Добавляемые части 6¹ и 6² устанавливают закрытый перечень документов, которые должны подать российская (6¹) или зарубежная (6²) организации в Совет, чтобы получить мотивированную рекомендацию о получении права на осуществление функций ПДАУ.

Законодатель коснулся расплывчатого требования из прошлой редакции закона о наличии «широко признанной международной репутации» у подающего заявку иностранного арбитражного центра. В соответствии с введенным п. 1 обновленной ч. 12 ст. 44 критерии этой репутации разрабатывает Совет.

Госзакупки без *ad hoc*

Еще одно значимое дополнение, внесенное в ст. 45 ФЗ «Об арбитраже», — подтверждение права разрешать в зарегистрированных ПДАУ споры из госзакупок. Для арбитражей *ad hoc* эти споры теперь официально недоступны. «Если местом арбитража является Российская Федерация, споры, возникающие из договоров, заключаемых в соответствии с Федеральным законом от 18 июля 2011 года № 223-ФЗ “О закупках товаров, работ, услуг отдельными видами юридических лиц”, или

в связи с ними, могут рассматриваться только в рамках арбитража, администрируемого постоянно действующим арбитражным учреждением».

Мнения

Изменения в законодательстве и тенденции ушедшего 2018 года любезно прокомментировали для Arbitration.ru специалисты в области арбитража.



Михаил Юрьевич Савранский,
заместитель председателя
Арбитражного центра при
РСПП, профессор ИЦЧП

«Принятые поправки направлены в основном на то, чтобы ограничить ненадлежащую деятельность

лиц по разрешению споров под видом арбитражей *ad hoc*, в том числе активность некоторых скандально известных персонажей, сумевших продолжить работать, мимикрируя под постоянно действующие арбитражные учреждения в обход законодательных ограничений. Ранее многие такие третейские суды имитировали атрибутику госсудов, вводя в заблуждение неискушенную публику. Отсюда и запрет рекламы. Упоминание иностранных арбитражных центров имеет похожую направленность, его цель — перекрыть лазейку, при которой указанные сомнительные структуры организовывали бы разрешение внутренних споров за рубежом. Подобный опыт уже был с местом арбитража в Сингапуре. Не думаю, что ограничения направлены на известные иностранные зарубежные центры — вероятно, им будет даже проще получить разрешение на работу в России, чем нашим арбитражным учреждениям, если они захотят открыть офисы за рубежом.

Введенная норма об арбитрабельности споров из контрактов госкомпаний (споры из контрактов по 223-ФЗ) призвана расставить точки над «ё» в этом вопросе после обнародования не вполне однозначного акта Верховного суда, появившегося вслед за отказом Конституционного суда рассматривать данный вопрос. Эти споры признаны арбитрабельными, но только под эгидой ПДАУ. Здесь найден определенный компромисс с Верховным судом, поскольку изъятие данной категории споров из компетенции судов *ad hoc* будет означать, что такие споры будут разрешаться

в «понятных рамках», то есть лицами, имеющими достаточную репутацию, под эгидой профессиональных арбитражных учреждений, по понятным правилам арбитража, прошедшим серьезную экспертизу.

В целом в ходе реформы у коллег были опасения, что Минюст будет вмешиваться в деятельность ПДАУ. Однако ничего подобного нет, поэтому перенос полномочий по выдаче «третейских лицензий» с правительства на Минюст не будет особо ничего значить, поскольку решать эти вопросы будет по-прежнему в основном Совет по совершенствованию третейского разбирательства. Другое дело, что Совет надо дополнять действительно независимыми и авторитетными специалистами, глубоко знающими третейское разбирательство.

Если же подводить итоги прошедшего года, то они в целом положительные».



**Андрей Владимирович
Костицын,**
AdHoc Arbitration

«В преддверии нового, 2019 года социальные сети пестрели комментариями, постами и репостами о предстоящих изменениях в законе об арбитраже. 27 декабря Президент России подписал соответствующий закон. И пока одни радовались поступательной зачистке арбитражной сферы, другие предрекали конец арбитражу ad hoc. Однако в отношении запрета рекламы ad hoc реакция была примерно такой: «Ну, это явно лишку хватили».

Четыре арбитражных центра, которые получили вотум доверия, казалось бы, должны расслабиться и наслаждаться положением на рынке. Но такого ощущения почему-то не возникает. Очевидно, что заинтересованные в арбитраже как способе урегулирования споров даже в нынешней ситуации «бутылочного горлышка» не пойдут только в те институции, которые получили лицензию.

Несмотря на ограниченное число арбитражных центров, количество дел в них не выросло в геометрической прогрессии. Все споры, их общая динамика, существовавшая в 2017 году и в дореформенный период, не стали прерогативой арбитражных центров. Они перешли в арбитражные суды или

нашли иные способы альтернативного разрешения споров (АРС).

Пожалуй, не наличие лицензии является отправной точкой для намерения сторон идти в арбитраж. Предприниматели не пойдут туда по причине, которая зачастую забывается: это доверие. И дело не в том, что текущим арбитражным центрам не доверяют. Отнюдь. Действующие арбитражные центры работают качественно. Проблема лежит в иной плоскости, поэтому даже открытие отделений этих центров в регионах России, полагаю, не мотивирует бизнес идти туда только потому, что все рядом.

Очевидно, что с учетом основных тенденций арбитраж ad hoc может создать проблемы с подконтрольностью. Не вызывает сомнений, что арбитраж остается независимым от государства в том, что касается цели разрешения споров и результатов. Но и государство с его реформами можно понять. В нынешней экономической, политической и геополитической ситуации государству требуется строгий контроль за всевозможными способами обойти закон.

Отдельно хотелось бы указать на фактор, формирующий арбитражный спрос. Как правило, спорящие стороны не вникают в ситуацию на арбитражном рынке так глубоко, как представители арбитражного сообщества. Также не будем забывать о том, что арбитраж или иной способ АРС выбирают в основном не контрагенты обязательств или бизнесмены — к его помощи прибегают юристы, консультанты. До тех пор пока они не будут четко понимать правила игры и общие тенденции, не стоит надеяться, что они взглянут на арбитраж в России под концептуально иным углом. Их общее отношение к арбитражу формируют лишь отголоски тенденций, заголовки статей и другие косвенные факторы. Пока арбитражный мир бушует, тот факт, что от ad hoc все пытаются отстраниться, делая его «маргинальным», влияет на общее восприятие ad hoc в России.

Ad hoc был, есть и будет! Мы констатируем, что это не конец арбитража ad hoc. Это как раз начало. Начало в его здоровом концепте».

AD HOC – 2019: КОНЕЦ ИЛИ НАЧАЛО?



Андрей Костицын,
AdHoc Arbitration

24 декабря 2018 года в Azimut Hotel Smolenskaya Moscow при поддержке РАА состоялся первый российский форум по арбитражу ad hoc. Представители российского арбитражного сообщества обсуждали фундаментальные вопросы существования арбитража ad hoc в России: останется ли он в нашей стране и в каком виде?

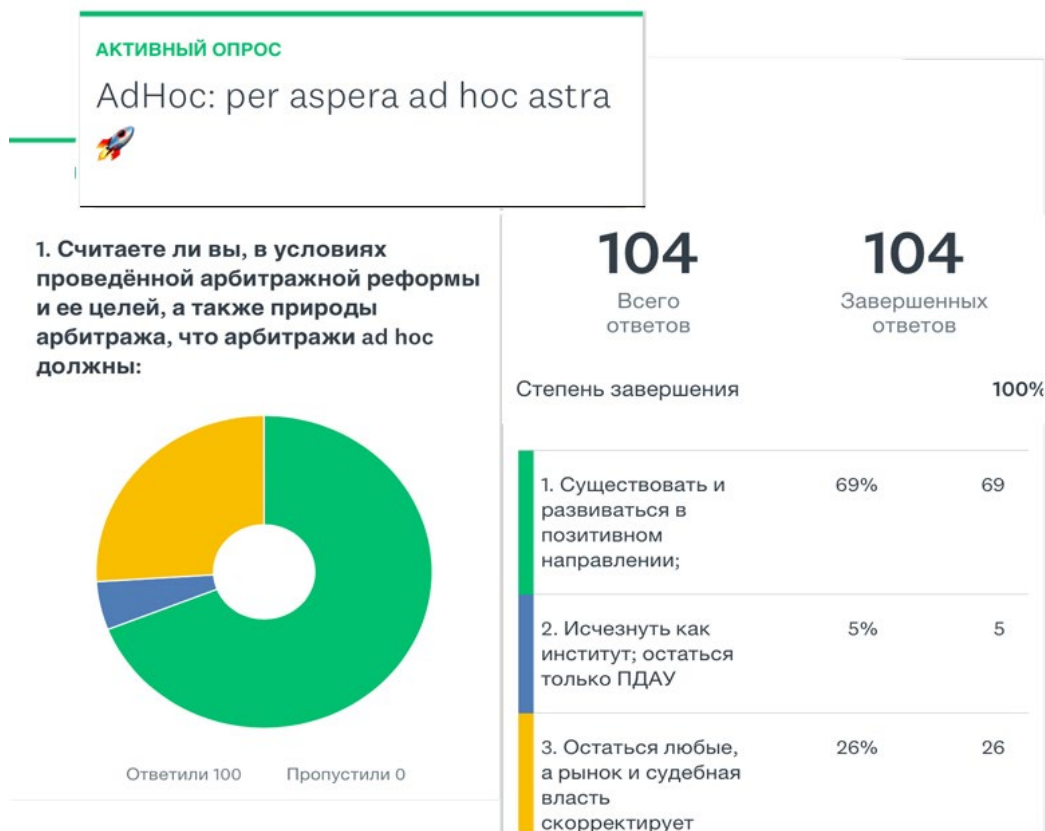
Примечательно, что проведение форума было поддержано ЮНСИТРАЛ — Комиссией ООН по праву международной торговли. Как известно, разработанный ею арбитражный регламент является признанным международным ориентиром для гармонизации процедуры арбитражного разрешения споров¹, наиболее популярным среди правил арбитража ad hoc в 2018 году².

На форуме прозвучали самые разные мнения — от «*арбитраж ad hoc является предтечей арбитража в целом и его квинтэссенцией*» (и это невозможно забыть и не учитывать в ходе проведения любой арбитражной реформы в любом государстве) до «*государство обращает особое внимание и устанавливает контроль за функционированием арбитражей ad hoc*» (в том числе для предотвращения нездоровых отклонений в данной сфере, с учетом на тот момент еще не принятых изменений в законе). Естественно, на форуме не раз задавался вопрос, не умер ли ad hoc вообще. Статистика говорит об обратном.

По результатам исследования, проведенного AdHoc Arbitration, в России за 2018 год арбитраж ad hoc (или третейские суды, образованные сторонами для разрешения конкретного спора, РКС) упо-

¹ Приветствие и небольшая справка о роли и предназначении UNCITRAL Arbitration Rules теперь доступны и для читателей журнала: www.adhocarbitration-forum2018.ru/video/uncitral.mp4.

² 2018 International Arbitration Survey: The Evolution of International Arbitration, с. 15. [http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-\(2\).pdf](http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).pdf).



минается в 202 решениях (РКС — в 142). За 2017 год ad hoc упоминался арбитражными судами лишь в 129 судебных постановлениях, а за 2016 год — в 69. Нарастающая тенденция очевидна.

При этом общее количество дел, связанных с выдачей исполнительных листов на решения третейских судов и с их отменой, в 2018 году — 2575 и 1293 соответственно. Из них, например, в Арбитражном суде города Москвы рассмотрено 668. Но говорит ли данная динамика о том, что экс-третейское сообщество перекочевало под флаг ad hoc?

Путем несложных арифметических подсчетов легко прийти к выводу о том, что подавляющее число составляют иные дела, не связанные с арбитражем ad hoc. Можно заключить, что основным девиационным отголоском существующей арбитражной реформы является как раз не ad hoc. В большей степени им стал «арбитраж вчерашнего дня». Сплошь и рядом в арбитражные суды поступают дела, рассмотренные (якобы) экс-третейскими судами в период аккурат до 1

ноября 2017 года. Причем государственные суды, как правило, не препятствуют выдаче исполнительных листов по этим делам.

Любопытны результаты опроса, который был проведен в преддверии форума по арбитражу ad hoc среди представителей арбитражного сообщества (они представлены на диаграмме). Очевидно, что большая часть респондентов (69%) посчитала необходимым развитие арбитража ad hoc в России в его здоровом понимании.

При этом еще 26% опрошенных полагают, что должны существовать любые ad hoc — вне зависимости от «окраски». Таким образом, общее количество сторонников ad hoc в нашей стране в совокупности составило 95%. Цифры выразительно говорят об отношении сообщества к институту ad hoc.

Будем надеяться, что институт арбитража ad hoc будет и дальше развиваться в России в его правильном, здоровом формате. Равно как и то, что проведенный форум станет отправной точкой и регулярной площадкой для обсуждения актуальных проблем, возникающих в данной сфере.

Любое завершение одного — это всегда начало другого. Мы полагаем, что арбитраж как явление нестатичное будет развиваться и дальше. Вопрос лишь, в каком векторе.

Как известно, история циклична. И мы верим, что наработки и опыт нашего времени сослужат добрую службу подрастающим поколениям юристов.

РЕГЛАМЕНТ ЮНСИТРАЛ – СТАРЕЙШИНА В МИРЕ АРБИТРАЖНЫХ РЕГЛАМЕНТОВ AD HOC



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В последнее время в отечественном арбитражном сообществе активно заговорили об арбитраже ad hoc – как в связи с последними поправками в законодательстве, так и из-за неясности судьбы ad hoc в России в целом. Что же такое ad hoc – неужели это действительно суд без правил? Нет, правила у «эдхоков» есть. Нужно напомнить, что важнейшим глобальным документом, регламентирующим деятельность арбитражей ad hoc, является Арбитражный регламент ЮНСИТРАЛ. Многие договоры о защите капиталовложений между Россией и странами дальнего зарубежья предполагают рассмотрение споров между инвестором и принимающим государством, а равно договаривающимися сторонами по данным правилам.

В конце 2000-х годов мне довелось принимать участие в сессиях рабочей группы по подготовке новой редакции Арбитражного регламента ЮНСИТРАЛ, известной ныне как пересмотренный Регламент 2010 года.

Интересно, что по совокупному количеству дел Регламент ЮНСИТРАЛ используется чаще, чем любые отдельно взятые правила институционального арбитража, хотя и существует как бы в тени. Полагаю, отсутствие привязки к определенному арбитражному институту приводит к тому, что имидж этого инструмента проигрывает в сравнении с его практическим значением. Чтобы убедиться, обратимся к истории Регламента и исследованиям о статистике его использования.

История Регламента ЮНСИТРАЛ

Положения Арбитражного регламента ЮНСИТРАЛ (Комиссии ООН по праву международной торговли, www.uncitral.org) 1976 года

¹ Адвокат, преподаватель юридического факультета СПбГУ. Принимал участие в деятельности рабочей группы по подготовке пересмотренного Регламента ЮНСИТРАЛ в качестве наблюдателя от ИВА (Международной ассоциации юристов). Адвокатское бюро «Егоров, Пугинский, Афанасьев и партнеры» – юридическая фирма, представляющая интересы бизнеса в странах бывшего СССР. В материале изложены собственные взгляды автора, которые могут не совпадать с позицией бюро и его адвокатов.

можно считать самыми популярными правилами третейского разбирательства в мире. Изначальная версия Регламента — долгожитель международного арбитража: этот инструмент служил практически единственным известным источником для процессов *ad hoc* почти целых 35 лет, до принятия его новой редакции в 2010 году. Регламент широко применяется и сейчас — в случаях, когда разбирательства происходят из «старых» контрактов. Используется он и для инвестиционного арбитража — арбитражные оговорки с отсылкой к Регламенту можно найти в межправительственных соглашениях о поощрении и защите капиталовложений. Особенно часто прибегают к этому механизму для разрешения коммерческих споров в крупных инфраструктурных проектах, концессионных соглашениях и подобных начинаниях. Насколько широко?

Обратимся к статистике. Около половины дел, проходящих через Постоянную палату третейского суда в Гааге (Permanent Court of Arbitration) — межправительственную организацию, находящуюся в Гааге и выполняющую по умолчанию функцию назначения компетентного органа по Регламенту, — это инвестиционные споры¹. Обзор 200 крупнейших процессов международного арбитража² позволяет установить, что по популярности эти правила *ad hoc* не уступают регламентам ведущих постоянно действующих арбитражных институтов мира. Регламент применяется почти в четверти масштабных разбирательств в обоих секторах арбитража, будучи столь же популярен, как и Регламент ICC (Международной торговой палаты) применительно к коммерческим спорам, и процедура ICSID в инвестиционном арбитраже.

Многие арбитражные институты не только ведут разбирательства по собственным канонам,

но и предлагают административную поддержку процесса по правилам ЮНСИТРАЛ. Больше того, этот текст используется в качестве ориентира или отправной точки для составления «домашних» регламентов — правил арбитражного разбирательства постоянно действующих арбитражных учреждений. Так, например, этот документ послужил образцом для Международного арбитражного регламента Международного центра по урегулированию конфликтов (International Center for Dispute Resolution, ICDR)³, который впервые был составлен в 1986 году.

Эволюция Регламента

Практика международного арбитража не стоит на месте. Развивается законодательство в этой сфере, появляются новые международные соглашения и трансформируются классические подходы. Еще в 2006 году было решено, что Регламент 1976 года нуждается в модернизации в связи с изменениями, которые произошли за 30 лет в праве и практике международного арбитража (в частности, в документе следовало отразить использование электронных средств связи). Целью ревизии стало повышение процессуальной эффективности, при этом изначально структуру текста, его концепцию и стиль изложения считали целесообразным сохранить. Проект прошел три чтения и принял окончательный вид в феврале 2010 года.

25 июня 2010 года на сессии в Нью-Йорке ЮНСИТРАЛ утвердила пересмотренный Регламент, который вступил в силу с 15 августа⁴. «Старые» арбитражи будут проходить по документу 1976 года. Если ссылка на Регламент включена в архи-

¹ См. документ ООН A/CN.9/665, п. 47–50.

² Лучшие против лучших: крупнейшие процессы в международном торговом арбитраже, действующие лица и исполнители // Третейский суд. — 2006. — № 6; 2007. — № 1, 2; Никифоров И. В. Хроники международного арбитража. Лучшие против лучших: раунд второй // Третейский суд. — 2008. — № 4–6; Goldhaber M. D. Arbitration Scorecard // American Lawyer Focus Europe. 2009, July 01. В этих обзорах рассматриваются дела в международном коммерческом и инвестиционном арбитраже, в которых цена иска превышает соответственно 200 и 100 млн долл.

³ ICDR создан под эгидой Американской ассоциации арбитража (США) и выполняет функции ее международного арбитражного органа. В случае если арбитражная оговорка во внешнеэкономическом контракте предусматривает разрешение спора по правилам Американской ассоциации арбитража, такое разбирательство передается Центру по его международному регламенту; собственно правила арбитража Американской ассоциации арбитража рассчитаны на применение при рассмотрении внутренних споров.

⁴ Аутентичный русский текст можно найти на сайте организации по ссылке <http://www.uncitral.org/pdf/russian/texts/arbitration/arb-rules-revised/arb-rules-revised-r.pdf>. Там же доступны версии на английском и других языках.

тражное соглашение, заключенное после 15 августа 2010 года⁵, предполагается применение новых правил. Разумеется, стороны всегда могут согласовать использование конкретного варианта правил.

Новеллы пересмотренного Регламента 2010 года

Включены положения на случай арбитража со множественностью лиц и соединения арбитражных разбирательств. Однако нет указаний относительно объединения процессов, возникающих из нескольких взаимосвязанных договоров, например подряда и субподряда, — такой механизм при необходимости придется прописывать в арбитражных оговорках каждого контракта. Доработаны вопросы предварительных обеспечительных мер. Критерии, которыми следует руководствоваться третейскому суду при вынесении подобных распоряжений, установлены в п. 3 ст. 26 Регламента⁶:

1. отсутствие предварительных обеспечительных мер увеличивает риск негативных последствий, которые нельзя адекватно загладить путем присуждения убытков;
2. такие негативные последствия более существенны, чем последствия испрашиваемых ограничений;
3. существует разумная возможность того, что испрашивающая меры сторона добьется успеха в отношении существа требования.

Пересмотрены процедуры замены выбывающего арбитра исходя из необходимости скорейшего продолжения процесса. Новые правила предусматривают обязанность ответчика представить ответ на просьбу об арбитраже в течение 30 дней с момента его получения.

По Регламенту 1976 года первое заявление ответчика по существу требований можно было оттягивать до предоставления отзыва на иск, так что сторона защиты могла без ущерба для своей позиции не предпринимать никаких шагов в

третейском разбирательстве до тех пор, пока это выгодно, — иногда месяцами — оставляя истца в неведении относительно своего отношения к обоснованности заявленных требований и лишая его возможности тщательно проработать контраргументы.

Целый ряд нововведений касается процессуальных гарантий для сторон, причем они ориентированы не только на превенцию злоупотреблений самих сторон, но и на предотвращение безответственных или корыстных действий арбитров. Действительно, в процессе *ad hoc* стороны оказываются заложниками арбитров, которые имеют практически неограниченную свободу в организации процедуры и решении вопросов собственного вознаграждения.

Приложения к документу содержат факультативные положения: типовую арбитражную оговорку и типовое заявление о беспристрастности арбитров.

Выбор применимого материального права и процессуальные аспекты новой редакции Регламента ЮНСИТРАЛ

Подход, принятый в новой редакции Регламента, дает составу арбитров свободу в вопросе определения применимого права — как материальных, так и процессуальных норм. Положение, установленное в п. 1 новой редакции ст. 35⁷, по сути, представляет собой особую коллизионную норму⁸ для выбора материального права.

Статья 35. Применимое право, «дружеские посредники»

Арбитражный суд применяет нормы права, которые стороны согласовали как подлежащие применению при решении спора по существу. При отсутствии такого согласия сторон архи-

⁵ Кроме случаев, когда арбитражное соглашение заключено посредством принятия после 15 августа 2010 года предложения, сделанного до этой даты.

⁶ Исключение представляет приказ об обеспечении сохранности доказательств, который, как правило, не требует доказывания этих элементов.

⁷ Выбору права была посвящена ст. 33 Регламента 1976 года.

⁸ Такой подход согласуется с ГК РФ: «Особенности определения права, подлежащего применению международным коммерческим арбитражем, устанавливаются законом о международном коммерческом арбитраже» (п. 1 ст. 1186 «Определение права, подлежащего применению к гражданско-правовым отношениям с участием иностранных лиц или гражданско-правовым отношениям, осложненным иным иностранным элементом»).

тразный суд применяет право, которое он сочтет уместным.

Арбитражный суд выносит решение в качестве «дружеского посредника» или *ex aequo et bono* лишь в том случае, если стороны прямо уполномочили арбитражный суд на это.

Во всех случаях арбитражный суд принимает решение в соответствии с условиями договора, при наличии такового, и с учетом любых торговых обычаев, применимых к данной сделке.

В первом предложении п. 1 слово «право» было заменено на «нормы права». Эта незначительная, казалось бы, модификация несет глубокую смысловую нагрузку и открывает дорогу для применения ненациональной системы права (*lex mercatoria* и т.д.). К категории «норм права» могут быть отнесены модельные законы (например, модельный ГК СНГ), проекты национальных нормативных актов и т.п. В литературе в качестве примера выбора норм права упоминается подчинение прав и обязанностей по контракту, международному соглашению (конвенции, договору), которое еще не ратифицировано либо не вступило в силу, и даже рабочим вариантам (проектам) таких документов.

Участники внешнеторгового оборота часто используют эту возможность для выбора в качестве обязательственного статута не позитивного права какого-либо политического образования, а *lex mercatoria* — транснационального обычного торгового права, то есть деловых обычаев и обыкновений международной торговли в чистом виде или негосударственных сводов правил, текстов, сборников, компилирующих юридическую практику внешнеторгового оборота.

Предложение допустить вынесение решения в отрыве от национального законодательства, руководствуясь общими принципами права, частными кодификациями, без особой на то договоренности сторон, не нашло поддержки в ходе ре-визии Регламента. В отсутствие волеизъявления сторон по вопросу материального статута арбитраж обязан избрать «право» (то есть обратиться к конкретному национальному закону), а не какие-либо иные источники⁹.

⁹ Параграфы 107–109 документа ООН А/CN.9/641.

Однако и в этой части Регламент все же был модернизирован, допустив прямой выбор права (*direct choice of law; voie directe*). Предложение сохранить классический подход правил 1976 года, то есть вменить арбитрам обязанность всегда выбирать закон традиционным путем, через коллизионные нормы, не нашло поддержки¹⁰. Третейский суд может непосредственно обратиться к правопорядку, который в силу наиболее тесной связи с существом спора или иных обстоятельств будет надлежащим применительно к конкретному правоотношению. Это относится как к материальным, так и к процессуальным нормам. В решении нет необходимости ссылаться на нормы коллизионного права, обосновывать выбор последних в качестве предварительного вопроса. Свой выбор, однако, пусть даже и «прямой», арбитры всегда должны аргументировать.

Что касается методов ведения третейского разбирательства, таких как порядок исследования доказательств или активность арбитров как координаторов процесса, то в Регламенте они прописаны лишь частично. Поэтому на стадии издания Процессуального приказа № 1 (определения формата разбирательства) уместно дополнить его ссылками на стандартные документы — кодификации лучших практик, такие как Пражские правила¹¹. Сами правила не предлагают стандартных фраз для включения в арбитражные оговорки, акт о полномочиях арбитров (*terms of reference*) и приказы третейского суда. Такая задача поставлена на будущее. На старте, в период пилотного применения автор этих строк предложил следующую формулу.

¹⁰ Генезис этого приема объясняется тем, что, в отличие от государственных судов, арбитры в международных спорах зачастую не имеют той привязки к *lex fori* (будь то право места арбитража или места нахождения арбитражного института), которая позволила бы однозначно определить национальную систему международного частного права, из которой они должны заимствовать коллизионные нормы. То есть сам выбор коллизионной нормы требует применения коллизионной нормы — а какой? Ее (коллизионное правило, положенное в основу выбора коллизионной нормы) тоже надо как-то установить. Получается замкнутый круг. Метод прямого выбора права позволяет из него выйти.

¹¹ Подробнее см.: Arbitration.ru. — 2018. — № 4; сайт, посвященный Пражским правилам: www.pragerules.com.

Для включения в договор	Стороны, намеренные прибегнуть к Правилам, могут включить в арбитражную оговорку такие фразы.	The Parties who intend to rely on Prague rules in the proceedings are advised to include the following language in the arbitration clause.
	[Арбитраж / разбирательство / слушания / предоставление документов / свидетели и эксперты] будут проводиться в соответствии с Правилами эффективной организации процесса в международном арбитраже (Пражские правила), действующими на дату [этого соглашения / the commencement of the arbitration].	The [arbitration] / [evidentiary proceedings / hearings / document production / witness testimony etc. *] shall be conducted according to the relevant provisions of the Continental 'Rules on the efficient conduct of proceedings in international arbitration' Rules on Evidence (Prague Rules) as current on the date of [this agreement / the commencement of the arbitration].

Будущее Регламента ЮНСИТРАЛ

Следует заключить, что Арбитражный регламент ЮНСИТРАЛ можно по праву считать одним из самых удачных частно-правовых инструментов в сфере альтернативного разрешения споров.

Нет сомнений, что Регламент будет существовать до тех пор, пока существует арбитраж ad hoc, — и развиваться вместе с ним. Сейчас экспертное сообщество работает над смежными проектами. Под эгидой ЮНСИТРАЛ сегодня действуют соответствующие рабочие группы (см. врезку).

Создание Регламента завершено, однако на подходе новые связанные с ним проекты. Рекомендую вам включиться в интересный, поучительный и живой процесс работы над ними, например обратившись в Арбитражную Ассоциацию (РАА)¹². РАА имеет статус наблюдателя при ЮНСИТРАЛ, что позволяет ее членам стать делегатами на сессии рабочей группы или пленарном заседании комиссии.

¹² Приглашенные международные неправительственные организации могут присутствовать на сессиях ЮНСИТРАЛ в качестве наблюдателей и излагать свои мнения по вопросам, в которых они обладают компетенцией или международным опытом.

Рабочая группа II – с 2000 года по наст. вр.
Арбитраж и согласительная процедура

Разработка документа, касающегося приведения в исполнение международных коммерческих мировых соглашений, достигнутых в рамках согласительной процедуры (своего рода Нью-Йоркская конвенция для медиационных соглашений). Итогом должны стать проект поправок к Типовому закону ЮНСИТРАЛ о международной коммерческой согласительной процедуре (Типовой закон о согласительной процедуре, или Типовой закон) и проект международной конвенции.

Рабочая группа III – с 2017 года по наст. вр.
Реформирование системы урегулирования споров между инвесторами и государствами

Задачи этой рабочей группы – анализ существующей практики и проблем инвестиционного арбитража, а также, если группа придет к заключению о целесообразности реформы, разработка подходящих решений. Для дальнейшего рассмотрения представлены еще две смежные темы в области арбитража:

- руководство относительно параллельных разбирательств;
- нормы этики для арбитров.



АДВОКАТСКОЕ
БЮРО

ЕГОРОВ
ПУГИНСКИЙ
АФАНАСЬЕВ
И ПАРТНЕРЫ



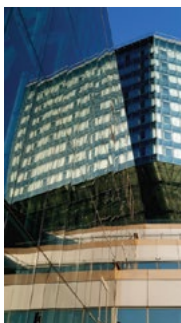
МОСКВА



САНКТ-ПЕТЕРБУРГ



КИЕВ



МИНСК



ВАШИНГТОН



ЛОНДОН

Арбитражный Регламент ЮНСИТРАЛ 2010 года Рабочая тетрадь



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Арбитражный регламент ЮНСИТРАЛ можно считать самыми популярными правилами третейского разбирательства в мире. Изначальная версия Регламента – своего рода долгожитель: широко применялся целых тридцать пять лет! Регламент используется как формат инвестиционного арбитража, так и разрешения коммерческих споров Третейским судом. Многие арбитражные институты, наряду с администрированием разбирательств по собственным правилам, предлагают поддержку процесса по правилам UNICITRAL.

Около половины дел, проходящих через Постоянную палату третейского суда в Гааге (Permanent Court of Arbitration) (ППТС), межправительственную организацию, находящуюся в Гааге и выполняющую по умолчанию функцию назначения компетентного органа по Регламенту, являются инвестиционными арбитражами.

При всей своей значимости Регламент не освещен подробно в отечественной литературе. Восполнить этот пробел и призвана данная публикация.

В издании представлены **постатейные материалы** к недавно пересмотренному Арбитражному Регламенту ЮНСИТРАЛ 2010 года. Публикация предлагает уникальный взгляд на процесс подготовки Регламента, который проливает свет на его **толкование и применение**.

www.epam.ru

Основу текста составляют материалы дискуссий в ходе разработки Регламента. Наглядно выполненный **сравнительный анализ** пересмотренного Регламента в редакции 2010 года с оригинальными Правилами 1976 года позволяет контрастно выявить **суть нововведений и их цель**.

Название «Рабочая тетрадь» не случайно. Подразумевается, что это издание будет представлять собой рабочий инструмент, который всегда под рукой у участников процесса. Применительно к каждой статье предусмотрены поля для заметок/записей – так **Вы можете создать свой уникальный комментарий, отражающий Ваш опыт и наблюдения**, как для себя лично, так и для фирмы, организации, в которой работаете.

Читатель сможет проследить, как изменялся текст и структура Регламента в процессе его подготовки

Публикация включает подробную информацию о происхождении каждого из положений, а также предусматривает ссылки на официальную документацию

Толкование каждой статьи Регламента раскрыто в авторском комментарии И.В. Никифорова, который известен в международном арбитражном сообществе как международный арбитр и опытный искушенный юрист-практик. От первого лица автор передает личный опыт участия в сессиях рабочей группы по подготовке новой редакции Арбитражного Регламента.

Здесь Вы также найдете обсуждение новелл, оставшихся за рамками окончательного текста, и размышления о спорных вопросах и основных проблемах, намеренно исключенных из текста Регламента.

Динамичный характер практики международного арбитража предполагает собой, что практика применения Регламента находится в постоянном развитии, таким образом, и эта книга должна быть живым, развивающимся инструментом практики.

Адвокатское бюро «Егоров, Пугинский, Афанасьев и партнеры» является крупнейшей юридической фирмой СНГ с офисами в России, Украине, Беларуси и ассоциированными офисами в Великобритании и США.

Основанное в 1993 году Бюро оказывает полный спектр юридических услуг национальному и иностранному бизнесу, органам государственной власти, международным организациям и финансовым институтам на всей территории СНГ.

Заказы на книгу «Арбитражный Регламент ЮНСИТРАЛ 2010 года. Рабочая тетрадь» принимаются по e-mail: books@epam.ru и по факсу +7 (812) 322-96-82.

Книги Академии АБ «Егоров, Пугинский, Афанасьев и партнеры»:

- Архипов Д.А. Распределение договорных рисков в гражданском праве. Экономико-правовое исследование. – М.: Статут, 2012. – 112 с. <http://www.estatut.ru/book/653/>
- Комментарии к арбитражным регламентам ведущих арбитражных институтов / под ред. Рихарда Хлупа. – СПб.: АНО «Редакция журнала Третейский суд»; М.: Инфотропик Медиа, 2012. – 464 с. <http://www.epam.ru/publications/view/kommentarii-k-arbitrazhnyim-reglamentam-vedushchih-institutov>
- Международный коммерческий арбитраж: Учебник / под ред. В.А. Мусина, О.Ю. Скворцова. – СПб.: АНО «Редакция журнала Третейский суд»; М.: Инфотропик Медиа, 2012. – 496 с. <http://www.epam.ru/rus/publications/view/mezhdunarodni-kommercheskii-arbitrazh>

Анонс новых изданий:

Лукаш Клэе, И.В.Никифоров

- **Типовые договоры строительного подряда Международной федерации инженеров-консультантов FIDIC**
Практика применения типовых форм «Условий контракта на сооружение объектов гражданского строительства» и их использования в инфраструктурных проектах в странах Восточной Европы и России, типовой формы «Условия контракта на поставку оборудования, проектирование и строительство для электромеханических и пусковых работ», а также аспекты типовой формы «Условия контракта для проектов типа ИПС (инжиниринг, поставки, строительство)». Все три типовые формы в актуальной редакции будут включены в книгу в качестве приложений.

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О ЕВРОПЕЙСКОЙ АРБИТРАЖНОЙ ГРУППЕ МЕЖДУНАРОДНОЙ ТОРГОВОЙ ПАЛАТЫ



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Всероссийской
академии внешней
торговли

В настоящее время существование Европейской арбитражной группы МТП (ICC) является одним из факторов, способствующих развитию международного коммерческого арбитража в региональном масштабе. Своим появлением и последующей деятельностью она обязана принятию в 1961 году Европейской конвенции о внешнеторговом арбитраже, которая в нынешних условиях иногда незаслуженно оказывается в забвении, когда анализируется современный международно-правовой режим арбитражного разбирательства.

В послевоенный исторический период, который ознаменовался беспрецедентным ростом международной торговли, Европейская экономическая комиссия ООН (ЕЭК ООН) принимала энергичные меры в области создания благоприятных условий для развития экономического сотрудничества между европейскими странами в контексте Восток — Запад. Такое сотрудничество должно было быть важным фактором, обеспечивающим мирное сосуществование государств, относившихся к различным общественно-экономическим системам в условиях холодной войны.

Среди средств достижения указанной цели важная роль была отведена разработке проектов международно-правовых документов регионального характера, направленных на создание взаимоприемлемого правового режима внешнеторговых сделок, которые могли заключаться между западноевропейскими фирмами и внешнеторговыми организациями, существовавшими в странах, относящихся к социалистическому лагерю.

Одним из таких мероприятий и стала разработка вышеупомянутой Конвенции о внешнеторговом арбитраже. Проект конвенции был подготовлен в довольно короткий срок специальной рабочей группой по вопросам арбитража, учрежденной под руководством Комитета по развитию внешней торговли ЕЭК ООН. В апреле 1961 года в Женеве состоялось специальное совещание уполномоченных

представителей, в котором приняли участие представители более 20 европейских стран, а также международных неправительственных организаций, включая Международную торговую палату. 21 апреля 1961 года конвенция была открыта для подписания.

Одной из главных целей данного проекта было создание правового регулирования, которое могло бы способствовать эффективному разрешению внешнеторговых споров, принимая во внимание увеличение объемов международной торговли на европейском континенте. Важным обстоятельством было то, что в этот исторический период страны Европы были разделены на два противоположных лагеря: с одной стороны были страны Западной Европы, где господствовала капиталистическая экономика, а с другой — восточноевропейские страны и СССР, где действовала социалистическая экономическая система.

Традиционные средства разрешения экономических споров, которые существовали в странах, принадлежавших к разным системам, имели серьезные различия, как по форме, так и по существу. Это обстоятельство, безусловно, представляло существенное препятствие при со-

гласовании вопросов, относившихся к порядку разрешения возможных споров из внешнеторговых сделок, дополнявшееся к тому же тем, что в социалистических странах внешняя торговля велась на основе государственной монополии.

Арбитражный порядок рассмотрения таких споров, обеспечивающий достижение максимальной степени процессуальной нейтральности, был признан с обеих сторон наиболее адекватным и эффективным способом разрешения споров, которые могли объективно возникать в ходе осуществления внешнеторговых связей между предприятиями, находившимися в странах, принадлежавших к различным социально-экономическим формациям. Однако в тот период времени существовало еще одно обстоятельство, которое следовало учитывать при выработке мер, необходимых для успешного использования этого способа разрешения внешнеторговых споров. В социалистических странах арбитраж (третейский суд) не был распространенным средством разрешения споров и был не урегулирован в необходимой степени, что, естественно, могло также осложнить применение арбитражного порядка разрешения внешнеторговых споров, которые могли рассма-



Встреча Европейской арбитражной группы ИСС в Париже в 2018 году.

триваться в юрисдикциях восточноевропейских стран. Поскольку с принятием конвенции такое развитие событий получало реальную перспективу, необходимо, чтобы конвенция включала нормативные положения, учитывающие эти аспекты правового режима внешнеторговой деятельности, существовавшего в социалистических странах.

В силу указанных обстоятельств одним из главных положений конвенции стало регулирование организации и осуществления арбитражного процесса, где одним из важнейших вопросов является формирование арбитражного суда. Основное внимание при этом было уделено решению проблем, обусловленных отсутствием необходимого опыта у участников внешнеторговых операций: возникала опасность, что содержание согласованных ими арбитражных оговорок могло приобрести патологический характер, то есть такие договоренности не могли быть реально исполнены. Также вполне частыми были случаи, когда стороны, заключившие соглашение об арбитраже, тем не менее не могли достичь соглашения по конкретным вопросам организации арбитражного процесса, что также нуждалось в регулировании, которое исключало бы блокирование реализации арбитражного соглашения.

Предусмотренный конвенцией механизм, насколько это было возможно в сложившихся условиях межгосударственных отношений, отражал сбалансированный компромисс в контексте отношений Восток — Запад. Для приведения в действие этого механизма конвенция отводила решающую роль торговым палатам стран-участниц. В приложении к конвенции был дан перечень национальных торговых палат, на которые были возложены функции, связанные с организацией и проведением арбитражного процесса в критических ситуациях, когда исполнение арбитражного соглашения оказывалось под угрозой. По запросу заинтересованной стороны руководящие органы торговой палаты страны, где находилась другая сторона, должны были принять меры для разрешения проблем, связанных с организацией арбитражного разбирательства, возникавших в силу дефектов арбитражных оговорок, включенных во внешнеторговые контракты, или в случаях, когда сторонам не удавалось достичь согласия по во-

просам, решение которых было необходимо для реализации арбитражных соглашений.

Важным элементом этого механизма было также функционирование Специального комитета, который должен был избираться каждые четыре года, и процедура его формирования детально регламентировалась в приложении к конвенции. Международная торговая палата не была прямым участником данного процесса, но она оказалась косвенно вовлеченной в него. Выборы председателя и двух постоянных членов Специального комитета осуществлялись на паритетных началах. С одной стороны — торговыми палатами стран, где существуют национальные комитеты Международной торговой палаты, то есть в тот период времени, как правило, западноевропейских стран. С другой — торговыми палатами, где отсутствовали национальные комитеты Международной торговой палаты, которые на тот момент включали восточноевропейские страны и СССР. Беспристрастное функционирование Специального комитета должна была обеспечить ротация при избрании его председателя. Как правило, совещания представителей соответствующих торговых палат использовались для выборов председателя и членов Специального комитета от соответствующих групп стран.

В целом предусмотренный конвенцией механизм организации и проведения арбитражного разбирательства заменял собой необходимость для сторон, заключивших арбитражное соглашение, обращаться при возникновении проблем по исполнению арбитражных соглашений за поддержкой к судебным органам, которые обычно выполняли соответствующие действия в соответствии с национальным законодательством, регламентирующим арбитражное разбирательство в соответствующем государстве.

Следует отметить, что предусмотренный конвенцией довольно сложный механизм, действовавший в отношении организации и осуществления арбитражного процесса, в основном был направлен на преодоление трудностей, которые могут возникать, когда действия в поддержку арбитражного разбирательства должны предприниматься на территории восточноевропейских стран, где судебные органы для этих целей практически не использовались.

В этой связи необходимо упомянуть, что 17 декабря 1962 года под эгидой Совета Европы было принято соглашение относительно применения Европейской конвенции о внешнеторговом арбитраже. В соответствии с этой конвенцией было признано необязательным применение правил, регулировавших механизм организации и осуществления арбитражного процесса, предусмотренный в конвенции, в случаях, когда все стороны арбитражного разбирательства были из стран, в которых существовали национальные комитеты Международной торговой палаты, то есть из стран Запада.

Государства, участвовавшие в разработке конвенции, отдавали себе отчет в том, что ее применение, по крайней мере на начальном этапе, будет сопряжено с известными трудностями в силу серьезных политико-экономических различий между капиталистическими и социалистическими странами. Результатом было то, что они позаботились также о создании дополнительных предпосылок, наличие которых могло бы способствовать успешной реализации положений конвенции, а вместе с тем и положительно влиять на развитие международной торговли. В заключительный акт специального совещания представителей, уполномоченных разработать и подписать Европейскую конвенцию о внешнеторговом арбитраже, была включена рекомендация торговым палатам стран-участниц консультироваться между собой по поводу мер, которые могут быть полезными для применения конвенции и развития арбитража.

Таким образом, появилась возможность создания своеобразного консультативного механизма, который прежде всего был направлен на обеспечение надлежащего соблюдения конвенции в странах-участницах и развитие международного коммерческого арбитража в отдельных европейских странах. Это, безусловно, имело большое позитивное влияние для стран, в которых внешнеторговый арбитраж как с точки зрения правового регулирования, так и практики его применения находился еще в процессе становления, что в известной мере было характерно для восточноевропейских стран.

В совещаниях по вопросам внешнеторгового арбитража, предусмотренных при принятии конвенции, от торговых палат восточноевропей-

ских стран в основном стали принимать участие представители существовавших при этих палатах арбитражных институтов, рассматривающих внешнеторговые споры. С другой стороны в совещаниях принимали участие западные специалисты по международному арбитражу, представлявшие не только соответствующие торговые палаты, но и профессиональные круги, связанные с практикой международного арбитража.

В дальнейшем такие регулярно проводившиеся совещания специалистов по международному арбитражу из Западной и Восточной Европы стали рассматриваться в качестве заседания международной группы специалистов по международному арбитражу, получившей название «Арбитражная группа Восток — Запад». Иными словами, была создана площадка, где представители разных европейских стран, участвовавшие в практическом осуществлении арбитража, получили возможность на регулярной основе не только обсуждать вопросы, связанные с применением Европейской конвенции о внешнеторговом арбитраже, но и обмениваться информацией по актуальным вопросам законодательства и практики внешнеторгового арбитража в своих странах.

В процессе организации и проведения этих консультативных совещаний координационные функции со стороны Запада приняла на себя Международная торговая палата в лице руководства Международного арбитражного суда, действующего при ней. Заседания группы стали достаточно регулярно проводиться попеременно либо в Международной торговой палате в Париже, либо по очереди в столицах государств социалистического лагеря, где действовали внешнеторговые арбитражные институты при торговых палатах этих стран.

В последующие десятилетия, особенно в 1990-е годы, произошли серьезные изменения в политическом климате как в глобальном, так и в региональном масштабе, которые также оказали влияние на развитие международного коммерческого арбитража. В этот период в большинстве восточноевропейских стран было принято законодательство о международном коммерческом арбитраже, которое было основано на Типовом законе ЮНСИТРАЛ. В этой связи предпосылки для применения механизмов, предусмотренных Ев-

ропейской конвенцией о внешнеторговом арбитраже, в значительной мере утратили свою роль. В частности, во многих восточноевропейских странах были созданы национальные комитеты Международной торговой палаты, укрепили свое положение арбитражные институты при торговых палатах этих стран, получила более широкое развитие практика международного арбитража.

В связи с названными обстоятельствами в кругу участников Арбитражной группы Восток — Запад обсуждался вопрос о продолжении ее существования. Существовало мнение, что конвенция практически утрачивает свое значение и теперь, когда серьезное противостояние между различными группами стран в Европе уже практически отсутствует, консультативный механизм для обеспечения действия конвенции, выражавшийся в существовании Арбитражной группы Восток — Запад, не требуется. Однако вполне обоснованно победило мнение, что, несмотря на произошедшие изменения в политической обстановке, механизм, который позволяет обмениваться опытом и информацией по вопросам практики международного арбитража в Европе, должен существовать в интересах его дальнейшего развития, поскольку международный арбитраж изменился количественно и качественно, появились новые серьезные проблемы, которые заслуживают обсуждения на международном уровне. Одновременно было принято решение о том, что название группы «Восток — Запад» несет на себе отпечаток характерного для предшествовавшего исторического периода противостояния и уже не соответствует сложившемуся на континенте к тому времени политическому климату, поэтому от него следует отказаться. Так появилось современное название — Европейская арбитражная группа.

Для внешнеторговых арбитражных учреждений, находившихся в восточноевропейских государствах, сохранение деятельности Европейской арбитражной группы имело особый смысл. С исчезновением социалистического лагеря, экономическое сотрудничество в котором на протяжении нескольких десятилетий осуществлялось в рамках международной организации, а именно Совета экономической взаимопомощи (СЭВ), также исчезли и предпосылки для посто-

янно осуществлявшегося сотрудничества, обмена опытом и информацией между арбитражными центрами при торговых палатах, находившимися на территории бывших социалистических стран. Такое сотрудничество включало в себя проведение регулярных встреч руководителей внешнеторговых арбитражных учреждений, обмен опытом, информацией об арбитражной практике по разрешению внешнеторговых споров и других аспектах, имевших практическое значение для их деятельности. Эти отношения развивались достаточно интенсивно на протяжении длительного времени и приносили большую пользу для практики внешнеторгового арбитража между внешнеторговыми организациями этих стран.

Отмеченные выше обстоятельства привели к тому, что находившиеся в бывших социалистических государствах Европы внешнеторговые арбитражные учреждения, а также вновь созданные арбитражные суды в образовавшихся после распада СССР государствах оказались без какого-либо механизма, который создавал бы возможность для проведения взаимных консультаций. Совещания в рамках Европейской арбитражной группы становятся единственным способом для этого и открывают возможность для арбитражных институтов осуществлять сотрудничество, обсуждать проблемы, имеющие значение для их деятельности, а также обмениваться опытом и другой актуальной информацией.

В настоящее время Европейская арбитражная группа, в которой принимают участие как авторитетные специалисты из западных стран, практикующие в области международного арбитража, так и представители практически всех внешнеторговых арбитражных судов, действующих на территории европейского континента, является важным форумом, где обсуждаются актуальные вопросы текущей практики международного арбитража, а также тенденции ее развития. Это создает условия для более прозрачного и предсказуемого положения в данной сфере международного сотрудничества, что, безусловно, способствует более широкому применению арбитража для разрешения международных коммерческих споров.

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- | | | |
|-------------------------|-------------------------------|--------------------------------|
| 1. Jura novit curia. | 7. МАК и МКАС. | 14. Société Européenne |
| 2. Бравый солдат Швейк. | 8. Арбитражный суд Москвы. | d'Etudes et d'Entreprises |
| 3. Пражские правила. | 9. «Акмеа». | (S.E.E.E.) v. Federal Republic |
| 4. | 10. РАА. | of Yugoslavia. |
| а) нет; | 11. Журналист. | 15. Гэри Борн. |
| б) нет; | 12. Дело «Мосинжпроект | 16. Новый год. |
| в) да; | против | 17. Мороз. |
| г) да. | Мостеплосетьстроя». | 18. Снежинки. |
| 5. Судья. | 13. Репост, в случае рецидива | |
| 6. Прокурор. | по ст. 282 УК. | |

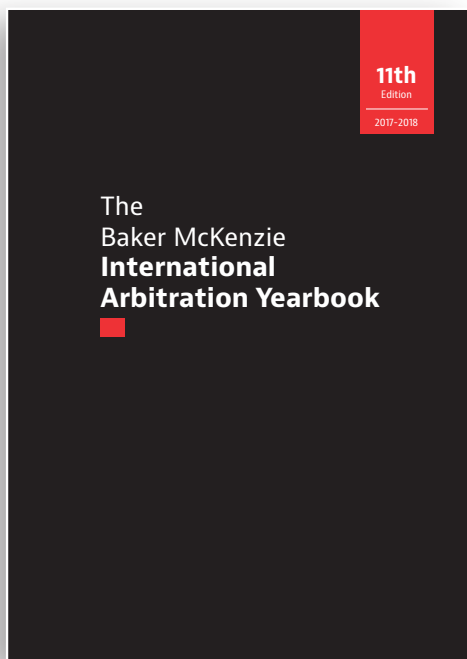
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