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Recognition of international arbitration in Ukraine in figures

KONSTANTIN PILKOV*

Arbitration practitioners often put Ukraine below the average ranking of countries in terms of recognition of arbitration. Ukraine's image of a not entirely arbitration-friendly jurisdiction is "promoted" with common thought about problematic enforcement of arbitral awards in Ukraine.

In the well-known case "*Regent Company v. Ukraine*", the European Court of Human Rights (in its decision of April 3, 2008) found violations by Ukraine of Part 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of the First Protocol due to the failure of the Ukrainian state authorities to enforce an arbitral award. There have been also Ukrainian court decisions where courts narrowed the jurisdiction of the arbitration, pointing out that the law does not grant any international commercial arbitration court the power to recognize agreements void. We hope that sort of decisions would never become a common judicial practice.

However, in general Ukrainian legal system demonstrated significant progress in adherence to the arbitration-friendly approach. That progress had been measured during the study resulted in the research paper "Ukraine. Arbitration-friendly jurisdiction: 2011-2012 statistical report". The paper has been prepared by the Arbitration team of Cai & Lenard Law firm and issued in English, Ukrainian and Russian. It was the first statistical report with the focus on recognition of international arbitration in Ukraine ever made.

In general, as shown by the practice analyzed in the study, Ukrainian courts (they are the bodies authorized to decide on enforcement of arbitral awards) do not create barriers for arbitration agreements to be recognized and arbitral awards to be recognized and enforced.

Despite the dominance of the share of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry in the number of cases involving Ukrainian entities, local courts also deal with the awards rendered by other arbitration institutions or in *ad hoc* arbitration.

Ukrainian local common courts rarely refuse to grant the leave for enforcement of arbitral award (about 10% of the requests in 2011 and 6% of

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the requests in 2012). Compared to the refusal of the enforcement of arbitral awards, more common are situations in which a request for enforcement is left without consideration because required documents have not been provided, or because of the provision of documents which do not comply with the law or other procedural mistakes.

Usually Ukrainian courts do not interfere in arbitration. In 2011 – 2012, some claims were filed to Ukrainian courts in order to compel arbitration institutions to resume arbitral proceedings. The vast majority of these claims have been submitted due to the difficult situation for the parties, in whose favor awards were rendered, when the awards were set aside or courts refused the enforcement. Arbitral tribunals refuse to restore proceedings as the restoration is not envisaged by the rules. The courts also believe that they have no legal grounds for interference with arbitration.

On the other hand, Ukrainian common courts are not inclined to help in securing the enforcement of arbitral awards. In the period covered by the study, there was not any court decision on interim measures found (either before or during arbitral proceedings or pursuant to an order of an arbitral tribunal on interim measures, or at a stage of enforcement).

Another important aspect of arbitration-friendliness of a particular jurisdiction is the attitude to setting aside arbitral awards. It has to be said that the quantity of applications for setting aside arbitral awards considered by courts is insignificant if we compare it to the quantity of the awards of the ICAC at the UCCI left for enforcement (1 arbitral award set aside per 49 awards left for enforcement). Ukrainian courts generally refuse to set aside awards, which are challenged on grounds of violation of the public policy, and inconsistencies of arbitration proceedings with an arbitration agreement (improper notification of the party). However, in most cases such claims were not met. Setting aside an arbitral award occurs in exceptional cases. Even if a local court sets aside an award the court of appeal carefully reviews the case and usually cancels the decision on setting aside the award.

Thus, Ukraine significantly developed its attitude to the enforcement of arbitral awards during recent years, though the approach of economic courts (these courts consider commercial cases and often take formalistic approach in matters related to recognition of arbitration agreements) still remains rather unfriendly to arbitration.

While preparing the report, it was not the aim to provide any guidance or recommendations to arbitration practitioners. We believe our colleagues are aware of the risks and specific aspects of the enforcement procedure in Ukraine. The data presented in the report may only help in assessment of the materiality of those risks.

Konstantin PILKOV, *Recognition of international arbitration in Ukraine in figures*

Summary

Arbitration practitioners often put Ukraine below the average ranking of countries in terms of recognition of arbitration. Ukraine's image of a not entirely arbitration-friendly jurisdiction is "promoted" with common thought about problematic enforcement of arbitral awards in Ukraine. However, in recent years Ukrainian legal system demonstrated significant progress in adherence to the arbitration-friendly approach. That progress had been measured during the study resulted in the research paper "Ukraine. Arbitration-friendly jurisdiction: 2011-2012 statistical report".

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Manuscripts and related correspondence should be sent to the Editor. At the time the manuscript is submitted, written assurance must be given that the article has not been published, submitted, or accepted elsewhere. The author will be notified of acceptance, rejection or need for revision within eight to twelve weeks. Manuscripts may be drafted in German, French, Italian or English. They should be submitted by e-mail to the Editor (mscherer@lalive.ch) and may range from 3,000 to 8,000 words, together with a summary of the contents in English language (max. ½ page). The author should submit biographical data, including his or her current affiliation.

Aims & Scope

Switzerland is generally regarded as one of the World's leading place for arbitration proceedings. The membership of the Swiss Arbitration Association (ASA) is graced by many of the world's best-known arbitration practitioners. The Statistical Report of the International Chamber of Commerce (ICC) has repeatedly ranked Switzerland first for place of arbitration, origin of arbitrators and applicable law.

The ASA Bulletin is the official quarterly journal of this prestigious association. Since its inception in 1983 the Bulletin has carved a unique niche with its focus on arbitration case law and practice worldwide as well as its judicious selection of scholarly and practical writing in the field. Its regular contents include:

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- Selected landmark cases from foreign jurisdictions worldwide
- Arbitral awards and orders under various auspices including ICC, ICSID and the Swiss Chambers of Commerce ("Swiss Rules")
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