Ukraine

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International arbitration law

The legal regulation of international commercial arbitration is ensured by International Conventions. Developed by UNCITRAL and adopted under UN auspices, the New York Convention of 1958 (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards) is the main source to regulate international commercial arbitration law. To date, its members include almost all economically important states (more than 140), making it one of the most successful and significant acts of international law.

It is important to note the following fundamental decrees of the Convention, namely art. 2 of the Convention, which requires the local court, provided that it has an issue lawsuit on which the parties have entered into an arbitration agreement, to send the parties to arbitration upon request of one party, if it does not determine the agreement to be invalid. Articles 3-5 of the Convention oblige state parties to recognise foreign arbitral awards on their territory, as well as determine the list of documents possibly requested for the appropriate procedure by local courts and limited list of reasons for refusal to recognise and enforce awards.

Other sources of legal regulation of international commercial arbitrage comprise the European (Geneva) Convention on International Commercial Arbitration of 1961 with about 30 state parties, including Ukraine, the Inter-American (Panama) Convention on International Commercial Arbitration of 1975 with about 20 state parties, including Argentina, Brazil, Mexico and the United States, and the Amman Arab Convention on Commercial Arbitration of 1987, signed by a number of Arab States.

To unify approaches in the legal regulation of international commercial arbitration, UNCITRAL in 1985 issued a Model Law on International Commercial Arbitration, which the UN recommended "to take duly into account" in order to ensure "uniformity of the law on arbitration procedures and the specific needs of international commercial arbitration".

To date, more than 60 countries, including Ukraine, have based their legislation on the model law (amended in 2006). However, there are major "arbitration jurisdiction countries" administering the main part of international courts, such as France, the United States, the United Kingdom (except Scotland), Switzerland, Sweden and mainland China, which have not implemented the model law for their legislation. However, the adoption of legislation based on the model law allows state courts and lawyers to benefit using the UNCITRAL database of court and arbitral awards based on the application of the model law in other countries. The Ukraine authorities of international commercial arbitration are the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, and the Maritime Arbitration Commission (p. 5 of art. 14 of the law of Ukraine "On Chambers of Commerce and Industry in Ukraine"), which are ensured by the

legislation of Ukraine. Thus, the legal status of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (hereinafter the UICAC) is established by the Law of Ukraine "On international Commercial Arbitration" of February 24, 1994 (hereinafter the Law), the Statute on the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, attached as Appendix 1 to the Law, and the Regulations of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry. The Law recognises the arbitration decrees contained in international treaties of Ukraine, especially in the UN New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and the European Convention on International Commercial Arbitration (Geneva, 1961). The Law is based on the International Commercial Arbitration Model Law issued in 1985 by the UN Commission on International Trade Law and approved by the General Assembly of the United Nations.

The Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (MAC at the UCCI) is an independent permanent arbitration institution (Court of Arbitration), which acts in accordance with the Law of Ukraine "On International Commercial Arbitration", dated February 24, 1994, the Statute on the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry, and the Regulations.

Being the supreme body of government judicial power, the Supreme Court of Ukraine also recognises another option of international arbitration. Thus, the Decree of Plenum "On Court Consideration of a Petition about the Recognition and Enforcement of Foreign Arbitral Awards and Reversal of Awards Based on International Commercial Arbitration", dated December 24, 1999, states that the adoption of the Law on the ICAC and the Maritime Arbitration Commission "does not presuppose that international arbitration in Ukraine can only be carried out by those bodies. In addition, it can also be administered by a special individual arbitration or an arbitration institution non-included in the general jurisdiction system of courts, which by agreement of the parties are submitted to the resolution of disputes". In practice, however, the ICAC still retains *de facto* the monopoly of international arbitration in Ukraine.

Arbitration agreement

The ICAC considers disputes under its jurisdiction, when there is a written agreement of both parties for the transfer of all or certain disputes, which have arisen or which may arise between the parties in connection with any specific legal relations, irrespective of whether they are of a contractual nature or not. The arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. In the absence of a valid arbitration agreement, the dispute shall not be accepted for consideration by the ICAC. If the agreement takes the form of a separate contract or a clause in a contract, the contracts must meet the form and content requirements of Ukrainian legislation, in particular the Civil Code of Ukraine and Commercial Code of Ukraine.

The General Jurisdiction Court is not entitled to cancel the arbitration agreement, nor to review the arbitration award on the merits.

The arbitration agreement is characterised by legal autonomy, thus its validity does not depend on the validity of the main treaty. Based on the principles of the contractual obligation theory, recognition of the main treaty as invalid can automatically lead to recognition of the invalidity of the arbitration clause contained in it. The parties are deprived of their rights to independent arbitration, including consideration of the contract validity and the obligations arising from it. However, the underlying principle of the ICAC is the legal autonomy of the

arbitration agreement and the voluntary arbitration. Recognition of the contract as invalid does not invalidate the arbitration agreement and does not deprive the right of an arbitrator to consider contract invalidity-related issues. This principle is enshrined in most national laws, international agreements and arbitral practice.

Thus, the idea that a foreign economic contract and applicable arbitration agreement are separate agreements prevails in doctrine. In many jurisdictions the arbitration agreement autonomy issue is addressed specifically. Thereby, in accordance with art. 16 of the Law of Ukraine "On International Commercial Arbitration", the arbitration court can unilaterally adopt a regulation about its own jurisdiction, including any objections as to the existence or validity of the arbitration agreement. The arbitration court award on the invalidity of a treaty does not entail the invalidity of the arbitration agreement by law. In accordance with part 1 of art. 2 of the Rules of the ICAC at the UCCI (hereinafter the ICAC Rules), an arbitration clause which forms part of the treaty shall be treated as an agreement independent of the other terms and conditions of this treaty. The arbitration court award on the invalidity of a treaty does not entail the invalidity of the arbitration agreement by law.

It should be noted that the Maritime Arbitration Commission at the UCCI recommends that international contract parties wishing any dispute to be passed to the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry should include the following arbitration clause in the agreement: "Any dispute arising hereunder or in connection herewith shall be referred for review and final approval to the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry. The parties agree that the Rules of the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry will be applied during arbitration."

It is recommended for international contract parties wishing any dispute to be passed to the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry to include the following arbitration clause in the agreement: "Any dispute, controversy or claim arising under this agreement or in connection with it, including its interpretation, performance, breach, termination or invalidity thereof shall be settled by the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry in accordance with its Rules."

Arbitration procedure

The ICAC President determines if there are any legal grounds for bringing of a suit to the ICAC while accepting the case. If it is obvious that the consideration of the claim does not fall within the competence of the ICAC, the claim documents are returned to the plaintiff without consideration (p. 2, art. 2 of the Rules of the ICAC).

Proceedings are instituted by the ICAC President Decree on the case acceptance, upon presentation before the ICAC of the duly executed statement of claim, with registration fee paid.

Arbitration takes place in Kiev, Ukraine. The parties may agree that the hearings may be held in a non-ICAC location. In this case, all the additional costs involved in holding of the hearings are imposed on the parties. The composition of the arbitral court hearing the dispute, after agreement with the parties, may conduct hearings in the non-ICAC location which it considers to be appropriate for consultation among arbitrators, hearing witnesses, experts or representatives of the parties, or for inspection of goods, other property or documents.

The powers given to the composition of the arbitral court include powers to determine the admissibility, relevance, materiality and weight of any evidence.

Procedural issues can be resolved by the President of the arbitral court alone, provided that he or she is empowered by the members of the arbitral court.

Subject to any agreement of the parties, the arbitral court decides whether to hold oral hearings for the evidence presentation or oral arguments, or to carry out the trial only on the basis of documents and other materials. However, except when the parties have agreed not to hold an oral hearing, the arbitral court shall hold such hearing at an appropriate stage of the proceedings, if so requested by any of the parties.

Arbitrators

Arbitrators shall be experts performing the adjudication in the ICAC. The arbitrators are appointed by either the parties, or by the President of the Chamber of Commerce and Industry of Ukraine.

One of the advantages of international commercial arbitration is the possibility to select a suitably qualified specialist. Therefore, the main criterion for inclusion of experts in the recommendatory list of arbitrators is the availability of special knowledge in a specific field of commercial disputes, a certain skill level and degree. According to p. 2, art. 5 of the ICAC Rules, the Bureau of the Chamber of Commerce and Industry of Ukraine, on the recommendation of the ICAC Bureau, adopts the recommendatory list of arbitrators for a period of five years, which can include both citizens of Ukraine and citizens of other states, as well as stateless persons possessing the necessary expertise of dispute resolution within the competence of the ICAC. Thus, nationality is irrelevant. No person may be deprived of the right to act as an arbitrator because of his or her nationality, unless otherwise agreed by the parties.

After full arbitration fee payment by the plaintiff, the ICAC Secretary General within 10 days sends the respondent the recommendatory list of arbitrators along with copies of claim documents and the Rules.

At the same time, the Secretary General proposes that within the 30-day period from the receipt date of claim documents and the ICAC documents, the respondent should report to the ICAC, depending on the terms of the arbitration agreement, the name and surname of the assigned (or agreed with plaintiff sole) arbitrator.

The parties may at their discretion determine the number of arbitrators, including one. If there is no agreement between the parties on the number of arbitrators, three arbitrators shall be appointed. The arbitrator or arbitrators who consider the case, regardless of their number, are referred to as the composition of the arbitral court during the consideration of the case.

The parties may at their discretion agree on a procedure of appointing the arbitrator or arbitrators, subject to the decrees of the Rules.

In the absence of such an agreement:

- in case of arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators appointed shall appoint a third arbitrator, the President of the arbitral court with regard to the case; if a party fails to appoint an arbitrator within 30 days after receiving the notice of the ICAC, or if the two arbitrators within 30 days from the date of their appointment fail to agree on the appointment of the third arbitrator, the arbitrator shall be appointed by the President of the Chamber of Commerce and Industry of Ukraine in accordance with p. 3, art. 11 of the Law of Ukraine "On International Commercial Arbitration"; or

- in case of arbitration with a sole arbitrator, if the parties fail to agree on the appointment of an arbitrator, the arbitrator shall be appointed by the President of the Chamber of Commerce and Industry of Ukraine in accordance with p. 3, art. 11 of the Law of Ukraine "On International Commercial Arbitration".

If the dispute involves several plaintiffs or multiple respondents, for collegiate examination both plaintiffs and respondents must jointly appoint one arbitrator each. If either party does not jointly appoint an arbitrator within 30 days after the ICAC notification, the arbitrator shall be appointed by the President of the Chamber of Commerce and Industry of Ukraine.

As with the local national courts, the ICAC operates on the principles of impartiality and independence of the arbitrators, as well as concepts of arbitrator disqualification and replacement.

The powers of an arbitrator may be terminated by agreement of the parties or upon the application of self-disqualification or disqualification by the ICAC Bureau on its own initiative based on the failure of the arbitrator to exercise its functions.

Interim relief

It should be noted that a plaintiff has two ways to achieve interim relief. Thus, the Law of Ukraine "On International Commercial Arbitration" (art. 17) and the ICAC Rules (art. 4) enable the plaintiff to file a petition to the ICAC President about interim relief (after filing and payment of the arbitration fee), and about composition of arbitrators considering the dispute, following their appointment. Thereby, if it's considered to be justified, the ICAC President can determine the size and form of interim relief and composition of the arbitral court at the request of either party. The ICAC acts on the adjustment of interim relief size and form, which shall be binding on the parties and shall be valid pending a final arbitral decision.

The second way to decide a case is an appeal to the Supreme Court before or during arbitral proceedings, requesting interim relief. The Supreme Court shall determine such relief and it is not incompatible with an arbitration agreement according to the law. Some authors point to the insufficiency of this solution as provided for by the arbitration law. Thus, there are not deadlines for the consideration of such an application, types of interim relief and the order of consideration of such petitions. However, on the basis of common principles and advantages of arbitral proceedings, it's believed that all parties including arbitrators and the ICAC President are interested in the objective consideration of an interim relief application within a reasonable time, meaning the statutory period of six months to consider the case.

On the other hand, it should be admitted that the ICAC's position *vis-à-vis* the adoption of interim relief is vulnerable because it has no authority to ensure relief implementation, unlike the Supreme Court. That confirms the existence of the alleged fairness of the parties and a certain degree of trust between them, as well as readiness for voluntary execution of court decisions.

The second way, namely the possibility of the parties to appeal to the Supreme Court requesting interim relief, is declarative, since there is no procedure for dealing with such applications provided for by legislation and no court to be appealed by the party. Therefore, no court has the power to adopt such a procedural decision as determination on securing interim relief.

On July 7, 2006 the UNCITRAL model law underwent some changes, particularly in the securing of interim relief. These developments resulted in recognition and enforcement of

interim relief of the arbitration court by the state courts. Unfortunately, such changes have not affected the legislation of Ukraine, and this problem remains topical.

Arbitration award

Arbitration proceedings end with an award or decree on termination of the arbitral proceedings. An award on the case shall be made during the meeting of the arbitration court after the proceedings. The award shall be made in writing and signed by a sole arbitrator or arbitrators. In collegial arbitration, it is enough to have signatures of a majority of the arbitration court, subject to specification of the reasons for the lack of other signatures.

An arbitrator who disagrees with the arbitration award, shall have the right to express in writing a separate opinion, which is attached to the award. There are established requirements for the form and certain details in the arbitration award. The award shall include the following:

- the name of the ICAC;
- the case number;
- the place of arbitration;
- the date of the judgment;
- the names of the arbitrators;
- the names of the disputing parties and other persons involved in the arbitral proceedings;
- the subject of the dispute and a short case resumé;
- the motives on which the award is based;
- the conclusion on approval or rejection of the claim;
- the amount of the arbitration fee and case expenses, their allocation between the parties; and
- the signatures of the arbitrators.

It should be noted that there is a concept of an arbitral award on agreed terms. In this case, the arbitration proceedings end due to the resolution of the dispute between the parties.

This award applies to all the above requirements, and it has the same power and shall be enforceable in the same way as any other award on the merits of the case. Similarly, it is possible to draw a parallel with a settlement agreement in national courts.

It is also possible to obtain a separate award. At the request of a party, a separate issue or part of the claim may be the subject of a subsequent arbitration award, including the case of a partial recognition of claims by the party.

The proceedings should not exceed six months from the formation of the arbitral court. The ICAC Presidium has the right to extend the deadline upon an information request on the composition of the arbitration court, or one of the parties, if needed. Once this period expires, a decree on termination of the arbitral proceedings or an award shall be issued.

The arbitration award shall be communicated to the parties by the Secretariat of the ICAC within 20 days from award adoption. The ICAC President has the right, in exceptional cases, to extend the period specified.

Due to particular complexity of the case, at the end of the oral hearing the arbitration court may decide that the award will be dispatched to the parties without oral announcement of its operative part, within not more than 30 days. The ICAC President has the right, in exceptional cases, to extend the period specified.

Party court costs

The costs incurred by the party which the court finds in favour of, while the protection of its interests in proceedings conducted at the ICAC (travelling expenses of the parties, lawyer fees, etc.), can be assigned to the opposite party to the extent recognised as justified and reasonable by the arbitration court.

Considering the circumstances of the particular case, the ICAC may arbitrate the allocation of the arbitration fee between the parties other than described above, the additional costs of the arbitral proceedings and expenses of the parties, in particular, to charge one party in favour of the other party of the unnecessary expenses incurred by the first party due to inappropriate or abusive actions of the other party. Such actions presuppose, in particular, actions that have caused undue delay of the arbitration.

Arbitration award enforcement

The ICAC's award is final and binding on the parties from the date of its adjudication.

The ICAC's award shall be executed by the parties voluntarily within the prescribed period. If the execution period is not stated in the award, it is subject to immediate execution.

In the absence of voluntary execution, the award shall be enforced compulsorily in accordance with procedural law and international treaties of the country where such enforcement is sought.

Arbitration award contest

Contesting an arbitral award may be made only by an application to set aside the regional court award, directed to municipal and interregional courts at the location of arbitration.

Grounds for setting aside an award are issued in p. 2, art. 34 of the Law of Ukraine "On International Commercial Arbitration", based on which the award shall be subject to cancellation in case one of the parties provides the evidence that:

- one of the arbitration agreement parties has to some extent been dysfunctional, or such agreement is not valid by law applicable to this agreement, or in the case of absence of such law, by law of Ukraine;
- one of the parties has not been duly notified of the arbitrator appointment or of the dispute arbitration or it could not provide explanations for other valid reasons;
- the award has been decreed on a dispute not covered by the arbitration agreement, or one that does not fall under its terms, or contains provisions on issues beyond the scope of the arbitration agreement. However, if the arbitration award covered by the arbitration agreement can be separated from those not covered by the agreement, it is possible to set aside only that part of the award which contains decisions on issues not covered by the arbitration agreement;
- the composition of the arbitration court or the proceedings have not met the agreement of the parties, unless such agreement contravenes any provision of the Law of Ukraine "On International Commercial Arbitration", which the parties cannot derogate from, or, in the absence of such agreement, is consistent with law; or
- if the court determines that:
    - the object of the dispute cannot be subject to arbitration according to the legislation of Ukraine; or
    - the arbitral award is contrary to public order in Ukraine;

The term to submit an application for setting aside an arbitral award is not more than three months, starting from the date on which the party filing this statement has received the award, or from the date of the additional arbitration court award, or clarification or correction of the award.

The law also provides for the right of the court (at its discretion), if it considers it to be justified and if so requested by a party, to terminate the proceedings in order to give an opportunity to resume the arbitration or take other actions that may enable the grounds for setting aside the award to be eliminated.

Thus, the international arbitration award contest is regulated by the Law of Ukraine "On International Commercial Arbitration", or by relevant international treaty, which is explicitly stated in p. 5, art. 389 of the Civil Procedure Code of Ukraine.

Investment arbitration

As for arbitration award enforcement, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 is essential for the effectiveness of international arbitration. The New York Convention primarily focuses on common standards for award enforcement, and limited grounds for refusal of recognition and consequent enforcement of such awards.

An arbitral award, irrespective of the country where it is rendered, shall be compulsory and executable while applying to the competent court.

The party applying for arbitration award recognition and enforcement shall submit to the competent state court the following:

- a duly certified original award or a duly certified copy thereof, as well as
- an original arbitration agreement (in the form of an arbitration clause in a contract or in the form of a separate agreement) or a duly certified copy thereof.

If the application, award or agreement is not in the official language of the country where award recognition and enforcement are sought, the party who initiates the application shall also submit a duly certified translation thereof into the official language. The translation shall be certified by an official translator or a consular office.

In case the debtor is in Ukraine, the ICAC award upon written application of the applicant shall be enforced in accordance with the Law of Ukraine "On International Commercial Arbitration" and civil procedure legislation of Ukraine through the competent state court at the location of the debtor. Thus, the award of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry requires its acceptance by the competent court.

If the debtor is not in Ukraine, the claimant shall send a written request to the competent state court in the country of the debtor and, in accordance with article 3 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) or inter-state agreement, the competent court of the contracting country shall recognise and enforce the ICAC award in accordance with the procedural law of that country.

Grounds for refusing recognition or enforcement of an arbitral award, irrespective of the country where it is rendered, are the following:

1. at the request of the non-prevailing party, if such party provides to the competent court evidence that:
    - one of the arbitration agreement parties has to some extent been dysfunctional, or such agreement is not valid by law applicable to this agreement, or in the case of

absence of such law, by law of the country where such award is rendered;
- the non-prevailing party has not been duly notified of the arbitrator appointment or of the dispute arbitration, or it could not provide explanations for other valid reasons;
- the award has been decreed on a dispute not covered by the arbitration agreement, or the one that does not fall under its terms, or contains decisions on issues beyond the scope of the arbitration agreement. However, the part of the award containing provisions on issues covered by the arbitration agreement may be recognised and executed;
- the composition of the arbitration court or the arbitration procedure has not complied with the agreement between the parties or, in its absence, has not met with the law of the country of arbitration; or
- the award has not yet become binding on the parties, or has been set aside, or its execution has been voided by the court or the law of the arbitration country; or

2. if the court determines that:
   - the object of the dispute cannot be subject to arbitration according to the legislation of Ukraine; or
   - the arbitral award is contrary to public order in Ukraine.

Based on an analysis of judicial practice in Ukrainian courts, it is necessary to pay attention to some circumstances which may entail the award abolition of the ICAC at the UCCI.

Thus, it is important to turn due attention to the correct spelling of the name of the court, when it comes to the ICAC at the UCCI, and its location in order to clearly identify the competent arbitration institution. Any inaccuracies thereof may result in the award cancellation of the arbitration court in Ukraine.

For example, the decision of the Shevchenko District Court of Kyiv of November 28, 2008 satisfied the application for setting aside the award of case No. 6-394/08 involving a claim by NAFIMPEX LIMITED (Cyprus) against Burat LLC (Ukraine) for the recovery of funds as follows. In accordance with the Arbitration section of contract No. F/15/05 dated 15.05.06 concluded between Burat LLC and NAFIMPEX LIMITED, the parties had made an arbitration clause, according to which "All disputes between the parties shall be referred to the Arbitration Court at the Ukrainian Chamber of Commerce and Industry in Kyiv". While proceeding the case No. AC 81y/2008, the International Commercial Court at the Ukrainian Chamber of Commerce and Industry found that the parties had made a mistake in spelling of the name of the arbitration court, and determined that the content of the arbitration clause corresponded to the general consensus of the parties on the election of International Commercial Court at the Ukrainian Chamber of Commerce and Industry in order to resolve disputes.

However, the decision of the Shevchenko District Court of Kyiv of November 28, 2008 determined that the content of the arbitration clause in the contract indicated that the parties came to an agreement on the selection of a specific permanent arbitration, i.e. the arbitration clause included a different judicial body of the ICAC at the UCCI in Kiev. Considering that the parties had not agreed to submit the dispute specifically to the ICAC at the UCCI in Kyiv, the mentioned court agreed to hear the dispute meant for other arbitral institution. Thus, the court found that the ICAC at the UCCI in Kiev illegally and prematurely had agreed to hear the case involving a claim by NAFIMPEX LIMITED against Burat LLC, and had adopted an award which violated the defining principles and legislation of Ukraine, and therefore the arbitration award was set aside.

This position of the court seems very formal, which is evidenced by the proceedings of recent years.

Thus, the decision of the Shevchenko District Court of Kyiv of May 20, 2015 on case No. 22-ц/796/3268/16 involving a claim by Ukrsotsbank PJSC (Ukraine) against Ivano-Frankovsk Armature Plant PJSC (Ukraine) for the recovery of funds, set aside the award of the International Commercial Arbitration Court at the UCCI, on the grounds that the ICAC at the UCCI had no competence to arbitrate the dispute because the parties had identified another institution in the arbitration clause. The court's decision was later revised in the court of appeal. It is also interesting how courts define their position in the context of the consideration of the applications for setting aside the awards of the International Commercial Arbitration Court at the UCCI on the basis of lack of competence or illegality of evaluation of such awards by national courts.

Thus, the decision of the Shevchenko District Court of Kyiv of November 2, 2015, left unchanged by the Court of Appeal of Kiev, did not satisfy the application of BNH UKRAINA LLC with foreign investments (Belarus) for setting aside the award of the International Commercial Arbitration Court at the UCCI of June 12, 2015 in case No. 649y/2014 based on the following. The complainant substantiated the claim that the court, during case proceedings, had not taken into consideration the application about the break, and also during the case proceedings on June 12, 2015, EASTMOND SALLES LLP (the United Kingdom) presented a reconciliation report as of December 23, 2014 and bank statements regarding foreign investments, which BNH UKRAINA LLC was unable to react to or give explanations and objections about, as well as the fact that the reconciliation report was signed by an unauthorised person, as evidenced by the official verification. However the Shevchenko District Court and Court of Appeal of Kiev pointed out that such arguments were not sufficient, namely, that the court had no right to assess the correctness of the award of the International Commercial Arbitration Court at the UCCI, since the current legislation did not allow appealing against the award on such grounds.

It should be noted that the legislation of Ukraine provides for an exhaustive list of the grounds for setting aside the award of the ICAC at the UCCI (art. 34 of the Law of Ukraine "On International Commercial Arbitration") and that is why, while appealing against arbitration, a party may not invoke any other circumstances than defined by law.

The parties are often mistaken regarding the definition of the grounds for an appeal against the award of the ICAC at the UCCI. Thus, the Supreme Court of Ukraine by its Decree "On Court Consideration of an Application about the Recognition and Enforcement of Foreign Arbitral Awards and Reversal of Awards Resolved during International Commercial Arbitration at the Territory of Ukraine", dated December 24, 1999 No. 12 (hereinafter the Decree of the SCU) determined that public policy presents the public policy of the state, i.e. the principles and concepts which constitute the basis of its structure (relating to its independence, integrity, sufficiency, fundamental constitutional rights, liberties, guarantees, etc.). In its turn, the applicant requested to set aside the award of the Maritime Arbitration Commission at the UCCI of April 7, 2015 of MAC case No. 3л/2014, since such award was not made public on April 7, 2015, and, consequently contravened the public policy of Ukraine, i.e. p. 2, p. 2, art. 34 of the Law of Ukraine "On International Commercial Arbitration", and as a result was subject to cancellation. However, the Shevchenko District Court of Kyiv pointed out that the case was not applicable to the public order, if the party that was against the award believed that arbitrators made mistakes in the application of the law, applied the wrong law or incorrectly assessed the factual circumstances of the case,

as the court hearing the application may not examine such arguments, as it will attempt to review arbitration award *per se*, which is not allowed according to the law of Ukraine "On International Commercial Arbitration" and the New York Convention of 1958.

It should also be noted that according to paragraph 19 of the Decree of the SCU and article 5 of the Law of Ukraine "On International Commercial Arbitration", the regular court shall not interfere with any issues subject to the law, except for cases explicitly stated by the law. Thereafter, the awards of the international commercial arbitration can be set aside only on the basis of having an exhaustive list with no free interpretation.

Thus, during the interpretation of the application for setting aside the award of the Maritime Arbitration Commission at the UCCI (hereinafter the MAC at the UCCI), the applicant has no right to compel the court to assess the correctness of the award of the ICAC at the UCCI or the MAC, because the law does not allow appeal against the award *per se,* therefore, the applicant's references regarding the violation of the norms of substantive law cannot be accepted by the court.

Judicial practice contains other cases of the application of international arbitration law, in particular relating to pre-trial settlement of arbitration disputes.

Thus, the decision of the Shevchenko District Court of Kyiv of February 11, 2016 of case No. 761/2205/16-ц did not satisfy the applicant requesting to set aside the award of the ICAC at the UCCI on case AC № 331y/2015 involving a claim by Kherson Shipyard JSC (Ukraine) against the shipping company Ukrrichflot PJSC (Ukraine) for the recovery of funds based on the following. The applicant claimed that the award of the ICAC at the UCCI was not applicable to the terms of the arbitration clause, as the parties had negotiations aimed to settle the dispute, and the draft agreement on debt restructuring between the parties could not be considered by the court as a negotiations confirmation since the agreement had not been signed by Kherson Shipyard JSC. The applicant also referred to the fact that the award of the ICAC at the UCCI contained awards issued beyond the scope of the arbitration clause, as in that case the court had undertaken an extended interpretation of the treaty and had not taken into account the fact that contract payment had to be carried out on schedule only after the execution of the works. The applicant also considered that the claimant, having addressed the ICAC at the UCCI, elected the institution, which did not meet the parties' announcement, and the ICAC at the UCCI lacked the competence to review the dispute.

The decision of the Shevchenko District Court of Kyiv dated February 11, 2016 stated that the parties had given their consent to review the dispute at the ICAC at the UCCI. References of the applicant to arbitration inconsistency with the agreement between the parties were not accepted by the court as not-corresponding to the facts. The applicant's reference to the fact that the parties had no negotiations to resolve the dispute and therefore the appeal to the court was premature, was also refused by the court, since it did not constitute grounds for setting aside the award of the ICAC at the UCCI based on the Law of Ukraine "On International Commercial Arbitration". The court also considered the decision of the Constitutional Court of Ukraine dated July 9, 2002 of case N 1-2/2002 (N 15-рп/2002), according to which the agreement or law-based pre-trial settlement of the dispute by agreement of the parties does not limit the court jurisdiction and the right to judicial protection.

Summing up, it should be noted that the Ukrainian institutional arbitration functions quite well, as evidenced by the small percentage of its awards set aside, and preference by economic entities.

At this point, judicial arbitration in Ukraine is undergoing systematising and analysis, which reflects the development and improvement of the international arbitration institute in Ukraine.

A significant role in the formation of good international commercial arbitration practice is assigned to lawyers specialising in resolving arbitration disputes, as the arbitration dispute support service involves lawyers at all stages of the arbitration proceedings.

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