

Enforcement of commercial (maritime) foreign arbitral awards in Ukraine

Resolution of maritime disputes by international commercial arbitration is a typical situation in a modern globalized world. Under the reference in Clause 1 of Article 1 of the UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 (United Nations documents A/40/17, Annex I, and A/61/17, Annex I), the term of *commercial* arbitration should be given a wide interpretation so as to cover maritime arbitration.

International arbitration criteria, pursuant to Clause 3 Article 1 of the aforesaid UNCITRAL Model Law, also provide quite a wide interpretation of international arbitration:

The first criterion, the most clear and widespread, provides that the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States. The second and the third criteria determine the following:

- The place of arbitration, the place of contract performance, or the place of the subject matter of the dispute is situated in a state other than where the parties have their place of business;
- The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

The Maritime Arbitration Commission (MAC) as the institutional maritime arbitration

International commercial arbitration concerns quite a wide range of international private procedural relationships. The state may deem it as reasonable to apply the UNCITRAL Model Law to internal disputes. The Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (UCCI) is entitled, pursuant to Article 1 of the Rules approved by the Order of the UCCI Presidium No. 18(1) dd. 17.04.2007, to consider and to settle disputes between subjects of Ukrainian or foreign law, jointly or severally. This perfectly corresponds with the Law of Ukraine on International Commercial Arbitration dd. 24.02.1994 approved in view of the UNCITRAL Model Law dd. 1985.

The MAC shall settle disputes arising from relationships concerning the following matters:

- Affreightment of vessels, the carriage of goods by sea, and the carriage of goods in mixed navigation (river-sea);
- Marine towage of vessels or other floating objects;
- Marine insurance;
- Sale and purchase, mortgage and repairs of seagoing vessels and other floating objects;
- Pilotage, escorting through ice, agency or other servicing of seagoing vessels, as well as vessels engaged in inland navigation insofar as the relevant operations are connected with the sailing of such vessels on sea routes;
- Use of vessels for scientific research, extraction of minerals, hydrotechnical or other work;
- Salvage of seagoing vessels or vessels involved in inland navigation;
- Raising of vessels and other property sunk in sea waters;
- Collision between seagoing vessels, etc. These relationships definitely concern merchant shipping, but the MAC competence may cover the disputes beyond commercial relationship, i.e. all the maritime claims being not commercial, i.e. arising from reimbursable equivalent proprietary relationships (synallagmatic relationships), if they don't contradict international treaties of Ukraine.

Ukraine is a party to a number of bilateral treaties on legal assistance in civil and/or criminal cases, signed with such countries as Poland, Moldova, Bulgaria, Georgia, USA, China, Turkey, Italy, Greece, Lithuania, Latvia, Estonia, Cyprus and Panama.

Ukraine is also a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on June 10, 1958, which facilitates enforcement of arbitral awards in Ukraine not treated as internal.

Firstly, they include arbitral awards made in other state, different from the state where recognition and enforcement of arbitral award is requested.

Secondly, they include arbitral awards made in the state where recognition and enforcement of arbitral award is requested, however, such awards may be considered as foreign due to a certain foreign element of proceedings, i.e. if procedural law of another state has been applied.

Therefore the Ukrainian maritime arbitration award **except institutional arbitration, including** the MAC at the UCCI, may be deemed as foreign arbitral award provided that it has been made under the proceedings pursuant to regulations of another country.

Enforcement of foreign arbitral awards and debtor's property arrest

The cases on recognition and enforcement of foreign judgments and arbitral awards are being considered under civil procedure by the general jurisdiction courts of Ukraine. According to Articles 391, 392 of the Civil Procedural Code of Ukraine, the term for presentation of a foreign judgment or arbitral award for recognition and enforcement makes up 3 years from the date when the decision entered into force, and provided that it still remains valid as of the date of initiating the recognition and enforcement procedure at the territory of Ukraine. The nature of that term is identical to the time bar. Such claim may be filed both on location of the debtor and on location of the debtor's property at the territory of Ukraine if the debtor is not located in Ukraine, i.e. is a non-resident.

As shown by practice, such property may include real estate and transport vehicles, including sea-going vessels treated both as real estate and transport vehicles under the Ukrainian legislation. It requires for evidence of vessel state registration which may impede enforcement of arbitral award, although it is not necessarily since at the stage of enforcement proceedings regarding arrest the vessel is deprived of its legal status but is not treated as movable property. So at the stage of enforcement proceedings sea-going vessels remain real estate objects and may be arrested under the general procedure of arresting any real estate objects belonging to the debtor.

The Ukrainian courts refer to the Resolution of the Plenum of the Supreme Court of Ukraine No.9 dd. 22 December 2006 "On the practice of courts' implementation of civil procedural provisions in the consideration of applications for interim actions", under which, in the framework of the application on property arrest, in order to support his claim, the applicant shall provide to the court the evidence of a real threat of failure or difficulty in enforcement of the final arbitral award issued to settle the dispute, provide information about the debtor and confirm the proportionality of its claims collateral with security in the form of property arrest.

Within the frames of recognition and enforcement of foreign arbitral awards in Ukraine, the debtor's property arrest is used by recoverer creditors as the main tool influence on the defaulting debtor. Of course the court shall estimate a full set of evidences, taking into account any other property including opened bank accounts located at the territory of Ukraine as well as interests of third persons whose rights may be violated due to the appropriate claim security measures. Enforcement of arbitral awards under maritime claims causes often the issue of ship arrest. Although sea-going vessels do not lose their specification in full at the stage of executive proceedings, since, pursuant to Article 1 (2) of the International Convention Relating to the Arrest of Sea-Going Ships, signed in Brussels on May 10, 1952, *arrest* does not include the seizure of a ship in execution or satisfaction of a judgment, they still remain real estate objects with certain specifications because they may be sold at public tenders (auctions) only, i.e. under competitive playing field.

Conclusion

Under the general procedure, the debtor's property arrest at the stage of enforcement of court judgments or arbitral awards is an effective method to satisfy the recoverer's claims in full. If the appropriate measures are taken as security of enforcement of foreign arbitral awards under the procedure of recognition and enforcement at the territory of Ukraine pursuant to the law, it shall not exclude the possibility of making of washout agreement or amicable settlement between the parties at the stage of executive proceedings. Property arrest may also persuade the debtor in holding negotiations and amicable settlement of dispute. It is advisable because indefiniteness in the international private law (both in Ukraine and in general) may impede the process of enforcement of foreign arbitral award, in particular, under the maritime claim.

Today Ukraine trends to become an arbitration-friendly jurisdiction.

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