General Rules of the international arbitration

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Abstract

International arbitration has a very great importance in the international economic scene. In case there are contradictions in international economic relations, difficult procedures and long national litigation do not meet the needs of different businesses, for conflict resolution. In many cases, court decisions are not recognized or are enforceable in EU member states. For such issues, international arbitration sets out a process that helps businesses. This process is fast, not bureaucratic and thanks to international agreements arbitration decisions are applicable anywhere in the world.
The advantages of international arbitration lie in the fact that these rules are not state and procedure it is not as formal as the state one, and the procedure is much faster than the court process. In addition, arbitrators are experienced economist experts, whose vast knowledge leads to a just and speedy settlement of the matter. Often the parties themselves choose at least some of the arbitrators. Arbitration proceedings are much more closed (not public) than litigation and this suits many international businesses. At the same time international arbitration is the only way to settle an international issue of the law in a binding form thanks to the 1958 New York Arbitration Convention, whose decisions are applicable in 146 countries of the world[1].
Of course the arbitration procedure also has disadvantages, which are, first of all the costs for the arbitration proceedings are relatively high, secondly there is the possibility of legal remedies, which delay the implementation of arbitral awards. Another drawback is that arbitral awards are binding on the participating parties, making it problematic for third parties. In the following, this paper will describe the most difficult elements of international arbitration, as well as the most important international instruments in this field.

Keywords: Arbitration, international, law, Albania, Process.

Introduction

The necessary condition for entering the arbitration procedure is the arbitration clause. This determines that the parties in the event of a legal issue are not subject to regular judiciary, but to arbitration. In the event of an existing dispute, the parties may agree to adjudicate their dispute through arbitration. Normally, arbitration clauses are part of the content of the contract.

The arbitration clause contains information, whether all or only legal disputes set forth therein are adjudicated within arbitration. It also contains information on the composition of the arbitral tribunal, or according to which rules it will be tried, as well as where the seat of the arbitral tribunal should be. In international business relations it is very logical, also determine in which language the arbitration proceedings will take place. The arbitration clause must also contain the law applicable to this procedure.

[1] http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html (6.1.2016).

The model arbitration clause, based on the 2011[2] UNCITRAL Rules of Arbitration has this content:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

Note. Parties should consider adding:

(a) The appointing authority shall be ... [name of institution or person];
(b) The number of arbitrators shall be ... [one or three];
(c) The place of arbitration shall be ... [town and country];
(d) The language to be used in the arbitral proceedings shall be ...

The standard arbitration clause under the ICC (International Chamber of Commerce) 2012 rule is as follows:

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The validity of an arbitration clause depends on whether it is valid under national law. Applicable national law must be determined on the basis of the rules of private international law. The validity of an arbitration clause also depends on whether the contract is valid or whether it was agreed in writing. In the event that one of the parties appeals against the validity of an arbitration clause, then as a rule, arbitrators are the ones who decide on the validity and competence (so-called Jurisdiction-Jurisdiction)[3]. At the same time, the parties who have agreed on the implementation of the arbitration clause should be allowed to participate in the arbitration process. Also, if the parties have agreed to adjudicate their disputes in the context of arbitration, then the courts are not competent for such legal disputes. This lack of jurisdiction of the courts must be validated by one of the parties involved at the beginning of the trial.

Arbitration procedure under ICC-ICC Rules 2012

The International Chamber of Commerce (ICC) with its headquarters in Paris offers an institutionalized arbitration procedure, in which it is tried through a judge or a quorum composed of 3 judges. An (ICC International Court of Arbitration has also been established with the ICC; ICC Court), which oversees the arbitration process and at the same time is responsible for a small number of legal instruments against arbitral awards. The ICC does not decide on arbitration matters itself, , but controls the use of procedural rules. It also appoints the arbitrator or the chair in case of a quorum of 3 arbitrators. They are assisted in the arbitration proceedings by the secretariat of the ICC Court. Within the arbitration procedure the ICC is the institution which determines a number of rules regarding the composition of the Arbitral Tribunal, the rights and duties of the judge and the parties. ICC Arbitration Procedure Rule 2012

[2] http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010-e.pdf. (6.1.2016).

[3] See Article 5 of the European Convention; Article 21 I UNCITRAL Rules of Arbitration. Within the ICC arbitration procedure, the International Court of Arbitration has an important role (see Article 8.3 of the ICC 2012 Arbitration Rule).

exists in the 2011 version and is valid from 1.1.2012. The version that was valid until 31.1.2011 dates back to 1998. It is applicable to all those arbitration matters which are based on the ICC Rules of 1998.

Generally the new ICC arbitration rule of 2012 provides for arbitration proceedings with one or 3 arbitrators. The exact number is determined in the arbitration clause.

An arbitration procedure within the ICC is conducted through an arbitration lawsuit, which contains a list of data (e.g. plaintiff, defendant and claim). Also, often in the arbitration lawsuit an arbitrator is appointed by the plaintiff. Within 30 days of receiving the arbitration claim, the respondent has the duty to submit the response to the lawsuit, according to which he must appoint an arbitrator. The respondent may also file a counterclaim. In case the parties agree that the Arbitral Tribunal shall consist of 3 judges, then each of the parties appoints a judge, while the Arbitral Tribunal appoints the third and quorum presiding judge.

In the event that the seat of the Arbitration Court has not been decided by the parties, then the ICC designates an Arbitration Court. The parties generally have an obligation to determine the rules of law that will apply in this conflict. In case the parties do not determine the right of the state to be applied, then the Court of Arbitration determines the rules, which in its opinion are appropriate.

After receiving the acts, the Arbitration court issues a document, which is called the obligations of arbitration (Terms of Reference). This document should contain the following information:

Names and form of companies, addresses, purpose of the lawsuit, its content, a list of issues and questions to be adjudicated, names, professions and addresses of arbitrators, place of arbitration proceedings. The timeline should also be set. After completing the Terms of Reference, the parties must submit the signed documentation within 2 months to the Arbitration court.

The main obligation of the Arbitral Tribunal is to adjudicate the case quickly. There is also the possibility of an oral process. Within 6 months after the signing of the arbitration obligations by the parties, the arbitral tribunal must come up with a decision. In case of composition of the Arbitration Court by one or 3 judges, is decided by a simple quorum majority (2 to 1). Prior to the signing of the arbitral award, it must be approved by the ICC Arbitral Tribunal.

Once the parties have paid the costs of the arbitration proceedings to the ICC, The ICC Secretariat shall send the parties a copy of the arbitral award.

Ad hoc arbitration (appropriate, current)

In cases where the parties to a contract agree on the arbitration clause, but not in the institutionalized form of court, they have to organize a so-called ad hoc arbitration themselves. National law often fills the vacuum, which arises from the vague ad hoc arbitration rule that also exists in the arbitration clause.

UNCITRAL Rules of Arbitration 2010

Arbitration rules developed by UNCITRAL offer the parties the opportunity, to choose between a middle way, between high-cost institutionalized arbitration and ad hoc (current) arbitration. UNCITRAL Rules regulate in detail the course of the arbitration proceedings. The parties may also determine which person or institution appoints the arbitrators. The new version of the UNCITRAL rules was published in

2011 and contains the 2010 improvements.
UNCITRAL has also developed a model law, which approximates the rules on arbitration, which are part of any state legislation. This Legal Model dates back to 1985 and was amended in 2006. It is considered one of the most successful harmonization measures in the field of international economic law; about 40 state legislatures have based their arbitration rules in economic matters on the UNCITRAL law model. This legal model is different from UNCITRAL rules, which are based on procedural rules before Arbitration Court.

New York Convention

UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10.6.1958 (New York Convention) has been ratified by 146 states and determines the recognition of foreign arbitral[4] awards. In Albania it entered into force on 27.6.2001. This Convention provides that under what conditions, a state must recognize a foreign arbitral award, as well as on what arguments it should be based in case of non-recognition of a decision.

Conclusions

The above paper showed that a great deal of work has been done in the context of recognizing arbitral awards in all countries of the world. The object of international arbitration is the settlement of disputes between states by judges who elect themselves on the basis of respect for the law. Going to arbitration means a commitment to accept his decision in good faith. In matters of a legal nature and in particular in the interpretation or application of international conventions, arbitration is recognized by the contracting states as the most effective and at the same time, the fairest means of resolving disputes that diplomacy has failed to resolve. Consequently, it would be appropriate that in disputes, States should, if appropriate, resort to arbitration, as far as circumstances permit. According to the above analysis, there is no reason to establish that American jurisdiction over European defendants is generally broader than European jurisdiction over Americans, though it may be on specific issues. The real reason for a remark by the Europeans has to do with the combination of rules that define broad jurisdiction, although on the other hand not much broader than the European rules, with procedural rules, which are significantly more favorable to the plaintiff. From a pure point of view, American legislation is not broader than the law of some European countries.
American constitutional rules are based on another theoretical doctrine. In Europe, there must be a link between the respondent and the state of the court, in matters of general jurisdiction, though it is a connection of a stronger way. However, there should be no such link in the case of specific jurisdiction. It is enough to have a connection between the lawsuit and the state of the court. The difference brings two consequences. First, U.S. courts may require general jurisdiction in matters which at least according to the Regulation will not be considered in Europe. On the other hand, European courts may seek special jurisdiction in situations in which this would not be constitutionally possible in the US. There is a clear philosophical difference between American and European legislation. Americans interpret that a person will not be subject to the jurisdiction of a state as long as he has done something he knew,

[4] http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html.

or should have known, and this would have exposed him to this kind of danger. Europeans do not have similar issues, or if they have, then they consider that their objectives can resolve the issue.

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