

# BTA Bank v. Ukrsotsbank, High Commercial Court of Ukraine, 39/305, 17 March 2010

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## Headnote

*In BTA Bank v. Ukrsotsbank, the High Commercial Court of Ukraine explicitly rejected anti-arbitration injunctions (17 March 2010)*

## Digest

In a nutshell, in September 2009 BTA Bank (Ukraine) brought action in a commercial court against Ukrsotsbank (Ukraine), part of UniCredit group, to declare null and void the arbitration agreements, which provided for arbitration at the International Commercial Arbitration Court of the Ukrainian Chamber of Commerce and Industry ("ICCA") in two guarantees.

In October 2009 the claimant applied for interim injunctions, aiming to prohibit the ICCA from undertaking any actions in the arbitration case brought by Ukrsotsbank against BTA Bank to collect \$14 million in debt. Arbitration proceedings were initiated based on the arbitration agreements included in the mentioned guarantees. Kyiv City Commercial Court granted the requested anti-arbitration injunctions. In November 2009 the Kyiv Commercial Court of Appeals quashed the injunctions reasoning that the injunctions do not in any way facilitate the enforcement of any ultimate court judgment in this case. Under Ukrainian law a pre-judgment injunction can only be granted when the court finds that the execution of the ultimate court judgment may be impeded or made impossible if the injunction is not granted.

BTA Bank challenged the ruling of the Court of Appeal before the High Commercial Court of Ukraine. The Court upheld the ruling of the Court of Appeal reasoning that in the case where the claimant requests an arbitration agreement to be declared null and void, execution of a declarative judgment in such a case would not be necessary. The High Commercial Court concluded, therefore, that anti-arbitration injunctions do not facilitate execution of any possible court judgment in such cases. Additionally, the High Commercial Court stated that arbitration proceedings should not be stopped because if the commercial court declares arbitration agreements null and void, this would be a ground for refusal to recognize and enforce the arbitration award in Ukraine under the New York Convention.

In summary, the High Commercial Court of Ukraine held that Ukrainian law does not allow Ukrainian courts to prohibit actions of the arbitration tribunal. The court has construed the anti-arbitration injunction as an unlawful intrusion into the arbitration process.

The reviewed ruling is quite important because recent changes

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### Author

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### Jurisdiction

- Ukraine

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### Court

- High Commercial Court of Ukraine

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### Arbitrators/Judges

- I.M. Volick, chairman
- N.V. Kapatsin, judge
- M.M. Maletych, judge

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### Case date

- 17 March 2010

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### Case number

- 39/305

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### Parties

- Plaintiff, BTA Bank (Ukraine)
- Respondent, Ukrsotsbank (Ukraine)

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### Key words

- Anti-arbitration injunctions
  - Enforcement
- Arbitration agreement
  - Injunction
- Ukrainian

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### Source

- Yaroslav Petrov, **BTA Bank v. Ukrsotsbank, High Commercial Court of Ukraine, 39/305, 17 March 2010**, A contribution by the ITA Board of Reporters, Kluwer Law International

to Ukrainian law reduced the powers of the Supreme Court to hear appeals in commercial cases and considered the High Commercial Court as the court of final appeal for the overwhelming majority of commercial disputes. *Parties: BTA Bank v. Ukrsofsbank, case no: 39/305, High Commercial Court of Ukraine, Ukraine.*

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The summary of the case file and full text of summarized court decision are available on:

<http://www.kluwerarbitration.com/CommonUI/document.aspx?id=KLI-KA-1033033>