

Olena Perepelynska

Young International Arbitration Group, e-news (August 2011)

NEW PROCEDURAL RULES FOR ARBITRATION-RELATED MATTERS IN UKRAINE

1. Introduction

On 3 February 2011 the Ukrainian Parliament adopted several laws introducing important amendments to the procedural legislation in arbitration-related matters, including:

- *Law No.2979-VI* (see <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2979-17>), in force since 1 March 2011, amending the *Civil Procedure Code of Ukraine* (see <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1618-15>);
- *Law No.2980-VI* (see <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2980-17>), in force since 1 March 2011, amending the *Commercial Procedure Code of Ukraine* (see <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1798-12>).

These laws have filled many gaps in Ukrainian legislation and are of practical importance for all arbitration users in Ukraine. In particular, they set forth new procedural rules of enforcement and setting aside of the arbitral awards made in the territory of Ukraine according to the law of Ukraine *On International Commercial Arbitration 1994* (see <http://www.ucci.org.ua/en/legalbase/zua944002.html>), as well as cover arbitrability issues.

Prior to entering into force of the above amendments, neither the *Civil Procedure Codes of Ukraine* (2004), nor the *Commercial Procedure Code of Ukraine* (1991) contained specific provisions on the arbitration-related state court proceedings for arbitral awards made in Ukraine (both domestic and international) and regulated only recognition and enforcement of foreign arbitral awards in Ukraine (after the reform in 2010).

Thus, for many years arbitration practitioners in Ukraine have been applying to the state courts for setting aside or enforcement of arbitral awards with reference to the provisions of the respective arbitration laws only. Needless to say, that lack of procedural rules for such cases resulted in practical difficulties and uncertainty for the parties and even judges. And the court practice in arbitration-related matters was rather controversial.

The 2011 procedural reform purported to improve the foregoing situation and to finally establish the long-expected procedural rules for such matters.

2. Procedure of International Arbitral Awards Enforcement

The Law No.2979-VI establishes different rules for enforcement of “domestic” arbitral awards (i.e. awards rendered under the law of Ukraine through domestic Arbitration Courts) and “international” arbitral awards (i.e. awards rendered under the law of Ukraine in International Commercial Arbitration).. According to this law, international arbitral awards made in the territory of Ukraine (e.g. by the International Commercial Arbitration Court (see <http://www.ucci.org.ua/arb/icac/en/rules.html>) and the Maritime Arbitration Commission (see <http://www.ucci.org.ua/arb/mac/en/rules.html>) at the Ukrainian Chamber of Commerce and Industry) will be enforced in accordance with the general provisions for granting permission to enforce foreign court decisions (Chapter VIII of the *Civil Procedure Code of Ukraine*). This clarification

supplements the last year's amendments to the *Civil Procedure Code of Ukraine*, providing for application of its Chapter VIII to recognition and enforcement of "foreign and international arbitral awards". New provisions aim to eliminate practical difficulties in the enforcement of the awards of the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry caused by lack of uniform interpretation by the courts of the said notion.

3. Procedure of Setting Aside Arbitral Awards

The Law No.2979-VI sets forth the procedure for setting aside domestic arbitral awards and contains also several provisions on setting aside international arbitral awards made in the territory of Ukraine. The interpretation of those provisions is a difficult task, however, it seemingly allows presuming that, the new procedure of setting aside domestic arbitral awards will be applied to "international" arbitral awards made in Ukraine also. However, the conditions and grounds for the setting aside of the latter should be exclusively regulated, as was previously the case, by the Law of Ukraine *On International Commercial Arbitration* and/or by respective international treaties of Ukraine.

4. Arbitrability

The Law No.2980-VI introduced minor amendments to Article 12 of the *Commercial Procedure Code of Ukraine*. Prior to entering into force of the above amendments, this article contained restrictions and prohibited to submit to arbitration (both domestic and international) certain categories of disputes (first of all, corporate disputes and public procurement contracts disputes). The new wording of this article and its new context of domestic arbitration may provoke discussions of its applicability to international arbitration, since the newly adopted version of Article 12 of the *Commercial Procedure Code of Ukraine*, unlike its predecessor, provides an opportunity for ambiguous interpretation of its provisions as applicable to domestic arbitration only or to international arbitrations also. Only with time and upon the establishment of court practice in this regard, the actual meaning and significance of these provisions for arbitration in Ukraine will be fully discovered.