

*LG Electronics v. ANT YAPI Turkey, Court of Appeals of the City of Kiev, 22-u/796/7347/2017, 10 August 2017*

A contribution by the ITA Board of Reporters

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## **Headnote**

Ukrainian appeal court sets aside the Ukrainian ICAC award due to a violation of the procedure for signing the arbitration clause.

## **Summary**

### **Facts of the case**

LG Electronics Ukraine (“LG Electronics”) and Limited Liability Company “ANT YAPI” (“ANT YAPI”, later the name was changed to LLC “Ukrnekstpulbrut”) entered into a sale purchase agreement dated 7 May 2014 (the “Agreement”). The Agreement contained an arbitration clause which provided for submission of potential disputes to the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (“Ukrainian ICAC”).

To secure ANT YAPI obligations, LG Electronics and Company “ANT YAPI SANAYI VE TICARET ANONIM SHIRKETI” (“Respondent”, “Guarantor”, “ANT YAPI Turkey”) entered into the guarantee agreement dated 20 August 2014 (the “Guarantee Agreement”). In addition, ANT YAPI Turkey and LG Electronics concluded the Addendum to the Guarantee Agreement (the “Addendum”) that contained an arbitration clause which provided for submission of potential disputes to the Ukrainian ICAC.

Ukrainian ICAC:

LG Electronics supplied the goods but ANT YAPI failed to fulfil its obligations under the Agreement. On 14 June 2016, LG Electronics submitted the dispute to arbitration against LLC “Ukrnekstpulbrut” and ANT YAPI Turkey.

In the course of arbitration proceedings, the LG Electronics changed its claims and named ANT YAPI Turkey as the only Respondent, while all claims against LLC “Ukrnekstpulbrut” (earlier “ANT YAPI”) were dropped.

On 15 November 2016, the Ukrainian ICAC rendered the award. ANT YAPI Turkey was compelled to fulfil all obligations of ANT YAPI in favor of LG Electronics.

Ukrainian courts:

On 8 May 2017, ANT YAPI Turkey applied to the Shevchenkivskiy District Court of Kyiv City (court of first instance) seeking setting aside the Award based on violation of public policy because of the exclusion of LLC “Ukrnekstpulbrut” (earlier “ANT YAPI”) from the dispute as the Respondent. The court of first instance refused to set aside the Award.

ANT YAPI Turkey filed an appeal. On 10 August 2017, the Appeal Court of Kyiv City (court of appeal) set aside the Award based on the Addendum invalidity (the “Decision”).

On 29 August 2017, LG Electronics applied to the High Specialized Court for Civil and Criminal Cases (court of cassation) to set aside the Decision. On 31 August 2017, was deadline to submit additional documents and objections regarding this case.

## **Question in Dispute**

The Addendum to the Guarantee Agreement which contains the arbitration clause between LG Electronics and ANT YAPI Turkey was drafted in 2 versions, namely in Russian and in English. It was stated that in case of discrepancies between the Russian and English versions, the Russian version shall prevail. The parties executed by its signatures only English version of the Addendum, the Russian version remained unsigned.

### **Arguments of the Parties**

Before the court of the first instance, ANT YAPI Turkey argued for setting aside of the Award based on the public policy violation. In particular, ANT YAPI Turkey argued that the suspension of the obligation under the Agreement of the LLC “Ukrnekstpulbrut” (earlier “ANT YAPI”) was illegal and contradicted public policy of Ukraine.

Before the court of appeal, ANT YAPI Turkey modified its arguments. ANT YAPI Turkey was arguing that the decision of the first instance was rendered with the violation of the rules of material and procedural law.

Comment: usually the approach of the Ukrainian courts to the process of execution of the arbitration clauses is very formalistic. The courts pay attention to the due process of the arbitration clause execution.

### **Judgment of the Court**

The court of appeal unlike the court of first instance analyzed the arbitration clause. The court of appeal found that the Addendum of the Guarantee Agreement, which contains the arbitration clause between LG Electronics and ANT YAPI Turkey, was not duly executed, i.e. it lacked the signature at the Russian version of the Addendum. Thus, the arbitration clause was not valid and the Decision as well as the Award were set aside.

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The summary of the case file and full text of summarized court decision are available on: <https://www.kluwerarbitration.com/document/kli-ka-ons-17-41-003?jurisdiction=Ukraine&type=Court%20Decisions>