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Problems of Ad Hoc Arbitration in Armenia

Aram Khachatryan (ILex law firm) · Friday, January 12th, 2018

Ad hoc arbitration in Armenia entails several legal issues.

The first issue discussed here is related to the concept of "*place of arbitration*". The problem is generated out of a very specific wording of the Armenian Arbitration Act.

From the perspective of international arbitration, Armenia is *classified* as a Model Law country, as it adopted an arbitration act based on the UNCITRAL Model Law (version 1985) in 2006.
The initial version of the Armenian Arbitration Act contained a provision in article 6 specifying that a single judicial institution, which was the Court of common jurisdiction of Kentron and Nork-Marash communities of Yerevan, is an authority competent to perform all the functions of court assistance to arbitral tribunals and supervision of their decisions.

However, on June 19, 2015, a package of revisions of the Armenian Arbitration Act adopted by the Armenian Parliament revised, *inter alia*, the above-mentioned article 6. The revision stated that the functions referred to in articles 9 on interim measures, article 11(3) and (4) on the appointment of arbitrators, article 13(3) on the challenge procedure, article 14 on failure or impossibility to act, and article 27 on court assistance in taking evidence shall be performed by the court of **the place of arbitration** (emphasis added).

Meanwhile, the rest of the functions (such as those stated in articles 34 (2) on setting aside, 35 -36(2) on recognition and enforcement of arbitral awards) were left to be decided by the Court of common jurisdiction of Kentron and Nork-Marash districts of Yerevan.

The new wording of article 6, however, turned to be problematic in the practice.
Let's imagine a hypothetical arbitration clause as follows:

> "All disputes arising out or in connection with this agreement will be resolved by arbitration according to the UNCITRAL 2010 Arbitration Rules, and the place of the arbitration will be Yerevan, Armenia."

The problem we may face is the one of determining the exact court which would have jurisdiction to perform functions referred to in articles 9 / interim measures /; 11(3), 11(4) / the appointment of arbitrators /, 13(3) / the challenge procedure /, 14 / failure or impossibility to act/, 27 / court assistance in taking evidence/ of the Armenian Arbitration Act.

The fact is that in Yerevan, the capital of Armenia, there are seven courts of general jurisdiction covering twelve administrative districts of the city. In this situation, when a party in *ad hoc* arbitration submits an application, e.g., for a preliminary injunction at a stage when an arbitral tribunal has not yet convened, the court, based on article 6(1) of the Armenian Arbitration Act, would refuse to proceed with the application, additionally requesting the determination of the address of arbitration in order to establish its jurisdiction.

A practical and/or contractual solution could be fixing an address of the place of arbitration in advance in the arbitration agreement, e.g., "*place of arbitration Yerevan /Armenia/ street xx building xx, apartment xx*" or "*place of arbitration Yerevan /Armenia/ the address of respondent or claimant*".

Another more effective solution here could be a "legislative intervention" (the revision of the Armenian Arbitration Act) – which shall provide for a backup provision stating for the jurisdiction of a respondent's domicile Court, unless otherwise agreed by the parties.

Hopefully, this situation will be solved by the legislative soon. However, for now, it would be better for practitioners to be aware of this "legislative trap" and use some contractual solution for it.

The second issue is related to interim measures (preliminary injunctions) granted by a court, before the tribunal in *ad hoc* arbitration is convened. Both the Civil Procedure Code (article 97 (1)) and the Armenian Arbitration Act (article 17.7 (1)) regulate granting interim measures by national courts in the course of arbitration, i.e. when arbitral tribunals are already formed. In other words, according to the mentioned legal acts, the court may grant an interim measure only in case when there is a pending arbitration.

Hence, Armenian courts request from a party who applies for an injunctive relief an evidence certifying that at least arbitrators or an arbitrator is appointed. The argumentation of the court here is that there is no pending *ad hoc* arbitration, unless the tribunal has been convened.

One may argue that the above described approach is a "way out" for the Armenian courts, which are unexperienced in commercial arbitration.

However, this approach makes the granting of interim measures in ad hoc arbitration before the appointment of arbitrator(s) practically impossible under the Armenian Arbitration Act, and thus, endangering the perspectives of fostering arbitration as a dispute resolution model in Armenia.

The solution here can be a legislative amendment which would expressly provide for the court's power and obligation to process the application for interim measures even in cases when an arbitral tribunal is not convened in *ad hoc* settings.

The third issue is related to the appointment of the arbitrators by a national court if the parties in *ad hoc* arbitration have not reached an agreement.

The main article regulating this procedure is the article 11.3(1) of the Armenian Arbitration Act, which is a *verbatim* adoption of the provision on the matter of the Model Law, and which states that failing an agreement on a procedure of appointing the arbitrator or arbitrators in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. Furthermore, if a party fails to appoint the arbitrator within thirty

days as of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days as of their appointment, the appointment shall be made, upon request of a party, **by the court** or other authority specified in article 6.

The problem here is that this provision is not further elaborated in the Civil Procedure Code, and the courts' obligation to process the request on appointment of arbitrator is not ascertained in any way.

Thus, in the practice this essential step in arbitration procedure may be processed in diverse ways by local courts – one may arrange a court hearing, the other may request some additional information, the third one may react to this application only after 15 days or more. Apparently, all these situations are contrary to the very substance of arbitration and the required court assistance.
For this issue, again, the best solution would be an amendment to the Civil Procedure Code which would expressly regulate the processing of the applications for the appointment of arbitrators by courts. The amendment shall at least stipulate the exact content /minimum requirements/ for such applications, as well set the time limits for processing them.

The "*ad hoc arbitration, place of arbitration Yerevan (Armenia)*" is a dispute resolution model, that, although having basic legal foundations stated in Armenian Arbitration act, may, still, face several practical problems as describe above. Thus, legal practitioners agreeing on "*ad hoc arbitration, place of arbitration Yerevan (Armenia)*", need to have additional, up-front regulations, such as stating some address of place of arbitration and the appointment of arbitrators. to cover the situations that my hinder effectiveness of this dispute resolution mechanism.

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