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Estonia: Public Policy Must Be Interpreted Narrowly

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The 168 parties to the New York Convention, including Estonia, have made a promise to recognize and enforce foreign arbitral awards. One of the few grounds – and probably the most discussed one – to refuse the recognition and enforcement is, under Article V(2)(b) of the New York Convention, the contradiction to the public policy of the country where the recognition and enforcement is sought. The New York Convention Guide admits that public policy forms part of a wider range of tools that allow a court to protect the integrity of the legal order to which it belongs.

Estonia has demonstrated itself to be an arbitration friendly country by defining public policy in a narrow way.

Selected case law on public policy

In case 2-18-4731 the Supreme Court of Estonia explained that not all of the country's mandatory provisions constitute public policy, but only those that reflect the core values of the country's legal system.

In the same decision, the Supreme Court dealt with enforcement of an arbitral award rendered in a case where the respondent – that was about to become bankrupt – did not dispute the claim. The decision also notes that it was possibly the parties' joint intent to rapidly obtain an enforcement deed against the respondent before the start of bankruptcy proceedings. This would allow the claimant to have an automatically acknowledged claim in the bankruptcy procedure. The court found that these circumstances do not result in a conclusion that the arbitral award contradicts public policy. Since arbitral awards obtained in Estonia in proceedings where the parties do not argue about the existence and extent of the claim are enforceable, the same should be applied to foreign arbitral awards. Hence, an allegation that the parties have used arbitration to achieve an advantage in the domestic bankruptcy proceedings does not render the arbitral award unenforceable.

Previously, in case 2-16-15675, the Supreme Court had also outlined that the recognition and enforcement of an arbitral award does not contradict public policy merely because the domestic laws of the country where the recognition and enforcement is sought were not followed – in this case, the procedure of service under Estonian law. The Supreme Court opined, however, *obiter dictum* that Article V(2)(b) of the New York Convention might be triggered where Estonian law

does not allow to arbitrate the type of disputes at all. Sections 718 and 718[1] of the Estonian Code of Civil Procedure respectively render the residential lease, employment termination and consumer credit disputes non-arbitrable and provide for strict rules applicable to arbitration agreements with consumers.

In contrast, when defining public policy, the Supreme Court found in an earlier case 3-2-1-186-15 that the independence of the arbitrator is a core value of the legal system and constitutes public policy. Estonia would not recognize an arbitral award rendered by an arbitrator who would simultaneously protect the interests of one party.

Conclusions

In summary, Estonian courts define public policy in a narrow way. They see arbitrator's independence and impartiality, as well as non-arbitrability of some disputes, as core values of Estonia's legal system. An award that contradicts any of these values is not recognized and enforced pursuant to Article V(2)(b) of the New York Convention. Most of the other mandatory provisions do not fall within the scope of Estonia's public policy and are not grounds to refuse the recognition and enforcement of a foreign arbitral award.

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