

# Kluwer Arbitration Blog

## Enforcement of Arbitration Awards in Ukraine: Chances are Measured

Konstantin Pilkov (CAI & Lenard) · Tuesday, September 16th, 2014

Ukraine has a reputation of a country with an imperfect justice system. No wonder that the country is also pictured by many arbitration practitioners as one unfriendly to arbitration, though refusals to grant the leave for enforcement of arbitral awards in Ukraine are relatively rare – 10% and 18% of all requests considered in 2013 and 2014 respectively, according to the *Statistical Report “Ukraine. Arbitration-friendly jurisdiction: 2013-2014”* prepared by Cai & Lenard.

Ukrainian courts sometimes refuse to leave to enforce arbitral awards, and sometimes the reasoning of the refusal is very much controversial. For example, in 2014, a court refused to grant the leave to enforce an LCIA award, issued by a sole arbitrator on the ground that an arbitration agreement contained a reference to an «arbitration panel», and, according to the court, “*the word “panel” always refers to the collegial body. There is no linguistic reason to believe that the terms “arbitration panel” and “arbitration tribunal” have similar meaning*”. The court did not even check whether the respondent had made any objections with respect to the composition of the tribunal during the arbitral proceeding. In general, as shown by the practice analyzed in the study, Ukrainian courts have developed a friendly attitude to arbitration and do not create significant barriers for arbitration agreements to be recognized and arbitral awards to be recognized and enforced.

Statistics of granting leave for enforcement of arbitral awards issued by the International Commercial Arbitration Court (ICAC) at the Ukrainian Chamber of Commerce and Industry (UCCI) in 2013-2014 was even more impressive: when requests are considered by the courts of first instance (i.e., not left without consideration, and the proceedings upon the request is not closed), in 2013 the claimant was granted with the leave to enforce in 93% of all cases; in 2014 the leave was granted in almost 77% of all cases. It should be noted that in 2014 in those cases when the leave for enforcement was not granted, this was largely due to the fact that the award was executed voluntarily (in 2013 the courts usually closed the proceedings in such a situation). It means that almost 91% of requests were satisfied in 2014. It is a good reason for foreign partners to think twice before insisting on “classical” arbitration when dealing with Ukrainian companies. In matters of setting aside arbitral awards Ukraine only seeks to enter the league of countries with arbitration-friendly court practice (20-30% of arbitral awards are successfully challenged).

Thus, common courts rarely refuse to enforce arbitral awards and in exceptional cases set aside arbitral awards. At the same time, further stages of the enforcement usually become time consuming and sometimes even ineffective process, which does not show any specific negative

attitude towards arbitral awards because problems of enforcement are peculiar to all court decisions. It is true that Ukrainian courts grant interim measures in support of enforcement of arbitral awards in rare cases which certainly does not help the enforcement. At the same time, if compared with 2011-2012, in recent years there has been some progress in this matter –courts have begun to impose seizure on the debtor’s property in support of the enforcement of arbitral awards (app. 5 % of the left for enforcement arbitral awards were secured with the arrest of debtors’ assets in 2013-2014).

The report also made it possible to name the arbitration institutes and rules most frequently referred among Ukrainian parties. These are: ICAC at the UCCI, ICAC at the Russian Chamber of Commerce and Industry, SCC and LCIA. ICC and VIAC arbitral awards are also among the arbitration institutions well known in Ukraine.

The Report is available in [English](#), [Russian](#) and [Ukrainian](#).

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