Kluwer Arbitration Blog

Croatia: New Arbitration Court Specialised for Small Claims

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In January 2015, a new arbitration institution, under somewhat ambiguous name of the Civil Arbitration Court ("Parni?ni arbitražni sud") ["CAC"], was established. The program and rules provided by the CAC reveal its dedication to provide parties with an alternative forum for the resolution of disputes related to small claims, as in accordance with the principles set by the Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 which established a European small claims procedure. The main features of such procedure are: no need for the parties to be represented by counsels, shorter deadlines for the delivery of decision, no hearing except necessary, the use videoconference or similar modern technology etc.

In today's arbitration world, when the community is constantly warned on the overregulation and bureaucratization of arbitration, it is unusual to see arbitration rules with no more than 15 provisions, aimed at the resolution of disputes related to small claims within rather short deadlines. For that reason, the procedure before CAC tribunals is simplified, sometimes in a very peculiar way. Some of the most peculiar provisions are presented in this post:

Applicable procedural and substantive laws

According to the CAC Procedural Rules (available in Croatian here) ["CAC Rules"], applicable law to the merits is Croatian law. As to procedure, the CAC Rules provide for the application of these Rules, while all the issues not covered therein are left for tribunals to be solved in a way they find it appropriate, subject to the parties' right of equal treatment. The CAC Rules further provide a possibility for a tribunal to secondarily apply the Croatian Civil Procedure Code and the Arbitration Act, especially the provisions on the calculation of deadlines, the form of a claim and other submissions etc.

At the first sight, these rules seem to be a step back in the development of arbitration practice. The bifurcation of the civil procedure rules and arbitration laws was one of the first obstacles for the development of arbitration. However, in this case, the rules of civil procedure are freely agreed upon by parties by choosing the CAC Rules. Moreover, it is often emphasized by arbitration experts that the overlap of the substantive and procedural laws in arbitration leads to less possible legal issues once arbitration commences. If arbitrators will mostly be Croatian lawyers, this rule serves the predictability and the principle of efficiency at the highest level. On the other hand, the CAC Rules explicitly provide only for a possibility for party autonomy in regard to the rules on procedure, while they are unclear whether there is any possibility for the parties to depart from Croatian law as the law applicable to the merits. It would be a somewhat undesirable solution to

leave the parties without such a choice.

The choice, challenge, and fees of arbitrator(s)

The default rule is that a *sole* arbitrator, appointed by the CAC, resolves a dispute. Parties are free to agree on a higher number of arbitrators and free to appoint them – in that case, the arbitrator appointed by the CAC will be the presiding. The body which decides on the challenge is an appellate arbitrator who would otherwise decide on the appeal in such a case. The choice of a *sole* arbitrator by the CAC simplifies the procedure of appointment, and makes it, in combination with the default rule on a sole arbitrator and the assigned fee rates, considerably less costly.
According to CAC's fees schedule, fees are initially paid by the claimant, and can be allocated at the end of proceedings. The initial payment by the claimant may raise certain issues as to the bias of arbitrator(s). A better solution would be to follow the usual arbitral practice of paying the initial costs by both parties in equal shares.

Deadlines and a "no paper session" rule

Short deadlines and a "no paper session" rule are the main basis for achieving speedy and less costly proceedings. Firstly, CAC tribunals are required to render a decision within 60 to 90 days in a dispute regarding the claim which is lower than 350,000 HRK (cca. EUR 45,000), or within 120 days where an amount in dispute is above 350,000 HRK. The time reserved for the work of experts, or when otherwise the tribunal is reasonably unable to work on the case, is not calculated in deadlines.

Other rules also promote the faster and more cost-effective resolution of disputes. For example, hearings are held in a limited number of cases, depending on the amount in dispute. In disputes below 10,000 HRK in civil matters and 75,000 HRK in commercial matters, hearings are held only exceptionally and only if the tribunal finds them necessary. If it is decided that there will be hearings, the maximum number of hearings is two, and, after that, no further evidence is examined. Furthermore, hearings are audio recorded, which is one of the applications of a "no paper session" rule. This rule shapes also the delivery of submissions, which are delivered and received solely via e-mail.

The rules are clearly in service of cutting down the unnecessary hearings, travelling, and the endless production of evidence; consequently, they aim at saving time and costs for parties involved. This is all, of course, done by "paying the price" that a decision will not necessarily provide substantive justice, and this might be an issue. Namely, small claims are not to be mistaken for less complex claims. An amount in dispute may indicate so, but this is not written in stone, so tribunals should consider a possibility of the extension of a number of hearings. Another unaddressed issue in the Rules is what happens if the rather short deadlines of 60-90 (120) days are violated. Is an arbitrator who decided the case in such a situation exceeding her or his mandate? Probably yes. Is there a possibility for an extension, and who should grant it? Does an elapsed deadline have any influence on the validity of an arbitration agreement for that particular claim? There is no rule which provides answers to these questions. When one poses such short deadlines, one should also provide the solutions for these issues.

An opt-out appeal provision

Following the need for legal certainty, the CAC Rules provide for a possibility to appeal an award before the Appellate Civil Arbitration Court ["ACAC"], unless parties agree on another appellate

procedure. An appeal needs to be submitted within 15 days after the award is rendered, and the ACAC arbitrator (tribunal) has to decide within 90 days. An appeal is not allowed for disputes related to small claims (amounts defined under Rule 13), unless parties agree otherwise, while it is a default rule for disputes with a higher amount at stake. That means that parties should explicitly opt-out from these provisions. An appellate arbitrator(s) is appointed by the CAC or by the parties, and a chosen person must be a lawyer with six-year experience after she/he passed the bar exam. It is unclear from the Rules whether these professional requirements apply in the situations when the parties decide to appoint an appellate arbitrator. It is also unclear why they are necessary and provided only for appellate arbitrators. However, as long as the parties freely agree to the Rules, without derogating this provision, one cannot contradict. Again, the principle of short deadlines is followed, and an ACAC tribunal shall render a decision on appeal within 90 days. The appellate tribunal may confirm or change the first instance decision, or, in exceptional situations, remit the decision to the CAC tribunal.

Conclusion

The procedure created under the Rules clearly serves the purpose of accommodating the claimants with a forum for small claims. Also, certain features of the Rules show that the targeted market is the domestic one. As such, it could serve well the purpose of unburdening civil judiciary in Croatia.

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