

# Kluwer Arbitration Blog

## Moldovan Supreme Court Recommends the ICCA Guide as an Interpretative Tool for the New York Convention

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One of the goals of “ICCA’s Guide to the Interpretation of the 1958 New York Convention: A Handbook for Judges” – as stated by Neil Kaplan in the Guide’s introduction – is to assist judges around the world in “*using the Convention in a way consistent with its letter and spirit*”. It seems that the Moldovan Supreme Court of Justice is set to do just that: through [an explanatory judgment dated 25 April 2016](#), it recommended lower courts to take into account the ICCA Guide when deciding on requests to recognise and enforce foreign arbitral awards. This development is remarkable at least for two reasons. First, it is apparently the first time a national court made reference to the ICCA’s New York Convention Guide and, second, it comes from a jurisdiction which, while considerably invested in crafting a modern and robust arbitration system, has so far been relatively unknown in the world of international commercial arbitration.

Going beyond merely directing lower courts to ICCA’s New York Convention Guide, the Moldovan Supreme Court of Justice has summarised the guiding principles courts should abide by when seized with a request to recognise and enforce a foreign arbitral award. These include, among others:

- (i) the principle of presumption of validity of both the arbitration agreement and the related arbitral award,
- (ii) a pro-enforcement approach when interpreting the New York Convention,
- (iii) the prohibition of review on the merits, coupled with
- (iv) the principle of restrictive interpretation of the grounds for refusal of recognition and enforcement.

While certain amendments to the Moldovan laws on arbitration and the Civil Procedure Code in 2015 were designed to align the language of the national legislation and the language of the New York Convention in order to exclude conflicts between these two legal sources, the Supreme Court of Justice – in its explanatory judgment – has recognised that contradictions and overlaps might still arise. Consequently, it offered a wide range of solutions:

- (i) in case of overlaps between Moldovan law and the New York Convention, the latter will be applied with priority, except when Moldovan law is more favourable (a

possibility also in line with Article VII(1) of the New York Convention);

- (ii) in case the New York Convention does not regulate specific legal issues, Moldovan law will apply as supplementing the former; and
- (iii) in case the New York Convention explicitly refers to national legislation, the latter will be applied.

Furthermore, the explanatory judgment pays special attention to (non-Moldovan) court practice referred to in the ICCA's New York Convention Guide, directing Moldovan courts to consider it when interpreting Article V of the New York Convention. In addition, Moldovan courts are to take into account the UNCITRAL Secretariat Guide on the 1958 New York Convention as well as the International Law Association Recommendations on the Application of Public Policy as a Ground of Refusing Recognition or Enforcement of International Arbitral Awards.

It is to be noted that explanatory judgments of the Supreme Court of Justice are aimed at unifying Moldovan court practice and do not have any binding force per se. However, in practice they are factually binding, and they are regularly referred to by lower courts and especially by the Supreme Court of Justice itself.

The effort of the Supreme Court of Justice to harmonise local practice by drawing upon international standards needs to be viewed as part of a wider policy of the Republic of Moldova to promote alternative dispute resolution mechanisms. While the 2017 Doing Business Report of the World Bank shows a significant advance of the country in the position of "Enforcing Contracts", court proceedings remain subject to criticism for their length and at times unpredictable outcome. It is in this context that Moldovan arbitration is starting to flourish. The beginning of this year alone has marked the launch of a new arbitral institution – Chisinau International Commercial Arbitration Court (*CACIC*) – operating under the aegis of the American Chamber of Commerce. It is also this year that Moldova is intended to make its debut in the ICCA Yearbook of Commercial Arbitration. These are exciting evolutions that showcase (yet again) that arbitration practice worldwide speaks the same language: that of the New York Convention.

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