Kluwer Arbitration Blog

Lithuania takes Steps to Facilitate Post-Arbitral Court Proceedings and to Maintain Confidentiality during the Arbitral Process

Tadas Varapnickas (TGS Baltic) · Friday, August 4th, 2017 · Young ICCA

Since 1996, commercial arbitration in Lithuania has been regulated by the Law on Commercial Arbitration which was based on the provisions of the 1985 UNCITRAL Model Law on International Commercial Arbitration. In 2012, the Lithuanian Parliament revised the Law in accordance with the 2006 amendments to the UNCITRAL Model law. Furthermore, in order to emphasize its international origin, Article 4(5) of the Law establishes that the provisions of the Law should be interpreted in light of the UNCITRAL Model law.

Hence, since more than twenty years Lithuania has a regulation based on the most modern arbitration provisions recognised worldwide. In addition, Lithuanian courts have proven that they are willing to protect arbitration agreements and arbitration itself.

Nevertheless, the application of the law in practice has shown that some lacunae remain. In particular, this regards the involvement of national courts in post-arbitral proceedings related to the annulment and/or enforcement of arbitral awards.

Consequently, a draft law amending the Law on Commercial Arbitration was proposed to Parliament by the Government on 21 August 2015. After considerations, the Lithuanian Parliament adopted the draft law on 8 November 2016 and it came into force on 1 July 2017.

Although the amendments do not entail essential changes to the arbitration proceedings, it is still worthy to analyse what changed in Lithuanian arbitration law as of July 2017.

Confidentiality vs. Publicity in Court Assistance to Arbitration

The Lithuanian Law on Commercial Arbitration emphasizes confidentiality as one of the main characteristics of arbitration. Indeed, Article 8(3) of the Law explicitly states that arbitration proceedings are confidential, meaning that nothing that happens during the arbitral process can be revealed to anyone. On the contrary, civil procedure in the Lithuanian national courts, as in most countries, is based on the opposite principle – court proceedings are public except where public or private interest requires differently (for example, cases concerning child adoption are strictly confidential).

This divergence between the Law on Commercial Arbitration and the Civil Procedure Code

becomes relevant when there is a need for court assistance during arbitration proceedings. Although arbitration is confidential, and this may even have been the reason why the parties decided to choose it, when a particular issue comes before national courts, e.g. an application for the removal of an arbitrator, the arbitration in essence becomes public as the civil case concerning the arbitrator's removal will be heard in public.

In order to resolve this divergence and to create legal certainty for the parties, the amendments to the Law on Commercial Arbitration foresee that cases concerning court assistance to arbitration, such as default arbitrator appointments, removal of arbitrators or applications for interim measures, are also confidential. However, it should be noted that the new confidentiality provisions do not cover court proceedings for the annulment or recognition of arbitral awards. These cases continue to be heard in public.

Enforceability Issues under Lithuanian Arbitration Law

One of the key amendments to the Law on Commercial Arbitration is related to the enforcement of national arbitral awards. Pursuant to the old Article 41(4) of the Law, an arbitral award is an enforceable document which can be enforced in accordance with the rules provided in the Civil Procedure Code. In practice this meant that in cases where the losing party refused to comply with an arbitral award, the other party could apply to the competent court and request a writ of execution. However, in practice it remained unclear which court was actually competent to issue such a writ.

In state court proceedings, a writ of execution is issued by the court which heard the respective case in the first instance. There are 54 courts of general jurisdiction that hear first instance civil cases, 49 district courts and five regional courts, and each of these courts issues writs of execution.

For national arbitral awards there was naturally no first instance court which had examined that case before. In lack of guidance in the laws, it therefore remained unclear which of the 54 first instance courts should be responsible for issuing the writ of execution.

This indeterminacy led to phantasmagorical situations: In one enforcement case, after the losing party refused to voluntarily comply with the arbitral award, the winning party applied to the Vilnius District Court for a writ of execution. However, the District Court refused to issue the writ, reasoning that the application should be made to the Vilnius Regional Court, as the case would have fallen within the first instance jurisdiction of the Regional Court but for the arbitration agreement. The winning party complied with the ruling of Vilnius District Court and applied to the Vilnius Regional Court. The Regional Court also refused to issue the writ of execution reasoning that this fell into the jurisdiction of the Vilnius District Court. Finally, after the winning party reapplied to the Vilnius District Court, the District Court issued the writ of execution. However, it was of no use, as the losing party had become insolvent in the meantime (A. ŠEKŠTELO. "Problems of the enforcement of an arbitral award – do we need a writ of execution". [2014] *Justitia,* 2014(79), p. 104).

In order to resolve this issue, the amendments to the Law on Commercial Arbitration determine that writs of execution shall be issued by the District Court at the place of arbitration (for example, if an arbitration is seated in Kaunas, the Kaunas District Court will be competent to issue writs of execution for an award resulting from the arbitral proceedings). A district court can only refuse to issue a writ of execution under limited grounds established in the Law. Those grounds are: 1) the

documents submitted are insufficient to determine the contents of the writ of execution; 2) the arbitral award has been annulled; and 3) the prescription period for applying for a writ of execution has expired. If a district court refuses to issue a writ of execution, that ruling may be appealed to the competent regional court.

Thus, the amendments bring more certainty to Lithuanian arbitration law as they clarify both the courts which have the jurisdiction to issue writs of execution for national arbitral awards and the circumstances under which courts can refuse to issue such a writ. Finally, it should be mentioned that before the amendments were adopted, relevant voices within the Lithuanian arbitration community suggested that the Vilnius Regional Court should receive the sole jurisdiction for issuing writs of execution, because it already has the sole jurisdiction for actions assisting arbitrations during the proceedings (V. MIKEL?NAS, V. NEKROŠIUS, E. ZEMLYT?. *Lietuvos Respublikos komercinio arbitražo ?statymo komentaras*. Vilnius: Registr? centras, 2016, p. 141-142).

Acceleration of Annulment Proceedings

The last amendment to the Law on Commercial Arbitration is related to the pace of annulment proceedings before national courts.

The amendments foresee that cases concerning the recourse against arbitral awards before the Court of Appeal of Lithuania shall be examined within 90 days of the Court's acceptance of the setting aside application.

According to the explanatory note of the draft law, this amendment aims to increase the effectiveness of arbitration and consequently will help to strengthen the position of arbitration as a method of dispute resolution.

The ruling of the Court of Appeal may be appealed to the Supreme Court of Lithuania, the sole court of cassation for reviewing judgements, decisions, rulings and orders of the courts of general jurisdiction in Lithuania. However, neither the Law on Commercial Arbitration nor the Civil Procedure Code provide for a time-limit for a case to be examined before the Supreme Court. The draft law also does not contain a provision regarding the length of proceedings before the Supreme Court. According to the statistics of the Supreme Court, it takes around 160 days to examine a case in this Court. Therefore, the amendment concerning the acceleration of annulment proceedings does only half the job, as it only accelerates the proceedings before the Court of Appeal and not the Supreme Court.

Conclusion

The current amendments are the first revision of the Law on Commercial Arbitration after its fundamental reform in 2012. Although the amendments are limited in scope and do not impact the arbitral process itself, it is clear that the Lithuanian legislators are making efforts to create better conditions for commercial arbitration in Lithuania. The increasing number of arbitration proceedings in Lithuania further proves that Lithuania is on the right track.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe here. To submit a proposal for a blog post, please consult our Editorial Guidelines.

This entry was posted on Friday, August 4th, 2017 at 6:45 am and is filed under Arbitration, Confidentiality, Lithuania
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.