Kluwer Arbitration Blog

Arbitration in Kyrgyzstan: Evolution and Next Steps Ahead

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Arbitration in Kyrgyzstan

Historically, arbitration in the Kyrgyz Republic is one of the least studied in Central Asia. Not much attention has been paid to the study of the law and practice of arbitration in the country. One of the recent books on the Law and Practice of International Arbitration in the CIS Region wholly neglects the country while giving sufficient attention to other former Soviet republics such as Russia, Ukraine, Kazakhstan, and the other states in the Commonwealth of Independent States.

In the same way as its neighbors in Central Asia, the legal foundation of Kyrgyzstan has been inherited from the Soviet Union. In the USSR arbitration as a private dispute settlement mechanism based on consent of the parties, alternative to state judicial system was limited. However, Article 162 of the Constitution of the Kyrgyz Soviet Socialist Republic (1978) guaranteed the citizens of the Soviet Kyrgyz Republic to settle commercial disputes between enterprises, institutions and organizations through state run arbitration courts. Here it is important to distinguish between arbitration, as an independent institution of civil self-governance for dispute resolution, where parties by mutual agreement submit a dispute to an arbitral tribunal that renders a binding decision and a system of Arbitration Courts (Arbitrazh Courts) which are part of a judicial system of a state.

Arbitration as a semi-independent private dispute settlement institution found its way in to the Constitution of independent Kyrgyzstan. Article 85 of the 1993 Constitution of the Kyrgyz Republic gave fundamental significance to the institution of arbitration. The Article empowered local bodies of self-administration to establish arbitration tribunals who had the power to rule on disputes between two private parties where the parties agreed so. Their power to entertain cases were limited to issues pertaining to property and family matters. The decisions of the arbitration tribunals were binding unless they contradicted to the law of the Republic. Interestingly enough Article 79 the Constitution of 1993 identified arbitration tribunals along with Arbitrazh Courts and other courts of the country to be part of the judicial system. This in effect made it an institution of first instance within the judicial system, not an independent institution of civil self-governance for dispute resolution.

At present arbitration is recognized as independent from the judicial system. Article 58 in a chapter on Citizenship and the Rights and Duties of a Citizen of the Constitution states:

> *"For extrajudicial settlement of disputes arising from civil legal relations, citizens of the*

Kyrgyz Republic are entitled to establish arbitration courts. The order of establishment and functioning of arbitration courts shall be determined by law." (non-official translation)

Besides the legal norms laid down in the Constitution arbitration are regulated by the Law of the Kyrgyz Republic No. 135 of July 30, 2002 "On Arbitration Courts in the Kyrgyz Republic" and Civil Procedure Code No.14 of January 25, 2017.

Prospects for further development of arbitration

Despite the large body of law on the subject matter, the way the arbitration has been defined in the Constitution, coupled with further prospects of development of the institution of arbitration, gives one grounds to think that there is not a clear understanding of the role and function of arbitration as an institution. Any attempt to extend the functions and the role of arbitration beyond the fields it has originally been designed for could compromise the positive image of arbitration as an institution.

The government of Kyrgyzstan in its development plan "Strategy on Sustainable Development of the Kyrgyz Republic 2018 – 2040" proposes to institutionalize arbitration as a mechanism for improving the access to justice. The Plan reckons that corruption has virtually penetrated into all fields of activity of the State, hence becoming the major impediment for development. For this reason, *inter alia*, it aims at easing the load on the judicial system of the country by delivering all civil disputes to commercial arbitration tribunals and arbitration courts while the judicial system will focus on dealing with criminal cases only. The role of the commercial arbitration tribunals will be to examine the merits of civil disputes and render an award that will be reviewed by courts of general jurisdiction.

Further, for the purposes of improving the business environment in the country, the government is proposing to develop a system of dispute settlement between entrepreneurs and administrative state bodies in the International Arbitration Court of Kyrgyzstan. The proposition is based on the assumption that the existing mechanism of dispute settlement between state bodies and the business community cannot adequately address the issues arising between the two. The new dispute settlement mechanism is to be designed in a way to address the needs of both the domestic and the international business community in their disputes between the State bodies of Kyrgyzstan. According to the Ministry of Economy of Kyrgyzstan compared to the existing mechanism the new one is going to be quick since it will allow disputes to be settled with recourse to a single legal authority with no possibility of appealing the decision. It will be more efficient, confidential and will allow choice of applicable law, place and language of the proceedings. The new legislation is to expand arbitrable disputes arising from State's exercise of its administrative functions such as taxation and customs.

However, we are of the opinion that further development of arbitration in Kyrgyzstan should not be in expanding competencies of arbitral tribunals beyond the inherent functions they were designed for and contrary to constitutional provisions. Next steps ahead should be focused on improving the cooperation between judicial and arbitral bodies. One way to achieve this would be to analyse judicial practice by courts in the supervision and supporting of arbitral bodies and thereafter provide training for judges based on the best international practices in the field.

Concluding remarks

From its establishment in 1993 to present day the institution of arbitration in Kyrgyzstan has gone

through many changes. It has developed from being part of the judicial system into an institution of civil-self-governance. However, the proposed changes by the Kyrgyzstan government not only clashes the judicial system of the country with arbitration but also creates a high degree of uncertainty as for the institutional identity of the institute of arbitration in Kyrgyzstan.

This entry was posted on Friday, February 22nd, 2019 at 4:00 am and is filed under Central Asia, Kyrgyzstan
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