

Kluwer Arbitration Blog

Latvian Constitutional Court: Absence of a Mechanism for Setting Aside of Arbitral Awards Violates the Rights to a Fair Trial

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On February 24, 2023, the Latvian Constitutional Court issued a long-awaited [Judgement in case 2022-03-01](#) confirming that the current control mechanism over arbitration in Latvia is incomplete and unconstitutional. This means that the government will now be required to introduce a procedure for setting aside arbitral awards made by tribunals seated in Latvia.

Background

The alleged award debtor (applicant in the Constitutional Court proceedings) learned about the arbitral award only when its recognition and enforcement was sought in Russia. They had not concluded any agreements, including the alleged arbitration agreement, with the alleged award creditor. They were not aware of the arbitration proceedings nor did they participate in the arbitration proceedings. Upon further investigation, it was discovered that the arbitration process had other substantial procedural errors: the appointed sole arbitrator was practicing in the same law firm as the counsel to one of the parties, the representative of the alleged award debtor acted on the basis of a forged power of attorney and, even more striking, the counsels of both parties, as well as the appointed arbitrator, were all practicing at the same address, which was also the registered address of the arbitral institution administering the case.

If these strange circumstances were not enough to question the legitimacy of the arbitration proceedings, the final award also addressed issues not set out in the submission to arbitration, and included decisions by the arbitrator on merits outside the scope of the submission to arbitration.

In other jurisdictions, each of the above procedural irregularities would be enough to succeed in setting aside proceedings. However, in Latvia, the mechanism for setting aside arbitral awards does not exist.

Under Latvian law, an arbitral award is only subject to control by Latvian national courts if recognition and enforcement of the award is sought in Latvia. It is highly likely that an award would be recognized and enforced in Latvia. However, since the alleged award debtor was established and operating in Russia, no enforcement proceedings were sought in Latvia.

In such circumstances, with no setting aside mechanism under Latvian law, the alleged award debtor was left without an effective remedy at the seat of arbitration to oppose the improper composition of the arbitral tribunal, the flawed arbitral proceedings, and the ensuing final arbitral award. Whether these circumstances and the underlying legislative framework ensured parties arbitrating in Latvia the most basic procedural human rights was for the Latvian Constitutional Court to decide.

The applicant contested the constitutionality of the provisions of the [Latvian Civil Procedure Law](#) (Articles 534, 534¹, 535, 536 and 537) on enforcement and recognition of arbitral awards, insofar as they do not provide for a possibility to set aside arbitral awards.

Ruling of the Latvian Constitutional Court

The Constitutional Court concluded that a person has a right to exclude jurisdiction of state courts and instead resolve a dispute by arbitration, provided that such opt out is free, in accordance with the law, and unambiguous. Moreover, in line with the principle of the rule of law, a person may not, even voluntarily, waive any of the guarantees contained in the Constitution of Latvia, such as party equality, independence and impartiality of the tribunal, and the right to be heard. Therefore, the State is obliged to ensure control over arbitration proceedings by granting affected individuals and entities the possibility to protect their violated rights. This implies that a person must have a right to state supervision of arbitral proceedings.

The Constitutional Court emphasized that this was not the first time it has drawn Latvian legislator's attention to the deficiencies of the legal framework governing control of arbitration proceedings. The Court went further, noting that the legislator's failure to implement an effective mechanism for the control of arbitration proceedings for an extended period of time erodes public trust not only in arbitration, but also in the state and the law itself.

The Constitutional Court analyzed the current control mechanisms, finding that the [Latvian Arbitration Law](#) already provides for a control mechanism when the validity of an arbitration agreement is questioned or when the enforcement of an arbitral award before Latvian courts of general jurisdiction is sought. However, in all other cases, no control mechanism exists.

As a result, the Constitutional Court declared Sections of the Latvian Civil Procedure Law to be incompatible with Article 92 of the Constitution of the Republic of Latvia, insofar as they do not provide for control of arbitration proceedings in cases where the interested party does not apply to a court of general jurisdiction for enforcement of the arbitral award for a prolonged period, where the arbitral award is recognized and is enforced abroad or where it is not necessary to apply to a court of general jurisdiction for the enforcement of the arbitral award to obtain an enforcement order.

The Constitutional Court declared relevant Sections to be incompatible as of 1 March 2024, thus giving legislators a one-year term to introduce proper control mechanisms over arbitration proceedings.

Conclusions

This is a long-awaited judgment that will hopefully provide the necessary impetus not only to introduce a mechanism for setting aside arbitral awards, but also to improve the Latvian arbitration framework. The Latvian arbitration legislation contains several incomprehensible provisions that discourage serious players from choosing arbitration as a means of resolving disputes, and it will be a success, if at least some of them are dealt with as a result of this judgment.

Although it is not precisely known what the legislator's preferred solution will be, it will certainly open the previously closed door to set aside proceedings where an arbitral award is tainted by serious procedural irregularities and various schemes of arbitration abuse.

The contributor, together with colleague Toms Krumins, COBALT Legal, was representing the award debtor in the proceedings before Latvian courts.



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