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Are All Foreign Arbitration Awards Enforceable in Armenia?

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Introduction

Unlike judgements of the courts, which do not require additional court assistance in enforcement, arbitral awards cannot be directly enforced and should undergo enforcement procedure at court to ensure the practical value of the formers and the whole process of arbitration in general. Furthermore, if the award is made in a country other than the one where its enforcement is sought, it is considered a foreign award and should be recognized by the competent court of the country where the enforcement is sought. Under Republic of Armenia ("RA") legislation this procedure is not clearly defined and accordingly creates room for variations and misinterpretation. When approaching the issue practically we encounter rules of law, which are vague, or there is lack of specific regulation.

Regulations on recognition and enforcement of the award

The Commercial Arbitration Act (the "Act" or the "Arbitration Act") was adopted in 2006 and amended in 2015.

One of the changes brought by the 2015 amendments of the Act concerns the scope of the law. Previously the law concerned only commercial disputes and disputes arising from commercial relationships. However, the amendments introduced in the Act and in certain other related laws broadened the scope of the law allowing arbitration of not only commercial disputes but also for non-commercial matters for which dispute resolution through means of arbitration is authorized by law[1]. Some other amendments in the Act include addition of sections regarding provisional measures during the arbitration process, and the principles and ethical rules to be complied with by arbitrators.

[1] RA Law on Making Amendments to RA Law on Commercial Arbitration (2015)

Recognition and enforcement regulations

Article 35 of the Act concerns the recognition and enforcement of arbitral awards. Point 1 of the Article states that the award made by the arbitral tribunal on the territory of RA or in a Member State of New York Convention[2] shall be recognized as binding and in case a written motion is presented to the appropriate court, it should be enforced in accordance with this article and Article 36. Article 36, in its turn, lists the grounds based on which the court can refuse enforcement of domestic awards or recognition and enforcement of foreign award. The enforcement of an award in case of domestic awards, or recognition and enforcement, in case of foreign awards, can be refused based on the grounds for challenge (setting the award aside) as well as two additional grounds granting discretion to the court not to enforce the award if it is not yet binding for the parties or it has been set aside, or it has been suspended by the court of a state where or in accordance with the legislation of which the award has been made.

Scope of the Law

When looking at the provisions of the New York Convention (Article V) we see the same grounds for refusal of enforcement of awards. The main difference is in the scope of application of this article as the Convention applies to awards "made in the territory of a State other than the State where the recognition and enforcement are sought, and arising out of the differences between persons, whether physical or legal" (Article 1) without referring to the nature of the dispute in which it was issued.

The difference arises from the reservation made to the Convention by Armenia when ratifying it:

"*1. The Republic of Armenia will apply the Convention only to recognition and enforcement of awards made in the territory of another Contracting State.*

2. The Republic of Armenia will apply the Convention only to differences arising out of legal relations, whether contractual or not, which are considered as commercial under the laws of the Republic of Armenia."[3]

Thus, international awards sought to be recognized and enforced in Armenia should be of commercial nature as defined by the Arbitration Act which limits the scope of the types of awards

[2] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.
[3] Contracting States to New York Arbitration Convention, Retrieved from: http://www.newyorkconvention.org/countries

the enforcement of which can be sought in Armenia. Under the Act arbitration, as one of alternative dispute resolution methods, can be applied to disputes arising out of commercial relationships. Point 4 of the Article 2 defines the word commercial which definition has been somewhat broadened by the amendments to the law adopted in 2015. The New York Convention, however, does not limit the scope of application. Here a question arises: what effect will the above-mentioned reservation have if RA legislation allows other, non-commercial, disputes to be settled by arbitration? It is difficult to provide a clear-cut answer but, judging from the wording of the reservation, RA "*will apply the Convention only to differences arising out of legal relations, whether contractual or not, which are* ***considered as commercial*** *under the laws of the Republic of Armenia*", broadening the scope of the law by adding new non-commercial arbitrable disputes will not change the nature of disputes making the added types commercial. If a dispute is arbitrable, it does not necessarily mean that it is of commercial nature. Hence a possible answer to the question would be that the reservation will still apply to commercial disputes only, which will limit the scope of the Convention in enforcing foreign arbitral awards in RA.

Article 2 of the RA Law on Mandatory Execution of Judicial Acts (hereinafter referred to as the Compulsory Execution Act) provides a list of judicial acts that are subject to mandatory enforcement, among them being awards of arbitral tribunals (point 3); and decisions and awards of foreign courts and arbitral tribunals regarding civil and economic (քաղաքացիական և տնտեսական) matters provided for by the international treaties of the RA (point 4). In this case we have an uncertainty. The 4th point of the provision can be interpreted in two ways. Either it aims to establish the possibility of enforcement of awards with a broader scope of dispute types by including the word "civil" before "economic" (which to a large extent is synonymous with commercial), or it states that the awards should only be arising from both civil **and** economic disputes at the same time. On the other hand, in the Arbitration Act we have disputes only of commercial nature and the scope of the word commercial is also defined. Thus, there is a contradiction between the two laws as to what types of disputes are subject to arbitration and enforcement. This is yet another ambiguity in the existing legislation. It is important to have the same wording and use the same legal terminology when referring to the same matters. It is advisable to make amendments to the Compulsory Execution Act and use the terms provided in the Arbitration Act to ensure uniformity of application of the laws.

Civil Procedure Code Rules and the *Interpipe Ukraine Case* (2015)

RA Civil Procedure Code (1998, amended in 2018) defines the procedures for applying for enforcement of an arbitral award. Here we see different conditions and enforcement procedures depending on whether enforcement is sought for a domestic or a foreign award.

In case of domestic awards (Article 321) the application to the court will be examined if the seat of arbitration has been Armenia. Going into details of the requirements, the Code provides that the enforcement application should be presented by the party in whose favor the award was made; and the time limit for applying for the enforcement of the award is one year from the date of receiving the arbitral award.

In case of foreign awards, the application for recognition and enforcement (Article 326) shall be presented by a party to the foreign arbitration. The Article also stipulates that the time limit for applying for enforcement of the award is three years starting from the date the award has entered into force. However, the law does not specify what is meant by "*entered into force"*. Is it the time when the award was signed, when notary has verified the award (in case of ad-hoc arbitration, and if required by the legislation of the seat of arbitration), after the period of making amendments to the award has lapsed, or after the challenge period has elapsed? Another point is the location: is the time calculated from the date the award entered into force in the seat of arbitration or in the state where the enforcement is sought?

We see a difference in procedures between domestic and foreign awards in terms of time scope for applying for enforcement and the part of recognition. Foreign arbitral awards should be recognized by the court in order to be enforced. The Cassation Court of RA has provided the reasoning behind this policy in the *Interpipe Ukraine LLC and Golden Field LLC* Case (2015)[4] where the issue was recognition and enforcement of an arbitral award made by the International Commercial Arbitration Court existing alongside the Ukrainian Chamber of Commerce and Industry.

The Cassation Court held that the calculation of the one year period[5] for applying for enforcement of a foreign arbitral award should be calculated from the moment the judicial decision of the RA court recognizing the award enters into force. The Cassation Court further indicated that the recognition of foreign arbitral award ascribes to the award the same characteristics it would have if it were a national award; hence the award gains the feature of enforceability after it is

[4] https://www.arlis.am/DocumentView.aspx?DocID=97905
[5] The time period required before it was changed by the subsequently amended Civil Procedure Code.

recognized and considered equal to an award made by national arbitral tribunal or arbitration institution.

In the light of the amended provisions of the Civil Procedure Code (2018) this judgement may have lost its practical value as the current regulation sets a longer time limit - three years - for recognition and enforcement of foreign arbitral awards. However, it is important to highlight the significance of the decision rendered by the Cassation Court in interpreting the law and providing a precedent for further similar cases, as it could still be relevant especially because the question of determination of the commencement date of the three year period still remains unclear, as discussed above.

On this subject reference could also be made to the opinion expressed by Vahe Hovhannisyan, PhD, discussing the RA Law on Commercial Arbitration in his study guide "*Commercial Arbitration in the Republic of Armenia*" (2011). In Chapter 8 of the Study Guide Hovhannisyan discusses the problems that one is encountered with when trying to enforce an arbitral award, among them being date limits, amount of state dues, certification of the award, translation, agreement form, stare decisis, etc. Hovhannisyan suggests that recognition of arbitral awards and enforcement is a combination of legal relations with a collective aim and logically interconnected that represents a separate stage of judicial proceedings, a process by which the foreign arbitral awards gain the legal characteristics of a national award, which in its turn facilitates the process of enforcement of the award.

Assessing Hovhannisyan's opinion as well as the Cassation Court judgement, it could be underlined that in the light of the legal requirements and formal procedures one encounters when trying to enforce a foreign arbitral award the characterizations offered by Cassation Court and Hovhannisyan foster and facilitate the Alternative Dispute Resolution ("ADR") practice, in general and arbitration, in particular thus creating a ground for its development.

Conclusion

In settling a dispute via ADR it is important to consider how practical the enforcement of the final result of the settlement is. It is important to highlight that when trying to enforce a local arbitral award, or recognize and enforce a foreign arbitral award, a party should pay due attention to the time limitations provided by the law, as well as to the grounds for refusal of the enforcement or recognition and enforcement under the law as well as the judicial practice in applying those grounds of the specific country where enforcement is sought.

When trying to recognize and enforce foreign award a party should consider the scope of the dispute as Armenia has a reservation under the New York Convention stating that only the awards concerning disputes arising from relations considered commercial under its domestic legislation will be recognized and enforced.

For the purpose of avoiding the practical problems in decision making which could result in conflicting court decisions, it would be recommendable to clarify and remove existing ambiguities in relation to enforcement of domestic and foreign arbitral awards some of which were pointed out above; and to make amendments to the Compulsory Execution Act regarding the scope of the disputes that are subject to arbitration (civil and economic) in order to make it more compliant with the Arbitration Act, which uses the term ‘commercial’, this being the term used in the reservation made to the New York Convention.

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