Russian Arbitration Center

at the Russian Institute of Modern Arbitration

ARBITRATION DIGEST JULY 2022

CASE LAW DEVELOPMENTS

Bifurcation: At Which Stage of the Arbitration Does One Raise the Sanctions Argument?

A UK court has heard an appeal against an arbitral award under s. 69 of the Arbitration Act 1996 in a dispute out of a gas sale and purchase agreement involving an Iranian company. The arbitration had been initiated after one of the parties failed to perform its obligation to supply gas for 25 years starting from 1 December 2005. Despite an agreement between the parties, gas was not supplied either on 1 December or in the 13 years that followed. The arbitral tribunal found it reasonable to first look into whether it had jurisdiction to hear the dispute, then establish whether the alleged contract breach had indeed been committed, and only after ruling on those issues did it proceed to resolve the issue of remedies available to the claimant. At the remedies stage, the party seeking to reduce the damages to be compensated raised arguments to the effect that default on obligations was caused by sanctions against Iran. In response, the opposing party argued that raising such arguments was nothing more than an attempt to circumvent the tribunal's findings on the breach of the agreement. Accordingly, they could not be brought at that stage of the proceedings. The tribunal upheld that argument of the opposing party.

The tribunal's decision moved the party to file an appeal with a state court, allowed by the English law to challenge the tribunal's rulings on matters of law (appeal on point of law), unless the parties agreed otherwise. During the proceedings, the opposing party submitted that the parties had waived their right to appeal on points of law as they agreed to arbitrate under the ICC Arbitration Rules that provide that an arbitral award shall be binding on the parties and not subject to appeal in any form available under the law. The court, however, did not agree with that defense, holding that the parties had agreed to apply the ICC Arbitration Rules only in case of differences or gaps in their own rules governing the arbitral procedure and contained in a schedule to the agreement. According to the court, based on the agreement between the parties, the ICC Rules could be used to fill the gaps only in terms of the arbitral procedure but should not affect the right of the parties to appeal the award or the procedure for such an appeal. As the parties had not expressly provided for a waiver of the right to appeal in their agreement, they retained that right.

When hearing the appeal on the merits, the court concluded that the tribunal's conclusions on points of law were not manifestly erroneous, hence they were not subject to appeal. In the view of the court, since a party could have raised the issue of sanctions during the hearing on the breach of the agreement, its desire to do so at the remedies stage was tantamount to an abuse of process. The court therefore agreed with the criteria applied by the tribunal, namely, that the party "could and should have" raised its objections at the stage related to the issue of breach, while relying on them after that issue was resolved was inadmissible.

Read

No Insurance without Waiver of Judicial Immunity

The dispute arose from a collision in 2020 of two vessels: a Venezuelan coast patrol boat Naiguatá and an Antarctic cruise liner Resolute flying the Portuguese flag and owned by the German shipping company Bunnys Adventure & Cruise. The patrol boat ordered that the liner call into port, while coming dangerously close to the larger vessel, eventually sinking due to damage to its hull.

Venezuela brought a EUR 300 million claim against Resolute, its owners and top managers, as well as the insurance company P&I Club, in the Caracas Court. It also filed a second EUR 125 million claim with a court of the Dutch Caribbean island Curacao. The authorities succeeded in securing an order to attach Resolute, that was then challenged by the vessel owners.

In 2021, the insurance company P&I Club applied to the High Court in London for an anti-suit injunction against Venezuela, as Resolute's insurance agreement contained an arbitration clause. The Court accepted the insurance company's plea.

The Venezuelan authorities, in turn, did not agree with the UK court and relied on the immunity from claims under the UK State Immunity Act 1978, as the state's grievances were sovereign by nature and related to the loss of a navy ship and environmental damage to its sovereign territory.

In the end, the judge arrived at the conclusion that the state could not invoke its sovereignty since the dispute was a "ordinary civil claim" filed with "ordinary civil courts". The High Court also observed that in its damages claim, Venezuela had itself referred to the commercial insurance agreement whereby P&I Club provided coverage for accidents at sea to Resolute. Although Venezuela was not a signatory to the agreement, it effectively accepted its terms, including the arbitration clause, having brought claims under its terms during the proceedings in Venezuela.

Read

Swedish Court Confirms That Remote Hearings Are Acceptable for Sweden-Seated Arbitrations

The impact of the pandemic has persuaded many that remote oral hearings are the new normal for resolving disputes in arbitration. That notwithstanding, the issue of whether they are acceptable rose before a court in Sweden after a party that was a respondent in an arbitration filed an application on grounds to set aside an award. According to the applicant, the arbitral tribunal had decided to hold a remote hearing against its will.

First, the respondent argued, remote technologies could not guarantee the parties' right to equal treatment. Second, the principle of party autonomy had been disregarded since the tribunal's decision placed the claimant in the arbitration in a better position than the respondent. The applicant also submitted that the tribunal's decision violated its right to an in-person oral hearing and due process.

In its reasoning, the court noted that the Swedish Arbitration Act did not define the term "oral hearing", but the relevant section of the Act was neutral in that regard, that is, allowed for holding oral hearings both in person and remotely. The court made the same conclusion regarding Article 32 of the SCC Arbitration Rules. According to the court, unless the parties agreed otherwise, it fell to the tribunal to decide on the format of the oral hearing, regardless of the potential objections of the parties. The court observed that arbitrators should in each specific case determine whether holding remote oral hearings was appropriate in view of the need to ensure the right of each party to be heard, the technical capabilities of the parties and the considerations of efficiency.

The court therefore concluded that the award and the manner in which it was rendered did not violate Swedish public policy and that the arbitration did not involve any procedural irregularities, since the parties

had been given equal opportunity to make their case, and the proceedings had been conducted in an impartial, efficient, and expeditious manner. Thus, the court found no grounds to set aside the award.

Read

Arbitral Award in the Case of Token Thieves

An arbitral award issued by a tribunal constituted under the Rules of the American Arbitration Association (AAA) concluded a dispute between Bitmart GBM Global Holding Co. Ltd and 91 persons who had made a series of fictitious transactions at a cryptocurrency exchange, issuing tokens, to immediately exchange them for another cryptocurrency. The tribunal established that the respondents' conduct constituted a cyberattack. The tribunal's jurisdiction was based on the terms of use providing that all disputes shall be referred to the AAA, that the respondents had consented to when registering on the platform. Their successful cyberattack allowed them to create an impression that they held 91,000 tokens that they immediately exchanged for more than USD 6 million. Although some of the transactions were blocked, a little more than USD 5 million eventually made its way to other exchanges.

Notably, the US court enjoined disposal of those assets for the duration of the arbitration. The arbitral tribunal eventually ordered that the respondents pay damages to the claimant, calculating them at the rate in effect on the date of the award.

Read

Claims from a Company's Articles of Association Fall under the Arbitration Clause in a SHA

A UK court in its judgment (*NDK Ltd v HUO Holding Ltd и другой [2022] EWHC 1682 (Comm)*) dismissed a party's arguments to the effect that claims filed under a Cyprus-incorporated company's Articles of Association did not fall under the clause contained in the Shareholders' Agreement (SHA). In its view, any reasonable businessperson would assume that the arbitration clause would apply to all disputes between the shareholders under the SHA, even those related to the provisions of the Articles.

The dispute arose over a joint venture for the operation of a Russian coal mine.

Two documents relevant for the resolution of the dispute were the Articles of Association and the SHA. The Articles did not provide either for an express choice of governing law, or for a dispute resolution clause and were hence governed by the law of Cyprus being the personal statute of the legal entity in question. In addition to the Articles, the relations between the three shareholders were governed by an English law agreement that provided for referral of disputes to the LCIA.

Both the Articles and the SHA envisaged the right of first refusal. Two shareholders had created a situation where their shares were transferred to a third party – a competitor – in circumvention of that right. Numerous differences between the shareholders resulted in proceedings before the LCIA and in Cyprus. In the Cyprus proceedings, one of the parties sought to dispute the transaction and have changes be entered in the shareholders' register – an argument that had its opponents file for an injunction at the LCIA. The issue to

be resolved was therefore whether the dispute was caught by the arbitration clause in the SHA. The following circumstances facilitated the conclusion that the LCIA was competent to administer the dispute:

- the well-known *Fiona Trust* principle on the intentions of reasonable businesspersons to arbitrate disputes, especially where both agreements are between the same parties and on the same matters;

- the need to determine whether the dispute fell under the arbitration clause, based on its substance, given the role of this or that agreement in the relations between the parties. In the case under review, the SHA was deemed a crucial document between the parties;

- the court defined the circumstances where an issue may be deemed non-arbitrable, namely: (1) exclusive jurisdiction of state courts; (2) the arbitral award may affect non-parties to the arbitration clause; and (3) the issue referred to arbitration concerns public interests. In the case at hand, neither circumstance was present.

The court therefore found that although the dispute arose both from the Articles of Association and from the SHA, the intentions of the parties to arbitrate it were to be respected.

Read

"Nuclear" Consequences of Contract Termination

Rosatom intends to launch an international arbitration against a Finnish company that refused to construct a nuclear power plant worth EUR 7 billion.

In 2013, Fennovoima entered into a contract with Rosatom's subsidiary for the construction of a 1,200 megawatt reactor for the Hanhikivi nuclear power plant on the West coast of Finland, expected to be commissioned for operation in 2024.

Construction works were to commence in 2023, but in May Fennovoima terminated the agreement, citing substantial delays and stating that the situation in the global arena had "worsened the risks for the project."

In turn, Russia's trade representative in Finland Anton Loginov pointed out that the Russian party had fully performed its obligations having supplied 90% of the equipment, while Fennovoima's unilateral termination constituted a breach of contract.

Read

Ice Cream Battle

Ben & Jerry, a famous American ice cream producer, and its parent company Unilever have granted to a local Israeli company a license for the exclusive manufacturing and sale of ice cream under their brand in Israel. Pursuant to the license terms, the territory where the product was to be distributed was to be

understood as both the territory of the State of Israel and the territories “under its control” (namely, the West Bank of the Jordan River).

In 2021, Ben & Jerry’s announced that it intended to stop sales of the product in the occupied West Bank territories. This March, Avi Zinger, an Israeli businessman, filed a claim with the court of New Jersey, seeking to enjoin Ben & Jerry’s from terminating the license via injunctive relief. Mr. Zinger also sought to have the agreement prolonged for five more years and to be paid a compensation of over USD 75,000 as punitive damages and legal costs.

In the end, the parties decided to arbitrate their dispute after all, and the court partially suspended the proceedings (a ruling that, nevertheless, did not apply to the injunction plea). The arbitration clause provides for the resolution of disputes by way of arbitration at the American Arbitration Association in New York. Since under the agreement terms an arbitrator cannot award punitive damages that Avi Zinger sought in court, the arbitration will concern only the issue of actually suffered damages.

Read

The Boundaries of Comity: When Should One Not Overstep These in Enforcing Arbitral Awards?

A US court was seized with the issue of whether a lower court acted correctly in refusing to enforce an arbitral award. The refusal had to do with the award having been set aside by courts in Nigeria due to the non-arbitrability of tax disputes. Nevertheless, it turned out that the judge had gone too far in refusing to enforce even that part of the award that did not concern taxation issues and, on the contrary, was upheld by a Nigerian court.

Although the higher court sided with its colleagues as to the need for deference to the Nigerian judgment by virtue of international comity, it did not agree that the partial annulment of the award entails a subsequent complete refusal to enforce the award, including to the extent it survived. The case was remanded to the lower court for reconsideration of the issue of which part of the award had been set aside by a court in Nigeria, and which could be enforced in the US.

Read

Creditors Seek to Attach American Airlines Assets to Get Money from Haiti

In 2020, PRH made three contracts for the supply of fuel with the Haiti Bureau of Monetization of Development Aid Programs. Later, PRH initiated an ad hoc arbitration over default on payment obligations.

In August 2021, the arbitrators issued a partial award ordering that the parties deposit USD 23 million as security until the delivery of the final award. Since the Bureau has failed to produce the required amount, PRH is searching for assets to attach. In doing so, PRH decided to bring a claim against American Airlines.

PRH substantiates its claims by arguing that when booking tickets to fly to or from Haiti, the airline collects an extra fee (from USD 10 to 100 per flight) that is then credited to Haiti. According to PRH, it thus collects about USD 500,000 per month.

This is not the first time that creditors have tried to attach public assets via the aviation industry. Earlier, in our May Digest, we wrote about investors approaching the International Air Transport Association (IATA) to attach India's property.

Read

Validity of an Arbitration Agreement to Refer Disputes Exclusively to the CAS: A German Approach to Sports Arbitration

The German Federal Constitutional Court has declared invalid an arbitration agreement between a professional athlete and the International Skating Union (ISU) that provided for the referral of any disciplinary disputes to the Court of Arbitration for Sport (CAS), thus excluding the jurisdiction of state courts. The Court relied on the existing inequality of bargaining positions between the parties as the ground of invalidity of the clause.

More than 10 years ago, the CAS disqualified the athlete for two years over the results of her blood tests. Her appeal was also dismissed. Later, she managed to obtain an expert opinion demonstrating that the blood readings were a result of a hereditary anomaly. That compelled her to go to court in Switzerland, but it held that she had failed to present any persuasive reasons for the delay in obtaining the expert opinion.

After losing the case in Switzerland, the athlete tried to litigate in Germany, but the German Federal Court of Justice dismissed her appeal, ruling that German courts had no jurisdiction over the dispute in view of the agreement to arbitrate at the CAS. Having exhausted all local remedies, the athlete approached the ECtHR, that refused to grant her complaint, reasoning that the arbitration agreement did not violate her rights under ECHR Article 6, but concluded that the refusal of German courts to publicly hear her case undermined her right to fair trial. The athlete then submitted to the German Federal Constitutional Court, arguing that German courts had denied her constitutional right to fair trial. In acknowledging that the arbitration agreement was not inconsistent with the principle of fair trial, since it was a consequence of private autonomy (freedom of contract), a concept deeply rooted in the German Constitution, the Court stressed that such private autonomy was not unlimited. Thus, to lawfully waive resort to state courts, the arbitral procedure shall meet the minimum procedural guarantees: in case of a disbalance of bargaining power between the parties, however, it is the law that must ensure due protection of the fundamental rights of the weaker party.

Read

The European Court of Human Rights Finds That Slovakia's Failure to Enforce an ICC Award Amounts to Breach of Right to Property

The ECtHR has found that Slovakia breached the right to property when its courts arbitrarily refused to enforce a commercial arbitral award. The judges have determined that the decision shall be qualified as "possession" as far as the protection of the applicant's property was concerned.

In 2006, the parties entered into a share purchase agreement (SPA); however, a state agency did not approve the deal after one of the parties had already paid up a portion of the purchase price. The parties managed to settle the dispute, and the money was gradually paid back, but a dispute over the interest emerged that gave rise to the arbitration. The arbitral tribunal satisfied the claims pertaining to the payment of interest, but Slovakia refused to enforce the award. The Slovakian courts decided to deny enforcement of the arbitral award on several grounds, referring to certain formal requirements of the Slovakian laws that the award purportedly did not meet. Besides, the courts contended that the payment of the amounts in question would have an adverse effect on Slovakian taxpayers. Having exhausted all domestic remedies, the applicants applied to the ECtHR, which, after having reviewed each ground for refusal, deemed them arbitrary and established that the applicant's rights were indeed breached as a result of the State's actions.

Read

The Supreme Court of the Russian Federation Clarifies Whether Rulings on Failure to Execute Foreign Letters Rogatory Can Be Challenged

In June the Supreme Court of the Russian Federation rendered a ruling in Case No. A40-179775/2021, where it considered whether it is allowed to challenge rulings ordering execution/non-execution of foreign letters rogatory under the Commercial Procedure Code of the Russian Federation.

As follows from the ruling, the Ministry of Justice of the Russian Federation forwarded a letter rogatory received from a competent authority of England and Wales (the United Kingdom) to the Moscow Commercial Court. By this letter, the Moscow Commercial Court was asked to execute a foreign letter rogatory and serve documents pertaining to UK court proceedings initiated by Prosperity Estates LTD on JSC Sovfracht under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

JSC Sovfracht submitted a motion for refusal to execute the foreign letter rogatory saying that the execution of the letter would run contrary to the public policy of the Russian Federation (under Article 256(2)(1) of the Commercial Procedure Code of the Russian Federation), as well as invoking a ruling of the Moscow Commercial Court issued in another case, whereby it was prohibited to continue the proceedings in the foreign court outside the Russian jurisdiction. In its ruling, the Moscow Commercial Court found that the letter could not be executed due to reasons beyond the Court's control. As JSC Sovfracht believed that the court of first instance was to refuse to execute the foreign letter rogatory, it challenged the ruling before the appellate court, stating in the appeal that the commercial court of first instance had not considered its motion, as well as observing that the service of a notice constituted one of the procedural stages in said

foreign court and such actions were therefore prohibited by the ruling issued by the Moscow Commercial Court.

The Supreme Court of the Russian Federation did not agree with the conclusions of the lower courts and stated that the appellate court should have analyzed whether the ruling to execute/non-execute the foreign letter rogatory would, under given circumstances, impede further consideration of the case between the foreign company and the Russian JSC. As the Supreme Court resolved, the court of first instance did not consider the motion filed by the JSC and did not review the foreign letter rogatory against the grounds for execution (refusal to execute), which, depending on the particular arguments, might have resulted in the adoption of a judicial act hindering further consideration of the case. The Supreme Court concluded that, even though the Code did not explicitly provide for the possibility to challenge a ruling ordering execution/non-execution of a foreign letter rogatory, Articles 188, 248.1, 248.2 and 256 of the Code made it possible to challenge such rulings as judicial acts hindering further consideration of the case.

Read

Article 248.1. of the Russian Commercial Procedure Code in a Case on Export of Telecommunications Equipment and Software to Russia

In a case between TALMER LLC (distributor) and Dell, the Moscow Commercial Court has established its exclusive jurisdiction over a dispute concerning the restrictions on export to Russia of telecommunications and other equipment imposed by the EU and the US.

As follows from the judgement, the dispute arose out of two separate contracts: a framework partnership agreement between Dell LLC and TALMER LLC and a license agreement between the same parties and an end user, PJSC MegaFon. The framework partnership agreement provided for the jurisdiction of English courts over any and all disputes between the parties, the law of English and Wales being the governing substantive law. The second agreement did not contain any jurisdiction clause at all.

Even though the Court has concluded that the license agreement is an independent contract envisaging no separate clauses on the procedure for the resolution of disputes, which, under some circumstances, could have resulted in the court's leaving the claim without consideration, in that particular case the Russian courts did have jurisdiction to consider the dispute. The Court has held that the restrictions apply to software and technical support for the end user that formed the subject matter of the agreements between the parties. In that regard, the Court applied the provisions on the exclusive jurisdiction of Russian courts, pointing out that the imposition of restrictions, in itself, shall be deemed sufficient to conclude that access to justice, including guarantees of fair trial and impartiality of the courts, has been restricted.

Read

New applications to the CAS: Future of the Russian Football

On 28 February, the FIFA and the UEFA decided to disqualify Russian football clubs and the Russian national team from international tournaments.

Subsequently, “Zenit”, “CSKA” (Moscow), “Dynamo” (Moscow), and “Sochi” football clubs and Russian football top executives applied to the CAS with a request to annul the disqualification decision, but, on 15 July, the Court of Arbitration in Lausanne dismissed the appeals, thus confirming that the Russian national team would not represent the country at the 2022 World Cup, nor would Russian teams appear in the Champions League and the Europa League.

At the same time, the CAS noted that the current political situation has created unforeseen and unprecedented circumstances to which FIFA and UEFA had to respond, and, without a doubt, the response has had an adverse effect on Russian football.

Furthermore, this month, seven major Russian football clubs (“Zenit”, “CSKA” (Moscow), “Dynamo” (Moscow), “Sochi”, “Krasnodar”, “Lokomotiv”, “Rostov”, and “Rubin”) and the Donetsk football club “Shakhtar” filed their claims with the CAS in Lausanne, asking the Court to annul the FIFA decision allowing foreign players and coaches to suspend their contracts with Russian and Ukrainian clubs up until next year without any sanctions imposed.

As at March 2022, the leading Russian football clubs “lost” more than 40 players.

INVESTMENT ARBITRATION AND PUBLIC INTERNATIONAL LAW NEWS

The Fall of a Chicken Empire in Costa Rica

Alejandro Díaz Gaspar, a Spanish investor, owning a chicken meat processing plant in Costa Rica, filed an ICSID claim, alleging that he lost his business as a result of the State's actions.

In 2016, the Costa Rican authorities inspected the plant's waste facilities, which evacuated water produced from slaughter. Upon the inspection, administrative orders were issued which effectively suspended the operation of the plant. The investor demanded that the State pay damages in the amount of USD 100 million to cover lost profits and the loss of jobs, as well as an additional USD 1 million as compensation for moral harm.

The arbitrators have found violations on the part of the State: for instance, the authorities gave the plant only one day for the investor to produce all required permits to allow the plant's operations; moreover, the actions of Costa Rica were not sufficiently transparent, contrary to the requirements of the BIT. At the same time, as the arbitrators noted, later, these administrative measures were successfully challenged in court, but the claimant was not able to prove the damage sustained. Besides, a co-arbitrator, in a separate opinion, took the position that as it understands the risks to public health stemming from animal slaughter, the State must first and foremost take care of the population rather than investors.

The arbitrators have unilaterally decided to dismiss the claims brought by the Spanish investor.

Read

State Will Pay for Exiting a Joint Venture

RusHydro has prevailed in an arbitration against the Kyrgyz Republic initiated over the construction of the Upper Naryn cascade of hydropower plants. A HKIAC tribunal has resolved that the State must compensate to RusHydro USD 37 million that the company invested in the project in the form of loans to the joint venture.

The dispute arose after Kyrgyzstan withdrew from the intergovernmental agreement for the construction of the Upper Naryn cascade of hydropower plants and the Kambar-Ata-1 hydropower plant. It was that agreement, as well as statements of Kyrgyzstani officials acknowledging the actual debt before RusHydro and made after the withdrawal from the agreement and up until 2020, that convinced the arbitrators to render the award in favor of RusHydro.

Read

Arresting Property of State-Owned Enterprises over the State's Debts: a Shift in Practice

The Hague Court of Appeal has attached 18 vodka brands in Benelux countries, including the Stolichnaya and Moskovskaya brands. The arrest has been imposed in order to enforce the arbitral award whereby Russia must compensate USD 50 billion to the former majority shareholders of YUKOS.

In commenting on the decision issued by the Dutch court, a shareholders' representative has stated that the shareholders will auction the attached brands, unless Russia takes measures to comply with the award.

Previously, the Hague District Court lifted the arrest of the vodka brands, reasoning that the brands were owned by a state-owned enterprise "Soyuzplodoimport", which, under the Russian laws, could not be held liable for the debts of its founder, that is, the Russian Federation. A similar decision regarding the property of state-owned enterprises was also previously made in France.

In view of the judgement of the Hague Court of Appeal, we might yet see a shift in the court practice on attaching the assets of state enterprises.

Read

Arbitral Tribunal Refuses to Grant Russia Sufficient Time to Find New Counsel

Russia has failed to challenge an arbitral tribunal on the grounds that it refused to postpone a hearing and grant a six-month extension to allow it to search for a new counsel.

This March, the law firm Houthoff, representing Russia in the case, refused to further participate in the proceedings. In the same month, the arbitral tribunal issued a ruling whereby it acknowledged a fundamental right to counsel, but stated that the proceedings had been ongoing for seven years and that efficiency must be ensured. In this vein, the arbitrators decided to postpone the hearing on damages from early May to 6 June.

In May, Russia sought to challenge all arbitrators of the arbitral tribunal on the ground that it was unfeasible to meet the time limits set by the arbitrators, especially considering the need to find new counsel, as well as experts. Notwithstanding these arguments, the challenge was dismissed as Russia missed the submission deadline, as well as due to the absence of any manifest indicia of bias on the part of the tribunal, the need to strike a balance between the interests of the parties, and the principle of timely administration of justice.

Read

The First Glimpse of Hope for WTO Arbitration

The arbitral tribunal in a dispute between the EU and Turkey has dismissed Turkey's appeal against the ruling of the WTO Dispute Settlement Body (DSB). Earlier, a ruling was issued within the framework of the WTO in favor of the EU under a claim against measures that Turkey took to localize the production of pharmaceuticals.

In 2017, Turkey launched the program, under which it was only allowed to obtain a refund for drugs bought in pharmacies if the drugs had been produced in Turkey. The EU deemed that that measure was forcing producers to relocate their production to Turkey.

The DSB resolved that the measures taken within the program were discriminatory and in breach of the WTO rules. Nevertheless, it was not possible to finally resolve the dispute within the WTO system since the selection of candidates for WTO Appellate Body arbitrators has been blocked by the US since 2019.

To overcome the problem, the EU and 22 more countries, including Turkey, invoked the Multiparty Interim Appeal Arbitration Arrangement (MPIA). An arbitral award upholding the position of the DSB has been rendered under the procedures set forth in the MPIA. This procedure will apply until the WTO Appellate Body is active again.

Read

Distinguishing between Military and Civil Activities at Sea

An arbitral tribunal has found that it has jurisdiction to hear Ukraine's claims over the Kerch Strait incident in a PCA dispute between Russia and Ukraine under the UNCLOS.

In its objections, the Russian party argued that military activities were at the core of the dispute and, therefore, the arbitral tribunal was not entitled to hear it under Article 298(1)(b) of the UNCLOS.

The Tribunal agreed that all events prior to the vessel's arrest by Russian border guards qualified as military activities. But, according to the arbitrators, the claims dealing with all subsequent events, including the vessel's arrest, may be resolved in arbitration. The tribunal will determine the precise point at which the events ceased to be "military activities" later.

Read

ARBITRATION NEWS

EU Clarifies Whether Transactions with Sanctioned Persons Aimed at Ensuring Access to Justice Are Allowed

Transactions that are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, as well as for the recognition or enforcement of a judgment or an arbitral award rendered in a Member State, will not be subject to EU sanctions. Attention to this issue had been brought by a joint statement of several European arbitration centers – the SCC, VIAC, FAI, DIS, CAM, and the Swiss Arbitration Center.

Read

Diversity and Intersectionality in International Arbitration: Where Do We Stand?

The June issue of the Journal of the Inter-Pacific Bar Association features an article by Elena Burova (Senior Associate, Ivanyan and Partners) based on the materials of the round table organized by the RIMA in January 2022 with respect to diversity and intersectionality in arbitration. Margarita Drobyshevskaya (RAC Case Manager) has provided valuable help in preparing this article.

Read

Young IMA Arbitration Review for 2H 2021

The Committee on the Interaction between Arbitration and State Courts of Young IMA headed by Co-Chair Dmitry Andreev has prepared a review of Russian state court practice on arbitration.

When do arbitration agreements become unenforceable? What measures shall arbitrators take to duly notify the parties? May a time-limit for challenging an arbitral award be reinstated due to a corporate conflict? Find up-to-date positions of the Russian courts on these and other arbitration issues in the new Young IMA review. The following authors have contributed to the review: Igor Voskoboynik (EPAM), Boris Glushenkov (JSC “NIPIGAS”), and Ellina Izotkina (Lidings).

Read

ADR EVENTS

II Research Competition “New Perspective on Dispute Resolution”

One of the main aims of Young IMA is to create a community of like-minded people who share our vision and work toward our common goal of amicable dispute resolution through alternative means such as negotiation, arbitration and mediation. We strongly believe that nowadays it is especially important to promote alternative dispute resolution and support bright young minds who do research on relevant issues. For that purpose, in 2021, Young IMA held I Research Competition “New Perspective on Dispute Resolution” among a number of talented young researchers from all over the globe. All submitted research papers were found well-researched, nontrivial, and up-to-date.

For that reason, Young IMA together with the Russian Institute of Modern Arbitration are delighted to announce the call for research papers for our II Research Competition “New Perspective on Dispute Resolution”.

- Research Competition is open to all practitioners and students under the age of 28.
- The winner and runners-up of the Research Competition will receive cash prizes.
- Papers can be prepared in Russian or English.
- Detailed requirements for and terms of the Research Competition are set out in the Regulation.
- Submit your research paper by 30 September 2022, 23:59 (GMT+3) at yima@centerarbitr.ru.

Read

2022 Mozolin Moot: Pre-Moots and RIMA Knowledge Days

Please be reminded that the registration of teams and arbitrators is ongoing for the VI National Moot Court on Arbitration of Corporate Disputes named after Professor V.P. Mozolin! We usually receive a lot of emails from teams asking us to help find coaches, so, if you want to help and share your experience with young and aspiring professionals, please, follow the link.

Due to the students’ increasing interest in preliminary rounds (pre-moots) of the Moot Court, this year we decided to organize four pre-moots: two offline (in Moscow and Yekaterinburg) and two online. The information on dates and conditions will be published in the Moot Court system by 10 August.

We also want to share with you more incredible news for Moot Court participants: during the first week of September, we will hold the RIMA knowledge days, where we will discuss some contentious issues raised in the Moot Court case this year. The information on lecture dates and the format will be available shortly.

Read

ICC Arbitration Forum: International Construction Arbitration

On 9 August 2022, the ICC, in collaboration with international experts, will hold the Arbitration Forum “International Construction Arbitration” dedicated to the discussion of the most complex issues arising out of arbitration proceedings in construction disputes. As reported, today, large construction and engineering projects have long accounted for the largest share of disputes before international arbitration tribunals, and their resolution is entrusted only to experienced arbitrators. To counterbalance the ongoing discussion in the arbitral community on how to adapt the procedural rules in such a way as to make construction arbitration more efficient, the Forum will focus on how parties themselves can increase the efficiency of arbitration proceedings within the limits of existing arbitration rules and standards.

The Forum will be held offline (in Frankfurt) and online.

Read

AUTHORS

Valeria Butyrina

Margarita Drobyshevskaya

Ekaterina Bubnova

Svetlana Grubtsova

Mikhail Makeev

Sofia Zabuga

Regina Enikeeva