International Arbitration Court Decisions

Second Edition

Editors- Sigvard Jarvin, Annette Magnusson

INTERNATIONAL ARBITRATION COURT DECISIONS

SECOND EDITION

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JurisNet, LLC

LATVIA

JUDGMENT BY THE RIGA REGIONAL COURT RENDERED ON 19 AUGUST 2004 IN CASE CA-4208/20, 2004 (FORSCAN TIMBER EXPORT AB v. INTERWOOD)

Subject Matters:

(1) Determination of the jurisdiction in case of similar names of arbitral institutions

(2) Arbitrator's knowledge of the language agreed in the arbitration agreement

(3) Competence – competence

(4) Issuance of the writ of execution

Findings:

(1) The wording of the arbitration agreement and the notarized translations of the arbitral award, the Rules of arbitration and the list of arbitral institutions shall be taken in account.

(2) The parties' agreement on the language for the arbitral proceedings had not been observed as the arbitrator held the proceedings in the official language of the state (Latvian), with the help provided by the interpreter, in English.

(3) The writ of execution shall not be issued if the award was made in violation of the provisions of the arbitration agreement and part D (Arbitration) of the Civil Procedure Law as the dispute had been referred to an arbitration court the parties had not agreed upon.

Parties:

Claimant: Swedish company "Forscan Timber Export" AB
Respondent: Latvian company "Interwood"

Place of court proceedings:

Riga, Latvia

Applicable law:

Latvian Civil Procedure Law

Place of arbitration:

Riga, Latvia

Language of proceedings:

Latvian

Nationality of judges:

Latvian

Case No. CA-4208/20, 2004

DECISION

The ***Civil Cases Board*** of the Riga Regional Court, consisting of:

Chairman of the hearing: L. Plica
Judges: M. Terjuhana and V. Maksimovs
with secretary: I. Krumina
with the participation of Attorneys at Law: V. Celmina and Z. Udris,

on 19 August 2004, at an open session in Riga, Brivibas bulvaris 34, reviewed an appeal by "Forscan Timber Export" AB of the decision given by Riga City Ziemelu District Court on 9 June 2004 in respect of "Forscan Timber Export" AB's petition to issue a writ of execution for enforcement of an arbitral award.

Having heard the report of Judge L. Plica, the Civil Cases Board established that:

On 11 March 2004, Riga Commercial Arbitration Court rendered an award in case No. 03-10/P 11: the company "Forscan Timber Export" AB against the limited liability company "Interwood," according to which the limited liability company "Interwood" was ordered to pay the Claimant damages in the amount of LVL 164 344,74, arbitration costs in the amount of LVL 524,93, and legal costs of LVL 5 656,50; in total: LVL 170 526, 17.

On 31 May 2004, "Forscan Timber Export" AB submitted an application to Riga City Ziemelu District Court for the issuance of a writ of execution for the enforcement of the above mentioned arbitral award, indicating that "Interwood" Ltd had not voluntarily executed the arbitral award and asking the District Court, pursuant to Articles 533 and 534 of the Civil Procedure Law, to issue a writ of execution.

Following the decision of Riga City Ziemelu District Court dated 9 June 2004, the application for the issuance of a writ of execution for the award given by Riga Commercial Arbitration Court on 11 March 2004 was denied.

The District Court, in conformity with Paragraph 1, Article 536 of the Civil Procedure Law, considered that the refusal to issue a writ of execution was justified because the Commercial Arbitration Court located in Riga, Latvia, was the only such court and its address was Duntes iela 34, Riga. The Claimant, however, had filed the claim with Riga Commercial Arbitration Court (rather than the Commercial Arbitration Court in Riga). The court also established that the arbitral proceedings should have been in English, since the Civil Procedure Law permits only participants in the proceedings not to know the language chosen by the parties, and the arbitrator is not such a participant.

"Forscan Timber Export" AB submitted an appeal against the above-mentioned decision, requesting that it be set aside; the matter adjudicated on its merits; and a writ of execution for the award of Riga Commercial Arbitration Court dated 11 March 2004 issued.

The Claimant considered that the dispute was reviewed by the Arbitration Court chosen by the parties, since in the contracts concluded between the parties on 4 October 2002 and 7 November 2003, on the basis of which the award of Riga Commercial Arbitration Court was made, the parties had agreed that all the disputes should be taken to final settlement in the Commercial Arbitration Court in Riga, Latvia. It was noted that the aforementioned contracts were concluded in English and that the name of the "Commercial Arbitration Court in Riga" appears therein, and this, in the Claimant's opinion, corresponded to the arbitration court's name in English mentioned in the Rules of the Commercial Arbitration Court. Furthermore, it was noted that the English translation of the Rules of the Commercial Arbitration Court was signed by the official representative of Riga Commercial Arbitration Court. The court, having accepted that the parties had come to an agreement on dispute settlement by the Commercial Arbitration Court, had not considered the fact that in the arbitral award dated 31 October 2003 the arbitration court's name in English was "Commercial Arbitration Court," not "Commercial Arbitration Court in Riga," as written in the contracts concluded between the parties.

The Claimant considered that, in reviewing the case, the arbitration court took into consideration the parties' agreement on the language of the arbitral proceedings and the arbitration procedure was carried out in English, which is confirmed by the fact that the original of the Riga Commercial Arbitration Court's award and the judgments and minutes were drafted in English; all documents were submitted to the arbitration court in English; at the Respondent's request, notarized translations from English to Latvian of the documents were submitted to the arbitration court; and two interpreters were invited to participate in the arbitral proceedings and assist the participants with translation. Moreover, in order to ensure that the proceedings were in English and to help the arbitrator, the arbitrator engaged a certified interpreter, who provided a translation of the hearings. It was noted that if the proceedings were in Latvian the presence of the

interpreters would not have been necessary. The Claimant considered that neither the Civil Procedure Law, the Rules of Riga Commercial Arbitration Court, nor the arbitration agreement signed by the parties, provided a mandatory clause that the arbitrator should have a good knowledge of the language of the arbitral proceedings, nor a prohibition on inviting an interpreter to the hearing.

At the same time, the Claimant considered that, during the case review, the District Court's judge violated Article 97, Paragraph 5, Article 230 and Article 535 of the Civil Procedure Law, by completely ignoring, and failing to give consideration to, the arguments and evidence submitted by "Forscan Timber Export" AB.

Taking the above into consideration, the Claimant asserted that the decision being appealed was groundless and illegal, as the reasons for denying the issue of a writ of execution, provided for by Article 636 of the Civil Procedure Law, could not be established.

On 13 August 2004, the court received "Interwood" Ltd's response to the appeal submitted by "Forscan Timber Export" AB, which noted that despite the fact that (according to the judgment of Riga City Kurzemes District Court dated 13 April 2004) the issuance of a writ of execution for the award of Riga Commercial Arbitration Court dated 11 March 2004 had been denied, the Claimant had, on 1 June 2004, submitted a second appeal on the same decision, only this time to Riga City Ziemelu District Court. The Claimant had requested the issuance of a writ of execution on the basis of the same arbitral award and had justified the second application with the fact that the address of "Riga Commercial Arbitration Court" Ltd had changed. However, according to data in the Enterprise Register, the change of the address was only registered in the Commercial Register on 17 June 2004. In light of these facts, "Interwood" Ltd considered that Riga City Ziemelu District Court had accepted the case for review without jurisdiction, because at the moment the application was submitted, according to data in the Commercial Register, the legal address of Riga Commercial Arbitration Court still fell in the jurisdiction of Riga City Kurzemes District Court.

"Interwood" Ltd also considered that Paragraph 3, Article 534 of the Civil Procedure Law had been violated, in that a notarized translation of the arbitral award had not been submitted. Contrary to Paragraph 3, Article 509 of the same Law, the translation of the arbitral rules were not certified by a notary, but by the official representative of the Arbitration Court. However, it followed from the statement of A. Veisbergs, Docent of Philological Sciences, a notarized translation [into Latvian] and a notarized translation [into English] of the list of Arbitration Courts issued by Court Department of the Ministry of Justice, as submitted by the Respondent, that *Rīgas Komerciālā Šķīrējtiesa* should be translated as "Riga Commercial Arbitration Court," rather than "Commercial Arbitration Court in Riga." It was also noted that the Claimant had addressed his

statement of claim in English to the "Riga Commercial Arbitration Court," but this was not the Arbitration Court the parties had agreed upon in the arbitration agreement. In contracts No. VA 00020910-01 and No. VA 00020920-02, signed by the parties, it was explicitly stated that any dispute should be referred to "Commercial Court in Riga, Latvia"; this court appeared in the notarized translation as "*Komerciālā šķīrējtiesa, Rīgā, Latvijā*."

In its objections to the appeal of "Forscan Timber Export" AB, "Interwood" Ltd noted that the materials filed in the case and the award of Riga Commercial Arbitration Court proved that the arbitrator had not ruled on the issue of the jurisdiction of dispute. The court had also considered that Article 495 of the Civil Procedure Law should not be interpreted broadly enough to conclude that the Arbitral Presidium had a right to decide upon the jurisdiction, believing that by the term "arbitration," one should understand the "Arbitral Tribunal."

According to their objections to the appeal, "Interwood" Ltd considered that Riga Commercial Arbitration Court and the arbitrator had not taken the agreement between the parties on English as the language of the proceedings into consideration, as the [procedural] documents were initially written in Latvian. Furthermore, the arbitrator was not able to lead the proceedings in English; hearings were held in Latvian.

Given the above, and pursuant to Article 223 of the Civil Procedure Law, "Interwood" Ltd requested that the appeal of "Forscan Timber Export" AB be rejected and the case dismissed.

During the hearing, "Forscan Timber Export" AB maintained their appeal on the basis of the arguments set out above, stating that the arbitral proceedings had taken place in English, all the documents had been submitted in English, and that Latvian translation had been provided.

"Interwood" Ltd did not admit the appeal and asked that the decision subject to appeal stand and the appeal be dismissed.

Having heard the explanations given by the parties and considered the arguments, along with the case materials, the Civil Cases Board concluded that there were no grounds for setting aside the appealed decision, based on the following reasons.

The specific occasions on which the court can deny the issuance of a writ of execution for an arbitral award are set out in Article 536 of the Civil Procedure Law. Paragraph 3 of this procedural provision states that the judge can refuse to issue a writ of execution if the arbitration court was not established, or the arbitral proceedings did not take place, according to the provisions of an arbitration agreement or Part D of this law.

The Civil Cases Board considered that, in this particular case, the award of Riga Commercial Arbitration Court was made in violation of the provisions of the

arbitration agreement and Part D of the Civil Procedure Law, as the dispute had been referred to an arbitration court the parties had not agreed upon.

As can be seen from the notarized translations of contracts No. VA 0020910-01 dated 4 October 2002 and No. VA 0020910-02 dated 7 November 2002, added to the application by "Forscan Timber Export" AB, the parties included an arbitration clause, stating that all possible disputes between the parties should be resolved in an amicable way, but in those instances when the parties could not reach settlement of disputes relating to the contract, including issues as to its existence and validity, the dispute should be taken for final settlement to the arbitration court mentioned in the contract. In the original text of the contract in English, this arbitration court is called "Commercial Arbitration Court in Riga, Latvia" and in the notarized translations of the contracts submitted by the Claimant it is translated as "*Rīgas Komerciālā Šķīrējtiesa.*" Whereas, in the notarized translations of the contracts submitted by "Interwood" Ltd, this court's name is translated as "*Komerciālajā Šķīrējtiesā Rīgā, Latvijā.*"

As follows from the statement of A. Veisbergs, Docent of Philological Sciences, attached to "Interwood" Ltd's response, the name of the arbitration court "*Rīgas Komerciālā Šķīrējtiesa*" should be translated into English as "Riga Commercial Arbitration Court." The notarized translations of the list of arbitration courts issued by the LR Court Department of the Ministry of Justice filed in the case supports this conclusion. For instance, *Rīgas Starptautiskā Šķīrējtiesa* is also translated as "Riga International Arbitration Court." Taking this into consideration, the Claimant's argument that the case was within the jurisdiction of Riga Commercial Arbitration court is groundless, because it is contrary to both the evidence in the materials of the case and logic. The words "in Riga, Latvia," as included into the contract, given their place in the sentence, point to the location of the commercial arbitration court as being in Riga, Latvia. Bearing this in mind, the court established that in the translations of the contracts submitted by "Forscan Timber Export" AB the arbitration clauses were not accurately translated; and the validity of the Claimant's statements could not be proved by the English translation of the Rules of the Commercial Arbitration Court because it was signed by the official representative of Riga Commercial Arbitration Court, rather than a certified notary.

In addition, the translation of the judgment of Riga Commercial Arbitration Court, dated 11 March 2004 and enclosed in the application submitted by "Forscan Timber Export" AB, where the name of the arbitration court is translated as "Commercial Arbitration Court in Riga," was not certified by a notary, but signed by the arbitrator. The Civil Procedure Law does not provide for the translation's compliance with the original document to be certified by the arbitrator and so this document could not be considered as valid proof of the Claimant's statements. Furthermore, from the notarised translation of the above-mentioned award, submitted by "Interwood" Ltd, it was evident that the name of

the arbitration court used in the English text ("Commercial Arbitration Court in Riga") should be translated as "Komerciālā šķīrējtiesa Rīgā." Contrary to this finding, however, Riga Commercial Arbitration Court had made the award. At the same time, the Civil Cases Board found it significant that, in submitting its statement of claim to Riga Commercial Arbitration Court, "Forscan Timber Export" AB called it "Riga Commercial Arbitration court," rather than "Commercial Arbitration Court in Riga," thus contradicting their own statements.

In light of the above, the Civil Cases Board found that reviewing the case in Riga Commercial Arbitration Court, rather than the Commercial Arbitration Court, violated the arbitration clause included in the contract. Furthermore, the dispute had been adjudicated upon in an arbitration court not agreed upon by the parties, since there was only one commercial arbitration court located in Riga, Latvia and its address was Riga, Duntes iela 34, LV-1005. This fact served as the basis for refusing to issue a writ of execution for the enforcement of the arbitral award pursuant to Paragraph 3, Article 536 of the Civil Procedure Law.

For these reasons, the Claimants point out that the court of first instance had given no consideration to the fact that, in the arbitral award of the Commercial Arbitration Court dated 31 October 2003, the English version of the name of the arbitration court was given as "Commercial Arbitration Court" rather than "Commercial Arbitration Court in Riga." This argument did not prove the Claimant's objections, because "in Riga, Latvia" only indicated the place of the arbitration court, the name of which did not have to be included in the award text.

The Civil Cases Board further held that Riga Commercial Arbitration Court had not only reviewed the case, which was not within its jurisdiction, but also violated the agreement between the parties on the arbitration language. As it is evident from the contracts dated 4 October 2002 and 7 November 2002, the parties made use of the rights in Paragraph 1, Article 509 of the Civil Procedure Law to come to an agreement on the arbitration language, establishing that the arbitral procedure was to take place in English. According to the objections to the award by the Riga Commercial Arbitration Court dated 20 January 2004, submitted by "Interwood" Ltd, the arbitral proceedings of 25 November 2003 were held in Latvian, with help provided by the interpreter, in English. It follows that the proceedings were in the official language, and only separate procedural actions took place in English. The Civil Cases Board argued that, in this specific case, it could not be considered that the parties' agreement on the arbitration language had been observed, because the process should have been held in English and only translated into Latvian for the parties had such necessity arisen.

The Civil Cases Board considered that Riga Commercial Arbitration Court had also violated Paragraph 1, Article 495 of the Civil Procedure Law, as the materials of the case made it apparent that the Presidium of Riga Commercial Arbitration Court had decided the issue of the arbitration court's jurisdiction on the case, although it is clear from the procedural provision mentioned earlier that

such powers could not be delegated to the Presidium. In this specific case, the word "arbitration" was to be understood as the "Arbitral Tribunal," because the jurisdiction question should have been resolved at the initial review of the civil dispute. Having established this violation, it was no longer important whether or not the arbitrator repeatedly decided on this question during the proceedings because, in the circumstances, the arbitrator's decision in this matter could not be considered objective.

Given the above, it was acknowledged that the arbitral proceedings were not in compliance with the provisions of Part D of the Civil Procedure Law, and that this was sufficient reason to deny the issuance of a writ of execution for enforcement of the arbitral award.

Accordingly, the arguments in the appeal could not serve as a reason to reverse the appealed judgement. In addition, the Civil Cases Board considered the Claimant's argument, that the court of first instance had tolerated violations of Article 97, Paragraph 5, Article 230 and Paragraph 1, Article 535 of the Civil Procedure Law, groundless, as it was clear from the content of the decision that the court had explained why it had denied the issuance of a writ of execution; therefore the appealed decision could not be considered unreasoned. In fact, the Claimant had acknowledged it to be reasoned by contesting the court's reasons in its appeal.

The Civil Cases Board further held that the request of "Interwood" Ltd for the case to be dismissed was unfounded, as no proof had been adduced that the decision of Riga City Kurzemes District Court, in connection with the second application of "Forscan Timber Export" AB for the issuance of a writ of execution for the award of Riga Commercial Arbitration Court, had came into force.

Likewise, "Interwood" Ltd's argument that Riga Commercial Arbitration Court was founded by two physical entities and one legal entity – and that therefore the arbitration court was not constituted in conformity with the provisions of Latvian law – was considered baseless. As shown by the materials of the case, Riga Commercial Arbitration Court was founded by one legal entity, namely, "Riga Commercial Arbitration Court" Ltd, in compliance with Paragraph 3, Article 486 of the Civil Procedure Law.

Having due regard to Part 1, Paragraph 1, Article 448 and Article 449 of the Civil Procedure Law, the Civil Cases Board **resolved:**

To uphold the decision of Riga Northern District Court, dated 9 June 2004, and to deny the appeal of the representative of "Forscan Timber Export" AB.

The decision was not appealable.

Chairman: /signature/ L. Plica
Judges: /2 signatures/ M. Terjuhana, V. Maksimovs

Observations by Ziedonis Ūdris* and Inga Kačevska**

The following observations examine the legal environment for both international and domestic arbitrations in Latvia, focusing primarily on the reasons it became possible to have so many permanent arbitration courts in Latvia and the efforts made by the Latvian Government to ensure fair arbitral proceedings. The decision of Riga Regional Court on enforcement of the arbitral awards, cited above, reflects the current situation in Latvia and clearly illustrates the role of the Latvian Courts in supervising arbitration.

General Overview

The Parliament of the Republic of Latvia passed the Civil Procedure Law[1] on 14 October 1998, which became effective on 1 March 1999. Chapter D of the Law deals with arbitration and was initially drafted on the basis of the UNCITRAL Arbitration Model Law. However, draft provisions with respect to court assistance in the formation of an arbitral tribunal and during the arbitration process, as well as with setting aside the arbitral award, were deleted before the Law was enacted.

Establishment of Arbitral Institutions

The Parliament of Latvia adopted amendments to the Civil Procedure Law in March 2005.[2] The main reason for the amendments was the large number of arbitration institutions being formed in Latvia; more than 100 arbitral institutions were formed in 2004 alone.[3] This was the result of vaguely defined Article 486 of the Civil Procedure Law, which provided that a newly established arbitral institution need only notify the Ministry of Justice of their establishment and also stated that the settling of disputes by means of arbitration was not a business activity. In principle, any legal entity could register as a permanent arbitration

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1 Civil Procedure Law [*Civilprocesa likums*] published in the state official gazette "*Latvijas Vēstnesis*" 3 November 1998, No. 326/330

2 Amendments to the Civil Procedure Law [*Civilprocesa grozījumi*] published in the state official gazette "*Latvijas Vēstnesis*" 9 March 2005, No. 40, in force from 10 March 2005

3 *86 arbitration institutions as of 13 October 2003. See*, Udris Z. and Kačevska I. *Arbitration in Latvia: Urgent Need for Statutory Reform*, 21 J.Int.Arb.2, 2004, at p. 212 and p. 220. *107 arbitration institutions as of 27 October 2004. See* Kačevska I., Šķīrējtiesu attīstība: līdz šim un nākotnē [*Development of Arbitration: now and in future*] Latvijas Vēstnesis: Jurista Vārds No.48, 14 December 2004, *in Latvian*

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[1] CIVIL PROCEDURE LAW [*Civilprocesa likums*] published in the state official gazette "*Latvijas Vēstnesis*" 3 November 1998, No. 326/330

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court, since no other legal requirements were set forth. Unfortunately, the situation remains largely the same.[4]

Pursuant to the 2005 amendments, all arbitration institutions had to deregister from the database of the Ministry of Justice and reregister with the Register of Arbitrations attached to the Commercial Register.[5] Contrary to expectations, the amendments and the requirement to re-register did not succeed in reducing the number of arbitration institutions; in fact, the number of arbitration courts registered has increased. For instance, by 1 June 2006 approximately 120 permanent arbitral courts had been registered.[6] There is now one dispute resolution centre for every 20,000 inhabitants and, unfortunately, the quality of the proceedings cannot be predicted in all cases.

An analysis of the founders of registered arbitration courts shows that in almost 84% of cases the founders of Latvian arbitration centers are business entities (limited liability or joint stock companies) and only 16% of the arbitration courts were established by professional associations or social organizations operated by individuals. There have been suggestions, including by the authors of these observations, that arbitration institutions should only be established if attached to professional organizations, as is the case in many other countries. However, while officials appear willing to listen to suggestions, they leave any action for the next government or merely hope that the situation will resolve itself.

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[4] After amendments Article 486 of the Civil Procedure Law provides:

(1) An arbitration court may be established for the resolution of a specific dispute. The arbitration court may also operate permanently.

(2) A permanent arbitration court shall operate on the basis of arbitration rules, whereas an arbitration court established for the resolution of a specific dispute is founded in accordance with the procedures prescribed by this Law.

(3) A permanent arbitration court may be established by one or more legal persons. A permanent arbitration court shall start to operate after registration in the register of arbitration courts. The registration of arbitration courts shall be conducted by the Commercial Register. [...]

(4) In order to register an arbitration court in the register, the founders of the arbitration court shall submit to the Commercial Register rules of the arbitration court and other documents as provided for in the regulations of arbitration courts registration.

(5) The name of a permanent arbitration court shall not coincide with the name of an arbitration court already registered, or the name of an arbitration court that is submitted to be registered, nor shall it contain misleading information about important working conditions of the arbitration court.

(6) The resolution of disputes by the arbitration court shall not be an entrepreneurial activity.

As can be seen, it is not hard work to register an arbitral institution. For more information about the registration of arbitral institutions, compiled by the Enterprise Register in Latvia see: http://www.ur.gov.lv/index.php?t=3&a=172&v=lv, *in Latvian*

[5] CIVIL PROCEDURE LAW: Transitional Provisions, Article 21.

[6] Data of the Enterprise Register: http://www.ur.gov.lv/drukat.php?t=8&id=1073&v= lv, *in Latvian*

Although the law prohibits running an arbitration center for profit and states that arbitration is not a commercial activity,[7] the establishment of a permanent arbitration court by a for-profit business entity is not considered a commercial activity according to the Commercial Register. Moreover, representatives of some arbitration courts recently proposed to change the wording of this statutory restriction to provide for the "administration of arbitration process and settlement of disputes [to be] a commercial activity within the meaning of the tax legislation!"[8]

One of main reasons to establish a permanent arbitration court is the finality of the arbitral award. An arbitral award in Latvia cannot be set aside, no matter what the grounds. Consequently, in the absence of proceedings associated with having the arbitral award set aside, the debt collection procedure can be completed much faster. This particular advantage is also highlighted on the web pages of certain Latvian law firms, who often provide arbitration services by using arbitration courts located in the firm's premises.[9] Such a situation reflects the prevailing legal culture among practicing lawyers, which is perfectly characterized in a recent publication: Western law firms provide legal advice, while post-Soviet Bloc law offices solve problems.[10]

There are other examples of the distorted arbitration environment. For instance, the Arbitration Court of Telecommunications, established by a limited liability company of the same name, advertises itself as a debt collection company.[11] Presumably, it is for this very reason that even the state company *Latvijas Dzelzceļš* (Latvian Railway) has registered its own arbitration court.

The possibility of having a dispute settled in somebody's "own" arbitration court and the often dubious nature of awards rendered by such arbitration courts have been constantly criticized in Latvia on the grounds that they are associated with money laundering, corruption and fraud.[12] Questions have also been raised as to

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[7] CIVIL PROCEDURE LAW, Article 486 (6)

[8] Draft ARBITRATION ACT, Article 2.2 as of 2 February 2006 [unpublished]

[9] *See*, LLC "BS Tiesu birojs" [*BS Court Bureau*] and "Baltijas Saimnieciskā šķīrējtiesa" [*Baltic Economic Arbitration*] – www.bstiesa.com, auditing company "Alfa factors" and "Saistību šķīrējtiesa" [*Obligation Arbitration Court*] – www.sst.lv/page_1118139318421.html, LLC "Law & Finance Consulting Group" and "Rīgas Patstāvīga šķīrējtiesa" [*Riga Permanent Arbitration Court*] – www.lfc.lv, LLC "Juridisko pakalpojumu birojs" [*Legal Service Bureau*] and Latvijas Apvienotā šķīrējtiesa [*Latvian United Arbitration Court*] – www.las.lv, LLC "K.S. Prakse" and Latvijas Pirmā šķīrējtiesa [*Latvian First Arbitration*] – www.pirma.lv, LLC "Lielrīgas Juridiskais Birojs" [*Big Riga Legal Bureau*] and arbitration - www.tiesa.lv etc.

[10] Игуменов В. [*Igumenov V.*], Законные Миллионы [*Legal millions*], FORBES, January 2006, p.63, *in Russian*

[11] *See*: http://www.kontakti.lv/en/infopage.php?code=C569_00543937&kw=&cname=&tel=&zip=&city=&street=

[12] The weekly journal recently wrote: "In practice [...] a company establishes its own arbitration court, where the arbitrators are employees of the company, business partners, friends or relatives, which renders decisions that are always in favor of the arbitration court's founder company. There

how ex convicts can freely register arbitration courts and serve as arbitrators in a society where there is the presumption of the rule of law.[13]

Unfortunately, these issues were not solved by the 2005 amendments to the Law. Among the problems left unresolved is the phenomenon of various arbitration institutions registering under similar sounding names, resulting in severe jurisdictional uncertainties.[14] The case at hand perfectly illustrates this issue.

Background to the Case

The Parties concluded the following arbitration agreement:

> *'All disputes, which may arise between the Parties, should be solved in an amicable way. In case the Parties don't agree any dispute under the present Contract, including question of existence and validity, shall be taken to final sanction in the Commercial Arbitration Court in Riga, Latvia. The decision of the Court is final and binding in all jurisdiction (s).*
>
> – *not "Ad hoc" Arbitration*
>
> – *the Arbitration consists of Sole Arbitrator*
>
> – *language of Arbitration are English*
>
> – *the court – costs will be for account of the losing Party'*

When a dispute arose due to breach of the sales contract, the Latvian company,[15] "Interwood," submitted a Statement of Claim to an arbitration institute called the Commercial Arbitration Court (*Komerciālā šķīrējtiesa*), with a registered address in Riga, Latvia. However, the Swedish company, "Forscan Timber Export," submitted its statement of claim to Riga Commercial Arbitration Court (*Rīgas*

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are also arbitration courts which are established with the purpose of earning a lot of money, to find permanent clients among businessmen and always settle disputes in favor of the "bread feeder"." Benfelde S. Šķīrējtiesas – ienesīgs uzņēmējdarbības veids [*Arbitration Courts – Profitable Business Activity*] 28 NEDĒĻA, 10 July 2006, p. 20, *in Latvian*

[13] Another daily newspaper reported: "The big sign "Eiroasistīda" decorates the door of one house on Čaka street. The sign states that it is the "sworn" legal service help bureau. Who has sworn it, nobody knows, but the Merchant's Arbitration Court [*Komersanta šķīrējtiesa*] also operates here. The chairman of the arbitration court is wife of ... [*a person formerly charged with fraud and sentenced to be imprisoned*] but the owner of it is Bureau itself. This "Sworn Bureau" offers clients an original service – representation in the Merchant's Arbitration Court, without even leaving the office. [...] "There is nothing wrong with it – the law does not forbid it!" he answers about his and his wife's business." Bahmaks I. Iegrožos šķīrējtiesas Ausekļīša stilā [*Will Keep a Tight Rein On Arbitration Courts in Style of 'Ausekliitis,'*" DIENA, 17 May 2006, p. 9, *in Latvian*

[14] For example, there are registered arbitration institutions with names such as "Arbitration Court," "European Commercial Arbitration Court," "European Arbitration Court," "International European Arbitration Court," "European International Arbitration Court," "International Arbitration Court," "Baltic International Arbitration Court," "Baltic Regional Arbitration Court," "Baltic Arbitration Court," "European Baltic Regional Arbitration Court," "Baltic Region Arbitration Court" etc. *See generally*: information on the Enterprise Register: http://www.ur.gov.lv/iekskat.php?t=&&id=1073&v=lv, *in Latvian*

Komerciālā šķīrējtiesa), claiming that the Latvian translation of the "Commercial Arbitration Court in Riga, Latvia" should be the "Riga Commercial Arbitration Court."

Paradoxically, both arbitration institutes found themselves competent to try the case. The first to render an award was the Commercial Arbitration Court. In spite of the judgment being *res judicata*, the Riga Commercial Arbitration Court continued to review the case. Moreover, they violated elementary principles of civil procedure in the course of the arbitration. For example, the Respondent Latvian company submitted a Latvian translation of the arbitration court's name, translated by a certified translator and approved by a notary public, stating that "Commercial Arbitration Court in Riga" should not be translated as "Riga Commercial Arbitration Court." However, this argument was not taken into consideration by the arbitration court even though the Riga Regional Court admitted in its decision that, "*the dispute had been referred to an arbitration court the parties had not agreed on.*"

Jurisdiction

As was evident from the court's decision, the tribunal of Riga's Commercial Arbitration Court did not decide the issue of jurisdiction; instead, this was done by the Arbitral Presidium of the arbitration court. This decision was based on the language of Article 495 of the Civil Procedure Law, which provides that: "*[t]he arbitration itself shall decide as to the jurisdiction regarding a dispute, including in cases when one of the parties disputes the existence or validity of the arbitration agreement.*" Following the Latvian company's arguments, the District Court stated: "*[i]n this specific case, "arbitration court" shall be understood as "Arbitral Tribunal," because the jurisdiction question should be resolved at the initial review of the civil dispute, namely, at the beginning of the proceedings.*" Interpreting the provision in the spirit of the CPL and on the basis of legal principles, it is clear that "arbitration" means the Arbitral Tribunal. Otherwise, the Arbitral Presidium or any other administrative body of an arbitration court could render an award, decide on the relevance of evidence, or call for experts, etc.

Arbitrators

There is leeway in the Civil Procedure Law for parties and permanent arbitration courts to establish additional restrictions on or requirements for arbitrators' qualifications since Article 497 only states that an arbitrator can be any legally capable person, regardless of her citizenship or place of residence, and that the arbitrator should be independent and impartial. Nevertheless, a more careful reading of the law reveals an additional criterion: to be qualified. Article 501 provides that "an arbitrator may be removed, if facts exist which cause well-founded doubts as to his or her objectivity and independence, as well as if his or her qualifications do not conform to those agreed by the parties."

The Riga Commercial Arbitration Court suggested an unusual interpretation of these articles on arbitrators' qualifications. As the parties could not agree on an arbitrator, the Arbitral Presidium of the arbitration court appointed an arbitrator with an insufficient knowledge of English, in spite of the fact that the signed arbitration agreement stated that the arbitration should be held in English. The Respondent's objections and challenges were not accepted.

Yet, as the District Court acknowledged correctly (and its observations correspond the opinion recently expressed in the bulletin of the ICC International Court of Arbitration):[15]

> *Riga Commercial Arbitration Court has not only reviewed the case, which is not within its jurisdiction, but also violated the agreement between the parties on the arbitration language. The Civil Cases Board considers that in this specific case it can not be considered that the parties' agreement on the arbitration language was observed, because the process should have been held in English and it could have been translated in Latvian for the parties had such necessity arisen.*

According to this opinion, it is clear that a legal understanding of professionalism and impartiality should underpin a discussion on ethics among lawyers in Latvia. It should also be added that there is no legislative supervision over "ordinary" lawyers who can also practice law, with the exception of Attorneys at Law (sworn advocates), who have their own system of ensuring professional responsibility. Thus, if such a lawyer is appointed as arbitrator she need take no administrative, ethical or other professional responsibility for her action.[16]

Moves have been made in the right direction, however. For instance, the Arbitration Court of the Latvian Chamber of Commerce and Industry has accepted an Arbitrators' Ethics Code (the first in the country to do so), realizing that written norms (rules) are more difficult to violate.

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[15] "If the parties lay down requirements regarding the arbitrators' linguistic abilities, the Court takes these into account, unless the parties expressly or implicitly waive them. If, for example, the arbitration clause states that the language of the proceedings is to be English, and that no person shall be appointed as arbitrator who does not speak English, the Court will not in principle confirm an arbitrator who does not satisfy this requirement": Castineira E. and Petsche M. The Language of the Arbitration: Reflections on the Selection of Arbitrators and Procedural Efficiency. 17 ICC INTERNATIONAL COURT OF ARBITRATION BULLETIN, No.1-2006, p. 38

[16] In other countries, arbitrators' duties are regulated by professional laws. For example, some of these are administrative in nature – a practicing lawyer receives a license to practice law, and that license may be withdrawn or other sanctions may be imposed by whoever issued the license. Some regulations may be issued by the state or a private body excising a public function or a private body as an association of private law. *See*, THE LEADING ARBITRATOR'S GUIDE TO INTERNATIONAL ARBITRATION (Newman L.W. and Hill R.D. ed). Juris Publishing, 2004, p.483

No setting aside procedures

An additional issue needs to be raised regarding the case at hand. The Civil Procedure Law provides that any award issued by arbitration in Latvia is final and should not be set aside.[17] This provision has created a dangerous situation, since even if enforcement is not granted by the court, the arbitral award remains in force and can serve as res judicata in other proceedings.

The Constitutional Court of the Republic of Latvia has raised this question in one of its judgments:

> *"At the moment in the Civil Procedure Law [...] there are no norms which determine the procedure for setting aside the arbitration court judgment, even if the issuance of a writ of execution is not requested. Taking into consideration the frequently expressed criticism of the performance of the arbitration courts and prima facie noticeable faults in the regulation of the issuance of a writ of execution, the [accepted international standards] for contesting the arbitration court judgment in Latvia, would be of especially great importance."*[18]

However, the situation remains unresolved.

Compulsory enforcement of award

The only opportunity to object to an award is when the court issues an order of compulsory enforcement (the writ of execution). The court can refuse to enforce an arbitral award and issue the writ of execution if the losing party provides sufficient evidence mirroring that listed in UNCITRAL Model law Article 34, with the exception that the law does not provide the possibility for the court to refuse issuing the writ of execution on public policy grounds.

Prior to the 2005 amendments, Latvian Civil Procedure Law did not provide for a specific order to be given to inform the other party about the initiation of the process for issuing of a writ of execution. Despite the *res judicata* of the Commercial Arbitration Court's award, the representatives of the Swedish company submitted an application for the issuing of the writ of execution to Riga Vidzeme Regional Court, a court of first instance. The Latvian company was not informed of these proceedings.

Moreover, as the Law provided that an application for the writ of execution must be submitted to the district court in which the *situs* of the arbitration institution

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[17] CIVIL PROCEDURE LAW, Article 528.

[18] Judgment of 17 January 2005, THE REPUBLIC OF LATVIA CONSTITUTIONAL COURT CASE NO. 2004-10-01: "On the Compliance of Section 132 (Item 3 of the First Part) and Section 223 (Item 6) of the Civil Procedure Law with Article 92 of the Republic of Latvia Satversme (Constitution), para. 10, http://www.satv.tiesa.gov.lv/ENG/Spriedumi/10-01(04).htm

was registered,[19] the Swedish company also submitted the same application for the execution of the award to another court of first instance, Riga Ziemelu Regional Court, as the legal address of the arbitration institution had recently changed.

In both courts, the Latvian company submitted its objections based on Article 536 (3) of the Civil Procedure Law, arguing that the arbitration court was not established, or the arbitral proceedings did not take place, according to the provisions of the arbitration agreement and the Civil Procedure Law. The judges subsequently refused to issue a court order to enforce the award. The Swedish company submitted appeals for both decisions. The appellate court, Riga Regional Court, held two separate hearings on each appeal, leaving the decisions in force. The case came to a happy end for the Latvian company, even though theoretically both awards are still in force.

The situation could have been be different had the court of first instance issued the writ of execution. For the Latvian company had no other legal remedy, as the Civil Procedure Law does not provide one with the option of appealing a court's decision to issue a writ of execution. The Constitutional Court of the Republic of Latvia has expressed concern that this violates the guarantees enshrined in Article 92 of the *Satversme* and Article 6 of the Convention.[20]

Ad hoc awards

Even though not relevant to the case above, it should be noted that, in addition to the new amendments, the Latvian Parliament has made an unfortunate change to the title of Article 534 of the Civil Procedure Law. Translating the text verbatim, it now states that only awards of permanent arbitration courts can be executed. What will happen to *ad hoc* awards? No one knows, but we know that they will not be enforced.

Conclusion

The new amendments to the Civil Procedure Law regarding arbitration have not filled all the gaps in this reckless and misconceived body of law. Thus Latvia remains unique in having an excessive number of arbitration institutions; a questionable arbitration process; and a different understanding of ethics, impartiality, independence and due process. Only in such a legal environment could so absurd a situation as that described earlier take place, where a case

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[19] Current formulation of the relevant article states: "When a court receives an application for the writ of execution, the application shall be sent to the other party by registered mail and not less than 10 to 15 days shall be given to the Respondent for submitting explanatory notes (Article 534)

[20] Judgment of 17 January, 2005, THE REPUBLIC OF LATVIA CONSTITUTIONAL COURT CASE NO. 2004-10-01: "On the Compliance of Section 132 (Item 3 of the First Part) and Section 223 (Item 6) of the Civil Procedure Law with Article 92 of the Republic of Latvia Satversme (Constitution), para 10. *http://www.satv.tiesa.gov.lv/ENG/Spriedumi/10-01(04).htm*

between the same parties and on the same subject is heard in two different arbitration courts and then two applications to enforce each of the awards are submitted to two different first instance courts.

In September 2005, the Ministry of Justice established a new working group to draft the New Arbitration Act; but, after a change of government, the draft law was put back on the shelf.

Nevertheless, we should mention that one positive aspect of having so many arbitration institutions is that the arbitration courts hear numerous cases, thus lightening the workload of the state courts. For example, in 2004 the courts of first instance issued 7374 writs of execution but in 2005, only 6390. Interestingly enough, the courts of first instance reviewed and rendered judgments in 8018 cases regarding claims of loss and damage in 2005 and 8918 in 2004[21]. Thus it may be concluded that the arbitration courts hear an almost equal number of the relevant cases as state courts. Meanwhile, in 2004, writs of execution were refused to issue in 241 cases; but in 2005, this figure was 167.

Finally, we believe that the Latvian Government will have to enact legislation to ensure fair arbitral proceedings and requisite supervision of the arbitral courts, as such legislation would be necessary to ensure impartial and neutral venues for the settlement of domestic and international commercial disputes.

[21] Report of the Ministry of Justice on civil cases in the courts of first instance of the Republic of Latvia in 2005 and 2004: http://www.tm.gov.lv/lv/[illegible]/materiali/ statistika_civillietas.html, in Latvian