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Commercial arbitration as non-state economy justice

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Table of contents.

Introduction 4

Part 1. General issues of commercial arbitration 10

Chapter 1 – Theory of commercial arbitration 10
1 - Concept and types of commercial arbitration 10
2 - Principles of commercial arbitration 25
3 - Advantages and disadvantages of commercial arbitration 43
Chapter 2 – Legal regulation of commercial arbitration 52
1 - Legislation governing commercial arbitration in various countries 52
2 - International law on commercial arbitration 62
3 - Arbitral tribunals 70

Part 2. Procedural Issues of arbitral proceedings 78

Chapter 1 – Issues of jurisdiction in commercial arbitration 78
1 - Arbitral agreement 78
2 - Arbitrability of disputes 96
3 - Competence of arbitral tribunal 114
Chapter 2 – Procedural issues of preparation of arbitral proceedings 125
1 - Applicable law in arbitral proceedings 125
2 - Place and language of arbitral proceedings 138
3 - Arbitration costs and fees 147
4 - Statement of claim in arbitral proceedings 153
Chapter 3 – Legal status of participants in arbitral proceedings 163
1 - Legal status of the arbitrator 163
2 - Legal status of the parties and the third parties to arbitration 176
Chapter 4 – Issues of procedure for arbitral proceedings 184
1 - Procedure for arbitral proceedings 184
2 - Evidence and proof 193
3 - Interim measures 203

Part 3. Arbitral award 209

Chapter 1 - Legal features of arbitral award 209
1 - Concept and types of arbitral award 209
2 - Procedure for arbitral award 222
Chapter 2 - Challenging an arbitral award 230
1 - Procedure of challenging an arbitral award 230
2 - Procedure for cancellation of arbitral award 235
Chapter 3 - Execution of arbitral award 252

Part 4. Problems of commercial arbitration, and way of their decision 264

Conclusion 282

Bibliography 287

Abbreviations.

UNCITRAL Model Law 1985 - *UNCITRAL "Model Law on International Commercial Arbitration" of June 21, 1985 (with changes of July 7, 2006).*
UNCITRAL Arbitration Rules 2010 - *UNCITRAL Arbitration Rules of 2010 adopted by UN resolution No 65/22 (with changes of 2013 adopted by UN resolution No 68/109 and of 2021 adopted by UN resolution No 76/108).*
New York Convention 1958 - *UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, June 10, 1958).*
European Convention 1961 - *European Convention on Foreign Trade Arbitration (Geneva, April 21, 1961).*
CIS Model Law - *Model Law «On Arbitration Tribunals and Arbitration Proceedings», adopted by the Inter-Parliamentary Assembly of States Members of the Commonwealth of Independent States, Resolution No. 45-6 of November 25, 2016.*
UNIDROIT Principles 2016 - *Principles of International Commercial Contracts.*
Italian Code - *Codice di procedura civile, Libro IV, Titolo VIII Dell'arbitrato.*
US FAA - *United States Federal Arbitration Act, United States Code Title 9. 1925.*
US UAA - *Uniform Arbitration Act (Last Revisions Completed Year 2000).*
Canadian Act of 1985 - *Commercial Arbitration Act (year 1985, assented to June 17, 1986).*
Ontario Act - *Arbitration Act, S.O. 1991, chapter 17, Ontario, Canada.*
BC Act - *Arbitration Act, SBC 2020, British Columbia, Canada.*
Finnish Act - *Law on Finland "On Arbitration" No. 967/1992, dated 23.10.1992.*
Swedish Act - *Law of Sweden "On Arbitration" No. SFS 1999: 116 dated 01.04.1999.*
Norwegian Act - *Law of Norway "On Arbitration" of May 14, 2004 No. LOV-2004-05-14-25.*
Danish Act - *Law of Denmark "On Arbitration" of June 24, 2005 No. 553.*
Icelandic Act - *Law of Iceland "On contractual arbitration" of May 24, 1989 No. 53/1989.*
English Act - *Arbitration Act of England 1996.*
French Code - *Code de procédure civile. Livre IV: L'arbitrage.*
Lithuanian Act - *Law of Lithuania "On Commercial Arbitration" of April 2, 1996 No I-1274.*
Russian Act 2015 - *Federal Law "On Arbitration (Arbitration Proceedings) in the Russian Federation" of December 29, 2015 No. 382-FZ.*
Russian Act 2002 - *Federal Law "On Arbitration Tribunals in the Russian Federation" of July 24, 2002 No. 102-FZ.*
Russian ICA Act 1993 - *Federal law "On international commercial arbitration" of July 7, 1993 No 5338-1.*
AAA Rules - *Rules of the American Arbitration Association.*
AAA Code of Ethics - *Code of Ethics for Arbitrators in Commercial Disputes.*
AAA Appelate Rules - *Optional Appellate Arbitration Rules.*
SCC Arbitration Rules - *Rules of the Arbitration institute of the Stockholm Chamber of Commerce.*
ICC Arbitration Rules - *Rules of the International Chamber of Commerce International Court of Arbitration.*
LCIA Rules - *Rules of the London Court of International Arbitration.*
ICAC Arbitration Rules - *Rules of the International Commercial Arbitration Court.*
MAC Arbitration Rules - *Rules of the Matrime Arbitration Comission.*
DIA Arbitration Rules - *Rules of the Danish Institute of Arbitration.*
CAM Arbitration Rules - *Rules of the Camera Arbitrale di Milano.*
VCCA Arbitration Rules - *Rules of Vilnius Court of Commercial Arbitration.*

Introduction.

Currently, various forms of legal dispute resolution alternative to state justice, including commercial arbitration, are becoming more widespread in the modern world. This is due to the development of economic circulation and business activity, as well as an increase in the volume of domestic and international economic legal relations.

My research is very actual now because commercial arbitration gets the big influence in the modern world. In many aspects it is connected to intensity and evolution of national and world economy. In the modern period arbitration tribunals are more and more distributed in many states that specify an actual need in expansion of practice of the commercial arbitration inside the countries, and abroad.

There are many advantages of arbitration tribunals before state courts, which will be researched in detail in this thesis. It can be indicated that parties to arbitration proceedings have incomparably broader rights in determining the place of trial, applicable law, trial procedure and other procedural matters. Parties can independently appoint arbitrators and be confident in their qualifications.

Arbitration is essentially a contractual institution. Dispute resolution is initiated by the parties to conflicts themselves. Therefore, an individual approach to each specific dispute is observed. Arbitral award, as a rule, is executed by the parties voluntarily. The award of arbitration tribunal cannot be compulsorily executed without state court decision, but there are not many reasons when state court can give up in enforcement of an arbitral award.

These advantages promote development of arbitration institute of arbitration in the modern world as many subjects of economy relations fairly believe that activity of arbitration tribunals in protection of their rights and interests will be more effective than activity of state courts. Objectively, arbitration is the form of jurisdiction that is most consistent with a market economy.

Now there are many blanks and lacks of the legislation regulating arbitration sphere, and the further work on their improvement is necessary for the arbitration science. Those blanks and lacks can create problems in arbitration practice and activities of arbitration institutions.

Some countries, includes European Union states and the USA have old traditions of legislative control of economy relations and a legal protection of economy subjects. It causes high development of their arbitration system, which experience is useful for research.

Other states, including the Russian Federation and countries of the former USSR, have

more recent traditions in the arbitration sphere. Nevertheless, in the process of formation and development of arbitration institution, a unique theoretical and practical material useful for further research was developed.

The above facts indicate the relevance of the research topic and necessity for a full and comprehensive study of the arbitration procedure and ways to improve it.

In the present thesis the author explores a set of legal relations arising in the process of arbitration trial in order to protect the rights and interests of economic entities. Object of the research is commercial arbitration as an institution of non-state economic justice.

Subject of the research represents the objective analysis of procedure of consideration of disputes in arbitration tribunals, and also research of the legislation regulating arbitration legal proceedings, revealing in it of blanks and lacks. The international legislation and legislation of various states as well as the rules of leading arbitration institutions are researched. The author researches arbitration law and practice of both states with great experience in development of the arbitration sphere, and states with relatively recent traditions in this field.

Propose of the research is a complete and objective analysis of the procedural features of arbitration proceedings, from conclusion of arbitration agreement to execution of arbitration award. Issues and problems of legal regulation of procedural legal relations arising in connection with arbitration proceedings are analyzed. Definition of the basic problems in arbitration and development of recommendations about their solving are making.

For achievement of the specified purposes of this research it is necessary to resolve the following issues.

Analysis of legislation of different countries, international legislation and conventions regulating commercial arbitration.

Analysis of regulations, rules, title documents and activity of leading world and national arbitration institutions.

Analysis the features of procedural regulation of arbitral proceedings at all stages from conclusion of arbitration agreement to execution (or cancellation) of arbitration award.

Comparison characteristics and regulations of arbitration in different countries.

Development and formulation of conclusions about advantages and disadvantages of arbitration practice and legislation in different countries.

Development and formulation of conclusions about trends and directions of the future commercial arbitration in the modern world.

Development and formulation of conclusions and recommendations for improving legal and procedural regulation of arbitration.

Definition of possible unified global legal standards governing the institution of commercial arbitration.

Methodological basis of the research.

This research is devoted the institute of commercial arbitration as non-state economy justice, the purpose of which is protection of rights and interests of economy entities.

Author explores both international and national commercial arbitration, but more attention is paid to national arbitration. Because, the legal regulation and practice of international commercial arbitration are now strongly unified in most states. Legislative regulation and practice of national arbitration are differs in various countries but based on general principles and postulates.

Legal basis of the research.

In this thesis, the author uses a national legislation of a number of states, selected in accordance with the following principles.

Firstly, the legislation of states with a high development and level of commercial arbitration system, due to long-standing arbitration traditions, is analyzed. It is reasonable to consider the laws of states, both the continental and common law systems.

For this research Italy and Sweden are chosen as the basic states of continental law system, as countries with highly developed traditions of commercial arbitration.

Finland and Norway were chosen as additional states of continental law system. In these countries, an institution of commercial arbitration is also quite developed and widely used, but its history, traditions and experience are not so well known in modern jurisprudence.

The United States of America was chosen as the basic state of common law system, as a country with a highly developed tradition of commercial arbitration and widespread use of this method of resolving commercial disputes.

Additionally, the legislation of Canada and the UK is being researched. The UK has a very long history of commercial arbitration and interesting arbitration practice in the modern period. Canadian legislation has developed under an influence of the jurisprudence of these two countries, which leads to a certain originality in Canadian regulation of the institution of commercial arbitration.

Secondly, the legislation of states with relatively recent traditions in the arbitration sphere is analyzed. The Russian Federation was chosen as the basic state for research. This country has a rich history of commercial arbitration and non-state conflict resolution. But, the Soviet period was characterized by a total state economy and, accordingly, a monopoly of state economic justice. The institution of commercial arbitration in modern Russia has been developing since the 1990s, and the features of arbitration legislative regulation are of interest

for this research.

Additionally, the law of the Republic of Lithuania, which is currently part of the European Union, is being analyzed. Note that Lithuania is a republic of the former USSR and modern Lithuanian arbitration law has been developing for the last thirty years. It is noteworthy that Lithuanian law is developing under the influence of both European jurisprudence and legal traditions of the Russian and Soviet systems of law.

Note that the law of the Russian Federation and the Republic of Lithuania belong to the continental system of law.

In this research, the author also uses international legal documents. For example, the UNCITRAL Model Law on International Commercial Arbitration of June 21, 1985; the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (New York Convention); the European Convention on Foreign Commercial Arbitration of April 21, 1961 and a lot of other international legal acts. The above documents establish international legal standards in the field of commercial arbitration. Accordingly, they need to be analyzed and compared with national laws in order to achieve proposes and objectives of this thesis.

Summarizing the above. The author chose for research international legislation and the legislation of Italy, Sweden, the USA, the Russian Federation as a basic and the legislation of Great Britain, Canada, Finland, Norway, Lithuania as an additional. Note that the author considers additional legislation not in the entire content of this thesis, but only where it is necessary to disclose issues and confirm postulates and provisions.

There are a number of noticeable differences between the laws of the above states that regulate commercial arbitration, which makes it possible to compare them and develop reasonable recommendations for their improvement.

The above choice of the legal basis of research allows a representative analysis of the commercial arbitration institute and to solve proposes and objectives of this thesis.

Theoretical basis of the research.

The author uses theoretical and practical scientific works in the field of jurisprudence in general and commercial arbitration in particular. First of all, the works of authors from various European Union states, such as Italy, Sweden, Great Britain, the Netherlands, Lithuania and other countries, are studied. The works of scientists from the USA, China and other countries have been studied somewhat less.

It is necessary to especially note the wide use in this research of theoretical and practical works of legal scientists from the Russian Federation and the former USSR. Note that, unlike countries with a long history of arbitration and well-established arbitration

traditions, Russian institution of arbitration has been progressively developing over the past 30 years. During this period of development, unique experience has been accumulated and many interesting scientific studies have been carried out in Russian commercial arbitration sphere, the analysis of which is useful for achieving the proposes of this research.

The present work explores both modern sources of the last decade and sources of earlier periods if they contain relevant ideas and postulates necessary to confirm the provisions of this thesis.

The author sometimes uses his own early works, if the ideas and postulates expressed in them are relevant today and serve as a justification for the thesis provisions.

Practical basis of the research.

The research analyzes regulations of the leading world and regional arbitration tribunals of the European Union, the United States of America and the Russian Federation. The state court practice and practice of arbitration tribunals of the above countries and regions are also used.

The thesis also analyzes Russian and former USSR judicial and arbitration practice, which is rarely used and analyzed in European legal sources.

The author does not aim at a great and detailed analysis of practice of state courts and arbitration tribunals in the research area. This practice is used if it is necessary to fully disclose the issues and confirm the provisions of this work.

Scientific novelty of the research consists, that researcher gives the comparative analysis of features of arbitration proceedings and practice in a number of states with different legal systems at all stages of arbitral proceedings from conclusion of an arbitration agreement to execution (or cancellation) of an arbitral award.

The research was made of the theory and practice of commercial arbitration as an institution of non-state economy justice aimed at protecting the rights and interests of economic entities.

The main provisions and conclusions about a legal nature and forecasts for further development of the arbitration sphere, as well as proposals for improving legal regulation, have been developed.

The theoretical significance of this research is that the results and conclusions have made some contribution to European and world legal science and may contribute to further theoretical research in the commercial arbitration field.

The practical significance of this research is that the author's proposals for development and improvement of the legal regulation of commercial arbitration can be used in law-making and law enforcement activities in various countries and at international level.

Research structure.

The present study consists of four parts.

The first part deals with general issues of commercial arbitration such as: theoretical basis, types of arbitration, principles of arbitration, advantages and disadvantages of arbitration. Further, the foundations of national laws and international legal acts regulating the institution of commercial arbitration are examined. In addition, one of the paragraphs is devoted to the leading world and national arbitration institutions, their history, activities and regulation.

The second part examines the procedure for arbitration trial of disputes at main stages from conclusion of an arbitration agreement to dispute proceedings. The issues of arbitrability of disputes, competence of arbitral tribunal, legal status of participants in dispute proceedings and other procedural issues of arbitration are considered.

The third part examines an arbitration award and its legal properties. The procedure for issuing, correcting, interpreting, challenging, canceling and executing an arbitral award is considered.

The fourth part analyzes the main problems of commercial arbitration in the modern period of times and suggests ways and means of solving them. Also considered global issues and development trends of commercial arbitration in the modern world

Part 1.
General issues of commercial arbitration.

Chapter 1. Theory of commercial arbitration.

Paragraph 1. Concept and types of commercial arbitration.

Definition of commercial arbitration.

Commercial arbitration is an alternative to state justice. The objective of the arbitration is to settle legal conflicts and ensure the voluntary execution of obligations. This objective is represented in the fact that the; arbitration is chosen by the disputing parties themselves, that voluntarily entrust the decision making on their case to a certain arbitration institution and undertake to follow this decision in advance. The power of the arbitral tribunal is based not on the state law but on the contractual principle and the will of individuals. Arbitration proceedings of disputes are sometimes called «private justice»[1] not accidentally.

Commercial arbitration is designed to resolve disputes of a commercial nature, namely those related to economic and mainly commercial legal relations.

In legal science, great importance is attached to the issues of private autonomy of economic entities in arbitration legal relations[2].

Consider the definition of the term arbitration, which can be divided into three components or three approaches.

Firstly, arbitration is is defined as a legal institution that contains a set of methods for resolving disputes.

It is possible to define arbitration as «a form of dispute resolution which is based on a private agreement and which leads to a decision having res judicata effect»[3]. Also «arbitration is a contractual form of dispute resolution exercised by individuals, appointed directly or indirectly by the parties, and vested with the power to adjudicate the dispute in the place of state courts by rendering a decision having effects analogous to those of a judgment»[4].

An interesting opinion, that «international arbitration, as well as national arbitration, is the means by which a dispute can be finally resolved by a disinterested non-state arbitrator in accordance with the voluntary agreement of the parties»[5].

Also arbitration can be defined as «consensual dispute resolution method, chosen by

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[1] Lebedev S.N. International commercial arbitration and interim measures. // Moscow Journal of International Law. №1.1999. P. 62.
[2] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Giappichelli. Torino. 2015. P. 4.
[3] Huys Marcel, Keutgen Guy. L’arbitrage en droit Belge et international. Bruylant. Bruxelles. 1981. P. 21.
[4] Comparative Law of International Arbitration: Second edition. // Poudret Jean-Frangois, Besson Sebastien. Sweet & Maxwell Ltd. London. 2007. P. 3.
[5] Born G.B. International Commercial arbitration in the United States. Kluwer Law. Boston. 1994. P. 1.

the parties as an effective way to end a dispute between them without resorting to state courts. As a result of this method, binding decisions are made by private individuals who are empowered to resolve dispute»[1].

Rene David claimed that «arbitration is defined as an institution of peace, the essence of which was not to ensure the rule of law, but to ensure harmony between people»[2]

Secondly, arbitration defined as arbitral tribunal, which is understood as an organization authorized by the parties to resolve disputes.

The opinion is expressed that «the term "arbitration" may have at least two meanings. On the one hand, it means a way or method of resolving disputes, and on the other hand, it is an organization or institution that resolves a dispute and adjudicates this dispute»[3]. Really, arbitral tribunal can be defined as «organization or institution authorized to resolve disputes, usually related to commercial activities and arising between business subjects»[4].

Here is the opinion of Russian legal scholars.. According to P.V. Loginov arbitral tribunals «are special legal institutions built on a voluntary basis to resolve civil law disputes submitted for consideration by agreement of the parties»[5]. Another scientist lawyer R.F. Kallistratova points, that arbitral tribunal is «non-state organization that considers economic (civil) disputes by agreement of the disputing parties»[6]. Moreover, arbitration tribunal is defined as «a jurisdictional organization elected by agreement of the parties to resolve a specific dispute of certain categories or all disputes of a civil law sphere that have arisen or may arise between them, with the obligation to comply with the decision of this tribunal»[7], or as « public amateur organization, which is organized to consider each individual legal dispute by the parties to this dispute themselves»[8], or as « jurisdictional formation of a private nature, designed to resolve civil law disputes»[9].

An interesting position of the Supreme Court of the Russian Federation, which indicates that «historically, an arbitration tribunal is a dispute resolution organization,

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[1] Redfern A., Hunter M., Blackaby N. Law and Practice of International Commercial Arbitration (Fourth edition). Sweet&Maxwell. London. 2004. P. 1.
[2] David R. Arbitration in International Trade. Kluwer Law and Taxation Publishers. Boston. 1985. P. 29.
[3] Ademi A. Zgjidhja e kontesteve tregtare para arbitrazhit tregtar ndërkombëtar: Disertacion për mbrojtjen e gradës shkencore “Doktor”. Tirane. 2015. P. 27.
[4] Jarrosson Ch. La notion d’arbitrage. Paris. 1987. P. 3.
[5] Soviet civil process. // edit. A.A. Dobrovolsky. Moscow. 1979. P. 338.
[6] Judicial system of Russia: Manual. Moscow. 2000. P. 239.
[7] Arbitration process: Manual. // Edit. Ya. Farkhtdinov. St. Petersburg. 2003. P. 377.
[8] Ivanov O.V. The rights of citizens in the consideration of civil cases. Moscow. 1970. P. 111.
[9] Gimazova E.N. Civil law means of providing arbitration protection of subjective civil rights: Candidate of legal sciences thesis (PhD). Kazan. 2007. P. 21.

including, in case of business associations between participants in such an association, a tribunal of a third party»[1].

Thirdly, arbitration proceedings, which refers to the process of disputes proseedings by arbitral tribunals.

«Arbitration may be described in general terms as a consensual, private process for the submission of a dispute for a decision of a tribunal, comprising one or more independent third persons»[2]. Arbitration proceedings is «an easy way to resolve disputes as it is passed on to ordinary people (arbitrators) whose qualifications are the sole reason for their selection as an arbitrator»[3]. Also «part of the doctrine instead looks at arbitration as a process aimed at producing a decision with effects as similar as possible to those of the sentence rendered by the state judge»[4].

Pay attention to the statement, that arbitration proceedings represents «procedure for the consideration of legal disputes, carried out not by a state court, but by an arbitral tribunal elected (appointed) in the manner agreed by the parties or arbitrators, determined by law, in order to make a final decision binding on the parties»[5]. Further, «arbitration proceedings in the international private law defined as consideration of disputes in arbitration tribulals elected or specially created by the parties to economic contracts for the consideration of disputes that have arisen between them»[6].

Moreover, arbitration proceedings defined as «procedure for resolving a dispute by an independent, neutral person (arbitrator), elected by the parties and having the authority to issue a binding decision for the parties»[7], or «procedure for the consideration of legal disputes, carried out not by a state court, but by an arbitral tribunal elected by the parties»[8].

Some authors gives definition of arbitration, combining these approaches.

For example, Dmitrieva G.K. claims, that «the term commercial arbitration is used, firstly, to refer to the whole mechanism for resolving commercial disputes; secondly, to

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[1] Ruling of the Supreme Court of the Russian Federation dated March 19, 2015 in case No. 310-ES14-4786. // https://www.garant.ru
[2] International Arbitration: a handbook. Third edition // Capper Philipp. Lowels. London, Singapore. 2004.
[3] Redfern A., Hunter M., Blackaby N. Law and Practice of International Commercial Arbitration (Fourth edition). Sweet&Maxwell. London. 2004. P. 2 .
[4] Commentario breve al diritto dell'arbitrato nazionale ed internazionale. // edit by Massimo V. Benedettelli M.V., Consolo C., Radicati Di Brozolo L.G. CEDAM. Padova. 2010. P. 806.
[5] Zaitsev A.I. Arbitration proceedings in Russia (problematic aspects): Candidate of legal sciences thesis (PhD). Saratov. 2004. P. 22.
[6] Boguslavsky M.M. International private law. Moscow. 2004. P. 55.
[7] Nosyreva E.I. Alternative resolution of civil disputes in the United States. Voronezh. 1999. P. 103.
[8] Vinogradova E.A. Legal basis for the organization and activities of the arbitration court. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 1994. P. 10.

designate the organization created to consider such disputes; thirdly, to designate a specific composition of arbitrators (or a sole arbitrator) considering a specific dispute»[1].

One should agree with the point of view that such a narrow definition of the term "arbitration" within the framework of one of the above approaches is not entirely correct. Arbitration should be understood more than just the process of litigating a dispute. Arbitration is understood not only as a process, but also as a system of legal relations that goes beyond the procedure of the proceedings. This system of legal relations is based, first of all, on a system of contracts that provide an opportunity to apply to a non-state jurisdictional organization[2].

It is obvious that in the theory of legal science there is a discussion and different opinions about the definition of arbitration. In the next chapter the author will consider definitions of arbitration given in the legislative acts of various states.

Non-state nature of commercial arbitration.

The most significant aspect of the legal nature of the Institute of arbitration is its non-state pattern that makes it possible to distinguish it from the state court. The arbitral tribunal has the competence to consider a dispute only in case if there is an arbitration agreement between the parties that confirms the existence of a clear consent of both parties. The state court is a body of the judicial power that has competence due to the direct reference of the national law, not by agreement of the parties. Therefore, the state court and arbitration tribunal are independent legal institutions of different legal nature. It seems that the arbitration trial of disputes is an important part of the legal sphere of non-state economic justice.

Arbitration tribunals are not organizations of the state judiciary and therefore are not included in the state judicial system of any of the countries. «Arbitration has a function in a certain sense replacing state jurisdiction»[3].

The state court is part of the judicial authorities of the state, vested with competence by virtue of legislation and direct indication of national law, and not by virtue of an agreement of the parties.

Accordingly, the state court and commercial arbitration are independent jurisdictional bodies having a different legal nature. In practice, this difference is manifested in the fact that

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[1] International private law. // edit. Dmitrieva G.K. Moscow. 2006. P. 627.

[2] Gaidaenko Sher N. I., Doronina N. G., Semilyutina N. G. New Federal Law "On Arbitration (arbitration proceedings) in the Russian Federation" and prospects for the development of international commercial arbitration. // Bulletin of International Commercial Arbitration. 2017. No. 2 (15). P. 32–46.

[3] Corso di diritto processuale civile / 3: L' esecuzione forzata, i procedimenti speciali, l'arbitrato, la mediazione e la negoziazione assistita. // Mandrioli C., Carrata A. Giappichelli. Torino. 2019. P. 51.

a number of procedural issues arising in the course of arbitration proceedings can be resolved with the direct participation of the state court using its power.

Therefore, one of the most important circumstances that should be taken into account when choosing between arbitration and a state court is that the former operates according to special procedural rules that are different from the rules contained in the national procedural law.

Autonomy of will of the parties.

Arbitration is one of the most appropriate forms of jurisdiction for the market economy, as it involves the possibility of choosing arbitrators from the amount of independent qualified specialists on the initiative of the parties of the conflict and, therefore, implies an individual approach to every particular dispute. The ex-isting opportunity for the parties to choose a judge on their own is one of the basic principles of the organization of the arbitration proceedings and an important factor in protecting the rights and interests of the parties.

Note, that «purpose of arbitral proceedings is settlement of emerging or potential legal conflicts and ensuring the voluntary fulfillment of obligations»[1].

During the execution of economic transactions between the parties to economic relations, disagreements and disputes are possible, which they can try to resolve peacefully through negotiations. This way is the most economical and acceptable. However, negotiations do not always lead to the desired result. In this case, the party whose right has been violated may use the state judicial system or arbitration to protect their legitimate rights and interests.

The obligatory condition for the dispute to be redirected to the arbitral tribunal is the existence of a valid arbitration agreement between the parties. «The conditions of validity of the arbitration agreement are determined in accordance with the civil law applicable to civil transactions»[2] The parties conclude this agreement voluntarily and independently determine what elements it will consist of. They voluntarily agree on the arbitrators who will consider the dispute and on the compulsory and voluntary execution of the decision of the stated arbitrator.

It appears that «the interest of the parties in the proceedings is in the arbitration trial of disputes and in the judgement, delivered by a third party, not interested in the matter of the dispute. As a result, the dispute is finally resolved»[3].

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[1] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod. 2007. P. 10.
[2] Vladimirova S.A. Legal nature and significance of the arbitration agreement: autoref. diss. ... candidate of law sciences (PhD). Moscow. 2007. P.14.
[3] Anisimov A. Gavrilenko V. Modern problems of arbitration in land disputes. // Conflict Studies Quarterly. CSQ. Accent Publisher. Cluj-Napoca. Romania. 2019. P. 5.

Actually, «the arbitration agreement, through which the parties, in the exercise of their negotiating autonomy, freely choose to have one or more disputes decided by arbitrators, precluding the judicial authority from a ruling on the merits of the same, if not possibly following the lapse of the award, for as long as this pact remains effective»[1].

The parties to the dispute have the right to provide for any rule of arbitration procedure in the arbitration agreement. The restriction of such freedom is the legal norms of the relevant laws and the reservation on public order, according to which the parties cannot establish procedural rules that violate the public order of the country in whose territory the arbitration tribunal operates.

It seems, that «there is no doubt that each type of the economic activity has its own specific features that must be taken into account and this leaves its mark both on the choice of arbitrators and on the cases considered»[2].

Types of arbitral tribunals.

Arbitral tribunals are divided into two types: permanent arbitration institutions and single-time (ad hoc), they are created for consideration of a particular dispute. The rules adopted by these arbitration institutions are applied to the activities of the permanent arbitration institutions. The set of the above rules is called the regulations of the appropriate arbitration institution. Finding resolution to a dispute in an isolated arbitration (ad hoc) established to consider a particular dispute, the arbitrators and the parties of the dispute should determine the procedural rules which they will follow. They may develop such rules themselves or agree that their dispute will be resolved in accordance to the model arbitration rules. It should be noted that ad hoc arbitral tribunals significantly differ from permanent arbitral tribunals. Rules of permanent arbitral tribunals are fixed and are mandatory for the parties. Rules of ad hoc arbitral tribunals prescribed by the parties in arbitration agreement or set by the arbitrators.

Arbitration ad hoc — this is one or more individuals (arbitrators) elected by the parties due to the need to resolve only one economic and legal dispute. The competence of arbitrators in this case is limited only to the scope of the trial of one case, after which the arbitrators lose their status and cease their activities. There is no organizational structure, and arbitrators are not full-time employees, but act as individuals, endowed with the trust of the parties. Also,

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[1] Commentario breve al diritto dell'arbitrato nazionale ed internazionale. // edit by Massimo V. Benedettelli M.V., Consolo C., Radicati Di Brozolo L.G. CEDAM. Padova. 2010. P. 807.

[2] Anisimov A. Gavrilenko V. Modern problems of arbitration in land disputes. // Conflict Studies Quarterly. CSQ. Accent Publisher. Cluj-Napoca. Romania. 2019. P. 4.

arbitration ad hoc has the property of efficiency, which allows without unnecessary formalization to resolve a conflict situation.

Note that methods can be used that allow the parties to avoid the complex work of independently regulating the dispute resolution procedure. It is possible to use one of the standard rules for arbitration. These are the Arbitration Rules of the United Nations Economic Commission for Europe of 1966, the Rules for International Commercial Arbitration of the United Nations Economic Commission for Asia and the Far East of 1966, the Arbitration Rules of the United Nations Commission on International Trade Law of 2010. The above regulations govern the activities of isolated (ad hoc) arbitral tribunals and not institutional arbitral institutions.

I also indicate that «recently, the practice of facilitating ad hoc arbitrations by permanent arbitration centers has become quite widespread, which, if economic entities intend to submit their disagreements to ad hoc arbitration, can assist in the appointment and removal of arbitrators, the organization of the hearing of the case, including the provision of premises and support staff for this purpose»[1].

«The advantages of ad hoc arbitration are possibly to become apparent when it is used towards a dispute that has already appeared. Knowing the nature of the dispute, and having an understanding of the circumstances related with the dispute, the parties may work out their ad hoc rules so that they corresponds properly with the requirements of the particular dispute»[2].

Moreover, there are another advantages of ad hoc arbitrations, such as maximum autonomy of the parties in the choice of procedural rules and resolution of other issues in the course of arbitration, shorter dispute resolution time, lower cost due to reduced administrative costs, completely private nature of arbitration.

Also indicate the negative aspects of ad hoc arbitration, such as the complexity of its organization and formation, high dependence on the quality and completeness of the arbitration clause, less protection from the bad faith of the parties in the performance of their obligations.

In world practice, a significant part of arbitration disputes is considered by permanent arbitration institutions.

Some of law scientists asserts, that ad hoc arbitral tribunals are now only invoked in exceptional cases[3].

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[1] Nikolyukin S.V. World transactions as regulators of commercial conflicts. Moscow: Yurlitinform. 2011. P. 150.
[2] Huleatt-James M., Gould N. International commercial arbitration. London: LLP. 1999. P. 35.
[3] Wuhler N. Mixed Arbitral Tribunals. // Encyclopedia of Public International Law (Bernhardt). Vol. 1. 1981. P. 142-146

In the activities of permanent or institutional arbitral institutions, the rules adopted by the said arbitral institutions shall apply. The set of the above rules is called the Rules of the respective arbitral institution.

Permanent arbitration institutions have permanent administrative authorities that performs administrative, economic and control functions, but does not deal with the dispute.

Institutional arbitration has many advantages. These include the certainty and orderliness of the arbitration procedure, including the manner in which arbitrators are appointed; high qualification of arbitrators as the most authoritative and qualified specialists in their respective fields; clear and definable reputation of arbitration; high-quality administration of activities, ensured by the presence of the necessary technical apparatus.

In my opinion, the following point of view is justified. «A large number of arbitrations established to resolve a specific dispute (ad hoc arbitration) have failed due to the fact that the parties in their arbitration agreement did not properly resolve possible procedural and organizational issues. It is clear that as the conflict situation develops, the parties show less and less desire to cooperate with each other. The arbitration rules of institutional arbitration tribunals are designed to ensure the effective conduct of arbitration proceedings with the subsequent issuance of an enforceable arbitral award, regardless of the degree of conflict between the parties»[1]. The arbitration rules of institutional arbitration tribunals are designed to ensure the effective conduct of arbitration proceedings with the subsequent issuance of an enforceable arbitral award, regardless of the degree of conflict between the parties.

The author will describe in more detail the leading world institutional arbitrations in one of the following paragraphs. In further work on research of the arbitration procedure, as a rule, the experience of institutional arbitrations will be used.

Arbitration institutions can be also divided into international commercial arbitration and "internal" arbitral tribunals, that resolve disputes of subjects within the country[2]. International commercial arbitration is an arbitral tribunal, the main purpose of which is to hear an international com-mercial dispute in accordance with the determined procedural order, that result in the decision making compulsory for both parties. Note that the presence of an extensive international legal framework has great importance for the interna-tional commercial arbitration. Its activity is based on a large number of interna-tional conventions. International commercial arbitration is created in order to re-solve disputes of special

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[1] Mayshev M.V. Impact of the Uncitral Model Law 1985 on regulation of international commercial arbitration in Germany: Diss. ... candidate of law sciences (PhD). Moscow. 2011. P. 59.

[2] Alekseev M.A. Transformation of the role and legal basis of the competence of the International Commercial Arbitration Court in modern economic activity: Autoref. diss. ... candidate of law sciences (PhD). Volgograd. 2012. P. 4-5.

category, particularly disputes arising from civil law, and mainly trade transactions, that include a mandatory “foreign element” in one form or another. The parties of the considered dispute should belong to different legal systems and national jurisdictions.

Consider the opinions of legal scientists on the similarities and differences between these types of arbitration.

«Despite the specifics of international commercial arbitration, its significant differences from the "internal" arbitration courts, the issues of normalizing the activities of both those and others are nothing more than issues of legal technique»[1]. In the legal literature, there is a point of view that there is no fundamental obstacles to a single legal act regulating the activities of both international and "internal" commercial arbitrations[2]. Really, the issue of an identical legal regime for international and domestic commercial arbitration is relevant.

Turn to the experience of various states, which shows that the regulation of the activities of international and "internal" commercial arbitration can be carried out both through a single normative act, and with the help of two laws..

For example, in Italy, Finland, Norway, England, the USA, Lithuania, Kyrgyzstan and a number of other states, there are uniform legislative acts regulating the institutions of international and "internal" arbitration.

At the same time, in the Russian Federation, many provinces of Canada, Switzerland, Kazakhstan, Tajikistan and a number of other states, "internal" and international commercial arbitration is regulated by various legal acts.

It seems that international arbitration generally has a much greater degree of freedom from national courts than "internal" arbitration.

Of interest Arbitration Act 1996 of England[3], acting in England, Wales and Northern Ireland. At the time of its adoption «there were discussions about whether two laws were needed or whether one law on arbitration should be limited. As a result of these discussions, a kind of compromise was reached. The legislator adopted one law regulating the activities of both international and internal arbitration tribunals (arbitrations), however, this law contains special provisions on the specifics of the functioning of internal commercial arbitrations»[4].

In one of the following paragraphs, the author will consider in more detail the current legislation on arbitration of various states and analyze the feasibility of an identical or

[1] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. St. Petersburg. 2006. P. 253.
[2] Novikov E.Y. To the issue of the legal nature of arbitration proceedings. // Russian Yearbook of Civil and Arbitration Procedure. No. 2. 2002-2003. St. Petersburg. 2003. P.310.
[3] Arbitration Act of England 1996. // https://www.legislation.gov.uk/ukpga/1996/23
[4] Soderlund K. Arbitration laws of England, Sweden and Russia: a comparative analysis. // Legislation and economics. 2004. No. 4. P. 36.

different legal regime for domestic and international arbitration.

Arbitration institutions can be also divided into institutions general competence or universal and institutions special competence.

The universal arbitration tribunals can consider various disputes, not limited to a specific area of legal relations. Example of such tribunals are ICC International Arbitration Court, London International Arbitration Court, American Arbitration Association, International Commercial Arbitration Court (Moscow) and many others.

Specialized arbitrations resolve disputes in a specific economic sector. There is a choice of highly specialized areas for resolving economic sphere.

The criterion for specialization of the arbitration tribunal in resolving disputes related to a certain category is not really a separate branch or sub-branch of law, but a set of legal relations united by a sign of similarity, for example, exchange law, construction law, investment, logistics and others. Examples of such tribunals are Matrime Arbitration Comission (MAC), International Air Transport Association (IATA), International Centre for Settlement of Investment Disputes (ICSID) and many others.

There is an interesting division of arbitration in Italian legislation. Examine The Italian Code of Civil Procedure, Book 4, Title 8 Arbitration, enacted by Decree No. 1443 of 10/28/1940[1] This was last amended by Legislative Decree No. 40 of 2 February 2006[2] (hereinafter Italian Code). Arbitration devided into arbitrato rituale (Articles 806–831 of the Italian Code) and arbitrato irrituale (Article 808 - ter of the Italian code).

Arbitrato irrituale carried out without strict observance of the norms of law and ends with an act (lodo irrituale), based on private autonomy, which in its legal force is equal to a settlement agreement. The parties of conflict turn to arbitrators with a request to help reach mutually acceptable options for a friendly resolution of the dispute. «The result of such activity can be recognized as an agreement of the parties and is considered as an expression of their own will»[3]. The arbitral award has only a contractual effect and cannot be enforced under the rules applicable to awards of arbitrato rituale. The main meaning of this type of arbitration «is to conclude an agreement by which the parties jointly grant "informal" arbitrators the power to resolve the dispute by concluding a new agreement, which will be recognized as an expression of their own will to conclude a contract»[4]. I notice, that «by concluding such an agreement, the parties waive the right to refer the dispute to the state

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[1] Codice di procedura civile, Libro IV, Titolo VIII Dell'arbitrato. Regio Decreto 28 ottobre 1940, n. 1443 in G.U. 28 ottobre 1940. // https://www.gazzettaufficiale.it/home
[2] Decreto legislativo, 02.02.2006, n° 4.0, G.U. 15.02.2006. // https://www.gazzettaufficiale.it/home
[3] Amato A., Costagliola A. Compendio di Diritto processuale civile. Santarcangelo di Romagna. 2011. P. 376.
[4] Kurochkin S.A. Arbitration in Italy. // Journal Arbitration Tribunal. No. 3 (81). 2012. P. 150.

court, leaving the dispute resolution in the contractual field»[1].

Arbitrato rituale constitutes the traditional arbitration of the dispute as provided for and governed by the procedural provisions of the law. Note that the rules set out in the Italian Code, regulate mainly the procedure for organizing and conducting of arbitrato rituale.

Fair opinion, that «arbitrato rituale leads to judgment, while arbitrato irrituale allows the parties to reach an agreement only by contractual resolution of the disputed situation»[2]. Also a hallmark of the arbitrato rituale is the obligation to make a final decision [3].

Arbitrato irrituale is, in comparison with traditional arbitration, another way of resolving legal conflicts beyond the limits of traditional civil jurisdiction. Note tendencies of some formalization of the procedure arbitrato irrituale. For example, includimg in Article 808 - bis of the Italian Code «the requirement to enter into a special agreement on contractual arbitration in writing will probably be the reason for a significant decrease in the number of appeals to this form of arbitration»[4].

In this thesis the author mostly researches arbitrato rituale in relation to Italian arbitration, because it corresponds to the objectives of my work.

Theories of legal nature of commercial arbitration.

During a long time there is a discussion in legal science about the legal nature of commercial arbitration[5]. For better understanding of the essence of each institution, it is necessary to analyze its legal nature. In this regard, three different points of view on this issue can be distinguished.

The *contractual concept* states that the arbitration agreement underlying the submission of a dispute for resolution to arbitration is an ordinary civil law contract. The subject of which is the choice by the parties of the type of arbitration, the time and place of arbitration, the determination of arbitration procedure itself and the substantive law to be applied by the arbitrators. «The intermediate purpose of arbitration is to organize the arbitration procedure, and the ultimate purpose is to resolve the case on the merits»[6] Since an

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[1] Camilli C., Fiorelli G. New Developments in Italian Arbitration Law // The Baker & McKenzie International Arbitration Yearbook. 2009. Baker & McKenzie. 2010. P. 83.
[2] Consolo C. Spiegazioni di diritto processuale civile. Padova. 2010. P.159
[3] Ferri G. L' arbitrato tra prassi e sistemazione teorica nell'età moderna: una nuova species nel genus, dall'Ancien Régime all'Italia del novecento. Roma: Aracne. 2012. P. 15.
[4] Comparative Law of International Arbitration: Second edition. // Poudret Jean-Frangois, Besson Sebastien. Sweet & Maxwell Ltd. London. 2007. P. 24.
[5] Adam S. Jurisdiction problems in International Commercial Arbitration: A study of Belgian, Dutch, Sweden, Swiss, U.S. West German law. Zurich. 1989. and Lew Julian D. M. Applicable law in International Commercial Arbitration. New-York. 1979. P. 51-61. and Minakov A.I. Arbitration agreements and practice of consideration of foreign economic disputes M., 1985. P. 113-115.
[6] Bernard A.L. Arbitrage volontaire en droit prive. Brussels. 1937. P. 283.

arbitration agreement is based on the will of the parties to refer the dispute to arbitration, the contractual nature of such an agreement determines the contractual nature of arbitration itself.

The *procedural concept* involves the recognition of arbitration as a special form of state justice[1], having a judicial or jurisdictional nature. The concept considers the arbitration agreement only as an agreement of a procedural nature, the main purpose of which is to exclude the jurisdiction of the state court. Supporters of this concept see an element of statehood in the fact that a number of issues of the arbitration process can be resolved only with the participation of state judicial organizations. Moreover, «the only difference between the status of arbitrators and judges, which is recognized by supporters of this theory, is that judges are appointed by public authorities, and arbitrators - by parties under an agreement»[2].

The *mixed* concept combines the main provisions of the two previous concepts and implies that arbitration includes substantive and procedural legal elements. Arbitration is a contractual institution, and procedural issues relate only to the sphere of its functioning. This approach makes it possible to ensure that not only the own law of the state where the arbitration proceedings takes place is applied, but also the relevant foreign law to which the applicable conflict-of-laws rule refers. This concept was formulated at the 44th session of the Institute of International Law in April 1952[3].

The *autonomous concept* assumes the recognition of arbitration and arbitration proceedings of disputes as a separate specific legal institution. Arbitration is autonomous and is indeed used by economic actors because it is tailored to their specific needs. «It is this circumstance that affects the improvement and streamlining of the arbitration procedure, the development patterns of which are based on the needs of commercial turnover»[4]. Proponents of this theory believe that further improvement of the arbitration procedure depends not on law, but on the pragmatic activities of business entities[5].

It appears, that «the mixed concept most accurately reflects the essence and content of arbitration, since the contractual, procedural and autonomous concepts have many correct provisions in their content, but separately they consider the institution of commercial arbitration very one-sidedly»[6]. In fact, the arbitration agreement, on the one hand, can be considered as a contract, and on the other hand, as a procedural document that is binding on the parties to the dispute. It seems that mixed concept pays enough attention to both

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[1] Cornu G., Foyer J. Procedure civile. Presses universitaires de France. Paris. 1958. P. 47.
[2] Anurov V.N. The role of international treaties in the formation of the modern concept of international commercial arbitration: Candidate of legal sciences thesis (PhD). Moscow. 2000. P. 35.
[3] Anurov V.N. The role of international treaties in the formation of the modern concept of international commercial arbitration: Candidate of legal sciences thesis (PhD). Moscow. 2000. P. 36.
[4] Nikolyukin S.V. International commercial arbitration. Moscow: Yustitsinform. 2009. P. 85.
[5] David R. Arbitration in International Trade. Kluwer Law and Taxation Publishers. Boston. 1985.
[6] Gavrilenko V.A., Trofimova M.S. Alternative resolution of civil disputes. Veliky Novgorod, 2009. P. 45.

substantive and procedural elements. I also point out that the provisions of contractual and procedural theory relate to peculiarities of the development of legislation on arbitration in a single country or several countries, and the mixed theory reflects the international interaction of various legal systems in regulating the institution of arbitration.

Interaction between commercial arbitration and national laws.

At the end of this paragraph, I will consider the theoretical basis for interaction between the institute of commercial arbitration and national legal systems. It is clear that internal arbitration is closely related to the legal system of the country of its localization. The issue of international arbitration is not so obvious. The issue of separating international commercial arbitration from national legal systems, primarily from the legislation of the country that is location, is relevant. Note, that «in 1957, the Institute of International Law adopted a Resolution entitled: Arbitration in Private International Law, in which clearly articulated two principles: firstly, the parties to an international treaty are free to choose the seat for arbitration in disputes arising between them, secondly, the choice of the place for arbitration automatically subordinates the arbitration to the law of the chosen place, including also its rules of private international law»[1].

Also, the legal doctrine states that international arbitration is subject not only to the public policy clause and peremptory norms, but also to procedural norms, private international law and even, in the absence of an express choice of parties, the substantive law of the national legal system of the country in which the arbitration sits. In other words, it was considered, that if arbitration took place in a particular country, then there is a close relationship between the arbitration and the legal system of that country.

The legal consequences of an arbitral award, as well as the legal consequences of the choice of law by the parties, must be based on a legal system that is competent to give force of law to such an award and to confirm such a choice.

If the national legal system does not authorize the choice of arbitration by the parties, the decision of this arbitration tribunal will not be legally binding. Traditional doctrine considers it quite natural that arbitration should be held in accordance with the law of the place where it sits. This concept has been reflected in a number of legislative acts, for example in Articles 1 and 2 of the UNCITRAL Model Law on International Commercial Arbitration, adopted on 21 June 1985, used as a model law in many countries.

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[1] Anurov V.N. Legal nature of international commercial arbitration. Issues of theory and practice. Moscow: Prospect. 2000. P. 66.

At present time, the doctrine of delocalization of arbitration is gaining more and more weight.

«One of the main proponents of this view, Swiss professor P. Lyaliv, formulated the main thesis of this theory on a preliminary arbitration decision in a dispute between an Indian cement company and a Pakistani bank: It is true that the rules of any international institution cannot be regarded as a sort of supranational law, standing as such above the laws of Pakistan or India. It is also fair that their legal force and binding nature in this case are based on the will of the parties. It must also be recognized that, according to the widely held notion, the will of the parties is not in itself a legal system, and its binding nature derives from certain legal systems, national or international.. However, the defendant does not understand or take into account that the existence of an international custom is now generally recognized, the expression of which can be found in international treaties signed by most civilized states, including Pakistan and India. According to this custom, international commercial arbitration can be completely decoupled or separated from the national laws of the parties: it is subject only to the rules of arbitration chosen by the parties or agreed by the parties in their contract»[1].

To substantiate this theory, one can point out the need to eliminate the interfering effect on international arbitration from national legal systems, the specific rules of which in different countries may differ significantly from each other. Pay attention to the fact that the place of arbitration is often chosen by the parties based on considerations of geographical convenience, and not in connection with the merits of the dispute. It would be unreasonable to attach particular importance to the country's legal system, which could be chosen not so much by the will of the parties as by practical considerations. There are also possible problems of jurisdictional immunity of the state, because sometimes disputes arise between private companies and the state, which is the carrier of sovereignty.

The issue of the theory of delocalization should be the subject of further scientific discussions. I only note that excessive interference by the state in the field of commercial arbitration distorts its legal nature as an alternative way to resolve legal disputes based on the freedom of contractual relations when entering into arbitration clauses by the parties, as well as on trust in arbitrators. Consequently, the legal regulation of use by the parties of commercial arbitration should be based on the principle of inadmissibility of arbitrary state interference in private law relations.

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[1]Anurov V.N. Legal nature of international commercial arbitration. Issues of theory and practice. Moscow: Prospect. 2000. P. 152 - 153.

Conclusion.

At the end of this paragraph, I indicate some conclusions. I mention that «arbitration consists of an alternative method of resolving disputes with respect to the judgment of state courts and entrusted to a private judge chosen by the parties, potentially able to guarantee a decision that is more in keeping with the peculiarities of the dispute and in any case faster»[1].

Currently, the institute of commercial arbitration is progressively developing, which is noted in many scientific works[2]. New arbitration institutions are emerging, the number of economic entities using arbitration to resolve their own disputes is increasing, and legislation in this area is being improved. The Current Landscape of Commercial Arbitration is really perspective[3].

These trends allow to be optimistic about the future of commercial arbitration and predict the further development and improvement of this legal institution.

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[1] Commentario breve al diritto dell'arbitrato nazionale ed internazionale. // edit by Benedettelli M.V., Consolo C., Radicati Di Brozolo. L.G. CEDAM. Padova. 2010. P. 805.

[2] El Ahdab J., Mainguy D. Droit de l'arbitrage Théorie et pratique. LexisNexis. France. 2021. P. 3.

[3] Schinazi M. The three ages of international commercial arbitration. Cambrige University Press. UK. 2022. P. 2.

Paragraph 2. Principles of commercial arbitration.

Definition of principles of law.

In legal science, the principles of law are defined as follows. Here is an opinion, that «principles - this is what permeates law, reveals its content in the form of initial, cross-cutting ideas, its main bases, normative and guiding provisions»[1]. Moreover, principles of law can be called «the leading bases of its formation, development and functioning»[2] or « the requirements that a law must meet in order to play the role and function of a certain type of law»[3]. Also principles of law can be defined as «fundamental provisions, basic legal ideas that permeate all procedural, norms and institutions, determining such a construction of the process that would ensure the adoption of legal and reasonable decisions»[4]

Ratio of general and special principles of commercial arbitration.

Consider in more detail the issue of relationship between the principles of commercial arbitration and the principles of procedural law. There are three opinions on this issue.

The first opinion that the principles of commercial arbitration and the principles of procedural law are identical. Theoretically this is explained by, that arbitration is characterized by some principles which are similar with principles of procedural law, and «some principles of state legal proceedings are at the same time the principles of arbitration»[6].

The second opinion that the distinction between the principles of commercial arbitration and the principles of procedural law is recognized, but the existence of common elements is pointed out. All the principles provided for by the current legislation on arbitration are of the same name, but not completely identical in content to similar principles for the implementation of state legal proceedings[7].

The third opinion is «recognition of the independent nature of the principles of arbitration, but in the event that the principles of civil procedural law and arbitration are independent legal system formations, then principles similar in content should be recognized as intersectoral»[8].

The author believes that in the aggregate of the principles of arbitration, one can

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[1] Alekseev S.S. Problems of the theory of law. Volume 1. Sverdlovsk. 1972. P. 102.
[2] Yavich L.S. General theory of law. Leningrad. 1976. P. 151.
[3] Semenov V.M. Constitutional principles of civil justice. Moscow. 1982. P. 18.
[4] Treushnikov M.K. Arbitration process. Moscow. 1995. P. 30.
[6] Morozov M.E., Shilov M.G. Legal bases of arbitration proceedings. Novosibirsk. 2002. P. 18.
[7] Vinogradova E.A. Legal basis for the organization and activities of the arbitration court. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 1994.
[8] Kurochkin S.A. Theoretical and legal foundations of arbitration proceedings in the Russian Federation: Candidate of legal sciences thesis (PhD). Yekaterinburg 2004. P. 98.

distinguish the principles that are general law and the principles that are characteristic of the sphere of commercial arbitration. After all there are general principles of legal proceedings, both for arbitration and civil proceedings; at the same time, there are principles that relate exclusively to arbitration proceedings.

General principles of commercial arbitration.

Consider a set of general principles used both in the field of commercial arbitration and in other branches of law.

The principle of independence.

It should be noted that the principle of independence of the dispute, both through arbitration and through the state judicial system, is the most important basis of great importance, which is a property of any democratic state[2].

Since the requirements for the independence of arbitral tribunals are derived from the requirements of the same name for state courts, the approaches to the most important conditions for their functional activities coincide. Nobody: neither public authorities, nor the founders of permanent arbitration courts, nor their officials or employees have the right to influence the activities of arbitrators to consider the dispute. Approvable, that the independence of arbitrators is exclusion of any outside influence on them and dispute resolution according to law and conscience.

Independence of arbitral tribunals from founders is expressed in the absence of interference of their organizations, officials and employees in activities of arbitral tribunals to resolve the dispute and make a decision on the case. Inclusion of persons in the list of arbitrators and the payment of fees for their activity does not consider to be dependency factor.

The independence of arbitrators from the parties of dispute is understood as the absence of monetary and other ties between them and one of the parties. The arbitrator must have no business ties with one of the parties of dispute or be materially interested in outcome of the case.

The principle of impartiality.

Impartiality is the arbitrator's lack of predisposition towards a particular party or the

[2] Lasser W. The Limits of Judicial Power. The University of North Carolina Press Chapel Hill. 1988. P. 272.

merits of the dispute. «Arbitrators must be impartial. It is a public policy principle»[1]. It is the impartiality of the arbitrator that is ensured by such requirements for him as the ability to ensure an impartial resolution of the dispute and the absence of direct or indirect interest in outcome of the case. The generally accepted rules for the formation of the arbitration panel, which I will consider in the next chapter, establish the grounds for disqualification (self-withdrawal) of an arbitrator. There is a functional relationship between independence and impartiality. Impartiality can be recognized as a condition for independence. Note that arbitrators are impartial until proven otherwise. For there to be reasonable doubt about an arbitrator's independence, their lack of independence must be clear and conspicuous.

The principle of equality of parties.

The equality of the parties in arbitration proceedings is due to the fulfillment by arbitrators of their duty to observe the principle of independence and impartiality as a condition for equal treatment of the parties, providing them with every opportunity to defend their position. The entire arbitration procedure is designed in such a way that the opposing parties have equal legal opportunities to protect their rights and legitimate interests within the framework of the arbitration procedure. The principle of equality implies the impossibility of obtaining advantages by one party to the dispute over the other. «This is expressed in the fact that none of the parties can be burdened with additional procedural obligations, it cannot be granted additional procedural rights, just as it cannot be released from the performance of procedural obligations»[2].

The following understanding of the principle of equality also seems reasonable. Such as «prohibition of legislative and other law-making bodies of the state to establish legally unequal legal frameworks for various subjects under actually similar or identical circumstances»[3].

The arbitrators' violation of the principle of equal treatment of the parties may be expressed not only in the fact that the arbitrator was biased against one of the parties, and in the fact that the arbitrator did not act effectively enough on the basis of the principle of equality of the parties.

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[1] Enforcement of Arbitration Agreements and International Arbitral Awards. The New York Convention in Practice. // edit by Gaillard E. Di Pietro D. Cameron May Ltd. London. 2008. P. 824.

[2] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 195.

[3] Gadzhiev G.A. Constitutional principles of a market economy (Development of the foundations of civil law in the decisions of the Constitutional Court of the Russian Federation). Moscow. 2002. P. 131.

In applying this principle take place, «balance of opportunities for the parties to assert their rights in arbitration proceedings»[1].

I should agree with the opinion that «if the parties in arbitration agreement provided for the waiver of one of the parties from their procedural rights, then the relevant provisions of arbitration agreement must be considered invalid»[2].

The principle of legality.

This principle is one of the most important universal legal principles and operates in all areas of law without exception. In my opinion, the principle of legality in arbitration is interpreted as a requirement to consider disputes using the rules of substantive law and to perform procedural actions in accordance with the rules established by the current national and international legislation.

The principle of legality is an important procedural principle that should guide the arbitral tribunal in the conduct of dispute proceedings. Normative sources for the activities of arbitral tribunals are national and international legal acts adopted within the established law-making procedure, in accordance with their legal force and place in the general legal hierarchy. The next by importance normative sources are regulations and constituent documents of arbitral tribunals. Less important are the rules formulated by the arbitration agreement, which should not contradict the mandatory rules of the current legislation.

The fair view is that «the principle of legality limits the discretion of the arbitral tribunal and the parties to the dispute when considering the case to the framework of mandatory norms established by law»[3].

The principle of dispositivity.

One of the fundamental legal principles in general, and arbitration in particular, is the principle of dispositivity. In general, dispositivity is expressed through the categories of freedom, opportunity, choice[4]. In legal science, the opinion is expressed that the principle of dispositivity is the leading principle of arbitration proceedings, which occupies a leading

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[1] Kurochkin S.A. Theoretical and legal foundations of arbitration proceedings in the Russian Federation: Candidate of legal sciences thesis (PhD). Yekaterinburg 2004. P. 103.
[2] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 196.
[3] Prokhorenko V.V. Principles of arbitration proceedings: the principle of legality. // Journal Civilistic practice. No. 2 (7). 2003. P. 55.
[4] Glukhova O.Y. Institute of discretion in law. // Abstract of the Candidate of legal sciences thesis (PhD). Tambov. 2009.

position in the system of other principles[1]. This principle «manifests itself in providing the parties of conflict situation with the opportunity to dispose of material rights and procedural means of their protection»[2].

The dispositivity principle is the fundamental postulate, «expressing the freedom of a subjectively interested person to determine the forms and methods of protecting a violated right or legally protected interest, the subject of judicial review, as well as the fate of the subject of the dispute and the fate of the process in various procedural law enforcement cycles of the civil process»[3]. Also, dispositivity can be defined as «the idea according to which persons participating in the proceedings can freely exercise their procedural rights and dispose of them, influencing the course of the process, in order to achieve the goals that the person in question sets for himself in a particular civil case»[4].

The principle of dispositive arbitration proceedings is a logical continuation of the universal principle of the same name, according to which the subjects of economic relations acquire and exercise their civil rights by their own will and in their own interest. They are free to establish their rights and obligations on the basis of the contract and to determine any conditions of the contract that do not contradict the law. It is in accordance with the principle of optionality that the parties to arbitration proceedings have the right to conclude an agreement on the choice of the form of protection of subjective rights, namely, an arbitration agreement.

Another distinctive feature of the principle of dispositivity in arbitration proceedings is the predominance of the right of dispositive legal regulation of the rules of arbitration. This is the right of the parties to agree on the rules of arbitration, starting from the moment of applying to the arbitration court, continuing with the election or appointment of arbitrators and the performance of other procedural actions in the course of arbitration proceedings, including the procedure for the arbitration court to decide on the merits of the dispute or determine the termination of arbitration proceedings on other grounds.

As a result, I point out that the main content of the principle of dispositivity is the right of the subjects of economic relations to choose any means, to protect their own rights and interests within the framework of the current legislation. Arbitral trial is one of way to rights protection.

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[1] Chan Hoang Hai. Trial and arbitration of economic disputes in the Socialist Republic of Vietnam. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 2002. P. 17.

[2] Zaitsev A.I. Dispositivity is the fundamental principle of arbitration proceedings. // Journal Arbitration Tribunal. No. 1. 2000. P. 34.

[3] Pleshakov A.G. Dispositive principle in the sphere of civil jurisdiction: problems of theory and practice. Moscow: NORMA. 2002. P. 94.

[4] Polyakov I.N. The principle of dispositivity in the activities of judicial and public jurisdictional bodies considering civil cases. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 1977. P. 12.

The principle of autonomy of will.

It seems that with the principle of dispositivity echoes the principle of autonomy of will, which is understood as «the parties' choice in the contract of the applicable law that will govern their relationship, and the parties' ability to choose a way to resolve the dispute, i.e. the right to refer the dispute to arbitration»[1].

The autonomy of the will of the parties is manifested in the right to conclude an arbitration agreement as the basis for the foundations of arbitration proceedings and in the right to agree on the rules of arbitration. In the process of arbitrating a dispute, the parties have the right to initiate the litigation of the dispute, to withdraw from their own claims or part of them, to conclude an amicable agreement. The will of the parties is appears in the above documents.

When concluding a contract, a party has the right to provide for possibility of resolving disputes in the procedure of legal proceedings in a state court. If a party does not exercise this right, but signs an arbitration agreement to submit disputes to commercial arbitration, then it thereby exercises its right to freedom of contract, voluntarily chooses an arbitration tribunal as a way to resolve disputes, and agrees to abide by the rules of arbitration.

The principle of competition.

The content of the adversarial principle is that the arbitration of disputes includes active actions of the parties to substantiate the legitimacy of their claims and objections by presenting evidence to support their position, participation in the study and evaluation of all evidence collected in the case, the implementation of all other procedural actions necessary to defend their position.

The content of the competition is in the fact that each of the parties must prove the circumstances that served as the basis for its claims and objections. In accordance with this requirement, the burden of proof in the arbitration process is distributed. Each of the parties participates in the study of evidence submitted to the court, expresses its views on this evidence, and also substantiates its own opinion on all issues arising during the dispute. Notice, that « parties have the right to independently determine the means of proof, including such means that are unknown to the procedural law regulating the procedure of proof in the framework of state legal proceedings»[2].

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[1] Codero Moss Giuditta. Autonomy of Will in the Practice of International Arbitration. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 1994. P. 5.

[2] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 191.

Moreover, this principle is considered «from the point of view of equal rights of both parties having opposing interests»[1].

Violation of the adversarial principle by an arbitral tribunal can have detrimental legal consequences, up to the possibility of challenging the arbitral award.

The principle of combining oral and written forms of dispute proceedings.

It seems that the principle of combining oral and written forms of dispute proceedings is also of great importance in arbitration trial. The principle of orality is understood as «the fundamental idea enshrined in the procedural legislation, the essence of which lies in the fact that all participants in the civil process appear before the court, give explanations, conclusions and testimonies, express their views orally»[2].

The consideration of a case in an arbitration court may not be accompanied by its hearing in a court session, since, by agreement of the parties, the arbitration court may consider the case based on the available written materials and make a decision. In this case «the parties should be given the opportunity to state their arguments and present evidence, therefore, the proceedings in a written process are possible only with the exchange of pleadings and evidence»[3].

Also note the following. «Parties may agree in the arbitration clause how they want the proceedings to be conducted, i.e., orally only, documents only, or mixed. In most cases it is advisable to make such a determination in the light of the actual dispute, ideally in Consultation with the tribunal»[4].

It seems, that «the combination of oral and written forms of legal proceedings in arbitration trial contributes to more effective protection of the rights and interests of the parties»[5]. In a situation where the arbitral tribunal considers the case on the basis of the available written materials, the time and resources of the parties to the proceedings are significantly reduced, since they only need to send the relevant documents to arbitration and to each other. In this case, commercial organizations do not need to send their representatives, distracting them from their daily work, the dispute is resolved in a shorter time»[6].

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[1] Ivica Colak. R. International Commercial Arbitration in the States of South-East Europe: Candidate of legal sciences thesis (PhD). Moscow. 2004. P. 156.
[2] Semenov V.M. Constitutional principles of civil justice. Moscow. 1982. P. 100-101.
[3] Kurochkin S.A. Theoretical and legal foundations of arbitration proceedings in the Russian Federation: Candidate of legal sciences thesis (PhD). Yekaterinburg 2004. P. 109.
[4] Comparative Law of International Arbitration: Second edition. // Poudret Jean-Frangois, Besson Sebastien. Sweet & Maxwell Ltd. London. 2007. P. 535.
[5] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod, 2007. P. 122.
[6] Gavrilenko V.A., Trofimova M.S. Alternative resolution of civil disputes. (Educational - methodical manual). Velikiy Novgorod. 2009. P. 69.

Of course, not every arbitration proceeding should be carried out on the basis of written materials. It all depends on the content and type of dispute.

Special principles of commercial arbitration.

There are the principles relating exclusively to arbitration.

The principle of voluntary appeal to an arbitration tribunal.

The principle of voluntary appeal to the arbitration tribunal is manifested in the following. No one can be forced to arbitration against their will. Arbitration is a contractual institution. The Parties have the right to voluntarily and consciously conclude an arbitration agreement, as a basis for submitting a dispute to arbitration and the right to agree on the rules and procedure for the dispute proceedings. The voluntariness of applying to an arbitration court means the freedom of an agreement on the arbitration proceedings of a dispute, which is based on the principle of freedom of contract and the voluntary expression of the will of subjects of economic activity. The principle of freedom of contract is one of the main principles of the arbitration and it consists in the possibility of fixing an arbitration clause in the contract or concluding an independent arbitration agreement, choosing arbitrators, and determining the procedure for the trial.

An arbitration agreement, like any other type of treaty concluded involuntarily using coercion, deception and other illegal methods, is recognized as legally null and void in the legal systems of all States, as well as in international law. «The conditions for the validity of an arbitration agreement are determined in accordance with civil law, in relation to a civil law contract»[1].

The principle of confidentiality.

The principle of confidentiality of dispute proceedings is an important guarantee for the protection of rights and interests of the parties to arbitration trial. It is known, that legal proceedings in state courts are open and the circumstances of the case under consideration become available. The following rule is used. «Through publicity, society receives an effective tool for monitoring the administration of justice. Justice is a public activity, it affects the public interest and must be under the control of public opinion»[2].

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[1] Vladimirova S.A. Legal nature and significance of the arbitration agreement. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 2007. P. 14.

[2] De Salvia M. Case law of the European Court of Human Rights. Saint-Petersburg. 2004. P. 433.

Such a situation is often unfavorable for economic entities, since disclosure of the subject and circumstances of the dispute may damage business reputation, or disclose information that is a trade secret, which may adversely affect the future. Arbitration trial is a confidential procedure, the proceedings are held behind closed doors, unauthorized persons are not allowed. Information that becomes known during the dispute resolution process is kept confidential.

In legal theory, there are two aspects of this principle: «firstly, it is non-publicity, secrecy of the all procedure for considering a case in an arbitration tribunal and making a decision, and secondly, these are measures to keep secret the information that was involved in the dispute resolution process»[1].

In modern world arbitration practice, a tradition has developed «proceed from the confidential nature of any information reported in the arbitration tribunal, except in cases where the parties to arbitration proceedings or their successors have expressed their consent to the contrary»[2].

The subject of such an agreement between the parties may be provisions included in the arbitration rules or arbitration agreement, according to which: persons who do not take part in the consideration of the dispute may be admitted to the session of the arbitration tribunal; the publication of the decisions of the arbitration tribunal is allowed by the decision of the chairman of the permanent arbitration tribunal, as a rule, subject to the non-disclosure of information containing the names, names of the parties to the arbitration proceedings, signs identifying the disputed property and its value. In the absence of the above agreements between the parties of dispute, the principle of confidentiality applies, which is valid both at the stage of preparing the case for trial, and in the process of the trial itself and the announcement of the decision of the arbitral tribunal. Also this principle «manifests itself outside the framework of arbitration procedures, that is, after the arbitration proceedings are completed, but other procedures are developing to implement the decision of the arbitration tribunal»[3].

It is fair to say that confidentiality «plays the role of a cementing factor at all stages of arbitration (arbitration proceedings)»[4].

The requirement on confidentiality of the arbitration trial should be applied not only to

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[1] Kurochkin S.A. Theoretical and legal foundations of arbitration proceedings in the Russian Federation: Candidate of legal sciences thesis (PhD). Yekaterinburg 2004. P. 115.
[2] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod, 2007. P. 34.
[3] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 179.
[4] Anurov V.N. Change of persons in the arbitration agreement. // Journal Arbitration Tribunal. No. 3. 2003. P. 109.

the arbitrators, but also to people executing the functions of principals (chairman, vice-chairman) and to the staff of the permanently functioning arbitral tribunal (executive secretary, secretary, typists, other employees). In an «ad hoc» arbitration tribunal confidentiality requirements apply to arbitrators and persons performing technical functions to ensure the dispute is resolved (keeping minutes, forwarding correspondence, etc.).

The most important guarantee of compliance with the principle of confidentiality of arbitral proceedings is the institution of "witness immunity" of arbitrators. This issue is regulated variously in different states. For example, the legislation of Italy, Norway, Denmark does not contain provisions on witness immunity of arbitrators. By contrast, US and Russian law provides for witness immunity for arbitrators.

The Revised Uniform Arbitration Act of The USA[1] (hereinafter UAA) in the Clause D Section 14 of the UAA provides for witness immunity of the arbitrator or other representative of the arbitral organization in respect of information related to the arbitration proceedings.

In the Russian Federation, arbitrators are exempted from the obligation to testify about the circumstances that became known to them during the arbitration proceedings. This provision is contained both in the current law on arbitration[2], as well as in the previous[3], which indicates the understanding by the legislative authorities of the importance of this issue.

But, the Russian law on international commercial arbitration[4] does not include the arbitrator's witness immunity provisions. The model law of the United Nations Commission on International Trade Law (UNCITRAL)[5], on the basis of which the aforementioned Russian law was developed, also does not include the arbitrator's witness immunity provisions.

The author believes that the witness immunity of arbitrators is a significant guarantee of compliance with the confidentiality principle and it is advisable to prescribe it in the legislation governing arbitration.

There are positions on the shortcomings of the principle of confidentiality. «Many international arbitral awards, and the submissions, hearings and deliberations in almost all international arbitrations, remain confidential.

Although it has benefits, the confidentiality or privacy of the arbitral process is at the same time an obstacle to practitioners, decision-makers and academics, all of whom

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[1] Uniform Arbitration Act (Last Revisions Completed Year 2000). // http://uscode.house.gov
[2] Paragraph 3 of Article 21 of the Federal Law "On Arbitration (Arbitration Proceedings) in the Russian Federation" of December 29, 2015 No. 382-FZ. // http://www.consultant.ru
[3] Paragraph 2 of Article 22 of the Federal Law "On Arbitration Courts in the Russian Federation" of July 24, 2002 No. 102-FZ. // http://www.consultant.ru
[4] Federal law "On international commercial arbitration" of July 7, 1993 No 5338-1. // http://www.consultant.ru
[5] The UNCITRAL "Model Law on International Commercial Arbitration" of June 21, 1985 (with changes of July 7, 2006) adopted by United Nations General Assembly resolutions of December 11, 1985 No 40/72 and of December 4, 2006 No 61/33. // https://uncitral.un.org/en/texts/arbitration

frequently desire precedent, authority, or information about the arbitral process»[1].

The principle of the arbitral award finality.

Some legal scholars point out the principle of the arbitral award finality[2]. This opinion is debatable, because in the current legislation there is a possibility of challenge and even cancellation of the arbitral award on a number of established bases. Also there is a possibility to appeal the decision of the state court for the issuance of a writ of execution on the arbitral award. It seems that unfair party may, at least, delay the execution of the decision of the arbitration tribunal, using the regulations of the current legislation. Positive experience in execution of arbitral awards has already been accumulated in a number of world countries. In order to carry out its dispute resolution function, the judicial system needs a mechanism that ensures the end of the dispute.

The courts have worked out a doctrine of prevention in order to ensure the finality of decisions. Preventing a claim interferes a party from filing a claim with the same subject with which it was previously filed to another court.

Doctrine of prevention a lawsuit interferes disputes consideration that were determined to the required extent in the previous case, despite the fact that the following claim may concern another subject. Prevention rules help to preserve judicial resources, interferes inconsequent decisions, eliminate unnecessary litigation delivering anxiety and promote public confidence in justice. Prevention is not provided when the opposing party can prove that it did not have an opportunity to fully state its position in a previous case towards the dispute under consideration[3]. The above-mentioned doctrine of prevention applies to both state courts and non-state arbitrations.

At the same time, the grounds for challenging arbitral awards are much less than towards decisions of state courts. However, it may take a long time before a final decision is made in the case. The inadmissibility of appealing an arbitral award on the matter of the dispute is an important factor in speeding its consideration and making a final decision. Considering the principle of finality of the arbitral award, note that «it is possible to talk about the existence of this principle only in cases when the rules of permanently functioning arbitral

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[1] Born G.B. International Commercial Arbitration. Walters Kluwer 2009. P. 189.
[2] Tarasov V.N. Arbitration process. Saint-Petersburg, 2002. P. 55.
[3] Cound J., Friedenthal J., Miller A., Sexton J. Civil Procedure: Cases and Materials. 5th ed. St Paul: West Publishing Co, 1989. P. 1084.

tribunals fixed the rule on finality of the decision and the parties have not agreed on other rules of the case»[1].

From the aforesaid it can be concluded that the principle of finality of arbitral awards works in practice, but at the same time, the finality of the arbitral award is relative. In case of non-execution of the arbitral award on a voluntary basis, the parties have the opportunity to use the mechanism of state coercion and have the right to apply to the state court for the issuance of a writ of execution for the enforcement of the arbitral award. The grounds on which a state court may refuse to enforce an arbitral award are limited. The grounds that allow state courts to refuse in enforcement of arbitral awards are issues of applicable law, issues of compliance of the dispute procedure with the arbitration agreement, etc.

So, «even though state courts do not formally have the opportunity to review the acts of arbitral tribunals, in fact, however, they often act, essentially, as an appellate instance in relation to the system of arbitral tribunals and international commercial arbitration»[2].

I conclude that despite the opinions of legal scientists about the absolute principle of «finality of the arbitral award and inadmissibility of its revision by a state court»[3], in fact «there is the possibility of challenging and even canceling the arbitration award on certain grounds»[4]. The procedure for appealing arbitral awards is also spelled out in the Italian law[5].

Consequently, the finality of arbitral awards is very questionable.

The principle of enforceability of arbitral awards.

The legal literature also mentions the principle of enforceability of arbitral awards, the essence of which is the existence of legal norms, «establishing such requirements for the decision rendered by the arbitral tribunal that would allow it to be actually executed both by the defendant himself on a voluntary basis and by the enforcement authorities in the case when a state court issued a writ of execution»[6]. But, to a greater extent, this principle is a legal property of an arbitral award.

The principle of prompt dispute proceedings.

In jurisprudence, there is also proclaimed the principle of prompt dispute proceedings,

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[1] Kurochkin S.A. Arbitration trial of civil cases in the Russian Federation: theory and practice. Moscow, 2007. P. 156.

[2] Anisimov A. Gavrilenko V. Modern problems of arbitration in land disputes. // Conflict Studies Quarterly. CSQ. Accent Publisher. Cluj-Napoca. Romania, 2019. P. 9.

[3] Baymoldina Z.H. On arbitration proceedings in the Republic of Kazakhstan. // Journal Law and State. No. 3. 2000. P. 42.

[4] Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P. 22.

[5] Corso di diritto processuale civile / 3: L' esecuzione forzata, i procedimenti speciali, l'arbitrato, la mediazione e la negoziazione assistita. // Mandrioli C., Carrata A. Giappichelli. Torino. 2019. P. 373.

[6] Zaitsev A.I. Advantages of arbitration. // Permanent Arbitration Court at the Volga CCI. Volzhsky. 2002. P. 36.

which «recognized at all times and in all states»[1]. This principle is also formulated as «the principle of simplicity and prompt of arbitration procedure»[2]. However, the allocation of this feature of arbitration proceedings as a separate principle is highly controversial, since these factors are only the consequences of the functioning of arbitration tribunals.

The principle of economy of dispute resolution.

In the theory of arbitration law, the principle of economy [3] or procedural economy[4] of arbitration proceedings are distinguish. The content of this principle lies in desire of parties to the dispute and arbitrators to strive to reduce costs and time spent in the arbitration process. The Rules of the International Bar Association on the Taking of Evidence in International Arbitration contain a provision allowing the arbitrator to refuse admission of evidence for reasons of procedural economy[5]. These Rules, of course, are advisory in nature, but they express the advanced trends of modern legal thought.

Note that the allocation of this principle is debatable, since economy is to a greater extent an advantage of arbitrating a dispute and a property of its functioning.

The principle of continuity of dispute proceedings.

Earlier in Russian legal science, the principle of the continuity of dispute proceedings was affirmed, which consists in, that «the case must be considered from beginning to end in one court session, including the issuance of a decision on the case»[6]. At present time, this principle is irrelevant and essentially illegal. Note, that arbitration tribunal should not use this principle, since the modern legislation does not contain such requirements. Moreover, there is no need for the continuity of the arbitration proceedings and it is possible, if necessary, to interrupt and suspend the procedure[7]. The issues of conducting arbitration proceedings in this aspect are at the discretion of the parties and arbitrators[8].

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[1] Zaitsev A.I. The Efficiency of dispute resolution in the arbitral tribunal - wishful thinking and normative validity. // Collection of scientific articles and abstracts on the materials of the International scientific-practical conference "Actual problems of modern forms of protection of the rights and freedoms of man and citizen". Veliky Novgorod: Novgorod state University, March 23-24 2017. Veliky Novgorod. 2017. P. 176.
[2] Tarasov V.N. Arbitration process. Saint-Petersburg, 2002. P. 52.
[3] Zaitsev A.I. Advantages of arbitration. // Permanent Arbitration Court at the Volga CCI. Volzhsky. 2002. P. 35.
[4] Ivica Colak. R. International Commercial Arbitration in the States of South-East Europe: Candidate of legal sciences thesis (PhD). Moscow. 2004. P. 156.
[5] Paragraph 2 (g) of Article 21 of IBA rules on the Taking of Evidence in International Arbitration. Adopted by a resolution of the International Bar Association Council on 17 December 2020. // https://www.ibanet.org
[6] Semenov V.M. Constitutional principles of civil justice. Moscow. 1982. C. 106.
[7] French arbitration law and practice. // edit by Delvolve J.L., Rouche J., Pointon G.H. Kluwer law international. 2003. P. 107 – 111.
[8] La China Sergio. L' arbitrato: il sistema e l'esperienza. Milano: Giuffrè. 2011. P. 122-129.

It seems that in relation to arbitration proceedings, the principle of continuity can be excluded.

The principle of the language of dispute proceedings.

Need to mention the principle of the language of the dispute proceedings, which is highlighted in scientific papers[1]. According to the generally accepted rules, proceedings in internal arbitration courts are conducted in the state language of the location of the arbitration, unless the parties agree otherwise.

«Conducting arbitration of internal disputes in a language other than the state language seems, as a general rule, inappropriate. This is due to the possible consideration in the competent state court of cases on an application for the annulment of an arbitration award and on an application for the issuance of a writ of execution for the enforcement of an arbitration award»[2]. In international commercial arbitration, parties to the arbitration may choose any language in which the case will be heard.

«Arbitration proceedings may be conducted in any language convenient for the parties and the tribunal»[3]. However, in this case, it is necessary to submit to the arbitration tribunal a translation of documents and other materials that are not in the language of the arbitration proceedings. In the regulations of permanent arbitration tribunals, the right to choose the language of the proceedings often belongs to the arbitration tribunal itself[4].

The issue of highlighting this principle is controversial, since the procedure for determining the language of the dispute is, to a greater extent, a feature of the activities of arbitrations.

The principle of choosing arbitrators by the parties of dispute.

Some legal scholars distinguish the principle of choosing arbitrators by the parties of dispute[5]. The content of this principle is the provisions, according to which the parties of dispute independently appoint arbitrators within the established procedure. The author considers it inappropriate to single out this principle separately, since the possibility of choosing an arbitrator by the parties of dispute is an integral part of the principle of

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[1] Novikov E.Y. To the issue of the legal nature of arbitration proceedings. // Russian Yearbook of Civil and Arbitration Procedure. No. 2. 2002-2003. Saint-Petersburg. 2003. P. 311.
[2] Kurochkin S.A. Arbitration proceedings and international commercial arbitration. Moscow. 2004. P. 41.
[3] Comparative international commercial arbitration. // Lew J.D., Mistelis L.A., Kroll S.M. Kluwer law international. The Hague. 2003. P. 540.
[4] For example, Article 20 of Rules of Arbitration of the International Chamber of Commerce (ICC Rules of Arbitration), in force as from 1 January 2021.
[5] Tolpakova N.N., Boyko A.N. Fundamentals of arbitration. // Development of alternative forms of resolution of legal conflicts. // edit. M.V. Nemytina. Saratov: SGAP. 2000.

dispositivity. Moreover, the procedure for selecting arbitrators is one of the constituent parts of the functioning of arbitrations.

The principle of cooperation of the parties of dispute.

Some authors argue the principle of cooperation between the parties of dispute is also applicable to arbitration proceedings. Arguments are made that «arbitration practice in the United States develops in such a way that direct adversarial proceedings and the issuance of a binding award are preceded by attempts by the arbitrator to reach a compromise and reconcile the parties»[1]. There is noteworthy opinion that «under an idealistic international theory, arbitration is a self-contained, private, consensual system of dispute resolution»[2]. Objectively, that «the desire to resolve conflicts, to overcome problems, to implement business cooperation is also inherent in human nature»[3]. I agree that the principle under consideration is inherent in the arbitration trial.

Legal regulation.

Consider the reflection of the principles of arbitration in the legislation of various states. Some laws explicitly state the basic principles of arbitration, while others are silent on this issue.

For example, legislation of the **United States of America** and **Italy** that govern arbitration do not explicitly mention the principles for arbitration.

Next, examine the reflection of the principles of arbitration in the law of **Canada.** Note that they are little reflected in the laws, both state and territorial. The principle of equality of arms and fair treatment is mentioned[4]. The law of the Canadian province of British Columbia is more detailed. It talks about the independence and impartiality of the arbitrator[5] and distinguishes in detail the principle of confidentiality and its guarantees[6].

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[1] Nosyreva E.I. Alternative resolution of civil disputes in the United States. // Abstract of the Doctor of legal sciences thesis. Voronezh. 2001. P. 18.

[2] Arbitration law in America: a critical assessment. // Brunet E., Speidel R.E., Sternlight J.R., Ware S.J. New York: Cambridge University Press. 2006. P. 32.

[3] Gavrilenko V.A., Trofimova M.S. Alternative resolution of civil disputes. (Educational - methodical manual). Velikiy Novgorod. 2009. P. 11.

[4] Article 18, Addition 1 of Commercial Arbitration Act (year 1985, assented to June 17, 1986), Canada; Article 19 of Arbitration Act, S.O. 1991, chapter 17, Ontario, Canada; Article 21 of Arbitration Act, SBC 2020, British Columbia, Canada. // https://laws.justice.gc.ca/

[5] Article 19.8 of Arbitration Act, SBC 2020, British Columbia, Canada. // https://laws.justice.gc.ca/

[6] Article 63 of Arbitration Act, SBC 2020, British Columbia, Canada. // https://laws.justice.gc.ca/

Consider **Finnish law.** The issue of the principles of arbitration is practically not affected by the Law of Finland. It is only stated that the arbitrator must be impartial and independent in his duties[1].

There is the issue of the principles for arbitration under **Swedish law**. The legislator paid little attention to this issue. There is an indication that the arbitrator must be independent and impartial[2] and that arbitrators must consider the dispute impartially, expediently and promptly[3].

The principle of confidentiality in arbitration is not explicitly enshrined in Swedish law. As a rule, this principle is prescribed in the regulations of arbitration institutions. Generally, arbitration in Sweden is closed, unless otherwise agreed by the parties, and the arbitrators hear the dispute confidentially[4]. Note the document «EU Directive on the Protection of Commercial Secrets No 2016/943 from 08.06.2016», which raises issues of protecting the confidentiality of commercial secrets in the process of judicial and arbitration proceedings in the jurisdictions of different states. The general trends of the European system of law are, among other things, the recognition and respect for the principle of confidentiality and respect for commercial secrets. In Sweden, arbitral proceedings are kept by the arbitral institution and are generally not sent to the state court, except for the resolution of the question of invalidity and contestation of the arbitral award.

Norwegian law mentions that at all stages of the arbitration the parties are treated equally, and each party is given the right to present its position[5].

The issue of confidentiality of arbitration disputes is regulated in an interesting way. The arbitral proceedings and the content of the award shall not be considered confidential unless the parties have agreed to this in order to resolve a specific dispute. Third parties may attend hearings only if agreed by the parties[6]. So, there is no clear legal requirement for the confidentiality of the arbitration proceedings. But, as a rule, the parties to the dispute prescribe confidentiality issues either in the arbitration agreement itself, or agree on a confidential consideration of the dispute after it has arisen. Also, confidentiality issues can be spelled out in the rules of arbitration institutions.

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[1] Article 9 of Law of Finland "On Arbitration" No. 967/1992, dated 23.10.1992. https://www.finlex.fi/
[2] Article 8 of Law of Sweden "On Arbitration" No. SFS 1999:116 dated 01.04.1999. https://www.riksdagen.se/sv/
[3] Article 21 of Law of Sweden “On Arbitration” No. SFS 1999:116 dated 01.04.1999. https://www.riksdagen.se/sv/
[4] Article 3 of Rules of the Arbitration institute of the Stockholm Chamber of Commerce (SCC Arbitration Rules), in force as from 1 January 2017.
[5] Article 20 of Law of Norway "On Arbitration" of May 14, 2004 No. LOV-2004-05-14-25. 37. // https://lovdata.no/
[6] Article 5 of Law of Norway "On Arbitration" of May 14, 2004 No. LOV-2004-05-14-25. // https://lovdata.no/

Lithuanian legislation prescribes the principles of the arbitration process, such as the independence of arbitration, equality of the parties to the dispute, confidentiality, dispositivity, autonomy, competition, economy, cooperation and prompt dispute proceedings[1].

Consider the legislation of the **Russian Federation**, which proclaims the principles of independence and impartiality of arbitrators, dispositivity, competition of the parties and equal treatment of the parties[2]. The confidentiality of the arbitration proceedings is also clearly proclaimed[3].

It should be noted that the previous law governing the arbitration of disputes indicated a greater number of principles for the arbitration of disputes, such as legality, confidentiality, independence and impartiality of arbitrators, dispositivity, competition and equality of the parties[4]. The issues of confidentiality of the dispute proceedings are regulated in sufficient detail by a separate article of this Law[5].

At the same time, the Federal Law "On International Commercial Arbitration" practically does not mention the principles of arbitration of disputes, except for the provision on equal treatment of the parties[6].

It should be noted that this law was developed on the basis of The model law of the UNCITRAL, which also contains a rule on equal treatment of the parties[7], without mentioning other principles.

Conclusion.

As a result, the totality of the principles of arbitration proceedings forms their ordered system. In arbitration proceedings, there are both general principles with other branches of law, such as the principle of legality, independence and impartiality of arbitrators, dispositivity, etc., and special principles relating exclusively to arbitration proceedings. The latter include the principle of confidentiality, voluntariness of the appeal to the arbitration tribunal, enforceability of decisions, etc.

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[1] Article 8 of Law of Lithuania “On Commercial Arbitration” of April 2, 1996 No I-1274.

[2] Article 18 of the Federal Law "On Arbitration (Arbitration Proceedings) in the Russian Federation" of December 29, 2015 No. 382-FZ. // http://www.consultant.ru

[3] Article 21 of the Federal Law "On Arbitration (Arbitration Proceedings) in the Russian Federation" of December 29, 2015 No. 382-FZ. // http://www.consultant.ru

[4] Article 18 of the Federal Law "On Arbitration Courts in the Russian Federation" of July 24, 2002 No. 102-FZ. // http://www.consultant.ru

[5] Article 22 of the Federal Law "On Arbitration Courts in the Russian Federation" of July 24, 2002 No. 102-FZ. // http://www.consultant.ru

[6] Article 18 of the Federal law "On international commercial arbitration" of July 7, 1993 No 5338-1. // http://www.consultant.ru

[7] Article 18 of the UNCITRAL "Model Law on International Commercial Arbitration" of June 21, 1985 (with changes of July 7, 2006) adopted by United Nations General Assembly resolutions of December 11, 1985 No 40/72 and of December 4, 2006 No 61/33. // https://uncitral.un.org/en/texts/arbitration

The presence of the above special principles emphasizes the difference between arbitration and state proceedings, and also allows arbitration tribunals to most effectively carry out their activities. The application of these principles in the process of resolving disputes determines the advantages of arbitration proceedings over state ones in order to protect the rights and interests of economic entities.

In addition, the author considers it appropriate to indicate both general and special principles of arbitration in national legislation and international model laws governing the sphere of arbitration.

Paragraph 3. Advantages and disadvantages of commercial arbitration.

Introduction.

In the modern world, arbitration is a popular and widespread non-state way of settling disputes and conflicts. Also relevant is the need for subjects of economic legal relations in the so-called specialized arbitration tribunals that could regulate disputed relations in a particular branch of business activity.

Consider some questions about the reasons why arbitration is attractive for resolving disputes. It is necessary to highlight the following features of arbitration proceedings in comparison with the usual judicial procedure. I will analyze the main advantages and disadvantages of dispute arbitration.

Advantages of commercial arbitration.

The arbitral tribunal has a number of advantages over ordinary commercial dispute resolution. Consider them further.

1. Proceedings of the case only with an agreement of the parties. «Arbitration tribunal is fundamentally a contractual institution. It is based on a contract and cannot be imposed on the parties who have not expressed their consent to the consideration of the case by arbitration»[1]. Note, that «it is unacceptable to force economic entities to arbitration disputes without their voluntary consent»[2].

The trial is conducted only by the tribunal if there is an agreement of parties on its mandatory nature. There is a limited number of cases when it can be contested. The arbitral tribunal is a contractual legal institution. It is based on a voluntary agreement between the parties. It is unacceptable to enforce economic entities to arbitration trial without their voluntary consent.

2. Confidentiality. Arbitration proceedings are not public and only the parties receive copies of the awards. «Arbitration is not public: only the parties and their advisers have access to the meetings, the arbitrators are bound to secrecy and the award can only be published with the consent of the parties»[3].

There is the aspect of confidentiality. Hearings in the arbitral tribunal are not public, are held in private, unauthorized people are not allowed to attend, its decisions are not

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[1] Vershinin A.P. Choice of a way to protect civil rights. Saint-Petersburg. 2000. P. 257.

[2] Gavrilenko V.A. Peculiarities of arbitration trial of disputes in modern Russia. // Journal Law, Security, Emergencies. No. 2 (39). 2018. P. 20.

[3] Bagner H. Confidentiality - a fundamental principle of international commercial arbitration. // Journal of International Arbitration. No 18 (2). 2001. P. 243-249.

published in the media and on the Internet, and only the parties receive copies of the decisions.

Any information that becomes known during the dispute resolution process is kept confidential. Current legislation of many states codifies the above principle. Legislation of some states[1] provides the witness immunity of arbitrators who are relieved of the obligation to give evidence on circumstances that have become known to them during the execution of their obligations.

The requirement on confidentiality of the arbitration trial should be applied not only to the arbitrators, but also to people executing the functions of principals (chairman, vice-chairman) and to the staff of the permanently functioning arbitral tribunal (executive secretary, secretary, typists, other employees).

3. Ability of choice of an arbitral tribunal. The ability to choose the arbitration allows the parties not to be limited by the place of residence of the citizen or the location of the legal entity or location of disputed real estate or property and other factors. In this case, it is not necessary that the trial will take place at the location of the arbitration tribunal. The possibility of choosing the arbitral institution itself allows the parties of dispute not to be limited by the above circumstances. Moreover, leading global and national arbitrations have a high reputation and extensive experience in dispute resolution. Consequently, the parties may choose an arbitral tribunal whose reputation they trust.

4. Possibility to choose a specific arbitrator (arbitrators) from the permanent arbitral tribunal.

The parties can independently choose arbitrators who are more trusted and whose competence is better suited to the subject of the dispute. It is obvious that the ability to choose the arbitrator by the parties is really important principle of arbitration sphere and also an important factor in protecting the rights and interests of economy subjects.

The state judicial system does not allow the parties to a judicial conflict to choose their own judges. «The courts usually have sufficient general expertise to settle commercial disputes. However, some disputes require extensive technical knowledge. It is impossible for a judge who has to adjudicate all kinds of disputes to be an all-round technical expert»[2].

Arbitration tribunal provides the parties with a unique opportunity to independently choose arbitrators, provided that they are independent persons. This gives the parties an opportunity to resolve their conflicts with help of people who have specialized competence in

[1] For example Russian Federation, United States of America.
[2] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 410.

the relevant field. The parties have right to choose the arbitrator who is more trusted and whose competence is better suited to the nature of their dispute.

Arbitrators, including those elected by the parties, must remain neutral and decide the case without prejudice. «In any case, the chairman of the arbitral tribunal, or the sole arbitrator, is an absolutely neutral person in relation to the parties»[1].

The arbitration panel of permanent arbitrations is usually highly qualified, and it is possible to choose arbitrators whose qualifications suit the parties to the dispute. Note, that «disputes are sometimes rooted in a particular environment»[2]. Accordingly, it may be important for arbitrators to specialize not only in jurisprudence, but also in related fields of knowledge. For example, the stock market, insurance, investments, intellectual property and many others.

5. Possibility to determine the dispute resolution procedure. The parties to the arbitration of a dispute have incomparably broader rights in determining the procedure for resolving disputes. It is possible to prescribe in the arbitration agreement on the conduct of dispute according to certain rules, or to agree with the rules of permanent arbitration court, in which this dispute will be considered.

The parties have right, in coordination with the arbitral tribunal, to choose not only the place for dispute proceedings, but also the time of trial. The choice of applicable law in arbitration allows the parties of dispute to decide on the most acceptable law for them to resolve possible conflicts. Accordingly, this allows the representatives of the parties to avoid working in an unfamiliar legal system where the interests of the party cannot be effectively protected.

In state courts, procedural rules are established by law. In arbitration agreements, the parties have right to choose certain rules according to which their disputes will be considered.

6. Case processing speed. Arbitration is less formalized compared to state litigation, which leads to a quick resolution of the dispute. Arbitration tribunals are not interested in delaying the process. In the previous paragraph, the principle of prompt arbitration of disputes was discussed in detail.

It should be noted that «one of the generally recognized undeniable advantage of case consideration by the arbitral tribunal instead of by the state courts at all times and in all states

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[1] Gavrilenko V.A. The main advantages of arbitration proceedings over state legal proceedings in resolving economic disputes. // Materials of the International Scientific and Practical Conference "Innovative Development of the National Economy". Ukraine. Ternopil. April 7-8, 2011. Ternopil. 2011.

[2] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 410.

was its efficiency»[1]. The efficiency of dispute resolution by the arbitral tribunal is connected with the fact that its regulations or the rules negotiated by the parties themselves in the arbitration agreement may not provide the use of a number of procedures that entail an increase in the period of the case consideration. Arbitration is less formalized in comparison with the state proceedings that leads to the rapid dispute resolution.

Pay attention, «if the arbitrators make it clear to the parties that they understand the essence of the dispute the parties do not need to repeat their arguments but can direct their attention specifically to the points which are still unclear to the arbitrators, thus saving time and money»[2].

In state court proceedings, a case can take a very long time.

In Italy, the average length of civil proceedings (from the moment a complaint is filed with the court until all possible appeals are exhausted) is seven years and one month in the northern regions of the country and nine years and seven months in the south. This is the average duration: according to sociologists, in the southern part, about 16 cases out of 100 can last up to 20 years[3].

This situation contributes to an increase in complaints from subjects of Italian legal relations to the European Court of Human Rights regarding excessive delays in the payment of monetary compensation awarded to them by the court.

Note that the contract performance indicator in Italy is considered low. This indicator measures the time, cost and procedural complexity of resolving disputes between two local economic entities for breach of contract. When calculating the indicator, the duration of the proceedings in the state court of first instance is taken into account, i.e. the time required to obtain a final judgment.

It seems that justice, that has to deal with a huge number of claims in short procedural terms with a limited number of judges, is frequently able to cope with the set task at the expense of the quality of the trial.

Dissatisfaction of the parties because of the quality of the court decision gives rise to a long process of appeal at higher authorities, it can last for years.

In the Russian Federation, as a rule, the term for consideration of a case in an arbitration tribunal is usually 40-50 days on average, while in a state court it is 90-100 days,

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[1] Zaitsev A. I. The Efficiency of dispute resolution in the arbitral tribunal - wishful thinking and normative validity // Actual problems of modern forms of protection of the rights and freedoms of man and citizen. Collection of scientific articles and abstracts on the materials of the International scientific-practical conference. 23-24 March 2017. Veliky Novgorod, 2017. P. 176.

[2] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 410.

[3] The complete text of the Report is available online at http://wwvi.governo.it/ Govemoln- forma/ Dossier/giustizia_ relazione/rela_integrale.pdf

and taking into account the appeal and cassation appeal, this period can increase up to 130-160 days[1].

7. Finality of the arbitral award. In the previous paragraph, the author noted that the finality of arbitral awards is very questionable. Nevertheless, «in many legal systems, the decision of arbitral tribunal is final and not subject to appeal. The arbitral award cannot be enforced without an act of the state court, but the grounds on which the state court can refuse to enforce the award are severely limited»[2].

There are far fewer legal grounds for challenging arbitral awards than there are for decisions by state courts. In fact, it is possible to challenge the procedural issues of the proceedings, but not the decision of the arbitration on the merits of the dispute.

As a rule, the subjects of economic relations, when litigating a dispute, prefer the completeness of the process, rather than its legal impeccability. At least, arbitral awards are declaratively final. A dispute before a state court may be appealed to a higher court. It may take a long time before a final decision is made.

8. The real responsibility of arbitrators. Arbitrators receive an appropriate fee for their activities, which directly depends on the number of cases considered by them, the quality of their resolution, and hence on their reputation. Accordingly, arbitrators are interested in maintaining their high reputation, which depends on the quality of their work. All this provides additional guarantees for the impartiality of arbitrators.

In Italian law, the issues of liability of arbitrators are spelled out more clearly and imperatively[3]. Note that the arbitrator «liability may be imposed in the form of damages to the parties for the late consideration of the dispute of the parties, provided that the final arbitral award was canceled on this basis»[4].

9. Opportunity to avoid litigation in the national court of another country. «Each of the parties may refuse to submit to the jurisdiction of a court in the country of the other party, for fear of being at a disadvantage»[5]. In this situation, there may be a fear of court bias in relation to a person from another state, conducting a process in a foreign language and applying unfamiliar procedural, and often substantive law.

Objectivly, that opportunity to choice applicable law in arbitration proceedings allows the parties to determine the most appropriate legal system for resolving the dispute.

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[1] Tsyganova E.M. Problems of legal regulation of the organization and activities of commercial arbitration tribunals in the Russian Federation. Moscow. 2004. P. 6.
[2] Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P. 4
[3] Article 813 – ter of the Italian Code of Civil Procedure, Book 4, Title 8 Arbitration.
[4] Kurochkin S.A. Arbitration in Italy. // Journal Arbitration Tribunal. No. 3 (81). 2012. P. 147.
[5] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 411.

Accordingly, this allows the representatives of the parties to avoid the work in an unfamiliar legal system where the interests of the parties cannot be protected well.

10. International recognition of arbitral awards. Arbitral awards are much more likely than the decisions of national courts of general jurisdiction to receive international recognition. Most countries in the world [1] signed the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, June 10, 1958), known as the New York Convention. Along with this, acts the European Convention on Foreign Trade Arbitration (Geneva, April 21, 1961)[2]. The conventions have created a single system for all participating states[3] of a mechanism for the recognition and enforcement of decisions through certain state courts, in the prescribed manner.

11. Possibility of enforcement of the arbitral award practically all over the world. The international conventions referred to in the previous paragraph, which regulate the issues of recognition and enforcement of foreign arbitral awards, have been ratified by almost all countries of any importance in world trade. With regard to internal arbitration, the possibility of enforcement of arbitral awards by the state judicial system is provided for by the laws of most states of the world. I mention, that for arbitration to exist and succeed there must be a regulatory framework which controls the legal status and effectiveness of arbitration in a national and international legal environment[4].

In a situation of non-execution of an arbitral award on voluntary basis, the parties have an opportunity to use the mechanism of state coercion and have the right to apply for a writ of execution for enforcement of an arbitral award to the state court. The grounds on which a state court may refuse to enforce an arbitral award are limited.

The above grounds that allow state courts to refuse to enforce an arbitral awards are issues of applicable law, issues of compliance of the dispute resolution procedure with the arbitration agreement and applicable law, issues of arbitrability of disputes.

An arbitral award in respect of which a writ of execution for its enforcement has been received is, in its legal force, equivalent to court decisions of state courts that have entered into legal force.

12. Possibility of peaceful solution of the dispute. A state court and an arbitral tribunal pursue different goals. If the purpose of a state court can be called the definition and

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[1] https://www.newyorkconvention.org/countries
[2] https://treaties.un.org/doc/Treaties/1964/01/19640107%2002-01%20AM/Ch_XXII_02p.pdf
[3] https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-2&chapter=22&clang=_en#:~:text=The%20Convention%20was%20prepared%20and,the%20Economic%20Commission%20for%20Europe%2C
[4] Comparative international commercial arbitration. // Lew J.D., Mistelis L.A., Kroll S.M. Kluwer law international. The Hague. 2003.

punishment of the guilty, then the main purpose of an arbitration tribunal in resolving the conflict. In many situations, the partners really manage to reach a compromise and maintain normal business relations. In addition, the reconciliation of the parties allows to reduce the time for consideration of cases and reduce costs and expenses.

An interesting, that «while in multiple national systems an attempt is made to affirm a greater role of the parties within the process through tricks and innovations of procedural technique that often take their cue elsewhere and from transnational contexts, the experience of international trade arbitration, a single venue as we have seen for the identification of compromise solutions, it can undoubtedly constitute a useful precedent, helping to increase the debate»[1].

13. Economy of the procedure. This advantage is in line with the principle of economy[2]. But there are different points of view on this issue.

On the one hand, the size of the arbitration fee, especially for large claims, is usually lower than the state fee in the state court, therefore, the parties save not only time, but also money. At the same time, in some cases, part of the fee can be returned, which further increases the financial attractiveness of this method of resolving disputes. There is an economy consideration of disputes, since the size of the arbitration fee is set no higher (and in some cases lower) than the amount of the state fee payable in state courts[3].

Moreover, the high speed and informal nature of dispute resolution reduce lawyers' fees. In some situations, parties to the dispute can protect their interests on their own, without the involvement of lawyers, which reduces costs[4].

Also, the consideration of the dispute by experienced and professional arbitrators can contribute to the conclusion of a settlement agreement between the parties and reduce costs, avoiding further consideration of the case[5].

On the other hand, «court procedures are likely to cost less than arbitration. Judges are in the employment of the State; their decisions are a public service. Parties do not have to pay the judges. The costs of judicial proceedings are limited to the summons, the listing of the case, court fees and registration taxes. Arbitration is usually more expensive since parties generally have to pay the arbitrators for their services»[6].

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[1] Fabbi A. La prova nell'arbitrato internazionale. Gappichelli. Torino. 2014. P. 210.
[2] Zaitsev A.I. Advantages of arbitration. // Permanent Arbitration Court at the Volga CCI. Volzhsky. 2002. P. 35.
[3] Gavrilenko V.A. The main advantages of arbitration proceedings over state legal proceedings in resolving economic disputes. // Materials of the International Scientific and Practical Conference "Innovative Development of the National Economy". Ucraine. Ternopil. April 7-8, 2011. Ternopil. 2011.
[4] Karrer P. Arbitration saves! // Journal of International Arbitration. 1986. P. 35-46.
[5] Wilson K. Saving costs in international arbitration. // Arbitration international. Vol 6. No. 2. LCIA. 1990. P. 151.
[6] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 412.

It seems that the issue of the cost of arbitrating a dispute largely depends on the level and jurisdiction of the arbitral tribunal. The author will consider the issues of arbitration costs and fees in the next part of thesis.

Disadvantages of commercial arbitration.

There are some disadvantages of arbitration proceedings.

1. Limited powers of arbitrators. The powers of arbitrators are much narrower than those of state judges, who can use the measures of state coercion provided for by law. For example, arbitrators cannot require the presence of a witness under threat of a penalty for non-appearance or seize the property of the defendant in the possession of a third party - all these are the prerogatives of state courts. At the same time, the courts of far from all countries are ready to provide appropriate assistance to arbitrators[1].

2. Arbitration of a dispute does not always guarantee the absence of a lawsuit in a state court. If a party evades participation in the proceedings, if, in certain cases, provisional measures are necessary, if the award is not enforced voluntarily, or if the losing party seeks to have it reversed, going to court may be inevitable. «Arbitration only works efficiently when the arbitrators actually solve a dispute. Arbitration awards are generally executed voluntarily. However, there is always a risk that a losing party refuses to abide or applies for nullity of the arbitral award so that a court procedure must decide on the enforcement or the annulment of the award»[2].

Than it can be such situation. «The confidentiality of arbitration, however, is under threat when the arbitral award is later discussed in court in annulment or enforcement proceedings. The dispute and the award then become public (though this risk is not as great as it seems since barely ever is arbitration followed by a judicial procedure). However, discussion in court is restricted to some—usually procedural—aspects of the arbitration and the merits of the case are generally not at issue»[3].

An arbitration proceedings can be useful only when the parties need to maintain friendly relations, to sort out disputed relations even in the absence of evidence[4].

3. In arbitration, it is usually not possible to combine claims. «If a dispute arose, for example, from a contract for the construction of an object and the customer tries to recover a certain amount from the general contractor, who, in turn, sues subcontractors and suppliers,

[1] Gavrilenko V.A. Issues of formation of arbitration panel and status of arbitrators in arbitration proceedings of the Russian Federation. // Journal Bulletin of Kharkiv State University named after V.N. Karazin. No. 1(5). 2009.
[2] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 412.
[3] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 411.
[4] Golmsten A. H. Textbook of Russian civil proceedings. Saint-Petersburg. 1907. P. 143-146.

then, if necessary, the state court can combine these claims and consider them in one process. In arbitration, without the consent of all interested parties, consideration of a multilateral dispute by one arbitral tribunal, as a rule, is impossible»[1]. Requests for third party intervention or for consolidation of related arbitration proceedings can only be entertained if all parties agreed to multi-party arbitration[2].

Conclusion.

Objectively, the arbitration of disputes has its positive and negative sides. However, wide international recognition and use in practice undeniably indicates that in the plans of participants in economic legal relations, the merits of arbitration outweigh its shortcomings. My older statement is true, that «in many respects, the consideration of disputes of business entities and the protection of their rights and interests in an arbitration tribunal is more preferable than the consideration of a case in a state court»[3].

[1] Bruntseva E.V. International Commercial Arbitration (Manual). Saint-Petersburg: Publishing House "September". 2001. P. 40-41.
[2] Hans Van Houtte. The rights of defence in multi-party arbitration. // International Construction Law Review. Vol. 6. 1989. P. 395.
[3] Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities. // Abstract of the Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006. P. 6.

Chapter 2. Legal regulation of commercial arbitration.

Paragraph 1. Legislation governing commercial arbitration in various countries.

Analysis of national laws.

This paragraph will consider the legal acts regulating the institution of arbitration in various states. Also I plan to describe the definition of arbitration in analised legal acts.

Consider the issues of regulation of arbitration in **Italy.** The Italian Code of Civil Procedure, Book 4, Title 8 Arbitration, enacted by Decree No. 1443 of 10/28/1940[1], regulates the industry under research. This was last amended by Legislative Decree No. 40 of 2 February 2006[2]. Note that, unlike the law of the rest of the studied states, Italy does not have a separate law governing commercial arbitration. All necessary legal provisions are included in the Italian Code of Civil Procedure (hereinafter Italian Code).

The Italian Code does not provide a definition for the term arbitration. The works of Italian legal scholars offer the following understanding of the institution of arbitration. «Possible to talk about arbitration only as an alternative means of resolving disputes over state jurisdiction. In other words, arbitration will be the result of a choice in its favor over the jurisdiction of the state»[3]. It is also true that «the jurisdiction of arbitration governed by Title VIII of the fourth book of the Code in a sense has the function of replacing state jurisdiction»[4].

Next, about the legislation of **the United States of America** and the US Federal Arbitration Act, which came into force on February 12, 1925[5] (hereinafter the US FAA). A rather short document regulating only general issues of the arbitration procedure. In 1947, the United States Federal Arbitration Act was codified into Title 9 in the United States Code. Subsequently, several amendments were made to this legal act. These issues are regulated in more detail by *the Revised Uniform Arbitration Act)*[6] (hereinafter US UAA), developed in 1955, the last amendments to which were adopted in 2000.

This document regulates directly the dispute resolution procedure.

The above legal acts do not contain a definition of the concept of arbitration.

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[1] Codice di procedura civile, Libro IV, Titolo VIII Dell'arbitrato. Regio Decreto 28 ottobre 1940, no 1443 in G.U. 28 ottobre 1940. // https://www.gazzettaufficiale.it/home

[2] Decreto legislativo, 02.02.2006, no 40, G.U. 15.02.2006. // https://www.gazzettaufficiale.it/home

[3] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 2.

[4] Mandrioli Crisanto, Carratta Antonio. Corso di diritto processuale civile. Torino: Giappichelli. 2019. P. 351.

[5] United States Federal Arbitration Act, United States Code Title 9, Enacted February 12, 1925, Codified July 30, 1947. // http://uscode.house.gov

[6] Uniform Arbitration Act (Last Revisions Completed Year 2000). // http://uscode.house.gov

The use of arbitration procedures is very characteristic of the American legal system. Appeal to an arbitration tribunal is as natural as an appeal to a state court. Arbitration tribunals are especially widely used in disputes arising in the field of entrepreneurial activity. The popularity of this type of legal proceedings in American society is explained by a number of factors. First of all, this is due to the support of arbitration by the state and society.

Next, about the issues of legislation on arbitration in **Canada** by the Commercial Arbitration Act of year 1985, which entered into force on June 17, 1986[1]. (Hereinafter Canadian Act of 1985). The most interesting Appendix 1 to this act is the Code of Commercial Arbitration, which contains the main provisions of the procedural regulation of dispute resolution. Note that the text of the 1985 Law was drawn up in two official languages of the country – English and French.

Note that Canada is a federal state, consisting of 10 provinces and three territories. Under the Canadian Constitution, justice falls under the jurisdiction of the provinces. Accordingly, each province has adopted its own legal acts governing the arbitration of disputes.

The study also used the Ontario Arbitration Act 1991 and the British Columbia Arbitration Act 2020[2]. (Hereinafter Ontario Act and BC Act).

In general, the legal regulation of commercial arbitration by the Act of 1985 and the laws of the provinces of Canada is not fundamentally different. However, there are differences in the regulation of the status of an arbitrator, the rules of appeal and some procedural issues. There are also some differences in the regulation of jurisdiction of disputes, which I will discuss below.

About the definitions. The term "arbitration" refers to any arbitration of a dispute, regardless of whether it is conducted by a permanent arbitral institution or in the framework of a one-time ad hoc arbitration (Article 2 (a) Appendix 1 of the Canadian Act of 1985). The term “arbitral tribunal” means a sole arbitrator or a panel of arbitrators (Article 2 (b) Appendix 1 of the Canadian Act of 1985, Article 1 of the BC Act).

Consider the legislation of **Finland** and the Law “On Arbitration” No. 967/1992, adopted on October 23, 1992[3] (hereinafter Finnish Act).

I point out the following. Finnish Act does not differentiate between permanent arbitration institutions and arbitration ad hoc, their legal status is the same.

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[1] Commercial Arbitration Act (year 1985, assented to June 17, 1986), Canada. // https://laws.justice.gc.ca/

[2] Arbitration Act, S.O. 1991, chapter 17, Ontario, Canada. Arbitration Act, SBC 2020, British Columbia, Canada. // https://laws.justice.gc.ca/

[3] Laki välimiesmenettelystä. Annettu Helsingissä 23 päivänä lokakuuta 1992. // https://www.finlex.fi/

Finnish law can be divided into two parts. The first part (Articles from 2 to 50) regulates the arbitration proceedings that take place in Finland. The second part (Articles from 51 to 55) regulates the arbitration of disputes outside Finland and the issues of recognition and enforcement of foreign arbitral awards (Article 1 of the Finnish Act).

The above legal acts do not contain a definition of the concept of arbitration.

Then consider the law of **Sweden**. The Law "On Arbitration" No. SFS 1999: 116, which entered into force on April 1, 1999[1], regulates the issues of arbitration (hereinafter Swedish Act).

The Law of Sweden explicitly states that disputes, concerning issues that the parties are entitled to settle among themselves, can be referred to arbitration for resolution on the basis of an agreement.

It should be noted that Sweden has a long tradition of arbitration, the provisions of which appeared in Swedish law as early as the 14th century. The first full-fledged Arbitration Act came into force in Sweden in 1887 [2]. In 1929, the Arbitrators Act came into force[3], which was used before the development and adoption of a new law in 1999. The traditional approach of Swedish legislators is based on the freedom to conclude a contract, trust in the institution of arbitration and arbitrators, recognition and respect for the independence and autonomy of the arbitral tribunal. This approach contributes to the significant role and high reputation of arbitration in Sweden.

In **Norway**, the institution of arbitration is regulated by the Law "On Arbitration" No. LOV-2004-05-14-25 dated May 14, 2004, which entered into force on May 1, 2005[4] (hereinafter Norwegian Act).

This statute provides the legal basis for the arbitration of disputes in Norway and is the main internal source of Norwegian law governing the institution of arbitration. This Act replaces chapter 32 of the Norwegian Civil Procedure Act, which previously dealt with arbitration.

This Law provides the legal basis for arbitration proceedings in Norway. It is the primary source of Norwegian law related to arbitration of disputes and the recognition and enforcement of arbitral awards after the completion of proceedings. Its application is appropriate where the place of arbitration is Norway and applies both to dispute resolution in Norway and to international arbitration regardless of the nationality of the parties.

[1] Lag om skiljeförfarande (SFS 1999:116). // https://www.riksdagen.se/sv/
[2] Zykov R.O. International Arbitration in Sweden: Law and Practice. Moscow, 2014.
[3] Skiljemannalag 1929, № 145. // https://www.riksdagen.se/sv/
[4] Lov om voldgift, № LOV-2004-05-14-25. // https://lovdata.no/

Pay attention to the reflection of terminology in the scientific doctrine of Norway. The term “arbitration” is derived from the word “arbitration”, which means to cede something in the interests or position of another - to let another decide or do something for one. There is no need to operate with any precise definition of the term “arbitration”, for example, there is no such definition in the Norwegian Act[1].

Norwegian law applies to arbitration that has been agreed by the parties or determined by law, regardless of the nationality of the parties to the dispute (Article 1 of the Norwegian Act).

Consider further the **UK** legislation.

Following the adoption of the UNCITRAL Model Law on International Commercial Arbitration in 1985, the UK revised its arbitration law.

There was developed and adopted Arbitration Act 1996 of England[2], adopted in June 17, 1996 and active in England, Wales and Northern Ireland from January 31, 1997 (hereinafter English Act). At the time of its adoption, «there were discussions about whether two laws were needed or whether one law on arbitration should be limited. As a result of these discussions, a kind of compromise was reached. The legislator adopted one law regulating the activities of both international and internal arbitration tribunals (arbitrations), however, this law contains special provisions on the specifics of the functioning of internal commercial arbitrations»[3].

The English Act provides economic entities with the necessary opportunities to ensure the protection of rights and interests in contractual relations in the event of a dispute. The interlocutory relief function has been taken over by the arbitral tribunal and there is less risk for UK judges that their awards will be set aside or not enforced on the grounds that the arbitral procedure was not in accordance with the law of the country in which the arbitral tribunal took place.

Alternative Dispute Resolution has gained popularity in the UK since the 1980s. If the cost of considering claims in court exceeds the size of the claim, the courts decide on alternative dispute resolution. It seems that these legislative provisions contribute to the development of arbitration in the UK and are an example of state support for the activities of this institution. For example, a party may be sanctioned in the form of reimbursement of costs for refusing to resort to alternative dispute resolution, if such refusal was not justified.

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[1] Voldgift. // Geir Woxholth. Gyldendal Norsk Forlag, AS. 2013. P. 32.
[2] Arbitration Act of England 1996. // https://www.legislation.gov.uk/ukpga/1996/23
[3] Soderlund K. Arbitration laws of England, Sweden and Russia: a comparative analysis. // Journal Legislation and Economics. No. 4. 2004. P. 36.

There is no definition of the term of arbitration in the English Act. But the object of arbitration defines as the way to obtain the fair resolution of disputes by tribunal without unnecessary delay or expense (Article 1 (a) of the English Code).

Consider the legislation of **Lithuania**. Arbitration sphere is regulating by the Law "On commercial arbitration" No I-1274, dated 2 April 1996[1] (hereinafter the Lithuanian Act). Significant changes have been made to this legal act by the Law No XI-2089 dated 2012[2] and by the Law XII-2752 dated 8 November 2016[3]. It should be noted that significant changes were made to this law and its original text has changed a lot. The above changes are positively assessed in Lithuanian jurisprudence[4]. Arbitration proceedings is defined as the process of commercial arbitration from the beginning of the consideration of the dispute in arbitration until the day the decision or determination of the arbitral tribunal enters into force, by which the proceedings on the case end without a decision on the merits (Paragraph 4, Article 3 of the Lithuanian Act).

Then about the legislation of arbitration in the **Russian Federation.**

The author will research the provisions of the Federal Law dated December 29, 2015 No. 382-FZ "On Arbitration (Arbitration Proceedings) in the Russian Federation"[5] (hereinafter Russian Act)

The Russian Act in paragraph 2 of Art. 2 gives the following definition, which I cite in full: "arbitration (arbitration proceedings) is the process of resolving a dispute by an arbitral tribunal and making a decision by an arbitral tribunal (arbitral award)".

Previously, the Federal Law of 24.07.2002 No.102-FZ "On Arbitration Courts in the Russian Federation" (hereinafter Russian Act 2002) was in force, and even earlier the "Temporary Regulation on the Arbitration Court for the Resolution of Economic Disputes" was in force, approved by the Resolution of the Supreme Council of the Russian Federation of 24.06.92 No. 3115-1. It was understood that Temporary Regulation is an interim legal act designed to regulate the issues of arbitration of disputes for a short time before the development and adoption of a full-fledged law. However, the above provision was in effect for ten years.

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[1] Lietuvos Respublikos Komercinio arbitražo įstatymas. 1996 m. balandžio 2 d. Nr. I-1274. Valstybės žinios, 1996, Nr. 39-961. Vilnius. // https://e-seimas.lrs.lt/portal/

[2] Naujos redakcijos įstatymas patvirtintas įstatymu Nr. XI-2089. Valstybės žinios, 2012, Nr. 76-3932. // https://e-seimas.lrs.lt/portal/

[3] Naujos redakcijos įstatymas patvirtintas įstatymu Nr. XII-2752. TAR, 2016-11-17, Nr. 26957. // https://e-seimas.lrs.lt/portal/

[4] Varapnickas Tadas. Naujieji Komercinio arbitražo istatymo pakeitimai: kokio efekto tikėtis? // Arbitrazas. Teorija ir praktika. Vilnius. No 4. 2018. P. 19.

[5] Federal Law "On Arbitration (Arbitration Proceedings) in the Russian Federation" of December 29, 2015 No. 382-FZ. // http://www.consultant.ru

Above-mentioned the Russian Act 2002 distinguished by a very high level, and in terms of its content far exceeds its predecessors. It successfully combined both the rules on the organization of the activities of arbitration tribunals and procedural legal norms directly devoted to the arbitration procedure and the execution of decisions made by arbitration tribunals. All the main issues of the activities of arbitration courts were covered. This law was highly appreciated by academic lawyers. «In Russia, a form of justice, alternative to the state, has been legalized. Now economic entities, on the basis of contractual jurisdiction, themselves choose the form of justice for resolving disputes, i.e. determine which court - state or arbitration - they will entrust the consideration of their case. And the main thing is not only that entrepreneurs trust the arbitration tribunal to resolve the dispute between them, but that they will voluntarily comply with his decision and maintain their partnership»[1].

It is obvious that Russian lawmakers throughout the history of modern Russia have paid close attention to issues of arbitration of disputes.

The new Russian Act of 2015 improved the regulation of the issues of the competence of arbitration courts and the arbitrability of disputes, as well as clarified the requirements for arbitration clauses and toughened the rules for organizing and registering permanent arbitration courts. The notification procedure for registration was replaced by a permissive one. The latter resulted in a significant reduction in the number of permanent arbitration courts, which was the reason for criticism of this law.

The main novelties of the current law are in the toughening of the rules for the establishment and registration of permanently functioning arbitral tribunals, that is carried out by the Russian Government on the recommendation of the Council for the improvement of arbitration, created under the Ministry of justice of the Russian Federation. This procedure is quite strict and formalized, it resulted in a significant reduction in the number of permanently functioning arbitral tribunals.

The right to carry out the above-stated functions is granted to the NPOs by the government of the Russian Federation on the recommendation of the Council for the improvement of the arbitration, that was established under the Ministry of justice of the Russian Federation. It includes the representatives of the state bodies (no more than 1/3), chambers of Commerce and Industry, public associations of lawyers and entrepreneurs. The above-mentioned Council takes into account the reputation and field of activity of the non-profit organization where the arbitration institution is established, also the attention is paid to the list of arbitrators and their professional reputation.

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[1] Devyatkin K.I. A new stage in the development of arbitration. // Journal Arbitration Tribunal. No. 3/4. 2002. P. 11.

There is a practice when the Council refuses to give in its recommendations the right to the realization of activities by a permanently functioning arbitral tribunal on formal and contrived grounds. The policy of getting the recommendation of the Council and the subsequent permission of the Government of the Russian Federation is rather strict. This is evidenced by the fact that at present very low permanently functioning arbitration institutions have received the right to carry out their activities[1].

So, the procedure of getting the recommendation of the Council and the subsequent permission of the Government of the Russian Federation is rather strict. This is evidenced by the fact that at present a small amount of permanently functioning arbitration institutions have received the right to carry out their activities

This situation causes a serious problem of the actual lack of the possibility of dispute resolution in the arbitral tribunals for the majority of business entities, as in fact arbitration trial has become an elite way of dispute resolution. The opinion is reasonable, that «some of the solutions proposed by the reform may create new legal problems»[2].

«Yes, the quality may improve, but few people will be able to sue in an arbitration tribunal»[3].

The opinion is also expressed, that «the arbitration tribunal has become an indicative tool for protecting the rights of the elected»[4].

It seems sensible to change the policy of the Ministry of justice of the Russian Federation and the Council for the improvement of arbitration in order to reduce the formalities that prevent the resolution of the activities of permanently functioning arbitral tribunals.

This is especially important for the consideration of all disputes by the arbitral tribunals as their advantages are obvious. The strengthening of the legal force of the arbitral awards will increase the confidence in the system of arbitral tribunals by the business community and will discharge the state courts.

I need to mention that, it is pointed out in the Russian legislation that the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation and the Maritime Arbitration Commission at the Chamber of Commerce and

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[1] http://minjust.ru/ru/deyatelnost-v-sfere-treteyskogo-razbiratelstva/deponirovannye-pravila-arbitrazha
[2] Audzevičius Ramūnas, Parchajev Denis. Rusijos arbitražo reforma žvelgiant per Lietuvos komercinio arbitražo įstatymo prizmę. // Arbitrazas. Teorija ir praktika. Vilnius. No 3. 2017. P. 78.
[3] Morozov M.E. Until the Ministry of Justice becomes uncomfortable, nothing will change. // https://www.kommersant.ru/doc/3454660
[4] Zaitsev A.I. Disadvantages of Reformed Arbitration in Russia. // Journal Arbitration Tribunal. No. 4. 2017. P. 48.

Industry of the Russian Federation have the right to carry out their functions without any permission from the state to such activities.

The above-mentioned arbitral tribunals belong to the sphere of international commercial arbitration and they are the oldest arbitration institutions in the Russian Federation. The International Commercial Arbitration court (ICAC), a former Foreign Trade Arbitration Commission, was founded in 1932. The Maritime arbitration Commission (MAC) was founded in 1930. The activity of these organizations is regulated by the Federal law N 5338-1 dated July 7, 1993 “On international commercial arbitration”[1] (hereinafter Russian ICA Act).

The above law was adopted on the basis of the Model Law "On International Commercial Arbitration", developed by the United Nations Commission on International Trade Law (UNCITRAL) in 1985 and approved by Resolution No. 40/72 of the UN General Assembly[2] (hereinafter UNCITRAL Model Law). The Russian law contains a minimum number of deviations from the text of the model law and reflects certain traditions that have previously developed in the world practice of international arbitration. There became an opportunity «performance of the functions of international commercial arbitration, both by arbitrators elected to consider a specific dispute, and by newly created permanent arbitrators»[3].

At the very beginning of the development of the Model Law, the question was whether to adopt this act in the form of a convention or a model law. As a result, the UN Commission on International Trade Law decided «…support the working group's proposal that the text be adopted and recommended in the form of a model law rather than a convention»[4].

The Russian ICA Act in Article 2 gives the following definition. Arbitration means the process of resolving a dispute by an arbitral tribunal and making a decision by an arbitral tribunal (arbitration proceeding), whether it is administered by a permanent arbitral institution or not.

Categories of disputes are provided, such as disputes from contractual and other civil law relations arising from the implementation of foreign trade and other types of international economic relations, if the commercial enterprise of at least one of the parties is located

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[1] Federal law "On international commercial arbitration" of July 7, 1993 No 5338-1. // http://www.consultant.ru
[2] UNCITRAL "Model Law on International Commercial Arbitration" of June 21, 1985 (with changes of July 7, 2006) adopted by United Nations General Assembly resolutions of December 11, 1985 No 40/72 and of December 4, 2006 No 61/33. 45. // https://uncitral.un.org/en/texts/arbitration
[3] Gavrilenko V.A. Activities of arbitration tribunals in the Russian Federation in the period of the years 1990ts. // Materials of the All-Russian Scientific and Practical Conference. "Legal problems of strengthening Russian statehood" Tomsk. January 31 - February 2, 2009. Tomsk. 2009. P. 31.
[4] UNCITRAL Model Law. // Editor Marilou M. Righini. Washington: American Society of International Law. 1985. Volume XXIV. Number 5. September 1985.

abroad, or if any place where a significant part of the obligations arising from the relationship of the parties, or the place with which the subject of the dispute is most closely connected is located abroad, as well as disputes arising in connection with the implementation of foreign investments in the territory of the Russian Federation or Russian investments abroad (Paragraph 3, Article 1 of the Russian ICA Act).

However, there are certain disputes that cannot be submitted to international commercial arbitration. Federal laws may establish restrictions on the transfer of certain categories of disputes to arbitration (Paragraph 6, Article 1 of the Russian ICA Act).

Minor changes were made to this law in 2016. In Russia, as already emphasized, the activities of international commercial arbitrations and domestic arbitration courts are regulated by various laws, which is called regulatory dualism[1].

Dualism of arbitration legal regulation.

It seems that the presence of two different laws entails the need to apply the institute of jurisdiction for the distribution of cases between internal arbitration tribunals and international commercial arbitrations. This is due to significant differences in the legal regime of arbitration in international commercial arbitration and in the internal arbitration tribunal.

There are different opinions on the advisability of regulating the institution of internal and international arbitration by various laws..

With the rejection of the concept of a unified law on arbitration tribunals «not considerations were taken into account, as it would be better from the point of view of theory, but the factors of expediency and pragmatism»[2]. «It should be emphasized that our legislator ultimately quite rightly rejected unreasonable attempts to combine the rules on international and "internal" arbitration in a single law, since they did not take into account the important features of international commercial arbitration»[3].

On the other hand, the presence of two acts on commercial arbitration leads to a certain competition between the rules governing arbitration, which creates a certain inconvenience[4].

A fair point of view is that there are no fundamental obstacles to regulating the

[1] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 207.
[2] Kostin A.A. Correlation between the Laws "On International Commercial Arbitration" and "On Arbitration Tribunals in the Russian Federation". // Journal Arbitration Tribunal. No. 4 (28). 2003. P. 33.
[3] Sukhanov E.A. New law on arbitration tribunals. // Journal Arbitration Tribunal. No. 3/4. 2002. P. 9.
[4] Petrosyan R.A. Features of the application of the Law of the Russian Federation "On International Commercial Arbitration" on a new stage of legal reform. // Journal Arbitration Tribunal. No. 1 (31). 2004. P. 18.

activities of both international and “internal” commercial arbitrations by a single legal act[1].

«Despite the specifics of international commercial arbitration, its significant differences from the "internal" arbitration courts, the issues of normalizing the activities of both those and others are nothing more than issues of legal technique»[2].

Of interest Arbitration Act 1996 of England[3], acting in England, Wales and Northern Ireland. At the time of its adoption «there were discussions about whether two laws were needed or whether one law on arbitration should be limited. As a result of these discussions, a kind of compromise was reached. The legislator adopted one law regulating the activities of both international and internal arbitration tribunals (arbitrations), however, this law contains special provisions on the specifics of the functioning of internal commercial arbitrations»[4].

The Swedish Act is the single law for all types of arbitration. But, the issues of international arbitration (Articles 46 - 51) and recognition and enforcement of international arbitral awards (Articles 52 - 60) are spelled out in a separate block at the end of this law.

Legislators in Sweden and the UK chose a compromise solution, considering that there are differences in the legislative regulation of international and internal arbitration, but at the same time, an excessive number of laws should not be created.

The author adheres to the point of view on the expediency of regulating international and internal commercial arbitration by a single law. More details about the proposals for improving the current legislation will be written in the Chapter 4.

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[1] Novikov E.Y. To the issue of the legal nature of arbitration proceedings. // Russian Yearbook of Civil and Arbitration Procedure. No. 2. 2002-2003. Saint-Petersburg. 2003. P. 310.
[2] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. St. Petersburg. 2006. P. 253.
[3] Arbitration Act of England 1996. // https://www.legislation.gov.uk/ukpga/1996/23
[4] Soderlund K. Arbitration laws of England, Sweden and Russia: a comparative analysis. // Legislation and economics. 2004. No. 4. P. 36.

Paragraph 2. International law on commercial arbitration.

Analysis of international laws.

Of great importance for international commercial arbitration is the presence of an extensive international legal framework. Its activities are based on a large number of international conventions. Among the international agreements of Russia in the field of international commercial arbitration are: universal international conventions and documents, conventions of a regional nature, multilateral and bilateral treaties.

Of course, within the framework of this work, it does not make sense to consider each of the listed documents, therefore, it is necessary to dwell in detail only on some of them, the most important and significant.

Protocol on Arbitration Clauses, adopted on September 24, 1923 at Geneva[1], is the first international act of a conventional nature in the field of commercial arbitration. This document had two main objectives. Firstly, to single out arbitration involving parties from different countries from ordinary disputes heard by national courts. Secondly, to ensure the enforcement of the relevant arbitral awards in the territory of the states where these awards were made.

A significant obstacle to the development of arbitration was the lack of legal regulation of the procedure for the state to recognize the validity of an agreement to submit a dispute to arbitration, and the Geneva Protocol removed this obstacle. The 34 signatory states have committed themselves to accepting the validity of an arbitration agreement between parties subject to the jurisdiction of the various contracting states. In addition, they agreed to recognize the arbitration procedure determined by the parties, as well as to assist in the implementation of legal proceedings to be taken in their territory. The Contracting States agreed to ensure, in accordance with the provisions of their national law, that awards made in their own territories be enforced. The conclusion by the parties of an arbitration agreement or the inclusion by them of an arbitration clause in the contract obligated the general courts of the states parties to the Geneva Protocol to refuse to accept a claim if the latter was sent to these courts[2].

A significant international treaty is the Geneva Convention on the Enforcement of Foreign Arbitral Awards of September 26, 1927[3]. In accordance with the Convention, the contracting states were obliged to mutually recognize and enforce arbitral awards made on the

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[1] https://www.trans-lex.org/511300/

[2] Tynel A., Khvalei V. "Baker and McKenzie": International Commercial Arbitration. States of Central and Eastern Europe and the CIS. Publishing house BEK. 2001. P. 9.

[3] https://www.trans-lex.org/511400/

basis of an arbitration agreement or arbitration clause that fall under the Geneva Protocol. The award was enforceable in the territory of any state that ratified the Geneva Protocol and the Geneva Convention, and not only in the territory of the state where it was made.

The Geneva Convention defined the conditions that an award must meet in order to be recognized and enforced. «For the first time, the Geneva Convention defined the unified requirements necessary for the execution of a foreign arbitral award, as well as the grounds for refusing to execute it: annulment of the award in the country where it was made; failure to notify the losing party in sufficient time of the arbitration proceedings, which resulted in the inability to prepare for the process; adjudication of matters outside the scope of the arbitration agreement»[1].

However, at present, the above documents have lost their significance in connection with the development and adoption New York Convention of the year 1958 and European Convention of the year 1961.

New York Convention 1958.

Consider the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in New York, June 10, 1958 (Hereinafter New York Convention 1958) signed by most of the countries of the world[2].

The subject of regulation of the New York Convention was not only the procedure for the recognition and enforcement of foreign arbitral awards, but also some aspects relating to the arbitration agreement. The New York Convention included in its content provisions relating to the arbitration agreement as the basis for the implementation of further arbitration proceedings and the issuance of an award.

Recognition of the expediency of limiting the powers of the court to review the decision of the arbitral tribunal as a guarantee of the effectiveness of the institution of arbitration proceedings served as the basis for the adoption of the New York Convention of 1958. It is precisely the limitation of the grounds for refusal to enforce an arbitral award that was the reason for the success of this Convention, which has no analogues in terms of coverage and universality in the field, for example, the enforcement of decisions of state courts.

The main object of regulation of the New York Convention is a foreign arbitral award. Foreign nature of the decision within the meaning of the Convention (п. 1, ст. 1 of the New

[1] Bruntseva E.V. International Commercial Arbitration (Manual). Saint-Petersburg: Publishing House "September". 2001. P. 45.
[2] https://www.newyorkconvention.org/countries

York Convention 1958) determined either by the fact of its issuance abroad or by the fact of non-recognition of such a decision as an internal one in the state in which its execution is requested. But «it is not necessary that an award be “international” in order to fall under the Convention. The latter applies to all “foreign” awards, even those rendered in domestic arbitration»[1].

From the text of Article 1 of the New York Convention states that it does not apply to agreements entered into in the course of arbitration proceedings and not formalized in the form of an arbitral award.

The text of the New York Convention does not contain the concept of “final award”; instead, a less categorical one is used - “an award that has not become final for the parties” (Clause 1, Article 5 of the New York Convention 1958).

Determining the subject matter of the award. The New York Convention gives its general concept, establishing that an arbitral award is understood as a decision on disputes between both individuals and legal entities (Clause 1. Article 1 of the New York Convention 1958).

«This broad interpretation makes it possible to execute, in the manner established by the New York Convention, decisions on both civil and trade disputes, as well as decisions that have been made not only in the territory of the State party to the Convention, but also in the territory of the third State. The scope of the New York Convention also covers such arbitral awards made against parties, one of which is a subject of a State that is not a party to the New York Convention. This definition of the arbitral award also determines the subject composition, that is, individuals and legal entities - participants in the dispute»[2].

However, the New York Convention does little to address the issue of whether the parties to the dispute have the necessary status to conclude an arbitration agreement, as well as the possibility of participating as a party in arbitration proceedings. In other words, that they have substantive and procedural legal capacity, with the exception of a single reference that says that the recognition and enforcement of an arbitral award may be denied if the parties to the arbitration agreement were, under the law applicable to them, to any extent incompetent (Clause 1, Article 5 of the New York Convention 1958).

The main provision of the New York Convention is Article 3, according to which each Contracting State recognizes arbitral awards as binding and enforces them in accordance with the procedural rules of the territory where recognition and enforcement of these awards is

[1] Comparative Law of International Arbitration: Second edition. // Poudret Jean-Frangois, Besson Sebastien. Sweet & Maxwell Ltd. London. 2007. P. 52.

[2] Tynel A., Khvalei V. "Baker and McKenzie": International Commercial Arbitration. States of Central and Eastern Europe and the CIS. Publishing house BEK. 2001. P. 11.

requested. The New York Convention establishes an exhaustive list of grounds on which recognition or enforcement of a foreign arbitral award may be refused. In this case, the burden of proving the existence of such grounds lies with the party against which the award was made.

Note, that «the provisions of the New York Convention do not affect the validity of other multilateral or bilateral treaties on the recognition and enforcement of arbitral awards and do not deprive any interested party of the right to exercise any award in the manner and to the extent permitted by the law or international treaties of the country where the request is made. recognition and enforcement of such award»[1].

European Convention 1961.

The European Convention on Foreign Trade Arbitration[2] was adopted in Geneva at April 21, 1961 (Hereinafter European Convention 1961). The Convention has created a single mechanism for all States Parties[3] for the recognition and enforcement of decisions through certain state courts, in the prescribed manner.

As noted in the preamble of the Convention, its participants were guided by the desire to promote the development of European trade by eliminating, as far as possible, some of the difficulties in the functioning of foreign trade arbitration. «Unlike the New York Convention, the European Convention of 1961 is not limited to the enforcement of arbitration agreements and arbitral awards. It deals with arbitration more broadly, with an emphasis on certain questions which were controversial or inadequately dealt with in the national laws at the time of its adoption»[4].

«The European Convention is a kind of addition to the New York Convention, creating together with it a prototype of the system of regulation of international commercial arbitration»[5]. It is also stated that, to a limited extent, the European Convention takes precedence over the New York Convention[6].

In accordance with the European Convention, the legal capacity of the parties to enter into arbitration agreements must be assessed according to the law that applies to them, i.e.

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[1] Mayshev M.V. Impact of the Uncitral Model Law 1985 on regulation of international commercial arbitration in Germany: Candidate of legal sciences thesis (PhD). Moscow. 2011. P. 35.
[2] https://treaties.un.org/doc/Treaties/1964/01/19640107%2002-01%20AM/Ch_XXII_02p.pdf
[3] https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-2&chapter=22&clang=_en#:~:text=The%20Convention%20was%20prepared%20and,the%20Economic%20Commission%20for%20Europe%2C
[4] Comparative Law of International Arbitration: Second edition. // Poudret Jean-Frangois, Besson Sebastien. Sweet & Maxwell Ltd. London. 2007. P. 55.
[5] Tynel A., Khvalei V. "Baker and McKenzie": International Commercial Arbitration. States of Central and Eastern Europe and the CIS. Publishing house BEK. 2001. P. 15.
[6] Brigulio A. L’arbitrato estero e l’ordinamento processuale italiano. Vol 1. Roma: Aracne. 2004. P. 53.

according to the “personal” law of each of the parties. «Regarding a legal entity, lex societatis is the law of the state where the head office of the legal entity that entered into the arbitration agreement is located»[1]. Also point out that in the field of commercial arbitration, the issues of the arbitration agreement and its recognition are regulated for domestic and foreign arbitration in the same way[2].

This convention also introduces a uniform conflict of law rule that determines the law applicable to assess the substantive grounds for the validity of an arbitration agreement. It unifies the formal conditions for validity of arbitration agreements. The arbitration agreement must be in writing and signed by both parties or must be contained in an exchange of letters, telegrams or teletype messages. (Clause 2, Article 1 of the European Convention 1961).

Much attention is paid to the principles of the implementation of arbitration proceedings and the procedure for making a decision. The parties are endowed with complete freedom to choose an arbitration court - institutional or ad hoc. Unless otherwise agreed by the parties, the organization of the arbitration proceeding takes place in compliance with the rules defined in Article 4 of the European Convention 1961.

Of significant importance are the provisions concerning the determination of a body for the replacement appointment of arbitrators, including the formation of a so-called special committee to carry out this function. (Additions to European Convention 1961).

European Convention 1961 provides for the possibility of state courts intervening in arbitration proceedings. This intervention is possible at various stages of the proceedings (Article. 6 of the European Convention 1961). State Court may issue a ruling on provisional measures or measures of provisional security before the initiation of arbitration proceedings. But a request for provisional measures submitted to a state court should not be considered as incompatible with the arbitration agreement or as referring the case to a state court for determination on its merits. (Paragraph 4, Article. 6 of the European Convention 1961)..

Model laws of the UNCITRAL.

It can be argued that a significant role in the field of international commercial arbitration was played by the United Nations Commission on International Trade Law - UNCITRAL, established by the UN General Assembly in 1966.

Perhaps the most important result of UNCITRAL's efforts in the unification of legal norms in the field of arbitration was the development and adoption of the Model Law "On

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[1] Mayshev M.V. Impact of the Uncitral Model Law 1985 on regulation of international commercial arbitration in Germany: Candidate of legal sciences thesis (PhD). Moscow. 2011. P. 36.

[2] Brigulio A. L’arbitrato estero e l’ordinamento processuale italiano. Vol 1. Roma: Aracne. 2004. P. 48.

International Commercial Arbitration", developed by the United Nations Commission on International Trade Law (UNCITRAL) in 1985 and approved by Resolution No. 40/72 of the General UN Assembly[1] (hereinafter UNCITRAL Model Law). In the year 2006, some additions were made to this Law.

At the very beginning of this Model Law development, the question was whether to adopt this act in the form of a convention or a model law. As a result, the UN Commission on International Trade Law decided «…support the working group's proposal that the text be adopted and recommended in the form of a model law rather than a convention»[2].

The UNCITRAL Model Law includes 36 articles arranged in 8 chapters, as well as an explanatory note and recommendations for interpretation.

This document was intended to assist countries that are reforming or modernizing their legislation governing arbitration. Note that the documents UNCITRAL considering here do not have binding legal force, but are used along with international treaties and other norms of international law and have a serious impact on the regulation of legal relations. Such acts can be called "soft law". But, embodied in the current laws of various states, the provisions of the UNCITRAL Model Law acquire an imperative character.

Provisions of the Model Law have already been adopted in the legislation of several dozen states[3], moreover, many of them adopted laws of a general nature, i.e., extending to the sphere of both international and internal arbitration.

The model law, the provisions of which do not conflict with the existing international agreements in the field of arbitration and are in most cases dispositive in nature, contains key concepts and covers the main phases of the arbitration process.

As a basic criterion for the international nature of disputes, the Model Law uses the traditional UNCITRAL criterion, namely, the location of the parties' places of business in different states. The same criterion is the main in Russian ICA Act 1993, providing that the jurisdiction of international commercial arbitration includes civil disputes arising from the implementation of foreign trade and other types of international economic relations, if the commercial enterprise of at least one of the parties is located abroad[4].

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[1] UNCITRAL "Model Law on International Commercial Arbitration" of June 21, 1985 (with changes of July 7, 2006) adopted by United Nations General Assembly resolutions of December 11, 1985 No 40/72 and of December 4, 2006 No 61/33. 45. // https://uncitral.un.org/en/texts/arbitration

[2] UNCITRAL Model Law. // Editor Marilou M. Righini. Washington: American Society of International Law. 1985. Volume XXIV. Number 5. September 1985.

[3] Born G.B. International Arbitration: Law and practice. Kluwer Law International. The Netherlands. 2015. P. 38

[4] Kostin. A.A. The UNCITRAL Model Law and the Russian Law on International Commercial Arbitration: A comparative legal analysis. // Actual issues of international commercial arbitration. Moscow. 2002. P. 19.

However, the Model Law provides for other criteria. Thus, arbitration is international if, outside the state in which the parties have their places of business, there is either the place of arbitration, or the place where a significant part of the obligations are to be performed, or the place with which the subject matter of the dispute is most closely connected, or where the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country (Paragraph 3, Article 1 of the UNCITRAL Model Law).

The Model Law provided a special legal regime for international commercial arbitration, without affecting any existing treaties entered into by a State (Paragraph 1, Article 1 of the UNCITRAL Model Law).

It appears from the above that the UNCITRAL Model Law met expectations and played a significant role in the unification of arbitration procedure in the modern world.

The experience of Belgium in using the UNCITRAL Model Law when reforming its own arbitration legislation is interesting. Generally Belgian legislator has decided to align his law with the UNCITRAL Model Law which is one of the most advanced and modern regulations. Legislator took also into consideration the peculiarities of Belgian procedural law. The law regulates both national and international arbitration, and the new provisions are integrated in the Judicial Code and not in a separate law[1].

Next, consider the UNCITRAL Arbitration Rules[2]. The first edition of the Regulations was adopted in 1976 by UN Resolution No. 31/98. Further, the next edition of the UNCITRAL Arbitration Rules was adopted in 2010 by UN Resolution No. 65/22. Subsequently, minor additions were made to the document without changing the basic structure in 2013 by UN Resolution No. 68/109 and in 2021 by UN Resolution No. 76/108.

The UNCITRAL Arbitration Rules were initially recommended for use in ad hoc arbitration that would be acceptable to economic entities from states with different legal, social and economic systems. But further, in arbitration agreements and clauses, the parties to the disputes began to increasingly refer to this rule and a significant number of institutional arbitration institutions and similar bodies have recognized or adopted this rule in one form or another.

I give the following opinion on the adoption of the regulation under study. There are two ways in which the UNCITRAL Model Rules can be recognized in private trade disputes.

The first is the adoption of the UNCITRAL Arbitration Rules as own rules of the arbitration body.

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[1] Philippe D. A New Belgian Law on Arbitration. // Czech (& Central European) Yearbook of Arbitration. Vol.5. Interaction of arbitration and courts. Juris. 2015. P. 711 – 719.

[2] https://uncitral.un.org/en/texts/arbitration/explanatorytexts/recommendations/arbitral_institutions_2010

The second is an arbitral institution or other body acting as competent authority or providing administrative services for ad hoc arbitration in accordance with the UNCITRAL Arbitration Rules[1].

Note that the first method contains some inconveniences, since a number of issues are not spelled out in the UNCITRAL Arbitration Rules. For example, the sectoral nature of some arbitral institutions implies special regulations corresponding to the branch of activity, and not a general model regulation.

Summing up the review of UNCITRAL documents, I point out their main difference. It seems that the UNCITRAL Model Law is intended for the legislative activity of states, and the UNCITRAL Arbitration Rules is intended for arbitration institutions, or directly for application by the parties to the dispute.

At the end of this paragraph, pay attention to one more soft law document. This is the Model Law «On Arbitration Tribunals and Arbitration Proceedings»[2], adopted by the Inter-Parliamentary Assembly of States Members of the Commonwealth of Independent States, Resolution No. 45-6 of November 25, 2016 (hereinafter CIS Model Law). This Law is advisory in nature for use in the national legislation of the CIS countries, which make up the majority of the states of the former USSR.

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[1] Mayshev M.V. Impact of the Uncitral Model Law 1985 on regulation of international commercial arbitration in Germany: Candidate of legal sciences thesis (PhD). Moscow. 2011. P. 53.

[2] Zaitsev A.I. Commentary on the Model Law "On Arbitration Tribunals and Arbitration Proceedings". Yurayt: Moscow. 2019.

Paragraph 3. Arbitral tribunals.

In this paragraph, the author considers the most famous permanent arbitration institutions of various states.

One of the leading arbitration institutions in **Italy** is **Associazione Italiana Arbitri** (AIA)[1], which, in fact, is not an arbitration institution, but an organization that promotes the popularization and dissemination of arbitration as a way to resolve commercial disputes. Also note that this organization specializes, among other things, in the development of recommendations for the regulation of ad hoc and permanent arbitrations. In recent years, a number of rules and recommendations for the arbitration of disputes have been developed[2].

I mention about activities of the **Camera Arbitrale di Milano** (hereinafter CAM), the latest edition of the Arbitration Rules of which entered into force on July 1st 2020[3]. CAM, founded in 1985, is one of the first institutions providing alternative dispute resolution and arbitration of commercial disputes in Italy[4]. CAM owned by the public organization of the Milan Chamber of Commerce Monza Brianza Lodi.

London Court of International Arbitration, (hereinafter LCIA) operates as a national arbitration court since 1892, and since 1981 also functions as an international commercial arbitration. This arbitration tribunal operates on the basis of the Arbitration Rules, the latest version of which entered into force on October 1, 2014[5]. The main founders of the LCIA are the London Chamber of Commerce and Industry and the London City Council. The founders form the LCIA Joint Advisory Board. However, its policies, ongoing activities and future development are under the control of the Board of Directors, the Council of the Court and the Secretariat of the LCIA.

LCIA - it is a recognized organization, standing on a par with the world's major international arbitration courts, as well as the oldest arbitration tribunal. The first mention of the creation of a tribunal for the arbitration of both internal and international disputes appeared as early as 1883, when the London Public Council Court established a special committee for this purpose. As a result, the London Chamber of Arbitration was established in 1891[6]. LCIA has been operating as an international arbitration since 1981[1].

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[1] https://arbitratoaia.com/statuto-dellassociazione-italiana-per-larbitrato/
[2] https://www.aia-figc.it/download/
[3] https://www.camera-arbitrale.it/en/arbitration/arbitration-rules.php?id=64
[4] https://www.camera-arbitrale.it/it/arbitrato/index.php?id=5
[5] Rules of the London Court of International Arbitration (LCIA Arbitration Rules), in force as from 01 October 2014 // http://www.lcia.org
[6] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 849.

Many innovations and advanced ideas of institutional arbitration were formed in the LCIA on the basis of vast experience in arbitration proceedings and the development of the institution of arbitration..

Arbitration Institute of the Stockholm Chamber of Commerce (hereinafter SCC Arbitration), established in 1917, is also an authoritative arbitration. The latest Rules of the Arbitration Institute entered into force on January 1, 2017[2].

The SCC Arbitration has a Board of Directors consisting of 14 members, including the Chairman and Vice-Chairmen, who are appointed for a term of 3 years by the Executive Committee of the SCC. The Board consists of Swedish and foreign experts in the field of commercial arbitration. The functions of the Board include the adoption of decisions provided for by the SCC Arbitration Rules. Each board member has a deputy appointed by the SCC Executive Committee for the same term of 3 years.

Note that members can be re-elected with the same powers for only one subsequent three-year term. In exceptional cases, a member of the Board may be dismissed from his position..

Decisions of the Board are taken by majority vote and are final. In the absence of a majority vote, the chairman's vote is decisive. Two members of the Board constitute a quorum. Decisions can be made by the Chairman or Vice-Chairman of the Board alone. It is possible that the Board may delegate its powers to the Secretariat, but this occurs in exceptional cases.

The Secretariat of the SCC administers affairs, organizes conferences, publishes articles and books. The secretariat is headed by a general secretary, who must have a law degree. The Secretariat employs several staff members who are employees of the SCC.

In modern international practice of concluding foreign trade contracts, SCC Arbitration is often indicated as the venue for arbitration of disputes. This circumstance was facilitated by the generally neutral status of Sweden in the world community, the favorable and interested attitude of the country's government to arbitration and confidence in the Swedish legal system.

SCC registers about 200 new disputes annually, of which approximately 50% are international with parties from 30-40 different countries[3].

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[1] Improving the legal basis for the activities of arbitration tribunals. (Monograph). // edit. Baranova V.A., Petyukova O.N. Moscow. 2019. P. 113.

[2] Rules of the Arbitration institute of the Stockholm Chamber of Commerce (SCC Arbitration Rules), in force as from 1 January 2017. // http://www.sccinstitute.com

[3] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 866.

«An important result is the fact that Sweden has always fully recognized the independence and autonomy of the arbitral tribunal. The results achieved during the arbitration proceedings can only be challenged if the procedure that was used by the arbitrators is in conflict with the agreement of the parties, or if it otherwise does not meet the minimum standards of fairness in terms of providing each of the parties opportunity to represent your interests»[1]. This is very importante to the effectiveness of arbitration.

This approach is relies on a position based on freedom of contract, trust in arbitrators and acceptance of the practical advantages of a single arbitral procedure..

International Chamber of Commerce International Court of Arbitration in Paris (hereinafter ICC Arbitration) established in 1923 and is the world's leading arbitration institution. The International Chamber of Commerce is the largest research center in the field of private international law. The latest ICC Arbitration Rules entered into force on 01 January 2021[2].

This document defines the organizational structure and procedure for the functioning of the ICC International Court of Arbitration. The activities of the above-mentioned arbitration court are primarily aimed at solving commercial disputes of an international nature, the parties to which belong to different legal systems.

The ICC itself was founded in 1919 with the aim of promoting free trade and private enterprise, providing practical assistance to merchants and performing representative functions for business at the governmental and international levels.

According to the charter of the International Chamber of Commerce, it may include collective members - national, local or foreign chambers of commerce and other associations not engaged in commercial activities, as well as individual members - companies, firms and individuals engaged in commercial activities.

The income of the Chamber is formed from the contributions of the national committees; contributions are set differently. The weight and influence of the national committee depends on the amount of the contribution.

The supreme body of the ICC is the Congress. Other bodies are subordinate to the Congress, such as the Council, the Executive Committee, the Secretariat, various committees, bureaus and working groups on trade, production, foreign investment, balance of payments, transport, communications, legal relations, international exhibitions and fairs.

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[1] Magnusson A. Activities of the Arbitration Institute of the Stockholm Chamber of Commerce - an inside view. // Journal Arbitration Tribunal. No. 2. 2003. P. 107.

[2] Rules of Arbitration of the International Chamber of Commerce (ICC Rules of Arbitration), in force as from 1 January 2021. // https://iccwbo.org/dispute-resolution-services/arbitration/

The ICC promotes by its activities the introduction of standards, business customs, unified rules, definitions, conditions, etc. into international practice, the dissemination of the necessary political and trade and economic information for the development of international business.

The ICC Arbitration is essentially an administrative body established to assist in the conduct of arbitration and the development of the Rules.

«The ICC Arbitration Court was established in 1923 and since its inception has considered about 6,000 claims for arbitration»[1]. It means that the ICC Arbitration has considered so many cases for almost the entire last century. The practice of this arbitral tribunal is now more extensive. In 2016, 966 applications for arbitration were registered by the ICC Court of Arbitration and 479 awards were made[2].

Pay attention to one more French arbitration initiative.

On February 14, 2022, with the participation of the Paris 1 University, the Paris Center for Mediation and Arbitration at the Paris Chamber of Commerce and Industry (CMAP) and the French Arbitration Association (AFA), a solemn official presentation of the center and the **Sorbonne Arbitrage** brand, created by the Panthéon University - Sorbonne[3].

The Sorbonne Arbitration project sets itself the task of organizing and media promotion of any arbitration events held within the Panthéon-Sorbonne University, as well as events outside the university framework. The project does not have any rigid administrative structure and is largely an informal association of people interested in arbitration. One of the objectives of the project is to give intellectual dynamics to everything related to arbitration in France, thereby contributing, among other things, to the promotion of Paris as a center for international arbitration, as well as creating points of contact between the university environment and arbitration practices.

The creators of the project assume that their activities will help confirm the status of Paris as a recognized "intellectual center" of international arbitration.

This project is not an active arbitration tribunal, but the author considered it necessary to mention it in his work and suggest that in addition to educational activities, the project may evolve to the creation of an active arbitration tribunal.

Continue the review from the **United States of America**. The use of arbitration is very characteristic of the American legal system. Appeal to an arbitration tribunal is as natural as

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[1] Bruntseva E.V. International Commercial Arbitration (Manual). Saint-Petersburg: Publishing House "September". 2001. P. 69.

[2] https://iccwbo.org/media-wall/news-speeches/icc-reveals-record- number-new-arbitration-cases-filed-2016/

[3] https://www.pantheonsorbonne.fr/universite/projets/sorbonne-arbitrage?fbclid=IwAR3-fUANGQcGHuDuWCsTgOyoW0yxUrhgNbtokJSKhYnM_AmQ3gABYcUkTAA

an appeal to a state court. Arbitration tribunals are especially widely used in disputes arising in the field of entrepreneurial activity. A factor that positively influenced the development of arbitration institutions in the United States is the high level of corporatism, which makes it possible to provide support and promotion of progressive undertakings.

American Arbitration Association (Hereinafter AAA), founded in 1926 as a public non-profit organization to promote arbitration and other non-judicial dispute resolution procedures. This organization does not itself resolve disputes, but provides administrative and legal support for arbitration proceedings.

This Association was created by the merger of two organizations: the American Arbitration Society and the New York State Chamber of Commerce, an arbitration institution. «The AAA aims to promote the development of arbitration and create conditions that would stimulate and facilitate the arbitration of disputes, and most importantly, in fact, provide for itself in arbitration matters the general leadership and guiding role in the United States and, moreover, if possible, to exert appropriate influence in matters of arbitration on business circles and outside the United States»[1].

Legally, A.A.A. is a corporation organized under the laws of the State of New York. In accordance with the charter adopted in 1926 and amended in 1942[2], the Association is headed by the Board of Directors, but the daily management of the Association is carried out by the Executive Committee.

The Association primarily provides the procedural basis for the activities of commercial arbitrations. Thus, common Commercial Arbitration Rules and Mediation Procedures was developed. The last redaction of them Amended and Effective September 1, 2022 (hereinafter AAA rules).

Association - a public, non-profit organization located in the United States, deals with international commercial disputes and uses its own Rules of International Arbitration, holds hearings in a place convenient for the parties. «Generally, the AAA's role is administrative, compared to the arbitrator's function which is substantive in nature. The extent of services provided by the AAA's International Center will depend on the rules chosen by the parties. These can provide for full administration, serving as a channel of communications between the arbitrator and the parties. Increasingly, however, the International Arbitration Rules (IAR) apply, providing for consultation with the parties in the early stages to manage the proceedings, sufficient authority to resolve procedural impasses, and institutional initiatives,

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[1] Nosyreva E.I. Alternative resolution of civil disputes in the United States. Voronezh. 1999. P. 75.
[2] http://www.adr.org/Rules

notably pre-arbitration conferences, to streamline and expedite the arbitration process. Once the tribunal is constituted, however, the parties communicate directly with the tribunal»[1].

Due to the variety of dispute resolution procedures in arbitration courts and methods for choosing arbitrators, it is important that all participants observe certain standards of conduct. Given the importance of this issue, the American Arbitration Association, in conjunction with the American Bar Association, has developed a Code of Ethics for Arbitrators in Commercial Disputes[2]. It «provides ethical guidance to arbitration activities»[3]. The existence of ethical standards is essential for the promotion of arbitration. They require a high level of competence from arbitrators, combined with such qualities as honesty, independence, good faith, and contribute to building public confidence in arbitrators.

Consider the main arbitration institutions of the **Russian Federation**. Point out that in the Russian Federation there are two well-known institutional arbitration tribunals operating in the sphere of international commercial arbitration**. International Commercial Arbitration Court** (hereinafter ICAC), founded in 1932, (former Foreign Trade Arbitration Commission (VTAC)) and **Matrime Arbitration Comission** (hereinafter MAC), founded in 1930.

The document regulating the activities of the ICAC at the Chamber of Commerce and Industry of the Russian Federation, in addition to the current legislation, is its Rules, which was adopted in accordance with the order of the Chamber of Commerce and Industry of the Russian Federation No. 6 dated January 11, 2017[4].

Objectively, that the ICAC at the Chamber of Commerce and Industry of the Russian Federation, in terms of the professional level of its work, is not inferior to the leading international arbitration organizations.

Note, that «the International Commercial Arbitration Court is an organization designed to resolve disputes involving foreign firms and organizations. By its legal nature, this is an arbitration court, i.e. tribunal chosen or constituted by the parties themselves and solely at their discretion»[5].

Another important Russian organization operating in the field of international commercial arbitration, in addition to the ICAC, is the Maritime Arbitration Commission (MAC) at the Chamber of Commerce and Industry of the Russian Federation. The MAC at the Chamber of Commerce and Industry of the Russian Federation resolves disputes arising

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[1] Handbook of international arbitration and ADR. // Edit by T. E. Carbonneau. JurisNet LLC. New York. USA. 2006. P. 55.
[2]https://www.adr.org/sites/default/files/document_repository/Commercial_Code_of_Ethics_for_Arbitrators_2010_10_14.pdf
[3] Nosyreva E.I. Alternative dispute resolution in the USA. Moscow. 2005. P. 269.
[4] https://mkas.tpprf.ru/en/documents/
[5] Boguslavsky M.M. International private law. Moscow. 2004. P. 55.

from contractual and other civil legal relations arising from merchant shipping, regardless of whether the parties to such relations are subjects of Russian and foreign or only Russian or only foreign law. The MAC also resolves disputes arising in connection with the navigation of sea vessels and inland navigation vessels on international rivers, as well as disputes related to the implementation of foreign transportation. The Rules was adopted in accordance with the order of the Chamber of Commerce and Industry of the Russian Federation No. 5 dated January 11, 2017 [1].

According to paragraph 1 of the MAC Arbitration Rules, the MAC resolves disputes that arise from contractual and other civil law relations arising from merchant shipping, regardless of whether the parties to such relations are subjects of Russian and foreign or only Russian or just foreign law. In particular, the Maritime Arbitration Commission resolves disputes arising from relations:

- on chartering ships, sea transportation of goods, as well as transportation of goods in mixed navigation (river - sea);
- for sea towing of ships and other floating objects;
- marine insurance and reinsurance;
- related to the purchase and sale, pledge and repair of sea vessels and other floating objects;
- on pilotage and ice assistance, agency and other services for sea vessels, as well as inland navigation vessels, since the corresponding operations are related to the navigation of such vessels along sea routes;
- associated with the use of ships for scientific research, mining, hydraulic engineering and other works;
- for the rescue of seagoing vessels or by a seagoing vessel of an inland navigation vessel, as well as for rescue in sea waters by an inland vessel of another inland navigation vessel;
- associated with the recovery of sunken ships and other property;
- related to the collision of sea vessels, a sea vessel and an inland navigation vessel, inland navigation vessels in sea waters, as well as damage caused by a ship to port facilities, navigational aids and other objects.
- related to causing damage to fishing nets and other fishing gear, as well as other damage in the course of sea fishing.

The Maritime Arbitration Commission also resolves disputes arising in connection with the navigation of sea vessels and inland navigation vessels on international rivers, in the

[1] https://mac.tpprf.ru/en/rules/

cases specified in this article, as well as disputes related to the implementation of inland navigation of foreign transportation.

Really, that the ICAC is a classic international arbitration that considers disputes between economic entities belonging to different legal systems. MAC is an international industry arbitration institution that resolves disputes arising from maritime industry legal relations.

It should be noted that the provisions relating to the activities and legal status of the ICAC are contained in the Federal Law of December 29, 2015 No. 382-FZ "On Arbitration (Arbitration Proceedings) in the Russian Federation". This Law in Art. 44 expressly states that the ICAC and the MAC perform the functions of a permanent arbitration institution without the need for the Government of the Russian Federation to grant the right to exercise these functions. That is, they do not have to go through the complex bureaucratic procedures that the author wrote about in the previous paragraphs. This is good, because the above arbitral tribunals have high world reputation.

The activity of these tribunals is regulated by the Federal law N 5338-1 dated July 7, 1993 "On International Commercial Arbitration".

This law was adopted on the basis of the "Model Law on International Commercial Arbitration", which was developed by the Commission on International Trade Law (UNCITRAL) 1985.

As for the rest of the arbitration tribunals in Russia, their number is currently insignificant[1] due to the complex and redundant procedure for obtaining an activity permit. This issue was also raised by the author above. It is fair to say that «in modern Russia, arbitration tribunals have actually been eliminated, and the existing ones are just an exception to the rule and nothing more»[2]. The above statement applies to internal arbitration tribunals.

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[1] http://minjust.ru/ru/deyatelnost-v-sfere-treteyskogo-razbiratelstva/deponirovannye-pravila-arbitrazha

[2] Zaitsev A.I. Disadvantages of Reformed Arbitration in Russia. // Journal Arbitration Tribunal. No. 4. 2017. P. 48.

Part 2.
Procedural Issues of arbitral proceedings.

Chapter 1. Issues of jurisdiction in commercial arbitration.

Paragraph 1. Arbitral agreement.

Introduction.

This paragraph about the regulation and legal properties of the arbitration agreement. I point out that an arbitration agreement of parties to a dispute is basis for a dispute settlement through arbitration. This agreement excludes the jurisdiction of a state court. The right of parties to conclude an arbitration agreement is an expression of the principle of dispositivity, which implies the possibility for the subjects of legal relations to choose any legal measures and ways to protect their own rights and interests.

The legal literature emphasizes, that «arbitration agreement is the sole source of authority for arbitration, the jurisdiction of arbitration is based on and stems solely from the arbitration agreement of the parties»[1]. It is really that «there cannot be arbitration without an arbitration agreement - so it is necessary for the parties to draft an arbitration agreement in their contract»[2].

«Unlike state forms of administration of justice, which have powerful prerogatives by virtue of the law itself and regardless of the will of the parties, arbitration proceedings can take place only on the basis of an agreement between the parties, from which the tribunal draws its competence»[3].

«Arbitration, as has been said, is an institution that is founded and governed by the will of the parties; and the act in which this will is expressed is called an "arbitration agreement" and traditionally assumes two distinct forms: compromise, arbitration clause»[4].

Form of arbitration agreements.

I point that in the theory and practice of arbitration disputes, there are two forms of arbitration agreement. This is a separate agreement and arbitration clause. I presume that terms arbitral agreement and arbitral compromise are synonyms.

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[1] Redfern A., Hunter M., Blackaby N., Partasides C. Law and Practice of International Commercial Arbitration (Fourth edition). Sweet&Maxwell. London. 2004. P. 131.
[2] Arbitration and alternative dispute resolution. How to settle international business disputes. Geneva: ITC. 2001. P. 119.
[3] Lebedev S.N. International trade arbitration. Moscow. 1965. P. 8.
[4] La China Sergio. L' arbitrato: il sistema e l' esperienza. Giuffrè. Milano. 2011. P. 33.

An independent agreement is concluded in a situation where the parties conclude it in relation to an existing dispute, which has already arisen between them. And an arbitration clause is part of a specific agreement, and represents an agreement between the parties to resolve a dispute in an arbitration tribunal that may potentially arise between them. In practice, various standard arbitration clauses are more often used. Model clauses are attached to the model arbitration rules, model clauses are contained in the institutional arbitration rules.

There is the example of recommended arbitration clause of Vilnius Court of Commercial Arbitration (hereinafter VCCA), which located in Vilnius, Lithuania[1].

Any dispute, arising out of or relating to this contract, shall be finally settled by arbitration in the Vilnius Court of Commercial Arbitration in accordance with its Rules of Arbitration.

All procedural documents shall be served via parties' e-mails

(please indicate e-mails of each party to the contract).

The number of arbitrators shall be

The place of arbitration shall be

The language of arbitration shall be

The law of .... shall be applicable to the dispute.

In my opinion, a fairly concise arbitration clause, nevertheless including the necessary information and understandable for interpretation.

A separate agreement is usually referred to when the parties enter into an arbitration agreement with respect to a dispute that has already arisen between them, i.e. in relation to an already existing dispute. Whereas an arbitration clause, being part of a specific agreement, is an agreement between the parties that, in the event of a dispute between them in the future, it will be submitted to the arbitration tribunal established in accordance with the procedure provided for in the arbitration clause.

The arbitration agreement is usually concluded in writing, and «the rules on compliance with the written form of arbitration agreement almost completely coincide with the procedure for concluding a contract in writing»[2].

There is consideration in more detail the regulation of this issue and the content of the concept of written form.

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[1] https://www.arbitrazas.lt/?lid=6

[2] Gavrilenko V.A. Legal features of the arbitration agreement. // Bulletin of the Novgorod State University No. 69. 2012. P. 14.

The conservative concept claims, that «the prudent approach is to ensure that the agreement is unambiguously recorded in a recognized form of writing such as a written contract signed by all parties»[1].

Nonetheless, in modern law, the issue of written form of an arbitration agreement is not regulated so strictly and unambiguously.

The New-York Convention 1958 (Clause 2, Article 2) indicates that written agreement means an arbitration clause included in a contract or compromise, signed by the parties or contained in an exchange of letters or telegrams.

The European Convention 1961 (Clause 2, Article 1) indicates that arbitration clause may be contained in letters, telexes, telegrams, or other means of communication that allow proof of the agreement to be preserved. It is also added that if the states to which the parties to the dispute belong do not establish a requirement for a written form of an arbitration agreement, then the form of the agreement provided for by the national laws of these countries is recognized.

The UNCITRAL Model Law 1985 (Article 7) approves the need to conclude an arbitration agreement in writing and recognizes as such electronic messages, electronic and magnetic media, telegrams, telexes, links in the contract, statements of the party about the arbitration agreement and the absence of objections of the other party in the statement of claim or response to the claim. Proclaimed, that fixation of an arbitration agreement in any form is recognized.

The issue of form of an arbitration agreement sometimes becomes the subject of judicial practice. Here is the practice of the Federal Court of Oregon, USA, namely the case Oregon Pacific Forest Products Co. vs. Welsh Panel Co. Contractors, Japanese and American companies concluded about 50 transactions by phone. The transactions were executed in the form of buyer's orders accepted by the seller and included in the content of the contract signed by the buyer's agent. The content contained a condition on the consideration of disputes that may arise between the parties in the future, in Japanese arbitration. Subsequently, when the party filed a lawsuit against counterparty in the federal court of Oregon, the latter challenged, citing the existence of an arbitration agreement, and asked the court to stay the proceedings in the case. The court granted the defendant's request on the grounds that the plaintiff knew or should have known from the counterparty about the condition for the consideration of

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[1] International Arbitration: a handbook. Third edition. // Capper Philipp. Lowels. London, Singapore. 2004. P. 26.

disputes in Japanese arbitration in accordance with the arbitration clause contained in the contract[1].

In legal science, there is an issue of whether the signatures of parties are required for the validity of an arbitration agreement, and if so, in what form. There is no unequivocal answer to this issue, but the possibility of fixing the arbitration agreement on electronic media, electronic and telegraphic messages automatically entails the absence of mandatory signing of the agreement by parties.

Note, that in national laws governing arbitration, the issue of the obligation of a written form of an agreement is regulated in different ways. For example, the law of some countries (Italy, Russian Federation, etc.) provides for a mandatory written form of an arbitration agreement, while the law of other countries (Sweden, Norway, etc.) does not.

This paragraph will discuss in detail the regulation of the arbitration agreement by national law of the various States.

Content of arbitration agreements.

There is a detailed analysis of a content of an arbitration agreement.

Parties to the dispute independently determine what elements the arbitration agreement will consist of. Most often, as practice shows, it consists of the following elements, such as choice of arbitration method for resolving a dispute, choice of type of arbitration (institutional or ad hoc), name of institutional arbitration, choice of place for conducting proceedings, choice of language for conducting proceedings, determination of the number of arbitrators, choice of applicable law. Of course, the parties may include any other matters in the arbitration agreement.

If the parties submit the dispute to ad hoc arbitration, then it is imperative to decide on the arbitration procedure, since such arbitration does not have its own rules. Several options are possible here: either a sufficiently detailed establishment of the arbitration procedure in the arbitration agreement itself, or an appeal to one of the model rules, or an appeal to the rules of some institutional arbitration. The parties are limited only by the public policy of the country in which the arbitration takes place. In the event that the parties do not resolve procedural issues in the arbitration agreement, this will complicate the subsequent resolution of the dispute. It will be necessary to resolve these issues in the course of ad hoc arbitration, or the dispute will not be considered at all.

If institutional arbitration is chosen, it is important to clearly indicate the official name of this arbitration. Otherwise, different interpretations of the question of which arbitration

[1] Revue Critique de Droit International Priv. 1962. № 1. P. 129-130.

institution will consider the dispute are possible. Such situation causes difficulty of the parties in definition of competent arbitration tribunal.

Conflicting interpretations may give rise to disputes between the parties about the authorized arbitral institution, which may lead to the need for the intervention of the state judiciary. There is one precedent in the practice of the ICAC. The counterparties entered into an arbitration clause on the consideration of possible disputes in Moscow arbitration, without specifying it. After the dispute arose, the claimant applied to the ICAC, which did not find grounds for recognizing its competence to resolve this dispute, due to the fact that the parties in the contract did not express their clear intention to refer the disputes arising between them to the ICAC for consideration and did not exclude the possibility of their resolution by another arbitration tribunal. institution. Accordingly, the ICAC refused to hear the case[1].

In this situation, the parties to this dispute have two options. It is possible to conclude an additional arbitration agreement, where the ICAC or another arbitration institution is clearly and consistently indicated to resolve the dispute. Such a decision is possible only with the consent of the parties. Otherwise, this dispute is subject to litigation in a state court.

On the other hand, the same ICAC did not consider the inaccuracy of its indication in the arbitration clause as an obstacle to the trial of the case. In determining its competence to resolve the dispute, it was indicated that there is only one arbitration court that meets the criteria specified in the arbitration agreement, and the inaccuracy in the name of the arbitration institution, made in the arbitration clause of the contract, does not prevent the recognition of the existence of the competence of the ICAC, given the clarity of that that both sides had in mind the ICAC, as evidenced by their actions. The claimant brought a claim to the ICAC, and the defendant filed objections on the merits of the stated claims. That is, in fact, the defendant recognized the competence of the ICAC justifying its decision, the ICAC pointed out that when concluding the contract, the parties had in mind only the ICAC, and the inaccuracy in the spelling of the name of the court does not affect the content of the arbitration clause of the contract on the place of dispute resolution and the arbitration institution authorized to consider the dispute[2].

Note that in the arbitration agreement, if it specifies a permanent arbitration institution, it is not necessary to indicate the place of the dispute. As a general rule, the proceedings will take place at the place of official residence of the arbitral tribunal, unless the arbitrators, in the

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[1] Practice of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation for 2003. // comp. M.G. Rosenberg. Moscow. 2004. P. 102-103.

[2] Practice of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation for 2004. // comp. M.G. Rosenberg. Moscow. 2005. P. 90-96.

light of the circumstances of the case, determine otherwise. If the parties apply to ad hoc arbitration, it is advisable to agree and indicate the place of arbitration.

When choosing institutional arbitration, it is desirable to indicate the language of the dispute, and this indication should not contradict the requirements of the regulations. In the absence of an indication, the arbitration will determine the language itself. As a rule, domestic arbitrations use the language of location of the institution. Whereas there is a generally accepted rule that, if a party does not speak the language in which the arbitration is being conducted, it shall provide an interpreter at its own expense[1], therefore, an issue of language is practically significant.

Determine the number of arbitrators who will hear the case. When referring to ad hoc arbitration, the solution of this particular issue is essential. Institutional arbitration tribunal will resolve this issue in accordance with its rules considering instructions from the parties.

Note that if the parties have chosen institutional arbitration, the latter conducts proceedings in accordance with the laws of the country of its location and its regulations. However, a distinctive feature of arbitration is the unlimited right of the parties to establish a dispute resolution procedure, in accordance with the principle of dispositivity. Consequently, the vast majority of the rules that determine the procedure for proceedings are dispositive in nature and are applied at the will of the parties.

The choice of law to which the contract is subject is not necessarily included in the arbitration agreement, it is often decided as an independent condition of the contract. The choice of law is not only addressed to arbitration. First of all, it is addressed to the parties themselves, since it indicates under the laws of which state the rights and obligations of the parties under the contract will be determined, regardless of whether there is a need for arbitration. However, there are no obstacles to resolving this issue in the arbitration agreement. Sometimes the parties prefer that their dispute be considered by arbitration not according to the laws of any particular state, but, for example, according to the customs of international trade. In this case, it is necessary to include in the arbitration agreement an appropriate indication.

Also note, that «the development of domestic collision law of contractual relations is characterized by the displacement of binding to the law of the place of conclusion of the contract by other conflict decisions related to the needs of modern international commercial turnover»[2].

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[1] For example Article 19 of the UNCITRAL Model Law, Article 26 of the SCC Arbitration Rules.
[2] Zvekov V.P. Collisions of laws in private international law. Moscow. 2007. P. 127-128.

It follows that the parties may provide in the arbitration agreement any rule of arbitration procedure, even if they refer to institutional arbitration. This freedom is limited by the mandatory provisions of the relevant laws and the public policy clause, according to which the parties cannot establish such a procedural rule that violates the public policy of the country in which the arbitration operates.

Validity of arbitration agreements.

Resolving the issue of validity of arbitration agreement is of great importance, since depending on one or another answer, either the jurisdiction of the state court is excluded, or vice versa, the arbitration is considered incompetent to consider this dispute. When clarifying the question of validity of arbitration agreement, it is necessary to check whether it complies with the requirements provided for by national civil law and international ones in relation to contracts. Substantiated opinion, that «the conditions for validity of any transaction, by their legal nature, are substantive, therefore, they are determined by the substantive law of the state to which the transaction is subject, and in this case, the arbitration agreement»[1].

It is accepted in jurisprudence, that «arbitration agreement is presumed to be valid unless applicable law provides otherwise»[2].

The New-York Convention 1958 provides, that state court refuses to recognize and enforce a foreign arbitration award if the arbitration agreement is invalid (Clause 3, Article 2). Grounds for invalidity may be inconsistency with the form (Clause 2, Article 2), incapacity of the parties, making a decision on a dispute that does not fall under the terms of the agreement, the decision contains issues that go beyond the scope of the agreement (Clause 1, Article 5). Moreover, invalidity of the agreement follows from its inconsistency with the law of the country to which the parties have subjected this agreement, and in the absence of such an indication - under the law of the country where the decision was adjudicated (Clause 1, Article 5).

The European Convention 1961 also establish incapacity of the arbitral agreement if the parties that signed it were incapable or if the agreement did not comply with the law of the country to which the parties submitted this agreement, and in the absence of such an indication - according to the law of the country where the decision was adjudicated (Clause 1, Article 9).

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[1] International commercial arbitration. (Manual). // edit. Hellman U., Balashenko S., Sysouev T. Minsk: BGU. 2017. P. 123.

[2] Fouchard, Gaillard, Goldman On International Commercial Arbitration. // edit by Gailard E., Savage J. The Hague: Kluwer Law International. 1999. P. 419.

The author considers the following list of grounds for invalidity of the arbitration agreement to be justified.

- The agreement was made with a vice of will, for example, under the influence of deceit, delusion, violence, etc.

- The agreement was made by a person who does not have the necessary legal capacity or legal capacity.

- The agreement was made without observing the form prescribed by law.

- The agreement does not contain all the essential terms established for the arbitration agreement, including does not contain an express intention to submit the dispute to arbitration.

- The Agreement is contrary to the mandatory rules of applicable arbitration law.

- The agreement was concluded on issues that cannot be the subject of arbitration proceedings[1].

Also, «the conclusion of an arbitration agreement by a person who does not have the right to conclude an arbitration agreement entails the invalidity of the latter»[2].

I will also add such a ground for the invalidity of arbitration agreement as an unclear and contradictory indication of an institutional arbitration institution, which may lead to different interpretations.

Analysis of national laws.

Then I will analyze provisions of national laws about arbitral agreement.

First about arbitration proceedings of disputes in the **Russian Federation** and the provisions of the Federal Law dated December 29, 2015 No. 382-FZ "On Arbitration (Arbitration Proceedings) in the Russian Federation" (hereinafter Russian Act).

Chapter 2 of the Russian Act regulates issues related to an arbitration agreement, which can be formalized as a separate agreement or clause to the current agreement. A prerequisite is the written form of the arbitration agreement, including the written form is the exchange of letters, telegrams, procedural documents in which one party confirms the existence of the arbitration agreement, and the other does not submit objections, as well as other documents, including electronic, transmitted through communication channels, allowing you to reliably establish that the document comes from the other party (Clause 2, Clause 3, Article 7).

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[1] Khvalei V. How to Kill an Arbitration Agreement. // Journal Arbitration tribunal. 2003. No. 5 (29). P.47-48.
[2] International commercial arbitration. (Manual). // edit. Hellman U., Balashenko S., Sysouev T. Minsk: BGU. 2017. P. 130.

I point out that the rules on compliance with the written form of the arbitration agreement almost completely coincide with the procedure for concluding an agreement in writing, provided for the Civil Code of Russian Federation, Part one, enacted by Federal Law No 51-FZ of 30 November 1994. (Clause 2, Article 434).

In case of non-compliance with the requirements for concluding an agreement in writing, the agreement is considered not concluded, which does not entail any legal consequences for the parties and does not oblige them to consider the dispute in an arbitration tribunal.

According Russian ICA Act 1993, an arbitration clause that is part of a contract is treated as an agreement independent of the other terms of this contract. «Accordingly, the award of arbitration tribunal that the contract is null and void does not entail, by virtue of law, the invalidity of the arbitration clause»[1].

The Arbitration Procedure Code of the Russian Federation of July 24, 2002 No. 95-FZ indicates, that a state economy court cannot consider the case if there is an agreement of the parties on the consideration of this dispute by an arbitral tribunal (Article 148).

But, it should be noted that in certain categories of cases, the exclusive jurisdiction of state courts is possible, and any agreement of the parties on the arbitration procedure for resolving disputes, regardless of how it is drawn up, should be declared invalid. I will consider the issue of arbitrability of disputes in more detail in the next paragraph.

The **Italian Code** of Civil Procedure, Book 4, Title 8 Arbitration, enacted by Decree No. 1443 of 10/28/1940, regulates the sphere under research. This was last amended by Legislative Decree No. 40 of 2 February 2006 (hereinafter Italian Code).

The issues of the arbitration agreement are governed by Art. 808 of the Italian Code. The parties can enter into both a separate arbitration agreement and an arbitration clause in the main agreement. Moreover, its validity is assessed regardless of the main contract. Moreover, its validity is assessed regardless of the main contract. That is, the invalidity of the agreement does not automatically entail the invalidity of the arbitration agreement. Also, the parties have the right to conclude an arbitration agreement on legal relations outside the main contract (Art. 808 bis of the Italian Code).

I note that a prerequisite is the written form of the arbitration agreement (Art. 807 of the Italian Code), and confirmation of the will of the parties by telegraph, fax and electronic message is recognized as a written form. Accordingly, failure to comply with the written

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[1] Rozenberg M.G. International treaty and foreign law in the practice of the ICAC. Moscow. 2000. P. 14.

form will invalidate the arbitration agreement. «Thus, there is a legislative innovation on the written form of the arbitration clause»[1]

The interpretation or interpretation of the arbitration agreement is in favor of the latter. A priori, it is considered that the arbitration agreement concerns the entire set of legal relations arising from the contract (Article 808 quater of Italian Code).

The legislation rightly recognizes the arbitration agreement as an expression of the will of the parties and the basis for arbitration of the dispute and provides provisions aimed at protecting the specified will of the parties. Moreover, in addition to private subjects of economic turnover, state organizations can also be a party to the dispute. Legislatures «have confirmed in principle the possibility of arbitration in disputes against government agencies»[2].

Then I consider the law of **Sweden.** The Law "On Arbitration" No. SFS 1999: 116, which entered into force on April 1, 1999, regulates the issues of arbitration (hereinafter Swedish Act).

The Law of Sweden explicitly states that disputes, concerning issues that the parties are entitled to settle among themselves, can be referred to arbitration for resolution on the basis of an agreement. The arbitration agreement may relate to both already arisen disputes and disputes that may arise in the future (Article 1 of the Swedish Act). The provisions of the Swedish Act are formulated rather succinctly.

Note that the legislation does not require a mandatory written form of the arbitration agreement. «The arbitration agreement can be concluded in writing or by word»[3].

If the question of the validity of an arbitration agreement or clause included in another agreement is being decided, then the arbitration agreement or clause should be considered as an independent agreement (Article 3 of the Swedish Act). That is, the recognition of the contract as invalid does not automatically entail the invalidation of the arbitration clause.

If the Swedish state court establishes the existence of a valid arbitration agreement between the parties, it does not accept the case for proceedings, but invites the parties to comply with this agreement. But, at the same time, it is necessary to declare the position of one of the parties on the existence of an arbitration agreement and the intention to proceed with the dispute in arbitration (Article 4 of the Swedish Act).

Next I examine legislation of **Finland** and the Law "On Arbitration" No. 967/1992, adopted on October 23, 1992 (hereinafter Finnish Act).

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[1] Recchia G. L' arbitrato nel diritto comparator. Padova: CEDAM. 2014. P. 183.
[2] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 8.
[3] Zykov R.O. International Arbitration in Sweden: Law and Practice. Moscow. 2014. P. 18.

The arbitration agreement between the parties is recognized as a reason for the dispute proceedings in an arbitration court, and civil and economic disputes are indicated directly (Article 2 of the Finnish Act). There are no restrictions on the conclusion of an arbitration agreement, both in relation to an existing dispute, and in relation to a dispute that may arise in the future.

Finnish law sets out the requirements and conditions for an arbitration agreement. Its obligatory written form is provided. The agreement can be contained both in a separate document and in correspondence between the parties (including electronic) and in a link to another document containing provisions on arbitration (Article 3 of the Finnish Act).

In addition, it is provided that the arbitration clauses included in wills, donations, bills of lading and similar documents, in the statutes of associations, foundations, companies and other legal entities have the same force as an arbitration agreement (Article 4 of the Finnish Act).

If a claim is filed with a state court in a dispute governed by a valid arbitration agreement, the latter refuses to proceed with the proceedings and refers it to arbitration (Article 5 of the Finnish Act).

But, if one of the parties actively refuses to arbitrate the dispute, for example, evades the appointment of an arbitrator and incurring costs, then the other party may, despite the existence of an arbitration agreement, file a claim with the competent court. (Article 6 of the Finnish Act). That is, Finnish legislation does not provide for the right of state courts to compel arbitration.

The competent state court in resolving all issues related to the arbitration of a dispute is the court of first instance, which has jurisdiction over the territoriality of the place of arbitration (paragraph 1 of Article 50 of Finnish Act). An exception is the competent state courts considering issues related to arbitrators (Articles 14, 15, 16, 19 of the Finnish Act) before the court located at the place of residence of one of the parties, or in the District Court of Helsinki (Clause 2 Article 50 of the Finnish Act).

In addition, the parties to the arbitration agreement may agree on another court of first instance, competent to consider all issues related to the dispute by arbitration (Clause 3 Article 50 of the Finnish Act).

In **Norway**, the institution of arbitration is regulated by the Law “On Arbitration” No. LOV-2004-05-14-25 dated May 14, 2004, which entered into force on May 1, 2005 (hereinafter Norwegian Act).

The basis for the arbitration proceedings of the dispute is the arbitration agreement of the parties in relation to any disputes that may arise in a specific legal relationship (Article 10

of the Norwegian Act). Note that the Norwegian Law does not say anything about the mandatory written form of the arbitration agreement, leaving this issue to the discretion of the parties. An arbitration agreement that is part of a contract regardless of other terms of the contract. Recognition of the contract as invalid does not automatically entail invalidation of the arbitration agreement (Article 18 of the Norwegian Act).

Next about the legislation of **the United States of America** and the US Federal Arbitration Act, which came into force on February 12, 1925 (hereinafter the US FAA). These issues are regulated in more detail by the Revised Uniform Arbitration Act (hereinafter US UAA), developed in 1955, the last amendments to which were adopted in 2000.

The arbitration agreement has traditionally been cited as the primary ground for arbitration proceedings (Section 3 of the US UAA, Clause A Section 6 of the US UAA). Moreover, a state court, both federal and state court, when sending a statement of claim in relation to a dispute, if it is established that there is an arbitration agreement in writing in relation to this dispute, providing for its proceedings in arbitration, must suspend consideration of the said statement of claim pending arbitration, provided by the agreement (Paragraph 3 of the US FAA). Please note that there is a requirement for a written arbitration agreement or clause (Paragraph 2, Paragraph 3 of the US FAA).

It is also stated that the normal contracting rules (Paragraph 2 of the US FAA) apply to arbitration agreements.

Arbitration in **Canada** is regulated by the Commercial Arbitration Act of year 1985, which entered into force on June 17, 1986. (Hereinafter the Canadian Act of 1985).

This research also use the Ontario Arbitration Act 1991 and the British Columbia Arbitration Act 2020. (Hereinafter Ontario Act and BC Act).

The arbitration agreement is the basis for the arbitration of disputes. It can be either a stand-alone document or an arbitration clause. (Clause 1 Article 7 Appendix 1 of the Canadian Act of 1985, Paragraph 1 Article 5 of the Ontario Act, Article 5 of the BC Act). The parties have the right to enter into an arbitration agreement both before and after the dispute arises.

But, further there are discrepancies in the studied legal acts. The arbitration agreement is concluded in writing, which is also recognized in the exchange of letters, telex, telegrams or other types of communication, or in the exchange of statements of claim containing information about the arbitration agreement, if the latter is not contested by the other party (Clause 2 Article 7 Appendix 1 of the Canadian Act of 1985). Also, a reference in a contract to a document containing an arbitration clause is equivalent to an arbitration agreement, provided that the contract is drawn up in writing (Clause 2 Article 7 Appendix 1 of the

Canadian Act of 1985). The legislation of the provinces of Canada regulates these issues in a slightly different way. The written form of the arbitration agreement is not a prerequisite (Paragraph 3 Article 5 of the Ontario Act, Clause A Paragraph 5 Article 5 of the BC Act).

The competent state court is the court in the territory of the jurisdiction of which the arbitral institution is located and / or the dispute is directly adjudicated (Paragraph 6 of the Canadian Act of 1985).

If one of the parties submits an application for the dispute to a state court, and the dispute, in accordance with the agreement, is subject to arbitration, the court refuses to consider the case and directs the parties to arbitration. An exception is the recognition of the arbitration agreement as invalid or the dispute is not subject to arbitration in accordance with the law (Clause 1 Article 8 Appendix 1 of the Canadian Act of 1985, Article 7 of the Ontario Act).

I also pay attention to the following provision of the British Columbia Act. The arbitration agreement or clause is independent of other terms of the contract and the recognition of the contract as invalid does not automatically entail invalidation of the arbitration agreement (Article 23 of the BC Act).

And I draw attention to the provision of Ontario Law, according to which a state court can stop arbitration and invalidate it at any stage of the dispute proceedings. The grounds for this are the invalidity of the arbitration agreement, the incapacity of one of the parties (or the lack of authority of the employees of the legal entity) who signed the agreement, the discrepancy of the dispute under consideration with the arbitration agreement, and also if the subject of the dispute cannot be the subject of arbitration. An injunction is issued against arbitration (Article 48 of the Ontario Act).

In the **UK** arbitration is regulated by the Arbitration Act 1996 of England, adopted 17 June 1996 (hereinafter English Act). The English Act points, that an arbitration agreement is deemed to be in writing if the agreement is in writing, whether signed by the parties or not, is concluded by means of an exchange of messages in writing, or it is reliably proven that the agreement was concluded in writing (Article 5).

Application of arbitration agreements.

I will consider some legal situations related to the conclusion and application of an arbitration agreement.

In a situation where arbitration is vested with jurisdiction, the consideration of the case in a state court should be terminated. For this, as a rule (especially in Great Britain and other countries of the Anglo-Saxon system of law), the mechanism of an order to terminate the

consideration of the case in a court of another state is used (anti-suit injunction). Accordingly, there may be disputes over the application of this mechanism. There is the decision of the English Court of Appeal in the case Alfred Toepfer[1]. The claimant disputed the jurisdiction of the French courts to consider the validity of the arbitration agreement, referring to the existence of an agreement on the exclusive jurisdiction of the English courts. The defendant motivated his objections to this by saying that the English court should terminate the proceedings, because the same cause of action (cause of action) already pending in the French court, where he applied earlier. In order to avoid the situation of jurisdiction of courts of different states, it was applied anti-suit injunction.

In the modern practice of English courts, the anti-suit injunction mechanism is applied not only in relation to state legal proceedings, but also in relation to arbitration proceedings. The rationale for this approach was that its main focus was to enforce the arbitration agreement[2].

A situation is possible with a contract that has not entered into force, but contains an arbitration clause. A similar collision was considered in American jurisprudence, in the proceedings in Republic of Nicaragua v. Standard Fruit Co. The contract contained an arbitration clause, but negotiations on the main contract were not completed and it did not enter into force. However, when a dispute arose, it was submitted to arbitration as the arbitration clause was found to be valid. In another similar situation, the state court took the opposite position. For example, in Australia, the court held that, even if the parties had agreed to an arbitration clause, it had no effect if there was no underlying contract[3].

Plurality of arbitration agreements.

An interesting question is whether it is possible to resolve a dispute on the basis of several arbitration agreements in one arbitration process.

It is possible to give an answer about the fundamental possibility of such a trial. It is advisable to combine various arbitration agreements and disputes related to one or related legal relations within the framework of one arbitration procedure. Moreover, it should be distinguished between the consolidation of two already initiated arbitration proceedings on one subject or the initiation of a single arbitration based on two or more arbitration agreements.

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[1] Alfred C. Toepfer International Gmbh v. Societe Cargill France [1997] EWCA Civ. 2811. // UK Court of Appeal decision of 25 November 1997.// http://www.bailii.org

[2] Ambrose C. Can anti-suit injunctions survive European Community Law? // Journal. International and Comparative Law Quarterly. Issue 52 (401). April. 2003.

[3] Kanashevsky V.A. International private law. (Manual). Moscow. 2006. P. 646-647.

I point, that SCC Arbitration Rules expressly permits the filing of claims arising from or related to more than one contract in one arbitration process (Clause 1, Article 14).

The approach of the national courts to the issue under consideration of the consolidation of arbitration agreements within the framework of one proceeding is contradictory.

There is an example. The Supreme Court of Cassation of Italy held that the filing of a single request for arbitration in respect of different claims based on identical arbitration agreements is valid and therefore the award cannot be set aside on this basis. The Supreme Court of Cassation of Italy was guided by the circumstances that the parties are identical, the contracts are related and the arbitration agreements are identical. Accordingly, the principle of good faith justifies joining in one arbitration trial[1].

In Canada, the Supreme Court of British Columbia heard the case British Columbia South Coast Transportation Authority vs. BMT Fleet Technology Ltd. The Court invalidated one request for arbitration filed under more than one arbitration agreement. However, the Court found a different solution, holding that the arbitral institution administering the case (British Columbia's International Commercial Arbitration Center) may divide the dispute into separate arbitrations, in accordance with the arbitration agreements[2].

The author supports the practice of combining the consideration of disputes arising from several arbitration agreements within the framework of one arbitration trial, if there are grounds for this. This practice is consistent with the principles of procedural economy and promptness of dispute resolution.

Arbitration agreement as source of legal regulation.

Now I will research issues of the hierarchy of sources of legal regulation of commercial arbitration and the place of the arbitration agreement in this hierarchy.

The opinion of scientists - lawyers on the issue of correlation and supremacy of the regulations of arbitration institutions and arbitration agreements is interesting.

Some scientists believe that it is impossible to give the leading role to one of these sources, since on the one hand, the agreement of the parties is the fundamental principle of the arbitration process, which determines the possibility of transferring a commercial dispute to private legal proceedings, which may contain the main conditions for the dispute. On the other hand, if the parties have obeyed the arbitration rules of a specific arbitration institution,

[1] Aliman Immobiliare dell Geon, Roberto Gufler & C.S.A.S., vs. Meridiana Costruzioni srl. // Corte Suprema di Cassazione, 25 May 2007. // http://www.cortedicassazione.it
[2] British Columbia South Coast Transportation Authority vs. BMT Fleet Technology Ltd., 2018 BCCA 468 (2018-12-11).

they cannot change the procedure and the list of services provided by such an institution by agreement. In the first case, the arbitration process implies the supremacy of the agreement of the parties, which is typical for ad-hoc arbitrations, in the other case, the supremacy of regulatory law is traced when considering a dispute in institutional arbitration[1].

I agree that when a dispute is settled in institutional arbitration, its rules and regulations prevail over the provisions of the arbitration agreement. In case of conflict, two options are possible. It is possible to change the terms of arbitration agreement, with the consent of both parties, and bring it into line with the rules of the arbitration institution, or it has the right to refuse to consider this dispute and decide on the lack of competence.

Objectively, the hierarchy of sources of legal regulation of commercial arbitration is as follows.

In the first place are international agreements and conventions adopted and ratified by states in accordance with the established procedure.

In second place is the national legislation of states.

In third place are the rules of institutional arbitration.

In fourth place are arbitration agreements.

Attention should be paid to the positive and negative effects of the arbitration agreement.

The positive (prorogative) effect of the arbitration agreement is manifested in the fact that it creates the competence of the arbitration tribunal, is the basis of the powers of arbitrators and obliges the parties to submit disputes to arbitration.

The negative (derogational) effect implies the obligation of the parties to refrain from filing claims in state courts, the subject matter of which is covered by the arbitration agreement.

Conclusion.

At the end of this paragraph, I will return to the issue of the form of arbitration agreement, which is analyzed in the legal science of Italy[2], USA[3], France[4], Belgium[5], UK[1], China[2], Russian Federation[3] and other states[4].

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[1] Mayshev M.V. Impact of the Uncitral Model Law 1985 on regulation of international commercial arbitration in Germany: Candidate of legal sciences thesis (PhD). Moscow. 2011. P. 56.
[2] La China Sergio. L' arbitrato: il sistema e l'esperienza. Milano: Giuffrè. 2011. P. 62
[3] Arbitration law in America: a critical assessment. // Brunet E., Speidel R.E., Sternlight J.R., Ware S.J. New York: Cambridge University Press. 2006. P. 228.
[4] El Ahdab J., Mainguy D. Droit de l'arbitrage Théorie et pratique. LexisNexis. France. 2021. P. 349.
[5] Storme M., Demeulenaere B. International commercial arbitration in Belgium. A handbook. Kluwer Law and Taxation Publishers. Deventer. The Netherlands. 1989. P. 45.

The appropriateness of the written form requirement should be assessed. Objectively, there are many situations where the parties have agreed to arbitrate, and this is confirmed by written evidence, however, the validity of the arbitration agreement, however, is called into question due to strict formal requirements.

Accordingly, «the requirement for a written form of arbitration agreement is due to the fact that by entering into it, the parties thereby waive their constitutional right to apply to a state court, which justifies the strict requirements for the form of an arbitration agreement»[5].

I agree that the written form of the arbitration agreement and its signing by authorized persons in the prescribed manner provides a clear legal fixation of the agreements and prevents possible attempts to violate or challenge the agreement in the future.

But, modern development of technologies dictates new rules. It seems that the electronic form of the arbitration agreement, certified by the electronic signature of authorized persons, does not differ in any way from the traditional written form.

As for other ways of formalizing arbitration agreements described earlier, such as electronic messages, telegrams, telexes, magnetic media, or even more so verbally, the author is very skeptical about them.

For example, a party to a dispute wishing to avoid arbitration may be able to claim that various types of communications containing an arbitration clause were sent by unauthorized persons and are not the position of the company. A legally controversial situation arises, which will be resolved most often in the state court and its various outcomes are possible.

Therefore, the author recommends providing in international legal documents, national laws and arbitration regulations such forms of arbitration agreements or clauses that exclude their various interpretations that may be the reason for their challenge. Such forms are seen as a written form with official seals of the counterparty and signatures of authorized persons or an electronic form with an electronic signature of authorized persons of the counterparty. Currently, there is software for electronic document management that provides for verifiable electronic signatures.

As a result, the arbitration agreement is one of the most important components of a commercial contract, as essential as its main conditions. As a rule, counterparties do not

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[1] Tweeddale A., Tweeddale K. Arbitration of commercial disputes. International and English law and practice. Oxford University Press. 2007. P. 97.
[2] Tao J. Arbitration law and practice in China. Kluwer Law International. The Netherlands. 2008.P. 42.
[3] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018.. P. 320.
[4] Arbitration in Asia, Second Edition. // Part C. Mongolia. by Cottrill Y., Buxbaum D.C. JurisNet, LLC. 2013. P. MON 8. // https://arbitrationlaw.com
[5] Kiseleva T.S. Form and procedure for concluding an arbitration agreement: a comparative legal analysis. // Journal Arbitration Tribunal. No. 1/2. 2002. P. 75.

conclude a contract by planning its violation. But, if such a violation occurs, then the condition on the procedure for resolving disputes becomes an essential component of the transaction.

It seems, that «the starting point is the contractual nature of arbitration, which in turn derives from the autonomy of the will of the parties. Any arbitration is based - on the agreement of the parties. The power of the arbitrators follows from the agreement of the parties, in other words, the arbitrators act by virtue of the powers granted to them by the parties»[1].

It is advisable for subjects of economic relations to analyze the positive and negative factors when concluding an arbitration agreement, because it makes certain obligations and responsibilities for the parties

With a clear understanding of the subjects of legal relations of their own interests, the arbitration agreement serves as a serious guarantee for the protection of their rights and the effective resolution of a possible conflict situation.

[1] Hober K. Activities of a lawyer in international commercial arbitration in Sweden. // Journal International Commercial Arbitration. No. 2. 2005. P. 75.

Paragraph 2. Arbitrability of disputes.

Introduction.

Considering this issue in relation to the arbitration trial, it is noted in the literature that jurisdiction is understood as a range of cases referred by law to the consideration and resolution of certain bodies of the judicial system. «Jurisdiction is intended to establish that judicial organization, which, by virtue of its properties and the duties assigned to it, is best able to satisfy the needs of a person in judicial protection. In this regard, jurisdiction should be considered not as a condition for the emergence, but as a condition for the proper implementation of the pointed rights»[1]. It can be argued that the institution of jurisdiction «determines the competence of various legal authorities that protect rights, and the institution of jurisdiction derived from it delimits the competence within the judicial system on a generic and territorial basis»[2]. As you know, the category of "jurisdiction" is subject to a certain differentiation into exclusive and multiple jurisdiction, the latter, in turn, is divided into alternative, contractual, imperative, conditional and mixed.

The legal literature has long explored the criteria that determine jurisdiction. For example, an interesting statement, that «attributing cases to the jurisdiction of judicial or other authorities depends on the particular policy of the state at this stage of its development, and to some extent is dictated by practical considerations»[3]. Also, the criteria for jurisdiction can be characteristics of the state legal policy.

Considering the issue of the jurisdiction of disputes to arbitration tribunals or the arbitrability of disputes, come to a conclusion that jurisdiction refers to the range of cases referred by law to the consideration and resolution of certain state or non-state authorities. I also point out that jurisdiction is understood as the right of jurisdictional authorities, including arbitration tribunals, to resolve only those cases. which are assigned by law to their jurisdiction.

Types of jurisdiction.

The category of jurisdiction is subject to a certain differentiation into exclusive and multiple jurisdictions, the latter, in turn, is subdivided into alternative, contractual. imperative, conditional and mixed.

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[1] Chudinovskikh K.A. Jurisdiction in the system of civil and arbitration procedural law. // Abstract of the Candidate of legal sciences thesis (PhD). Ekaterinburg. 2002. P. 14.
[2] Shcheglov V.N. Fundamentals of jurisdiction in civil cases. // Fundamentals of Civil Legislation and Fundamentals of Civil Proceedings of the USSR. // Saratov. 1981. P. 127.
[3] Yudelson K.S. Soviet civil process. M. 1956. P. 182.

If disputes of some kind are resolved only by certain organizations, jurisdiction is called exclusive, for example, certain categories of disputes are resolved exclusively by state courts.

Multiple jurisdiction allows, to one degree or another, a choice both from several state judicial organizations, and a choice between the state judicial system and alternative methods of dispute resolution, including arbitration.

With alternative jurisdiction, the choice is made by the person who requires the protection of disputed or violated rights. In other words, a person can determine the organizations (in the structure of organizations determined by law) unilaterally.

This type of jurisdiction involves the mutual agreement of the parties to consider the dispute in certain ways, whether it be a state court or arbitration tribunal. Some scientists believe that alternative jurisdiction has transformed into a mixed one, and « combines features inherent in other types of jurisdiction, most often imperative and alternative»[1].

Contractual jurisdiction means jurisdiction determined by mutual agreement of the parties. Thus, the subjects of economic turnover have the right to conclude an arbitration agreement on the consideration of possible (or already arisen) disputes between them in an arbitration tribunal.

Jurisdiction is imperative, in which the case is considered by several organizations in a sequence determined by law. Moreover, each subsequent organization from among those participating in the resolution of the case is endowed with the right to control the correctness of the decisions taken before it on the dispute by another organization. For example, criminal cases can be considered by different instances of the state judicial system.

With conditional jurisdiction, the case is subject to consideration in a certain organization only upon the occurrence of a certain condition provided for by law. Moreover, this condition, in contrast to the imperative jurisdiction, is not in a subordinate connection with the act of this organization.

Mixed i jurisdiction is characterized by a combination of the above (in any options) types of jurisdiction.

Arbitrability criteria for disputes.

As criteria for attributing certain categories of cases to the jurisdiction of certain organizations, as a rule, the nature of the disputed legal relationship, as well as the composition of its participants, are taken.

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[1] Yarkov V.V. Modern problems of jurisdiction of civil cases // Journal of Russian Law. No. 10/11. 1998. P. 114.

In addition, along with the specified criteria, for alternative or contractual jurisdiction, the necessary criterion will be the will of the party that determines the essential jurisdiction issues.

At least, to determine the jurisdiction of disputes, the arbitral tribunal must be guided by three criteria: the subject composition of the participants in the dispute, the nature of the disputed legal relationship, the presence of the will of the parties to refer the dispute to the arbitral tribunal. Obviously, arbitration should be qualified as a special jurisdiction[1].

Objectively, «conclusion by the parties of an agreement on the transfer of a dispute that has already arisen or may arise for resolution by an arbitration tribunal occurs without the competence of a state court»[2]. The guarantee of implementation of this agreement is the legislation that defines the range of legal relations subordinate to arbitration tribunals.

The term arbitrability of disputes should be understood as the possible jurisdiction of the disputes to an arbitration tribunal. Of course, in the presence of an arbitration agreement of the parties and the absence of legislative prohibitions on the consideration of certain categories of disputes between certain subjects.

In essence, the institute of arbitrability of disputes determines the relevance of a range of cases to competent arbitration tribunals. «Arbitrability allows a demarcation line to be drawn between the jurisdiction of the courts and arbitration»[3]. The state, through the current legislation, transfers to arbitration tribunals the authority to resolve certain categories of civil disputes in respect of which the parties conclude an arbitration agreement[4]. Arbitration agreement will be valid and apply if the subject matter of the dispute is arbitrable.

Arbitrability itself is divided into subjective and objective. Subjective arbitrability means the possibility of the parties to submit the case to arbitration, and objective arbitrability means the possibility of arbitrating a dispute that is not the prerogative of state courts[5].

It should be mentioned that legal relations in the field of administrative and criminal law cannot be resolved through the arbitration procedure under any circumstances. The imposition of administrative and criminal penalties is an imperative procedure carried out on behalf of the state by authorized public authorities.

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[1] Arbitrato: profili di diritto sostanziale e di diritto processuale. Torino: UTET Giuridica. 2013. P. 55.
[2] Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities. // Abstract of the Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006.
[3] Shelkoplyas Natalya. The Application of EC Law in Arbitration Proceedings: Thesis degree of Doctor. University of Tilburg. The Netherlands. May 2003. P. 249.
[4] Casa I.R. To the issue of competence of an arbitration tribunal. // Scientific and legal journal "Education and Law". No. 12. 2017. P. 128.
[5] Kaufmann-Kohler G., Rigozzi A. International Arbitration: Law and Practice in Switzerland. OXFORD University Press. Oxford. 2015. P. 43.

Arbitration is «an alternative to state justice and is carried out by non-state independent organizations»[1]. The institution of arbitration is not empowered to impose mandatory penalties, unlike institutions of state power.

Legal relations related to public law and the activities of public authorities within the framework of their own powers are also not the subject of arbitration proceedings. An exception is legal relations within the framework of civil and legal contracts between state or municipal bodies and business entities.

Some types of disputes cannot be resolved by arbitration because they contain a significant public law element. For example, legal relations in the field of administrative and criminal law cannot be resolved through the arbitration procedure, since the appointment of administrative and criminal penalties is an imperative procedure carried out on behalf of the state by authorized executive and judicial authorities.

Also «among the issues, the arbitrability of which is not always recognized, we can name the relationship of competition, unfair trade, intellectual property, issues related to the securities market and bankruptcy»[2].

In principle, the state has the right, in pursuit of its interests, to transfer certain categories of cases to the jurisdiction of state courts, limiting access to arbitration. «Each state decides independently what kind of disputes can be the subject of arbitration, using either the criterion of «alienability of rights», or public policy, or the economic nature of the legal relationship»[3].

So, of great importance is the issue of jurisdiction and competence of arbitration tribunals, which are mainly responsible for disputes between parties to civil law relations, including individuals and legal entities, unless otherwise provided by laws. I now do nott pay attention on sport, labor and some other types of disputes because the main issue of this thesis is commercial arbitration. The institute of commercial arbitration primarily focused on dispute resolution between economy entities.

Mention should be made of such a term as an economic dispute, an integral part of which can be considered a dispute from civil legal relations. It is considered that economic disputes may arise from civil ones. and other legal relations. As a rule «most cases of a commercial sphere are generally regarded as arbitrable»[4].

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[1] Anisimov A. Gavrilenko V. Modern problems of arbitration in land disputes. // Conflict Studies Quarterly. CSQ. Accent Publisher. Cluj-Napoca. Romania, 2019. P. 3.

[2] Yuryev E.E. Influence of European Union Law on International Commercial Arbitration: Candidate of legal sciences thesis (PhD). Moscow. 2008. P. 91.

[3] Carbonneau T. Cases and Materials on Commercial Arbitration. Juris Publishing, New York. 1997. P. 5.

[4] Yuryev E.E. Influence of European Union Law on International Commercial Arbitration: Candidate of legal sciences thesis (PhD). Moscow. 2008. P. 91.

There is one more circumstance, such as the possibility of concluding an arbitration agreement and subsequent settlement of disputes, one of the parties to which is a state organization and (or) its authorized persons.

«In Belgium, persons of public law have the right to conclude an arbitration agreement only if the subject of said opinion is the resolution of disputes arising from the conclusion or performance of the contract. In Latvia, disputes in which an authorities of state or municipal administration acts as a party cannot be considered in international commercial arbitration»[1].

«The United States and Iran have established a ban on the conclusion of an arbitration agreement between a private person, on the one hand, and the state, on the other»[2].

In the Russian Federation, it is possible to conclude civil law contracts, one of the subjects of which may be a state organization. Objectively, there are no obstacles to resolving disputes under these agreements in arbitration tribunals[3]. The law of the Republic of Lithuania also allows state organizations to enter into an arbitration agreement under the general procedure for disputes related to commercial contracts[4]. Legislatures of Italy «have confirmed in principle the possibility of arbitration in disputes against government agencies»[5].

This approach is typical for most legal systems, but there are exceptions described above.

Analysis of national laws.

There is analysis of the issues about arbitrability of certain types of disputes and analysis of the types of disputes to be considered exclusively in a state court.

Need to pay attention that «national laws contain both positive rules on arbitrability, which determine the range of disputes that can be referred to arbitration, and negative rules on arbitrability, which contain prohibitions on referring certain disputes to arbitration»[6].

The **Italian** Code of Civil Procedure regulates this issue as follows.

Article 806 of the Italian Code indicates that the parties have the right to arbitrate disputes arising between them, with the exception of disputes, the subject of which is inaccessible legal relations and with the exception of disputes, the arbitration of which is prohibited by law. A very general and non-specific wording, in fact referring to other provisions of the law.

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[1] Minina A.I. Arbitrability: theory and practice of international commercial arbitration. Moscow. 2014. P. 86.
[2] Khlestova I.O. Jurisdictional Immunity of the State. Moscow: Jurisprudence. 2007. P. 16.
[3] Gavrilenko V.A. Peculiarities of arbitration trial of disputes in modern Russia. // Journal Law, Security, Emergencies. No. 2 (39). 2018. P. 24.
[4] Zemlute Egle. Valstube kaip arbitrazinio susitarimo salis (Monograph). Vilnius. 2014. P. 31.
[5] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 8.
[6] International commercial arbitration. (Manual). // edit. Hellman U., Balashenko S., Sysouev T. Minsk: BGU. 2017. P. 135.

The same article 806 of the Italian Code indicates that the category of disputes provided for in Art. 409 of the Italian Code may be subject to arbitration if required by law or collective bargaining agreement. The above Art. 409 of Italian Code deals with individual labor disputes in labor relations. These disputes can be the subject of arbitration with the consent of the parties (Articles 412, 412 ter, 412 qater of the Italian Code).

Note that in the previous version of the Italian Code, prior to the entry into force of Legislative Decree No. 40 of 2 February 2006, in Art. 406 of Italian Code explicitly pointed out the non-arbitrability of individual labor disputes, as well as disputes on matters of marriage and family relations.

Currently, as it was indicated earlier, labor disputes can be resolved by arbitration. The procedures relating to the family and the status of persons governed by Title II of Book IV of the Italian Code are exclusively under the jurisdiction of the state courts. For example, disputes in the field of marriage and family relations (Articles 706, 736 bis of the Italian Code), parental responsibility (Article 709 ter of the Italian Code), recognition as deceased (Article 721 of the Italian Code), recognition as incapacitated (Article 712 of the Italian Code), legal relations of minors and disabled people (Art. 712 of the Italian Code). Inheritance relations governed by Section IV of the fourth book of the Italian Code; legal relations in the field of dissolution of common property, regulated by Section V of the fourth book of the Italian Code, legal relations in the field of mortgages, regulated by Section VI of the fourth book of the Italian Code, are also examined by state courts.

Need to pay attention to the issue of the possibility of arbitration of certain types of corporate disputes. The legislation «excluded the possibility of arbitration in the consideration of disputes regarding legal relations arising from the concession agreement»[1].

In turn, public works disputes are generally arbitrable, despite some restrictions imposed by anti-corruption laws [2].

I can argue that the Italian legislators simply included in the legislation (moreover in different articles of the Italian Code) list of non-arbitrable disputes, without including a general definition of dispute arbitrability[3].

It seems that the lack of a direct and clear indication of the types of disputes that are not subject to arbitration and are not subject to arbitration institutions in one article of the Code of Civil Procedure is an omission of the legislator and complicates the work of practicing lawyers. In accordance with effective legal technique, it is advisable to specify all

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[1] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 8.
[2] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 8-10.
[3] Weigang F.B. Practitioner's Handbook on International Commercial Arbitration. Second Edition. Oxford University Press. 2010. P. 45.

types of the above disputes in one provision of the Code, and not to scatter this information throughout the document.

Now about arbitration legislation in the **Russian Federation.**

The Federal law "On international commercial arbitration" of July 7, 1993 No 5338-1 (hereinafter Russian ICA Act 1993) includes in types of disputes for the proceedings in international commercial arbitration (Clause 3, Article 1). I will list them.

Disputes of the parties that arise from civil law relations, in the implementation of foreign trade relations, if at least one party is located abroad, or if any place where a significant part of the obligations arising from the relationship of the parties should be fulfilled, or the place with which the most closely connected the subject of the dispute is located abroad.

Disputes arising in connection with the implementation of foreign investments in the territory of the Russian Federation or Russian investments abroad.

Further I will examine the provisions of the Federal Law dated December 29, 2015 No. 382-FZ "On Arbitration (Arbitration Proceedings) in the Russian Federation" (hereinafter Russian Act).

The jurisdiction of disputes to the arbitration court is determined as follows. An important provision is contained in Paragraph 3 of Article 3 of the Russian Act under study, which it is expedient to cite in full: “Disputes between the parties to civil law relations may be referred to arbitration (arbitration trial) by agreement of the parties, unless otherwise provided by federal law”. That is, the arbitration proceedings of disputes are not suitable for the proceedings of disputes in the field of public legal relations.

Arbitral tribunals are subject to disputes between parties to civil law relations, including individuals and legal entities, unless otherwise provided by law. Some types of disputes cannot be considered by arbitral tribunals, since they often contain a significant public law element or other features that prevent them from being considered by arbitral tribunals.

The main types of these disputes should be indicated. To resolve the issue of arbitrability, one has to turn to various legal acts. Moreover, «the conclusion about the non-arbitrability of the relevant disputes is made based on the fact that each of them establishes the exclusive competence of state courts, or special (customs, tax) authorities to consider a certain category of legal relations»[1].

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[1] Yuryev E.E. Influence of European Union Law on International Commercial Arbitration: Candidate of legal sciences thesis (PhD). Moscow. 2008. P. 119.

Some of non arbitrable disputes are specified in the Arbitration Procedure Code of the Russian Federation. There is the list of them.

Consumer protection disputes; disputes over the lease of forest plots; disputes over contracts in the field of public procurement for state and municipal needs (there are exceptions).

Disputes in the field of antitrust regulation.

Disputes about the privatization of state and municipal property; bankruptcy disputes; disputes arising from relations related to compensation for harm caused to the environment.

Disputes on the convocation of a general meeting of participants of a legal entity (there are exceptions).

Disputes arising from the activities of notaries to certify transactions with shares in the authorized capital of limited liability companies.

Disputes related to challenging non-normative legal acts, decisions and actions (inaction) of state bodies, local self-government bodies, other bodies, organizations endowed by federal law with certain state or other public powers, officials.

Disputes involving legal entities that are a business entity that is essential for ensuring the country's defense and state security (there are exceptions).

Disputes related to the exclusion of participants in legal entities (there are exceptions).

Disputes related to the acquisition and repurchase of shares (exceptions apply).

Disputes on the establishment of facts of legal significance; disputes related to violation of the right to legal proceedings and the execution of a judicial act within a reasonable time.

Disputes about the protection of the rights and interests of a group of persons; disputes arising from administrative and other public legal relations.

Disputes on the protection of intellectual rights involving organizations that collectively manage copyright and related rights, as well as disputes within the jurisdiction of the Intellectual Property Rights Court.

Disputes on refusal of state registration, evasion of state registration of legal entities, individual entrepreneurs[1].

It should be noted that Part 2 of Article 33 of the Arbitration Procedure Code of the Russian Federation, to which I refer to compile a list of types of non-disputes that are not considered in the framework of arbitration, contains many references to other articles of this

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[1] Arbitration Procedure Code of the Russian Federation of July 24, 2002 No. 95-FZ (Part 2 of Article 33) // http://www.consultant.ru

code and even other legal acts, which makes it difficult for lawyers to work with sources of law.

The Civil Procedure Code of the Russian Federation provides for the types of disputes that cannot be considered by arbitral tribunal.

These are cases of special proceedings, such as: on the establishment of facts of legal significance, on the adoption (adoption) of a child, on recognizing a citizen as missing or declaring a citizen dead, on legal capacity, on recognizing a movable thing as ownerless and recognizing the right of municipal property to an ownerless immovable thing, on the restoration of rights on lost securities, on the introduction of corrections or changes in civil status records, on applications for notarial acts performed or on refusal to perform them, on applications for the restoration of lost judicial proceedings[1].

In addition, the following categories of disputes cannot be considered by the arbitration tribunal.

Disputes arising from family relations, including disputes arising from relations regarding the disposal of the property of the ward by guardians and trustees, with the exception of cases on the division of jointly acquired property between spouses.

Disputes arising from labor relations, with the exception of individual labor disputes of athletes, coaches in professional sports.

Disputes arising from inheritance relations.

Disputes about the privatization of state and municipal property.

Disputes about compensation for damage caused to life and health.

Disputes about the eviction of citizens from residential premises.

Disputes arising from relations related to compensation for damage caused to the environment[2].

Also, claims for recognition of ownership of real estate objects are filed with a court of general jurisdiction or an state arbitration court at its location, as well as claims against carriers arising from transportation contracts are filed with a court of general jurisdiction or an arbitration court at the location of the carrier (Article 30 of the Civil Procedure Code, Article 38 of the Arbitration Procedure Code). Objectively, the arbitration tribunal cannot oblige a specialized state authority to conduct state registration of a transaction regarding a real estate

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[1] Civil Procedure Code of the Russian Federation of November 14, 2002 No. 98-FZ. (Article 262) // http://www.consultant.ru

[2] Civil Procedure Code of the Russian Federation of November 14, 2002 No. 98-FZ. (Clause 2, Article 22.1) // http://www.consultant.ru

object, nor is it entitled to consider a filed dispute involving the settlement of legal relations between the parties through state registration[1].

Consider in more detail the issue about arbitrability of land disputes. Under the "resolution of land disputes" legal science usually means «the activity of courts of general jurisdiction, state arbitration courts and arbitral tribunals regulated by the rules of land, civil, civil procedure and arbitration law, aimed at the elimination of the disagreements between the disputing parties, the prevention of the subjective land rights and interests realization, as well as determination and restoration of the violated rights or understanding of the rights and obligations of the dispute parties»[2].

«However, a significant part of property land disputes can still be considered by the arbitral tribunals. The basis for consideration of land disputes by the arbitral tribunal is the article 64 of the Land code of the Russian Federation, according to which land disputes are considered in court, also before taking the case to the court, the land dispute can be send by the parties to the arbitral tribunal»[3].

The Constitutional Court of the Russian Federation pointed out on this issue that the provisions of laws allowing arbitral tribunals to consider civil disputes relating to real estate, and the state registration of relevant rights on the basis of the arbitral award, do not contradict the Constitution of Russia[4] .This conclusion applies to the land property.

It can be stated, that «domestic law prefers to limit the arbitrability of disputes to arbitration tribunals by laws, but at the same time not giving a clear answer whether a particular category of cases can be considered by an arbitration tribunal»[5].

From the point of view of the scientific provisions of legal technology and the rules of reasonable lawmaking, it is advisable to indicate all types of disputes that are not subject to arbitration and are not subject to arbitration courts in one article of one legal act, if necessary, making references to it in other legal acts. Or, even duplicate the above provisions in the Civil Procedure Code of the Russian Federation and the Arbitration Procedure Code of the Russian Federation, as well as Federal Law No. 382-FZ of December 29, 2015 "On Arbitration (Arbitration Proceedings) in the Russian Federation". The implementation of this

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[1] Letter of the Supreme Arbitration Court of the Russian Federation No. VAS-C06 / OPP-1200. // http://www.consultant.ru

[2] Harlamova O.A . Land disputes. Theory and practice solution. // Proceedings of the Orenburg state agrarian University. No. 4. 2009. P.. 208.

[3] Anisimov A. Gavrilenko V. Modern problems of arbitration in land disputes. // Conflict Studies Quarterly. CSQ. Accent Publisher. Cluj-Napoca. Romania. 2019. P. 12.

[4] Decision of the Constitutional Court of the Russian Federation No. 10-P, 2011 // http://www.consultant.ru

[5] Rothko S.V. Arbitration Tribunal in the System of Civil Jurisdiction (Monograph). Rostov-on-Don. 2013. P. 46.

proposal will significantly increase the convenience of working with legal acts and, as a result, the quality of legal regulation of the issue.

Next I consider the law of **Sweden**. The Law “On Arbitration” No. SFS 1999: 116, regulates the issues of arbitration (hereinafter Swedish Act).

The issues of jurisdiction of disputes to arbitration proceedings are practically not reflected in the Swedish Act, which, in the author's opinion, is an omission of the legislator and a shortcoming of the law under study. Unfortunately, these shortcomings are not unique to Swedish legislation.

In Swedish legal doctrine, it is considered that «a dispute is arbitrable if the parties are entitled to conclude an amicable agreement on such a dispute»[1]. This situation is based on the interpretation of Article 1 of the Swedish Act. The terms - disputes "which the parties have the right to settle among themselves" and "disputes over which the parties can conclude an amicable agreement" can be considered identical.

Note that «according to Swedish substantive law, the parties are generally free to enter into settlement agreements on disputes if such disputes arise from purely commercial legal relations. However, there are exceptions. Disputes concerning the penalty for an offense, as opposed to contractual damages and fines, which are paid by one of the parties to the contract, are not arbitrable»[2]. In fact, the generally accepted postulate that disputes in the field of civil, economic and private legal relations are arbitrable.

The only direct indication in the Swedish Law on arbitrable and non-arbitrable disputes is as follows. An arbitration agreement between an entrepreneur and a consumer in relation to disputes about a product, service or other good intended for personal consumption is invalid if it was concluded before the dispute arose (Article 6 of the Swedish Act).

There is also a limitation on arbitration agreements for rental and lease disputes. Functions of the arbitral tribunal in such disputes must be performed by the Hiring and Leasing Commission (Article 6 of the Swedish Act).

In addition, it is clearly stated that arbitrators have the right to consider issues of the civil law consequences of competition law, which do not go beyond the legal relationship of the parties (Article 1 of the Swedish Act). This means that «arbitrators are not entitled to qualify legal relations for their compliance with the norms of antimonopoly law, but they have the right to resolve the issue of the civil law consequences of violating such norms»[3].

Other Swedish legislation also contains provisions on the arbitrability of disputes.

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[1] Arbitration in Sweden. // ed. Herre J. Moscow, 2014. P. 59.
[2] Arbitration in Sweden. // ed. Herre J. Moscow, 2014. P. 63.
[3] Zykov R.O. International Arbitration in Sweden: Law and Practice. Moscow, 2014. P. 40.

Arbitration is not permitted in disputes «concerning the validity of patents, trademarks and other intellectual property. Agreements that violate the rights of minority shareholders are considered non-arbitrable due to the fact that they affect the interests of third parties. Labor, family and criminal cases are also not arbitrable in Sweden»[1].

But note that «while the issues of criminal punishment are not arbitrable, the issues of compensation for damage resulting from the commission of a crime may well be the subject of arbitration research»[2].

«By virtue of special legislation (lex specialis), arbitration can take place in Sweden in certain cases without the actual consent of the parties to the resolution of their disputes through arbitration»[3]. For example, Article 5 Chapter 22 of the Swedish Companies Act (2005: 551) stipulates that disputes concerning the compulsory acquisition of minority shares (minority squeeze out) must be resolved through a special form of arbitration.

In **Finland** the Law “On Arbitration” No. 967/1992 (hereinafter Finnish Act) regulates the arbitration sphere.

In general, the issues of jurisdiction of disputes to arbitration are indicated dabblingly. The disputes in the sphere of civil and economic (economic legal relations) were mentioned. The sign of arbitrability of the dispute, such as the possibility of its settlement by peaceful means, by agreement of the parties, is also indicated (Article 2 of the Finnish Act).

Some information about the issue of arbitration of shareholders' disputes in relation to the initiation of the liquidation process of a company. There is an interesting practical example. In 2003, two minority shareholders filed a lawsuit against the open joint stock company. Ultimately, the Finnish Supreme Court indicated that the arbitration clause in the company's articles of association stipulates that all disputes between the company and shareholders should be referred to arbitration. The court noted that disputes over claims of shareholders against the company demanding liquidation do not go beyond the competence of commercial arbitration[4].

In **Norway**, the institution of arbitration is regulated by the Law “On Arbitration” No. LOV-2004-05-14-25 (hereinafter Norwegian Act).

There is an analyze of the issue of arbitration jurisdiction. The general rule is that arbitration tribunals independently determine their competence to consider a specific dispute. Moreover, an objection to the competence of arbitration to consider the dispute must be

[1] Per Sundin, Erik Wernberg. The scope of arbitrability under Swedish law. // Global Arbitration Review. 2007. P. 64.
[2] Zykov R.O. International Arbitration in Sweden: Law and Practice. Moscow, 2014. P. 40.
[3] Arbitration in Sweden. // ed. Herre J.Moscow, 2014. P. 35
[4] Zykov R.O. Commercial arbitration in Finland. Hannes Snellman. Helsinki, 2008. P. 8-9.

declared no later than at the first presentation of one of the parties on the merits of the claim. There is also the possibility of challenging the competence of arbitration in a state court (Article 18 of the Norwegian Act).

The issues of jurisdiction of disputes to arbitration and types of disputes that are not subject to arbitration are not spelled out in the Norwegian Act. This circumstance is, in the opinion of the author, a shortcoming of this law and a flaw in the legislators.

Accordingly, issues of jurisdiction (or lack of jurisdiction) of a dispute to arbitration are contained in industry law. Consider the legal literature. «It is clear that arbitration does not have jurisdiction over founding judgments such as separation of spouses, divorce, adoption, paternity, family ties, citizenship, criminal penalties, custody and guardianship, children's residence and the right to foster care. On the other hand, cases on the distribution of property and finances between spouses are usually considered completely dispositive, and, in our opinion, there is the possibility of arbitration in cases of this type»[1].

I also draw attention to the fact that «cases subject to mandatory legal regulation are outside the freedom of choice of parties, since the parties outside the proceedings are not entitled to settle legal relations in the field of mandatory legal norms»[2]. That is, issues related to state coercion, primarily those related to criminal, administrative and tax legal relations, are subject to proceedings within the framework of the state judicial system. «The state cannot give the arbitration tribunal the right to make administrative decisions»[3].

Also, «the freedom of the parties to arbitrate a dispute may be limited in special legislation, see, for example, § 44 of the Road Freight Transport Act, § 10-38 of the Civil Aviation Act and Ch. 17 of the Working Environment Act»[4]. That is, certain issues in the field of the use of transport and labor legal relations may also be non-arbitrable.

Also, «§ 63 of the Patent Law, according to which certain patent cases are to be referred to the Oslo District Court. Such cases are not subject to arbitration. But the reason for this is not that these cases are referred to compulsory consideration, but that they relate to the rejection of decisions made in the public register, which the parties are not entitled to regulate by agreement»[5].

It should be noted that the Norwegian Act pays special attention to disputes of which the consumer is one of the parties. These disputes are arbitrable, but there are some restrictions. The arbitration agreement entered into before the dispute arises is not binding on

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[1] Voldgift. // Geir Woxholth. Gyldendal Norsk Forlag, AS. 2013. P. 233.
[2] Voldgift. // Geir Woxholth. Gyldendal Norsk Forlag, AS. 2013. P. 234.
[3] Voldgift. // Geir Woxholth. Gyldendal Norsk Forlag, AS. 2013. P. 245.
[4] Voldgiftsloven med kommentarer. Gyldendal Norsk Forlag AS 2006. P. 65.
[5] Voldgift. // Geir Woxholth. Gyldendal Norsk Forlag, AS. 2013. P. 238.

the consumer. Such an agreement should be concluded after the dispute has arisen and formalized as a separate document signed by both parties. Also, if the consumer is not aware of the rules for revising the arbitral award and the non-binding nature of the arbitration agreement concluded before the dispute arises, he can refuse to arbitrate the dispute at any stage (Article 11 of the Norwegian Act). The procedure for informing the consumer about these conditions is not prescribed. It appears that this information should be included in the arbitration agreement.

In **Lithuania** the Law "On commercial arbitration" No I-1274 regulates the arbitration sphere (hereinafter Lithuanian Act). It should be noted that Lithuanian legislators have clearly defined the types of disputes that are not subject to arbitration (Clause 1-3, Article 12 of the Lithuanian Act).

I will list these disputes.

Disputes subject to consideration in the order of administrative proceedings.

Disputes, the consideration of which is referred to the competence of the Constitutional Court.

Disputes arising from family legal relations.

Disputes related to patents, trademark registrations and designs.

Disputes arising out of employment and consumer contracts, unless the arbitration agreement was entered into after the dispute arose.

Disputes where one of the parties is a state-owned (or local government-owned) enterprise, organization or institution, unless the founder's prior consent has been obtained for the arbitration agreement[1].

The arbitral practice in **the United States of America** is regulated by the US Federal Arbitration Act (hereinafter US FAA) and the Revised Uniform Arbitration Act) (hereinafter US UAA).

The jurisdiction of arbitration is governed by Section 6 and Section 7 of the US UAA. Moreover, these issues are resolved by both the arbitrator (arbitrators) and the competent state court, and this is the court in the territorial jurisdiction of which the arbitration institution is located.

The arbitrator must decide whether a particular dispute is arbitrable, whether there is an arbitration agreement that is duly executed and enforceable (Clause C Section 6 of the US UAA).

If I talk about the jurisdiction of disputes to arbitration, then I can come to the conclusion that the legislation under study practically does not contain any instructions on this

[1] Clause 1-3, Article 12 of the Lithuanian Law "On commercial arbitration" No I-1274.

issue. An exception is the arbitration of disputes arising from the employment contracts of seafarers, railroad workers, or other types of workers engaged in international or interstate commerce (Paragraph 1 of the US FAA).

In fact, within the framework of assessing the arbitrability of a dispute, the issues of jurisdiction of disputes are decided by the competent state court, using various judicial precedents, as is customary in the common law system.

There is one interesting judicial precedent, the so-called “Mitsubishi case”, the decision on which can be interpreted as asserting the arbitrability of each dispute under international treaties in the field of antitrust legal relations, since the restriction on the arbitrability of disputes from the antitrust law does not apply when it comes to international contracts[1].

I also note that in countries belonging to the common law system (including the United States), disputes over rights to real estate, with few exceptions, can almost always be the subject of arbitration[2].

According to Section 1-14, Title 9 of the US FAA any disputes about the rights to real estate can be considered in the arbitration court. Moreover, if there are grounds for federal jurisdiction, then the provisions of the US FAA prevail over the provisions of the laws of the states that classify any disputes as non-arbitrable. «In most US states, real estate disputes are traditionally arbitrable, with the exception of a few states (Indiana, Michigan, Ohio, Tennessee)»[3].

In addition, I note the almost complete arbitrability of IT disputes in the United States[4]. The arbitrability of disputes about the validity of intellectual property rights is ensured by the fact that they are given an inter partes effect, their result affects the legal relationship between the plaintiff and the defendant, but does not change the scope of the rights and obligations of third parties[5].

Next, I will consider the issues of regulation of arbitration in **Canada** by the Commercial Arbitration Act of year 1985 (Hereinafter Canadian Act of 1985).

The research also used the Ontario Arbitration Act 1991 and the British Columbia Arbitration Act 2020. (Hereinafter Ontario Act and BC Act).

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[1] Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. No. 83-1569. Argued March 18, 1985. Decided July 2, 1985. US Supreme Court decision 73. U.S. 614. // https://pacer.uscourts.gov

[2] Yarkov V.V., Kurochkin S.A., Kotelnikov A.G. Certificate of consideration of issues on real estate rights abroad. //Journal Arbitration Tribunal. № 2. 2011. P. 86-92.

[3] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 270.

[4] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 280.

[5] Halket T.D. Arbitration of International Intellectual Property Disputes. Huntington. New York: Juris Publishing. 2012.

Canadian arbitration law does not clearly specify the types of disputes that arbitration institutions have the right to consider. Apparently, this implies the generally accepted practice of jurisdiction over arbitration disputes arising from civil relations and economic turnover. The issues of jurisdiction of specific disputes are determined by the arbitral institution itself and, if necessary, by the competent state court. The latter, as is customary in the common law tradition, uses judicial precedents.

But, there is a small exception. The Canadian Provincial Arbitration Acts of Ontario and British Columbia, which provide for the right to arbitrate in family disputes, with the proviso that the proceedings must be based on family law (Article 1 (a), Clause 1 Article 2, Clause 1 Article 50 of the Act of Ontario and Clause 1 Article 19.2 of the Act of BC).

The jurisdiction of federal and regional laws in the field of arbitration is also divided. The first applies if at least one of the parties to the dispute is a government agency, public corporation, or if there is a dispute in the field of the law of the sea or is subject to international trade agreements (Paragraph 5 of the Act of 1985).

Here is the jurisprudence of Ontario establishing the arbitration of disputes in the field of real estate. In 1994 «The Ontario Court of Appeal heard the case Automatic Systems Inc. v. Bracknell and positively resolved the issue of referral to arbitration of a case concerning the right of pledge of the contractor to the customer's land (mechanic's lien). Then, in 1997. Cooper v. Deggan case was resolved on sending the parties to arbitration regarding the division of land ownership»[1].

Conclusion.

The author researched the issues of jurisdiction or arbitrability of types of disputes. Arbitral proceedings of disputes is possible, as a rule, within the framework of civil and legal relations. The law of some states also allows arbitral proceedings of certain types of disputes, as indicated in the previous sections. In essence, disputes are arbitrable, the consideration of which in arbitration does not affect the public law prerogatives of the state.

In the considered legislation of various states, and to one degree or another this applies to all the legislation studied above, there is no clear definition of the types of disputes subject to arbitration, and the definitions that exist are often vague and contribute to contradictory interpretation of laws. Still, as a rule, the legislation does not clearly indicate the types of disputes that are not subject to arbitration proceedings.

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[1] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 270.

Further, I will briefly indicate the peculiarities of the regulation by the law of states, which I considered earlier, of the issues of jurisdiction of the types of arbitration proceedings.

Italian law indicates that the subject of arbitration proceedings may be disputes between the parties, in the absence of legal prohibition. That is, what is allowed is not prohibited by law. The issue of jurisdiction is no longer specified in the Code of Civil Procedure, Book 4, Title 8 Arbitration. Information on non-arbitrable disputes is available in a number of scattered articles of the Code.

The legislation of the Russian Federation and Finland establishes that disputes in the field of civil and legal relations can be the subject of arbitration proceedings.

The law of Finland and Sweden contains such a sign of arbitrability of disputes as the possibility of concluding an amicable agreement on this dispute by the parties. About the shortcomings of this wording. In the Russian Federation, it is possible to conclude an amicable agreement even in criminal cases of small gravity, resolved by magistrate courts. This practice is also typical of other states. But criminal cases cannot be the subject of arbitration proceedings. Consequently, the considered sign of arbitrability of disputes is imperfect.

Norwegian law does not specify jurisdictional issues at all.

The legislation of the United States and Canada does not clearly stipulate the jurisdiction of the types of disputes to arbitration, only mentioning certain types of disputes, the arbitrability of which has different conditions.

Note that the United States and Canada belong to the legal system of common law, characterized by the use of precedents and, as a rule, by a limited scope of issues directly regulated by law. That is, what is not regulated by the law is regulated by precedents. Norway is a country of classical continental law and the gap in legal regulation, described above, should be considered an omission of legislators.

Russian legislation more specifically defines the issues of arbitrability of types of disputes than the legislation of other considered countries. However, Federal Law No. 382-FZ of December 29, 2015 "On Arbitration (Arbitration Proceedings) in the Russian Federation" does not contain any indication of the types of disputes that are not subject to arbitration proceedings.

Russian procedural legislation indicates non-arbitrable types of disputes, but this information is not contained in one place, but there are many references to various legal acts, which makes it difficult for lawyers to work with sources of law.

Lithuanian legislation regulates issues of arbitrability more effectiveness, because the Lithuanian Act includes an article where clear and distinct points non arbitrable disputes.

The author considers it necessary to provide for the indication of all types of disputes that are not subject to arbitration proceedings and are not subject to arbitration courts in one article of one legal act, if necessary, making references to it in other legal acts. From the point of view of the scientific provisions of legal technology, the implementation of this proposal will significantly increase the convenience of working with legal acts and, as a result, the quality of legislation.

I also affirm that arbitral tribunals have the right to consider any commercial disputes, except the cases of direct legislative restrictions. There is an interesting proposal by legal scientists on the development of a comprehensive criterion for the arbitrability of disputes, which is proposed in the following formulation. «Dispute from contractual or private legal relations, in which the parties have right to exercise administrative actions»[1]. This proposal is interesting and should be the subject of further scientific discussions.

The problem of jurisdiction of arbitral tribunal is very important. «If a tribunal lacks jurisdiction altogether, it has no authority to continue with the arbitration. If it does so, any award that it makes will be void and if a party attempts to rely on such an award, it will be set aside and enforcement refused»[2].

Accordingly, in modern legal science it is necessary to develop and formulate clear and understandable legal standards for the arbitrability of disputes. These standards should be recognized by the global legal and arbitration community and recorded in international legal documents of a recommendatory or (better) mandatory nature. Thus, it is possible to avoid many contradictions and legal collisions in the sphere of jurisdiction of disputes to arbitration institutions.

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[1] Sevastyanov G.V. Legal nature of arbitration as an institution of alternative dispute resolution (private procedural law). Saint Petersburg. 2015. P. 123.
[2] International Arbitration: a handbook. Third edition // Capper Philipp. Lowels. London, Singapore. 2004. P. 77.

Paragraph 3. Competence of arbitral tribunal.

Introduction.

Consider the issues of arbitration tribunal competence. It is worth agreeing with the point of view, that «powers constitute the content of competence, and the subjects of jurisdiction constitute the sphere of competence»[1].

I will give the following definitions of the concept of competence. Firstly, this is «the totality of the rights and obligations of this authority, assigned to it by law»[2]. Secondly. This is «a set of powers and rights, which are at the same time duties, of a particular authority, assigned to it by a certain normative act for the implementation of specific tasks and functions established by the current legislation»[3].

I can define the competence, as «the power of the arbitration tribunal to consider a specific dispute»[4]. Besides «legislative restrictions on the consideration of a dispute in arbitration should be distinguished from the grounds for challenging the competence, understood in this case in a narrower sense»[5].

Note that the competence of an arbitration tribunal is based on an arbitral agreement of parties on how exactly they should consider a possible dispute between each other.

The competence of commercial arbitrations is presented as a combination of their powers to resolve the dispute on the merits, as well as the powers to conduct the proceedings, guaranteeing compliance with the principles of arbitration, as well as the rights and interests of the parties.

Two forms of competence should also be distinguished, namely objective and subjective. The objective competence of arbitration determines whether the dispute can in principle be the subject of arbitration. In other words, is such a dispute arbitrable? Subjective competence consists in the presence and scope of the powers of the arbitrators in relation to a particular dispute submitted for consideration.

If jurisdiction determines it from the side of the object of authority, then competence - from the side of their subject.

«Jurisdiction of disputes to arbitration means a set of types of disputes that can be resolved through arbitration in accordance with the laws of the country. Competence means

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[1] Chertkov A.N. Clarity and uniformity of constitutional and legal concepts and delimitation of competence // Journal of Russian Law. No. 2. 2004. P. 24.
[2] Druzhkov P.S. Judicial jurisdiction of disputes about the law and other legal issues considered in civil proceedings. // Abstract of the Candidate of legal sciences thesis (PhD). Sverdlovsk. 1966. P. 1.
[3] Lebedev M.Y. The development of the institution of jurisdiction and its appearance in the arbitration tribunal: Candidate of legal sciences thesis (PhD). Saratov 2005. P. 158.
[4] Sutton D., Gill J., Gearing M. Russel on Arbitration. London. 2015. P. 77.
[5] Sutton D., Gill J., Gearing M. Russel on Arbitration. London. 2015. P. 79.

the right of arbitration to resolve a specific dispute in particular and certain types of disputes in general»[1].

The principle of competence-competence.

Next, consider the principle of competence-competence (kompetenz-kompetenz), which has long been universally recognized in the world[2]. The main idea is that arbitration tribunal is competent to independently decide on its authority to consider a particular dispute.

This principle is based on the power of the arbitral tribunal to decide on the existence or absence of an arbitration clause and on its competence for the proceedings in a particular case[3]. This is «the almost universally accepted principle of international commercial arbitration that an arbitral tribunal may administer its own jurisdiction over it»[4].

I agree that the essence of this principle lies in the fact that the arbitral tribunal is authorized to independently decide on the issue of its own competence.

The principle of "competence - competence" provides an opportunity for arbitrators to invalidate the arbitration agreement and make a decision on their lack of competence to resolve the dispute referred to them.

The principle of "competence - competence" in arbitration sphere guarantees an opportunity of compliance an arbitration agreement on proceedings of a dispute in arbitration tribunal.

The principle of "competence - competence" has both positive and negative consequences. The positive factor is that arbitrators have the power to decide their own jurisdiction[5].

The negative factor is that the arbitrators are considered not as the only ones, but as the first persons making decisions on issues of the competence of the arbitration tribunal[6].

This principle prohibits a state court from deciding whether there is an arbitration agreement or whether it is valid until the arbitrators themselves have decided to do so.

Consider the circumstances that the arbitral tribunal should pay attention to when deciding on its own competence. There is reasonably opinion of the leading Russian theorist

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[1] Avdeev Y.A., Gavrilenko V.A., Doilnitsyn A.B. Institute for Alternative Legal Dispute Resolution. (Educational - methodical manual). Saint - Petersburg. 2022. P. 35.
[2] El Ahdab J., Mainguy D. Droit de l'arbitrage Théorie et pratique. LexisNexis. France. 2021. P. 391.
[3] Chirich A. Competence - competence of international commercial arbitrations. // International commercial arbitration - state and prospects. Belgrade. 1997. P. 194.
[4] Tweeddale A., Tweeddale K. Arbitration of commercial disputes. International and English law and practice. Oxford University Press. 2007. P. 171.
[5] Casa I.R. Legal regulation of activities of arbitration courts in the Russian Federation and in the Swiss Confederation: Comparative legal research: Candidate of legal sciences thesis (PhD). Moscow. 2018. P. 108.
[6] Fouchard, Gaillard, Goldman On International Commercial Arbitration. // edit by Gailard E., Savage J. The Hague: Kluwer Law International. 1999. P. 401.

and practice in the field of commercial arbitration V.A. Musin. He believed that in order to resolve the issue of competence, the arbitral tribunal must make sure: that there is an arbitration agreement concluded between the parties to the dispute; the legal validity of the arbitration agreement; that the arbitration agreement applies to a specific dispute[1].

Also the competence of arbitral tribunal can be challenged on some reasons. For example the arbitral agreement is invalid or the type of dispute is not arbitrable or the arbitral tribunal has no jurisdiction for this particular dispute.

The doctrine of "competence - competence" has received wide recognition. Consider the UNCITRAL Model Law 1985 (Clause 3. Article 16), which provides that the arbitral tribunal may itself determine its jurisdiction, including over any objection to the existence or validity of an arbitration agreement. For this purpose, an arbitration clause that forms part of a contract shall be construed as an agreement independent of the other terms of the contract. The ruling by the arbitration tribunal on the invalidity of the contract does not entail the invalidity of the arbitration clause.

The UNCITRAL Arbitration Rules 2010 (Article 23) also provides for the right of the arbitral tribunal to decide on its own competence over the dispute. I point out that the principle of "competence - competence" was also provided for by previous editions of the UNCITRAL Arbitration Rules. In legal science, the great importance of this principle is recognized[2].

It should be mentioned, that «in most cases, the arbitrators resolve the issue of their competence by issuing an order on a preliminary nature»[3].

Consider the European Convention 1961 (Clause 3, Article 5), which provides for the following provisions. The arbitral tribunal, against which a challenge on lack of jurisdiction has been filed, must not refuse to consider the dispute and has the right to make a decision on the issue of its competence or on the existence (validity) of an arbitration agreement or a transaction, of which this agreement is an integral part. However, the said decision of the arbitral tribunal may be subsequently appealed to the competent state court in accordance with the law of the country where the court is located.

European Convention «On the introduction of a uniform law on arbitration» ETS No. 563, adopted at Strasbourg on January 20, 1966 (Annex 1, Article 18) provides for the right of arbitration to decide on its own competence to resolve the dispute. But, the decision of the

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[1] Musin V.A. Scientific and practical comments to the Federal Law "On Arbitration Tribunals in the Russian Federation". // Journal Arbitration Tribunal. 2003. № 2 (26). P. 9.

[2] Caron D., Caplan M. The UNCITRAL Arbitration Rules. A Commentary (With an Integrated and Comparative Discussion of the 2010 and 1976 UNCITRAL Arbitration Rules). 2nd edition. Oxford. 2012. P. 452.

[3] Redfern A., Hunter M., Blackaby N., Partasides C. Law and Practice of International Commercial Arbitration (Fourth edition). Sweet&Maxwell. London. 2004. P. 351.

arbitral tribunal to recognize itself as competent can be challenged judicially in a competent state court only simultaneously with the issuance of an arbitral award on the main issue and within the framework of a similar procedure.

Analysis of national laws.

There is a description of national legislations regulating the issues of competence of arbitration.

The **Italian** Code of Civil Procedure, Book 4, Title 8 Arbitration contains the following provisions.

A specific dispute is recognized as arbitrable or non-arbitrable by the arbitral tribunal itself. Article 817 of the Italian Code states that the parties can challenge the competence of the arbitrators and the issues of the arbitration agreement (validity, scope, content). In this case, the arbitrators independently decide on the determination of their own competence to consider the dispute. Moreover, if a party to the dispute did not dispute these issues, then it cannot challenge the arbitral award on these grounds.

Also, if a party to the dispute did not dispute these issues, then it cannot challenge the arbitral award on these grounds.

It seems that the arbitral tribunal a priori decides on its own competence and the possibility of proceeding. What follows from the recognized doctrine of competence is competence. Also, Italian legal doctrine asserts «the recognition of the conceptual autonomy of arbitration»[1].

I notice that «in the Italian system, the arbitrator's decision affirming or denying its own jurisdiction (by virtue of the positive effect of the Kompetenz- Kompetenz principle) may be challenged only through the recourse for nullity»[2]. It is pointed in Clause 1, Article 829 of the Italian Code.

CAM Arbitration Rules do not directly address the issue of determining by the arbitral tribunal its own competence to resolve disputes. Apparently, the developers of the regulation did not consider it necessary to specify this issue, if it is regulated by the Italian Code. But noticed that the decision of the Arbitral Council that the arbitration is admissible shall not be binding on the Arbitral Tribunal (Clause 5. Article 1). So, only arbitrators can decide about their competence. Also any objection to the existence, the validity or the effectiveness of the arbitration agreement or lack of jurisdiction of the Arbitral Tribunal shall be raised in the first

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[1] Arbitrato : profili di diritto sostanziale e di diritto processuale. Torino: UTET Giuridica. 2013. P. 54.
[2] Zuccone E., Fonseca G. Arbitrator versus judge. // Interaction of arbitration and courts. // Czeck (and EU) yearbook of arbitration. Volume 5. edit by Belohlavek A.J., Rozehnalova N. Juris. 2015. P. 299

brief or at the first hearing following the claim to which the objection relates, or shall be deemed to be waived (Article 13).

Then I consider the arbitration legislation in the **Russian Federation** and the provisions of the Russian Act 2015. The issues of competence of an arbitral tribunal are spelled out in Article 16 of the Russian Act 2015. In accordance with generally accepted international practice, the arbitral tribunal independently decides on its own competence to resolve the dispute.

If a party to a dispute has objections to the competence of the arbitral tribunal, it must declare that it lacks competence to hear the dispute before it makes its first statement on the merits of the dispute. Thus, a later claim may be rejected by the arbitration tribunal. A declaration that the arbitral tribunal, in the course of arbitrating a case, exceeds the limits of its competence, must be made as soon as the issue, which, in the opinion of the party, exceeds these limits, is raised during the arbitration.

Consider Article 16 of the Russian ICA Act 1993. The arbitral tribunal may itself rule on its jurisdiction, including any objection to the existence or validity of an arbitration agreement. Similarly, an application for exceeding the limits of its competence by an arbitral tribunal may be presented no later than the submission of its first application on the merits of the dispute. A declaration that the arbitral tribunal, in the course of the proceedings, exceeds the limits of its competence, must be made as soon as the issue, which, in the opinion of the party, exceeds these limits, is raised during the arbitration trial.

Some information about the practice of arbitral tribunals in the Russian Federation.

The issue of competence of the ICAC in a specific case, according ICAC Arbitration Rules[1], resolved by the arbitral panel hearing the dispute. The ICAC has the right to make a separate decision on the issue of competence before considering the dispute on the merits, or to reflect this issue in the decision on the merits of the dispute. The defendant's statement that he does not recognize the jurisdiction of the ICAC for one reason or another does not terminate the proceedings on the initiated claim, if the plaintiff claims that the ICAC has the competence to consider this dispute.

There is an example of arbitration practice, such as the case of December 16, 1996 No 393/1995. The claim was filed by a Russian organization (claimant) against a Hong Kong firm (defendant). The defendant disputed the competence of the ICAC to consider the dispute from the contract. In his opinion, due to inaccuracies in the text of the arbitration agreement

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[1] Paragraph 25 of the ICAC Arbitration Rules for international commercial disputes (Appendix No. 2 to Order No. 6 of the CCI of Russia dated 11.01.2017), Paragraph 5 of the ICAC Arbitration Rules for interior disputes (Appendix No. 3 to Order No. 6 of the CCI of Russia dated 11.01.2017). // https://mkas.tpprf.ru/en/documents/

and discrepancies in the English and Russian texts, this agreement should be declared null and void due to its uncertainty.

The ICAC considered the arguments of the parties and, after conducting a comparative analysis of the Russian and English texts of the arbitration agreement, came to the conclusion that both the Russian and English texts of the arbitration clause refer to a permanent arbitration tribunal, and not to a state arbitration court. Further defining the specific arbitral tribunal agreed upon by the parties, and taking into account known inaccuracies in both the Russian and English texts, the arbitral tribunal drew attention to the formula in the English version: «Foreign Trade Arbitration Commission at Russian Federation». The only arbitration court under this name was VTAC, established in 1932 under the USSR Chamber of Commerce and Industry, which was later renamed the ICAC. In view of the foregoing, the name of arbitral tribunal in the Russian text does not conflict with the English text. The name of the tribunal must be interpreted as ICAC[1].

There are questions of delimitation of the competence of the state arbitration courts of the Russian Federation and arbitration tribunals. Competition arises when, in order to resolve a dispute under an agreement containing an arbitration clause, the claimant does not apply to an arbitration tribunal, but to a state arbitration court. Arbitration procedural legislation resolves this situation in favor of the competence of the arbitration tribunal[2].

In this case, the state arbitration court essentially does not, and cannot decide, the question of whether any arbitral tribunal is competent to consider a dispute that has arisen between the parties to the contract. The practice of state judicial authorities confirms that the arbitration tribunal is authorized to determine its competence independently and this issue does not fall within the jurisdiction of state arbitration courts[3].

The function of the state arbitration court is establish a compliance of the dispute content with the arbitration agreement. If there is such a compliance then the state court should not proceed this dispute.

And one more interesting circumstance. The arbitral tribunal may decide that it has no competence to consider the dispute. In this case, the arbitration proceedings shall be

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[1] Arbitration practice for 1996-1997 // comp. Rozenberg M.G. Moscow. 1998. P. 132-134.

[2] Clause 1-5, Article 148 of the Arbitration Procedure Code of the Russian Federation of July 24, 2002 No. 95-FZ. // http://www.consultant.ru

[3] Resolution of the Federal Arbitration Court of the North-Western District of November 28, 2002 in case No. A56-20905/2002; Resolution of the Federal Arbitration Court of the Moscow District of September 07, 2010 in case No. A40-53348/10-141-438; Resolution of the Federal Arbitration Court of the North-Western District of December 06, 2012 in case No. A56-57378/2011 // http://www.consultant.ru

terminated. This ruling is not subject to challenge in state court. This possibility is simply not provided for by law, as there is an explanation[1].

Consider the **Swedish** Law "On Arbitration" No. SFS 1999: 116 (Swedish Act).

Arbitrators have the right to independently decide on their competence to consider a specific dispute. But any of the parties can challenge this decision in the State Court of Appeal within a period not later than 30 days from the date of receipt of the arbitration decision on its own competence (Article 2 of the Swedish Act).

So «such ruling neither prevents the parties from seeking a court judgment on this point nor the arbitrators from continuing the arbitral proceedings»[2].

The SCC Arbitration Rules do not contain special rules on the determination by the arbitral tribunal of its own competence to resolve a particular dispute. Apparently, the compilers of the regulations refer to the current legislation.

Next about the legislation of **Finland** and the Law "On Arbitration" No. 967/1992. (Finnish Act).

The issues of the competence of arbitration and the determination by the arbitrators of their own competence are not spelled out in the Finnish Act. The procedural regulation of these issues is prescribed in the regulations of specific arbitration institutions.

In **Norway** the institution of arbitration is regulated by the Law "On Arbitration" No. LOV-2004-05-14-25 (Norwegian Act).

Consider the issue of arbitration jurisdiction. The general rule is that arbitration tribunals independently determine their competence to consider a specific dispute. Moreover, an objection to the competence of arbitration to consider the dispute must be declared no later than at the first presentation of one of the parties on the merits of the claim. There is also the possibility of challenging the competence of arbitration in a state court (Article 18 of the Norwegian Act).

I also note that state courts do not accept for proceedings a dispute that is the subject of arbitration, except for the invalidity of the arbitration agreement or other reasons that prevent the arbitration of the dispute (Article 7 of the Norwegian Act).

Further I examine the Law of **Lithuania** "On Commercial Arbitration" of April 2, 1996 No I-1274 (Lithuanian Act). Standard provisions are used that the arbitral tribunal has the right to make a decision on the issue of its competence in considering the dispute, including cases of doubt as to the existence or validity of the arbitration agreement. The

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[1] Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation of May 27, 2008 No. 2384/08 in case No. A40-5222 / 07-8-54 // http://www.consultant.ru

[2] Comparative Law of International Arbitration: Second edition. // Poudret Jean-Frangois, Besson Sebastien. Sweet & Maxwell Ltd. London. 2007. P.. 393.

decision of the arbitral panel to invalidate the contract does not, of itself, invalidate the arbitration clause. (Clause 1, Article 19 of the Lithuanian Act). The party's objection to the competence of arbitration to resolve the dispute must be made no later than the objection to the claim is filed (Clause 2, Article 19 of the Lithuanian Act). Noted an influence of the UNCITRAL Model Law 1985 on Lithuanian lawmaking in the field of regulation of arbitration and issues of competence[1].

Next, I consider the practice of **the United States of America.** Primarily the US Federal Arbitration Act (US FAA) and the Revised Uniform Arbitration Act (US UAA).

As it was indicated in previous paragraph the jurisdiction of arbitration is governed by Section 6 and Section 7 of the US UAA. Moreover, these issues are resolved by both the arbitrator (arbitrators) and the competent state court, and this is the court in the territorial jurisdiction of which the arbitration institution is located.

The arbitrator must decide whether a particular dispute is arbitrable, whether there is an arbitration agreement that is duly executed and enforceable (Clause C Section 6 of the US UAA).

The state court is also empowered to decide on the existence of an arbitration agreement and its validity (Clause B Section 6 of the US UAA). Moreover, one of the parties to the dispute has the right to challenge the arbitration agreement or the competence of arbitration in a state court. The court may suspend the arbitration process pending its award, but it may not, and arbitration will continue at least until a decision is made by a state court (Clause D Section 6 of the US UAA). And further, the state court either establishes the absence of arbitrability of the dispute, which can subsequently be considered within the framework of the state judicial system (the parties also have the right to conclude a new arbitration clause or resolve the dispute by an amicable agreement), or forces the parties to proceed with the dispute in an arbitration institution in accordance with the arbitration agreement. That is, it is possible to enforce an arbitration agreement or clause (Paragraph 4 of the US FAA).

However, a state court does not have the power to enforce an arbitration agreement if circumstances have been established that prevent its legal execution (Clause C Section 7 of the US UAA). If the above circumstances are not established, the state court may not, in its sole discretion, refuse to hold the arbitration proceedings (Clause D Section 7 of the US UAA).

In general, government policy, including the policy of the judiciary, is favorable in favor of the institution of arbitration. As a rule, state courts decide that the dispute is not

[1] Zemlute Egle. Valstube kaip arbitrazinio susitarimo salis (Monograph). Vilnius. 2014. P. 77.

arbitrable if the party challenging the arbitration procedure independently bears the burden of proof[1]. But, if a party that disputes the arbitrability of the dispute, before the decision is made by the state court, recognizes arbitrability and refuses the claim, the court automatically terminates the proceedings and a priori recognizes the right of the arbitral institution to hear the case.

I also pay attention to the application of the so-called doctrine of separability, which is expressed in the fact that the procedure for challenging an arbitration clause concerns only it and does not entail a revision of the entire agreement.

Consider the **Canadian** Commercial Arbitration Act of year 1985 (Canadian Act of 1985).

There is a standard provision on the right of arbitrators to decide on their own competence over the dispute under consideration (Clause 1, Article 16 of the Canadian Act). An objection to the competence of the arbitral tribunal may be filed no later than the filing of the first application of the party to the dispute. Exception only if, in the course of the proceedings, the arbitrator exceeded the limits of his powers and went beyond the scope of his competence (Clause 2, Article 16 of the Canadian Act). This rule prevents unfair actions of the parties to disrupt and delay the arbitration proceedings.

If a claim in a case that is the subject of an arbitration agreement is filed with a state court, then it refuses to consider the case when a party requests that the dispute be arbitrated. However, this petition must be filed no later than the filing of the first application in the state court on the merits of the dispute (Clause 1, Article 8 of the Canadian Act).

I also examine the Ontario Arbitration Act 1991 and the British Columbia Arbitration Act 2020 (Ontario Act and BC Act). Similarly, the regulation of this issue. Arbitral tribunal can decide about its jurisdiction for arbitral trial (Clause 1, Article 17 of the Ontario Act and Clause 1, Article 23 of the BC Act). Also, an objection to the competence of the arbitral tribunal may be filed no later than the start of the hearing (Clause 3, Article 17 of the Ontario Act) or filing a first statement on the merits of the dispute (Clause 3, Article 17 of the Ontario Act and Clause 2, Article 23 of the BC Act).

Conclusion.

So, the laws of many states give the arbitral tribunal power to deal with issues relating to both the existence and the scope of its own jurisdiction.

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[1] Sedillo v. Campbell, 5 S.W.3d 824 (Tex. Ct. App.1999) // https://pacer.uscourts.gov

«Arbitration tribunal, on its own initiative, decides the issue of the eligibility of considering a disputed legal relationship submitted for its resolution»[1].

«Arbitration laws all concord that arbitrators may rule on their own jurisdiction and that an affirmative ruling as anyhow subject the court control»[2].

Before proceedings, a check should be made. The power of arbitral tribunals to deal with issues relating to both the existence and the scope of its own jurisdiction is provided in their rules[3].

I should cite mine earlier work. «It seems appropriate to clarify the competence and procedural rules of permanent arbitration tribunals in such a way that most of them will quite definitely declare themselves as specialized in considering disputes in specific areas of the economy. Consequently, the permanent arbitration tribunals in their regulations will more specifically define their competence, in order to narrow their own specialization. This should improve the quality of arbitration work»[4].

On the one hand, industry arbitral tribunals can prescribe their competence in the regulations in order to avoid conflicting interpretations. On the other hand, the generally accepted principle of "competence - competence" has long established itself and there are enough existing legal norms to regulate this issue.

Arbitrators, and these are usually qualified specialists, are independently able to determine their competence, or lack of it, to consider the dispute.

Note the significant role of the arbitration agreement in this matter. «The main thing will remain - the arbitration agreement as the basis for submitting the dispute to the arbitration tribunal, which will determine the scope of the competence of the arbitration tribunal»[5].

But, when deciding on the issue of competence, arbitrators should pay attention to the following important circumstances, such as: the existence and validity of the arbitration agreement; the content of the arbitration agreement providing for the consideration of a specific dispute by a specific arbitration tribunal; the authority of this arbitration tribunal to consider a particular dispute; arbitrability of a particular dispute.

It should be noted that the concept of "competence - competence" remains relevant and analyzed in scientific and practical jurisprudence[6]. The application of this principle in the

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[1] Zaitsev A.I. Commentary on the Model Law "On Arbitration Tribunals and Arbitration Proceedings". Yurayt: Moscow. 2019. P. 64.

[2] Sanders P. Quo Vadis Arbitration? Kluwer Law International. The Hague. The Neitherlands. 1999. P. 185.

[3] For example Article 23 of the LCIA Arbitration Rules.

[4] Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities: Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006.. P. 57.

[5] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod. 2007. P. 49.

[6] Arbitrato: profili di diritto sostanziale e di diritto processuale. // edit by Alpa G., Vigoriti V. Torino: UTET Giuridica. 2013. P. 1185 – 1188.

field of arbitration is a generally recognized world practice. Since it is this approach that can to a greater extent contribute to strengthening the independence of commercial arbitration, which is an important prerequisite for making objective decisions, taking into account the modern realities, and in turn helps to increase the attractiveness of this form of resolving economic disputes.

Chapter 2. Procedural issues of preparation of arbitral proceedings.

Paragraph 1. Applicable law in arbitral proceedings.

Introduction.

The choice of applicable law in arbitration proceedings allows the parties to the dispute to determine the most acceptable law for them to resolve possible conflicts. Accordingly, this allows representatives of parties to avoid working in an unfamiliar legal system where the interests of parties cannot be defended effectively. In addition, there is no dependence on national legal systems, which contributes to less formalization of the arbitration process. «No arbitration takes place in a legal vacuum. The rights, duties and obligations of the contracting parties are based on the principles of law»[1].

The issue of applicable law to legal relations that are the subject of arbitration is very important in arbitration proceedings of disputes.

The parties to a possible dispute can realistically assess their position only if they imagine what laws will be applicable. Because the «modern legal systems are diverse, it is sometimes difficult to understand the intricacies of national legislation and the rules of specific arbitration institutions»[2].

Arbitrators need to identify the rules of law and establish their content in relation to the following circumstances, such as the arbitration procedure (lex arbitri), substantive law to merits of a dispute (lex causae), arbitration agreement and collision bindings (right to choose the law)[3].

Theoretical issues of applicable law.

Considering the theoretical aspects of the issue of applicable law, I mention that there are three approaches to choosing legislation that meets the needs of participants in arbitration legal relations.

The first, so-called international approach, assumes that commercial arbitration is in no way connected with the legislation of the country where the arbitration proceedings are held, but is carried out exclusively on the basis of the procedure chosen by the parties to the arbitration proceedings themselves.

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[1] Tweeddale A., Tweeddale K. Arbitration of commercial disputes. International and English law and practice. Oxford University Press. 2007. P. 179.

[2] Hewlitt-James Mark, Gould Nicholas. International Commercial Arbitration (Practical Guide). // Translation and scientific edition Smirnov V.A. Almaty. Kazakhstan. 1999. P. 117.

[3] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 707.

The second approach is that the law at the place where arbitration is held distinguishes between international and internal arbitration. International arbitration, as a rule, is less connected with the place of arbitration, and therefore the legislator can provide fewer grounds for judicial intervention and fewer mandatory rules in the legislation governing the activities of international commercial arbitration.

The third approach says that there is only a single law that regulates the activities of both international and internal arbitration, but this does not prevent the modernization of legislation to the benefit of both dispute resolution mechanisms.

Classical theory assumes that the parties are in principle free to choose the law governing the arbitration procedure. This possibility is the great advantage of arbitration proceedings of disputes.

Choosing the applicable law, the parties to the transaction can include in the arbitration agreement a condition that disputes from it will be resolved in accordance with the national legislation of a certain state, general principles of law (for example UNIDROIT Principles), trade customs (for example Incoterms 2020), international trade law (for example lex mercatoria), international treaties.

There is one more important circumstance. The restrictions imposed by national law on the application of foreign law seriously hinder its application by arbitrators. After all, arbitrators may face the application of a wide variety of foreign law, which differs in many respects from each other. As a result, arbitral institutions have taken a pragmatic approach to this issue in a number of cases. It consists in the following: when the applicable law does not provide an answer to a particular question and when the conflict-of-laws rule allows this, the arbitrators themselves apply the “general principles of commercial law” (Lex mercatoria). Application of general principles of commercial law becomes inevitable and justified.

An interesting opinion is that the problem of applicable law must be understood broadly, since there is a possibility of choosing not only national law, but also various legal systems (national and international), as well as the possibility of choosing between different sources of law within the same legal system[1].

Determining the applicable law does not cause any particular difficulties if the parties have reached an agreement on this issue. «The arbitrators shall act as arbitral award under the law applicable to the arbitration proceedings»[2]. The main principles for interpretation of such agreements are that indication of the parties to the law or system of law of a state should, as a

[1] Kanashevsky V.A. Foreign economic transactions: the main regulators, their relationship and interaction: Candidate of legal sciences thesis (PhD). Kazan. 2007.
[2] Bernardini Giardina. Codice dell arbitrato. Milano. 1990. P. 200.

general rule, be interpreted as directly referring to the substantive law of that state, and not to its conflict of laws rules[1].

The inclusion of applicable law among the essential terms of the arbitration agreement is not accidental, since the inaccuracy of the wording or the absence of an indication of the applicable law in the agreement makes the procedure for considering a dispute by commercial arbitration extremely difficult.

In legal science, a reasonable opinion is expressed that when determining the content of applicable legal norms (prescriptions) arbitral tribunal not limited to materials submitted by the parties. Arbitrators can conduct their own research and take into account relevant materials found in the course of such research, especially in relation to rules of public policy[2].

It is necessary to mention the following document of a recommendatory nature, developed by representatives of the global legal community[3]. There are Rules on the Efficient Conduct of Proceedings in International Arbitration, adopted in December 2018 (hereinafter Prague Rules)[4]. In particular, the Prague Rules recommend a more active role for arbitrators in adjudicating a dispute, applying the principle “court knows the law” (Iura Novit Curia), providing that the arbitral tribunal may apply rules of law not declared by the parties if it considers it necessary, but must seek the opinion of the parties as to the rules it intends to apply (Article 7). In legal science and practice, the Prague Rules were the subject of research and were generally perceived positively[5].

As a rule, «in the absence of signs of agreement of the applicable law under the law of the contract, the law of the place of arbitration is brought into effect»[6].

To determine the law applicable to the merits of the dispute, arbitrators may use the collision rules of the place of arbitration; collision rules that the arbitration considers applicable in a particular case; collision rules relevant to the dispute; as well as the direct method, which consists in the selection by the arbitrators of the applicable legal rules without recourse to collision rules

It seems that finding criteria for determining applicable collision rules is more difficult than for determining substantive[1]. The choice in favor of the collision rules of the country

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[1] Asoskov A.V. Collision regulation of contractual obligations. Moscow. 2012. P. 487.
[2] Ly F., Friedman M., Radicati di Brozolo L. The International Law Association International Commercial Arbitration Committee on ascertaining the contents of the applicable law in international commercial arbitration. // Arbitration International. 2010. Vol. 26. No 2. P. 193-220
[3] Panov A.A. Rules for the Effective Organization of Proceedings in International Arbitration (Prague Rules). // Bulletin of International Commercial Arbitration. 2018. No. 1(16). P. 76-91.
[4] https://praguerules.com/
[5] Khvalei V. The Prague Rules - Spirit and Scope of Application. // Arbitration.ru. 2018. № 4(4). P. 22-29.
[6] Mata O.V. Arbitration agreement and dispute resolution in international commercial arbitration tribunals. Moscow: Human Rights. 2004. P. 25.

where the arbitration is located is traditionally distinguished in theory[2] and practice[3] of arbitration law.

The choice of the place of arbitration or an arbitration institution does not in itself mean the choice of the law of the country where tribunal is located, although in some cases it affects the choice of collision rules that will guide the arbitration tribunal.

Analysis of international laws.

Consider further the international legal regulation on the issues of applicable law.

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, June 10, 1958) gives equal status to the law chosen by the parties and to the law of the place of arbitration in establishing the rules of procedure for the arbitration. (Point D, Clause 1, Article 5).

In accordance with the European Convention on Foreign Trade Arbitration (Geneva, April 21, 1961), the parties may, at their discretion, establish by common consent the law to be applied by arbitrators in resolving a dispute on the merits. Unless otherwise directed by the parties, the arbitrators will use the law established by the collision rule they deem applicable. In both cases, the arbitrators will be guided by the provisions of the contract and trade customs. (Clause 1, Article 7).

Note that the European Convention 1961 determines that the parties to the arbitration agreement can at their discretion establish the rules of procedure that arbitrators must adhere to (Point B, Clause 1, Article 4).

If there is no such agreement between the parties, the rules of procedure shall be determined by the arbitrators. If they themselves have not established rules of procedure for themselves, the President of the arbitral institution or the Special Committee may establish them (Point D, Clause 4, Article 4).

Thus, the European Convention does not refer to the law of the place of arbitration in the definition of the law applicable to the procedure.

Note the significance of the European Convention 1961, that «it exempted the tribunal of international commercial arbitration from the mandatory application of collision rules of

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[1] Blessing M. Choice of Substantive Law in International Arbitration. // Journal of International Arbitration. 1997. Vol. 14. Issue 2. P. 54.
[2] Wortmann B. Choice of Law by Arbitrators: The Applicable Conflict of Law System. //Arbitration International. 1998. Vol. 14. Issue 2. P. 103-104.
[3] Bardina M.P. Determination of applicable conflict rules in the practice of international commercial arbitration. // International commercial arbitration: modern problems and solutions: Sat of articles to the 75th anniversary of the ICAC at the Chamber of Commerce and Industry of the Russian Federation. // edit. Komarov A.S. Moscow. 2007.P. 26-46.

private international law of the country of its location, giving it the right to base itself on collision rules it deems applicable»[1].

In legal doctrine[2], as well as in arbitration practice[3] received a certain distribution of the position according to which the application of the customs of international trade is associated with the implementation of the theory "Lex mercatoria".

This theory is based on the thesis of the operation of an autonomous set of legal norms, isolated from national legal systems, regulating operations in the field of international trade. The sources of "Lex mercatoria" are international conventions, model laws that serve as a model for national systems of law, as well as international trade customs. The concept of "Lex mercatoria" means that its legal norms do not belong only to any of national legal systems.

Substantiated opinion, that «it is justified that the arbitrators refer directly to the "Lex mercatoria", but not to the conflict of laws rules of national law, since the "Lex mercatoria" chosen by the arbitration as the applicable regulator may have a close connection with the disputed relationship, while this connection may not be with the national legal system defined in accordance with collision rules»[4].

It should also be noted that the International Institute for the Unification of Private Law (UNIDROIT) in 1994 completed many years of work on a document called the "Principles of International Commercial Contracts" (hereinafter UNIDROIT Principles). This document is non-binding. As stated in its preamble, the UNIDROIT Principles are applicable if the parties have agreed that their contract will be governed by them[5]. Subsequently, the UNIDROIT Principles were edited in 2004, 2010, 2016. The latest revision is dated 2016.

«UNIDROIT principles as a "mirror" of the "Lex mercatoria" are widely used by arbitration tribunals around the world»[6] as seen by the extensive collection of precedents posted on the information resource http://www.unilex.info.

Influence and popularity of these principles[7] and their practical application[1] are reflected in legal science.

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[1] Maniruzzaman M. Conflict of Laws Issues in International Arbitration: Practice and Trends. // Arbitration International. 1993. Vol. 9. Issue 4. P. 375.
[2] Fabbi A. La prova nell'arbitrato internazionale. Gappichelli. Torino. 2014. P. 204.
[3] Redfern A., Hunter M., Blackaby N., Partasides C. Law and Practice of International Commercial Arbitration (Fourth edition). Sweet&Maxwell. London. 2004. P. 109.
[4] Polyakov Y.V. Main trends in the development of international commercial arbitration and the definition of applicable law. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 2010. P. 9.
[5] https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016
[6] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 721.
[7] Finazzi Agro E. The Impact of the UNIDROIT Principles in International Dispute Resolution in Figures // Uniform Law Review. 2011. Vol. 16. Issue 3. P. 719 - 724.

Moreover, the UNIDROIT principles can be perceived as a kind of transnational law [2].

But, opinions are also expressed about the dominance of national law over the principles of UNIDROIT, since law enforcement is characterized by immanent conservatism combined with limitations. At the same time, the “market niches” existing for the UNIDROIT Principles are recognized[3].

The possibility of their application when the parties have agreed that their contract will be governed by "general principles of law" "lex mercatoria" or similar provisions. They can also be used to resolve the issue that arises when it is impossible to establish the relevant rule of applicable law, as well as to interpret and supplement international unified legal documents.

Note that the UNIDROIT Principles do not require governmental approval, they are not a binding document and their application, as a rule, depends on their convincing authority.

In the practice of the world's leading arbitrations, situations are not uncommon when the disputing parties agreed on the application to their legal relations of legal documents that are advisory in nature, including the above UNIDROIT Principles. It is possible to use them even when there is no reference to this document in the agreement of the parties. This is confirmed by arbitration practice, for example, Decision of the ICAC at the Chamber of Commerce and Industry of the Russian Federation dated April 4, 2003 in case No. 134/2002[4].

Also interesting is the following international legal document, which is advisory in nature. The Hague Conference on Private International Law (Confdrence de La Haye de droit international privd) developed The Hague Principles on Choice of Law in International Commercial Contracts, adopted March 19, 2015[5]. This document is devoted to the principle of autonomy of the will of the parties in choosing the law applicable to the contract.

Article 3 of these Principles allows the parties to choose not only the law of states, but also the rules of law originating from non-state sources, with certain parameters. Provided that the law chosen by the parties may be the rules of law that are generally accepted at the international, supranational or regional level as a neutral and balanced set of rules, unless the law of the forum state otherwise.

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[1] Komarov A.S. Reference to the UNIDROIT Principles in International Commercial Arbitration Practice in the Russian Federation // Uniform Law Review. 2011. Vol. 16. Issue 3. P. 657 – 659.

[2] Cordero-Moss G. Does the use of common law contract models give rise to a tacit choice of law or to a harmonised, Transnational interpretation? // Boilerplate clauses, International commercial contracts and the applicable law. // editor Cordero-Moss G. Cambridge University Press, 2011. P. 46.

[3] Bonell M.J. The Law Governing International Contracts and the Actual Role of the UNIDROIT Principles. // Uniform Law Review. 2018. Vol. 23. Issue 1. P. 39-41.

[4] Practice of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation for 2003. // comp. M.G. Rosenberg. Moscow. 2004.

[5] The Hague Principles on Choice of Law in International Commercial Contracts (approved on 19 March 2015). // https://www.hcch.net/en/instruments/conventions/full-text/?cid=135

The above indicates the operation of the principle of dispositiveness in the issue of the parties' choice of applicable law. «The choice of parties may include the law of the state and norms that are not included in any system of law, thereby removing discussions about the relationship between these concepts»[1].

Analysis of national laws.

Consider the national legislation of some states.

The **Italian Code** does not directly regulate the issues of applicable law. But, establishes the right of arbitrators to determine the procedure for the proceedings, if the latter is not prescribed by the parties in the agreement (Article 816 - bis). The procedure for arbitrating a dispute obviously includes the determination of the applicable law. Similarly regulates this issue the Finnish Act (Paragraph 23). Also, the Italian Code contains provisions that arbitrators make decisions in accordance with the rules of law agreed with the parties. Moreover, the right of arbitrators to make a decision "in fairness" (secondo equità) is prescribed (Article 822). A fairly general wording that allows for various interpretations.

Consider the **Swedish Act.** The parties can define the law applicable to the dispute. The indication of the parties to legislation of a certain state is interpreted as a reference to substantive law of that state, and not to its collision laws. In the absence of agreement between the parties, the arbitrators determine applicable law. The right of arbitrators to resolve the dispute fairly is also provided (Article 27a).

Concerning the **Finnish Act**, then it also indicates the need for compliance with the applicable law of the arbitral award. But, the right of the parties is prescribed to agree on the application of the law of a particular state. Or, also by agreement of the parties, the arbitrators may base the award on what they consider reasonable (ex aequo et bono). Also quite general wording (Article 31).

Norwegian Act also provides for the parties to choose the applicable law. In the absence of a choice, the arbitrators shall apply the Norwegian collision rules. Also, by agreement of the parties, it is possible to use the principle of reasonableness (ex aequo et bono) when making an award (Article 31).

Consider further the laws of the **Russian Federation**. Similarly, the arbitrators' right to determine the procedure for proceedings is established, if the latter is not spelled out by the parties in the agreement (Clause 2, Article 19 of the the Russian Act 2015 and Article 19 of the Russian ICA Act 1993).

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[1] Konig M. Non - State Law in International Commercial Arbitration. // Polish Yearbook of International Law. 2015. Vol. XXXV. P. 269.

But, these laws contain a direct indication of the rules applicable to the merits of the dispute. As a general rule, it is stated that the parties themselves can choose the law applicable to the merits of the dispute. Arbitrage also takes into account trading habits. In the absence of designation of the parties, arbitral tribunal shall use the law determined in accordance with collision rules which it considers applicable (Article 31 of the the Russian Act 2015 and Article 31 of the Russian ICA Act 1993). I also note the reference norm of the Civil Code of the Russian Federation, Part one of 30 November 1994 No 51-FZ. «Features of determining the law to be applied by international commercial arbitration are established by the law "On International Commercial Arbitration"» (Clause 1, Article 1186, Chapter 4).

I agree that these provisions of the Russian legislation «confirm the release of arbitrators from a need to apply norms of private international law, but do not provide them with the opportunity to choose norms of law for resolving a dispute, which is provided to parties»[1].

Similar provisions regarding the rules of law applicable to the merits of the dispute are spelled out in UNCITRAL Model Law 1985 (Article 28) and European Convention 1961 (Article 7).

Consider the **English Arbitration Act 1996.** Authorizes the arbitrators and the parties to determine for themselves the arbitration procedure that is the most appropriate, taking into account all the circumstances of the case in question, in order to avoid unreasonable delay and costs (Article 33). It is also possible for the parties to choose foreign law as the applicable law to the arbitration, but only in respect of those provisions of the English Arbitration Act 1996, which are not imperative (Clause 5, Article 4).

Analysis of regulations of various arbitration institutions.

It should be noted that the main aspects of the issue of applicable law in the arbitration of a dispute are governed by the rules of arbitration institutions.

Providing the parties with opportunity to agree on the application of the rules of law to merits of the dispute is generally accepted. It is this interpretation of this issue that is contained in the comments to the regulations of arbitration institutions[2].

First I will explore the UNCITRAL Arbitration Rules 2010.

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[1] Bardina M.P. Rules on choice of law applicable to the merits of the dispute for international commercial arbitration. // Arbitration and regulation of international trade: Russian, foreign and cross – border approaches. // Liber amicorum in honor to the 70th anniversary of A.S. Komarov. // edit. Marcalova N.G, Muranov A.I. Moscow. 2019. P. 56.

[2] Greenblatt J. L., Griffin P. Towards the harmonization of international arbitration rules: comparative analysis of the rules of ICC, FFF, LCIA and CIET. // Journal of International Arbitration. 2001. Vol. 17. Issue 1. P. 109.

The arbitral tribunal shall apply the rules of law that the parties have agreed to be applicable in resolving the dispute on the merits. Failing such consent of the parties, the arbitral tribunal shall apply the law it deems appropriate (Clause 1, Article 35).

The arbitral tribunal may decide on fairness (ex aequo et bono), if the parties expressly authorized him to do so (Clause 2, Article 35).

The arbitral tribunal decides in accordance with the terms of the contract and taking into account any trade usages applicable to this transaction (Clause 2, Article 35).

I also note the powers of arbitral tribunal conduct arbitration proceedings in the manner it deems appropriate, subject to equal treatment of the parties and providing each of them at any stage of the process with all opportunities to state their position (Clause 1, Article 15). This power appears to include the choice of the applicable law in certain situations. This points also Article 35 of UNCITRAL Arbitration Rules 2010, which was cited before.

The ICC Arbitration Rules provides the following. The parties are free to choose the rules of applicable law. In the absence of an agreement between the parties, the arbitral tribunal determines them independently. In addition, the provisions of the contract and trade customs are taken into account (Article 21). It is also possible to resolve the dispute in a fair manner (ex aequo et bono), if parties have given the arbitration such powers (Clause 3, Article 21).

Consider the SCC Arbitration Rules.

The parties have the right to choose the law for resolving disputes. In the absence of an agreement between the parties on the applicable law, the arbitrators shall apply the law which they deem most appropriate (Clause 1, Article 27).

Any reference by the parties to the law of a particular State shall be construed as referring directly to the substantive law of that State and not to its collision rules. (Clause 1, Article 27).

It is also possible to resolve the dispute in a fair manner. (ex aequo et bono), if the parties have given the arbitration such powers (Clause 3, Article 27). In my opinion, a very general formulation, since the understanding of fairness is individual. On the other hand, in some situations it is impractical to use the legal system dogmatically and enhanced powers of arbitrators are needed for effective dispute resolution.

Note the use «in the absence of an agreement between the parties of the so-called direct method, according to which the applicable law is established by the arbitrators not through the conflict of laws rules of the country of the place of arbitration, but directly, for example, on the basis of the “closest connection” criterion with the disputed legal

relationship»[1]. It becomes problematic to predict the decision of arbitration on the basis of the provisions of the law, which should be recognized as applicable to a particular dispute.

The problem is that the criterion of "the closest connection" is a very arbitrary concept and its definition depends, first of all, on the inner conviction of the arbitrators. Arbitrators, guided by the stated norms of international law, national laws, rules of the relevant arbitration institution, may come to their own conclusion about the applicable law and, as a result, their decision will be unexpected for the parties of dispute.

Arbitral tribunal often consists of arbitrators from different states, for some of which the applicable law may be native, but for others not, or there may be a situation where the applicable law is not native at all for anyone.

Here is an example of using the uncertainty of the law of disputes from the history of SCC Arbitration practice in cases between parties from the USSR and West Germany. By choosing the seat of arbitration in Stockholm, but without specifying in the arbitration agreement the law applicable to resolve the dispute, the Soviet side regularly prevailed due to collision rules of Swedish law, which almost always gave preference to Soviet substantive law. The Soviet and German arbitrator appointed by the parties could never agree on the choice of the presiding judge, so the Swedish Chamber of Commerce and Industry appointed him (Clause 4, Article 17 of the SCC Arbitration Rules). The Swedish arbitrator, who also had no idea about the applicable Soviet law, trusted more the arbitrator whose country's law was applied [2].

Accordingly, the use of the applicable law of their country and legal system gave advantages to the Soviet counterparty.

Now I mention about choice of applicable law for arbitral proceedings in Vilnius Court of Commercial Arbitration (VCCA) practice. Usually the venue of arbitration is Lithuania, therefore the Lithuanian law "On Commercial Arbitration" (Lithuanian Act), based on the UNCITRAL Model Law 1985[3], is applied. The Lithuanian Act establishes the standard right of the parties to choose the applicable law, including trade customs (lex mercatoria). In the absence of agreement between the parties, arbitral tribunal can choose the applicable law. Also arbitral tribunal, with permission of the parties, can use the principle of fairness (ex aequo et bono) (Article 39 of the Lithuanian Act).

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[1] Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities: Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006. P. 92.
[2] Aleksandrov I.S. International commercial arbitration in the countries of the Commonwealth of Independent States (CIS) and the European Union (EU). Actual issues: Candidate of legal sciences thesis (PhD). Minsk - Bochum - Munster - St. Petersburg - Moscow. 2004.
[3] Lietvos Respublikos komercinio arbitrazo istatymo komentaras. // edit by Mikelenas W., Necrosius V., Zemlyte E. Vilnius: VJ Registru Center. 2016. P. 134.

Also the VCCA Arbitration Rules (Article 25) regulates the issue of applicable law analogically with the Lithuanian Act.

Usually in the Lithuanian arbitration practice the applicable substantive law is Lithuanian, because most of dispute parties belong to the Lithuanian legal system.

Consider further the practice of the ICAC at the Chamber of Commerce and Industry of the Russian Federation.

Note that the arbitrators, in the field of determining the applicable law, will be guided by the provisions of the arbitration agreement, collision rules, the terms of the contract and trade customs (Paragraph 23 of the ICAC Arbitration Rules).

The ICAC Arbitration Rules (Clause 3, Paragraph 23) also indicates that the arbitrators, when making an award, may apply the appropriate custom on their own initiative in cases where the parties in their contract did not provide for its application.

The choice of law clause has a certain autonomy. The choice of law cannot be disputed on the sole ground that the contract to which it refers is invalid[1].

It should be noted that in practice, the ICAC may use the collision rule of Russian law in force at the time of the conclusion of the contract, the relationship from which is the subject of the dispute. «But even in the conditions of the existence of such a "custom", the specified arbitration, considering a specific dispute, when choosing collision rules, recognized the applicable law as the law of the country of the place of the court session. In another case, the ICAC, based on the specific circumstances of the case, decided to apply to the contract of sale not the law of the country of the seller, but the law of the state where the contract was concluded»[2].

In practice, the law of the Russian Federation is often used as the applicable law. Moreover, it is the right of the location of the ICAC. But, of course, the decision about applicable law depends on parties of dispute. And this decision should be clear foxed in the arbitral agreement.

An example is Case No. 58/2005. The Russian company submitted an application to the ICAC at the Chamber of Commerce and Industry to terminate the contract. The applicable law to the merits of the dispute was Russian law, since clause 12 of the Contract contained the following provision: «The parties to this contract agreed that the applicable law in resolving

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[1] Resolution of the ICAC at the Chamber of Commerce and Industry of the Russian Federation of March 12, 2008 No. 64/2007, Decision of the ICAC at the Chamber of Commerce and Industry of the Russian Federation of December 17, 2007 No. 35/2007.// http://www.consultant.ru

[2] Bardina M.P. Determination of the law applicable on the merits of the dispute in the practice of the ICAC. //Actual issues of international commercial arbitration. Moscow. 2002. P. 32.

disputes that arose during the performance of the contract is the civil law of the Russian Federation»[1].

Also interesting is case no. 95/2002. The lawsuit was filed by a Russian organization against a Swiss company in connection with incomplete payment for goods supplied under the contract. The plaintiff demanded repayment of the amount of the debt, as well as reimbursement of expenses related to the consideration of the case. At the time of applying to the ICAC at the Chamber of Commerce and Industry of the Russian Federation, there was no agreement between the parties on the applicable law. But, at the arbitration meeting, the parties agreed to apply Russian law to relations under this contract[2].

Conclusion.

Summarizing the above, I conclude that most arbitration laws and regulations of arbitration institutions do not adhere to the principle of territoriality. The practice of modern lawmaking in the field of commercial arbitration allows the parties to the dispute or arbitrators to choose both the law of any state and trade customs. It is possible for the parties to choose both substantive and procedural law at their own discretion. But «tendency to recognize the presumption that the procedural law governing arbitration is the law of the place where the arbitration is held continues»[3].

It is necessary to note one more important circumstance. Restrictions imposed by national law on the application of foreign law seriously hinder its application by arbitrators. After all, arbitrators may face the application of a wide variety of foreign law, which differs in many respects from each other. In this regard, arbitration tribunals began to use a pragmatic approach to this issue in a number of cases. When an applicable law does not provide an answer to a particular question, and when a collision rule allows it, application of general principles of commercial law (Lex mercatoria) becomes inevitable and justified.

Disputing parties often tend to choose neutral rules in order to avoid rigid alternatives between the law of the country of localization of one or the other party. But, there are inconveniences of choosing the law of a third country, which is not connected with one of the parties, and the advantages of choosing the principles of law generally recognized in international trade.

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[1] Practice of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation for 2005. // comp. M.G. Rosenberg. Moscow. 2006. P. 359.
[2] Practice of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation for 2003. // comp. M.G. Rosenberg. Moscow. 2004. P. 62.
[3] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod. 2007. P. 88.

The provisions of the legislation and regulations of arbitral institutions cited above allows conclusion that arbitrators, when making a decision, can apply the relevant business practice on their own initiative in cases where the parties did not provide for its application in their arbitration agreement. In their selection, arbitrators should be guided by the interests of a fair and efficient trial of the dispute.

The above indicates «weakening the role of national law as the only possible regulator applicable by international commercial arbitration»[1].

It should also be pointed out that the choice of applicable law is often recommended depending on the intended place of recognition and enforcement of a commercial arbitration award[2]. This recommendation has a rational start. But, objectively, the will of the parties to choose the applicable law must be free and cannot be limited imperatively.

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[1] Polyakov Y.V. Main trends in the development of international commercial arbitration and the definition of applicable law. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 2010. P. 9.

[2] Fursov D.A. Arbitration tribunals: Limits of legitimacy of their decisions (Manual). Moscow: Statute. 2009. P. 25.

Paragraph 2. Place and language of arbitral proceedings.

Place of arbitral proceedings.

General provisions.

There is an important issue about the place of arbitration, which theoretical content is the subject of analysis in legal science[1]. Also the synonyms of this term are arbitral place, venue of arbitration, locus arbitri, situs arbitri, seat of arbitration The define of this drawn by both national and international law legislation and institutional arbitration rules[2].

Arbitration tribunal ad hoc but by its nature does not have a fixed location, therefore, for it the determination of the place of consideration of the dispute is one of the most important issues. The determination of the place of arbitration is carried out by the parties themselves. «In the legal sense, the place of arbitration is the place indicated in the agreement of the parties»[3]. If the parties have not agreed on this issue, determining the place of arbitration is the prerogative of the arbitral panel. In ad hoc arbitration, the concepts of "arbitral panel" and "arbitral tribunal" essentially coincide.

From a literal interpretation, it follows that if the parties agree on the place for the dispute after the composition of the court has decided on this issue, their agreement is a priority. «Even if in the arbitration agreement the parties of dispute did not discuss the place of arbitration, they can do in the event of a dispute, so they can supplement reference to the arbitration agreement about the place of arbitration»[4]. This is not a rare case in arbitration practice[5].

The power of the ad hoc arbitration tribunal to determine the arbitration process extends only to areas where the parties have not been able to determine the rules of arbitration.

Meanwhile, a lot depends on the determination of the place of arbitration proceedings. After all, the composition of the arbitration court can determine the most difficult places as the place of consideration. The costs are borne by the parties.

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[1] Procedural law in international arbitration.\\ Petrochilos Georgios. New York: Oxford University Press Inc. 2004. P. 22-41.

[2] Arbitration in Sweden. Practitioniers Guide. // Edit. by Franke U., Magnusson A., Ragnwaldh J., Walinn M. The Hague: Wolters Kluwer. 2013. P. 272.

[3] The place of arbitration. // edit. Storme M., De Ly F. // Third international symposium of The Law of international commercial arbitration. Ghent May 30-31, 1991. Institute of National and International Arbitration Law. 1992. P. 119.

[4] Mikelenas V. Arbitražo vieta: teisiniai ir praktiniai aspektai. // Arbitrazas. Teorija ir praktika. Vilnius. No 7. 2021. P. 7.

[5] Ortolani P. Place of Arbitration. // UNCITRAL Model Law on International Commercial Arbitration. A commentary. // Edit. by Bantekas I., Ortolani P., Gomez M.A., Polkinghorne M. Cambridge: Cambridge University Press. 2020. P. 573.

In practice, questions may arise, what are the consequences of choosing by the parties or the arbitral tribunal an unsuccessful place for the dispute? In addition to the obvious - high financial costs, choosing the wrong place to hear a dispute can lead to the impossibility of litigation at all. For example, there may be visa problems if the proceedings are held in a foreign country. It seems that in this case, the claimant, having offered in good faith several options for a realistically achievable place for resolving the dispute, has the right to apply to the appropriate state court.

In this case, the state court of general jurisdiction is obliged to consider the dispute on the merits, otherwise the right to judicial protection established by constitutional norms[1].

Legal regulation.

Note that the legislative requirements common for many countries to the place of arbitration proceedings. The parties have the right to agree on the place of arbitration. In the absence of an agreement between the parties, the arbitral panel determines the place of arbitration. In addition, as agreed by the parties, the arbitrators may choose any other venue they deem appropriate. These provisions are indicated in Article 816 of the Italian Code, Article 22 of the Swedish Act, Article 24 of the Finnish Act, Article 22 of the Norwegian Act, Article 20 of the Russian Act 2016, Article 20 of the Russian ICA Act 1993, Article 20 of the UNCITRAL Model Law 1985.

American law also provides for right of the parties to determine the place of arbitration proceedings in the arbitration agreement. In disputable situations, it is possible to apply to the state district court, in the district of which the above place of proceedings is located (Chapter 2, Paragraph 204 of the US FAA). The state district court may order the parties to arbitrate their dispute at the place provided for by arbitration agreement (Chapter 2, Paragraph 206, Chapter 3, Paragraph 303 of the US FAA).

Italian legislators also provided that if the parties and the arbitral tribunal do not determine the place of arbitration, then the place of arbitration will be in Rome (Article 816 of the Italian Code).

Russian law provides for the criterion of convenience for the parties in determining the place of arbitration (Clause 2, Article 20 of the Russian Act 2016 and Clause 2, Article 20 of the Russian ICA Act 1993).

Lithuanian law also specifies the right of the parties to agree about the place of arbitration. In the absence of such an agreement, the arbitral tribunal determines the place of

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[1] For example Article 24 of the Constitution of the Italian Republic, Article 46 of the Constitution of the Russian Federation.

proceedings, taking into account such criteria as circumstances of the case and convenience of the parties (Clause 1, Article 29 of the Lithuanian Act). Furthermore, regardless of the above, the arbitral tribunal may meet at any place of its own choosing, unless expressly prohibited by the parties (Clause 2, Article 29 of the Lithuanian Act).

If the dispute is considered by a permanent arbitration tribunal, the issue of determining the place of arbitration is regulated as follows.

«In a permanent arbitration tribunal, the general principle of determining the place of arbitration is that the relevant rules should be established by the rules of this tribunal. However, this does not exclude the possibility that the rules of a permanent arbitration tribunal may contain a reference rule according to which the rules for determining the place of arbitration may be left to the discretion of the parties to the arbitration»[1].

Consider some of the regulations of permanent arbitration institutions. The place of dispute settlement is determined by the arbitral institution and its rules (Clause 1, Article 25 of the SCC Arbitration Rules, Clause 1, Article 18 of the ICC Arbitration Rules) or by the arbitration panel (Clause 1, Article 23 of the VCCA Arbitration Rules).

At the same time, the above-mentioned permanent arbitration courts in their rules establish the possibility for the parties to agree on the place for the dispute to be settled (Article 25 of the SCC Arbitration Rules, Article 18 of the ICC Arbitration Rules, Article 23 of the VCCA Arbitration Rules).

I note that ICAC Arbitration Rules expressly indicates the place of the dispute is the city of Moscow, where it is located. But, it is also given the opportunity to consider the case in another place by agreement of the parties (Article 21 of the ICAC Arbitration Rules).

In its turn, CAM Arbitration Rules provides a rule that parties shell fix the place of arbitration in Italy or abroad (Clause 1, Article 4). If there is no agreement of the parties about this issue, the place of arbitration will be Milan (Clause 2, Article 4) or another place by decision of Arbitral Council (Clause 3, Article 4) or Arbitral Tribunal (Clause 4, Article 4).

It seems that the parties still have the opportunity to combine the desired arbitration tribunal with the most optimal place for them to hear the dispute. But, as a rule, permanent arbitration courts choose the place of their location as the place for the consideration of the dispute. However, the right of the parties to agree on the place of arbitral proceedings is recognized.

It is also possible, rarely encountered in practice, the situation when a vehicle is chosen as the place of arbitration: a train, an airplane, a ship. In this situation, it is important

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[1] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 506.

to determine in the territory of which state the vehicle was located at the time the arbitration decision was made, since it is possible to challenge the decisions in the competent court of the state in whose territory the decision was made.

«The parties to the dispute can change the arbitration the place of arbitration provided for in the agreement even after the commencement of the arbitration proceedings. But any case, there can be only one place of arbitration»[1].

Consideration of a dispute in a different place than the parties to the dispute have determined in an arbitration tribunal to resolve a particular dispute or as prescribed by the rules of a permanent arbitration court means that it may result in a refusal to enforce the arbitration award (Point D, Clause 1, Article 5 of the New-York Convention 1958).

The experience of Poland is very interesting, the legislation of which does not distinguish between "international" and "internal" arbitration. «The focus is solely on the place of arbitration, meaning that any arbitration taking place on the territory of Poland will be an internal arbitration, regardless of the presence of any foreign element. In other cases, we can talk about international or foreign arbitration»[2]. Accordingly, the contestation and enforcement of the arbitral award will be carried out within the framework of the Polish legal system. Therefore, the choice of a Polish arbitral institution or a venue for arbitrating a dispute on the territory of Poland will mean for subjects of economic activity the subordination of their own legal relations to Polish law.

«The seat of arbitration is more important in international arbitration than in domestic (national) proceedings. International arbitration generally adheres to the principle stipulating that the parties may themselves choose the seat of arbitration; and they should indeed avail themselves of this opportunity, especially in ad hoc arbitration. Otherwise they run the risk that the seat of arbitration will be determined contrary to their expectations, which might result in unexpected situations, for instance, as concerns the application of procedural rules, problems with recognition and enforcement, etc»[3].

So, I come to the conclusion that in most situations, the choice of the place of arbitration depends on the parties to the dispute. They usually spell out this issue in the arbitration agreement, especially if ad hoc arbitration is planned. If the parties have chosen a permanent arbitral institution, then the venue of the proceedings is determined by rules and regulations that take into account the position of the parties.

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[1] Born G.B. International Commercial Arbitration. Vol.II. 3rd ed. The Hague: Wolters Kluwer. 2021. P. 1664.
[2] Zenkovich D.I. International commercial arbitration in Russia and Poland: Comparative legal analysis: Candidate of legal sciences thesis (PhD). Moscow. 2011. P. 34.
[3] Belohlavek A.J. Seat of arbitration and supporting and supervising function of courts. // Czech (& Central European) Yearbook of Arbitration. Interaction of arbitration and courts. Volume 5. edit by Belohlavek A.J., Rozehnalova N. Juris. 2015. P. 33.

Often this is the location of the arbitration institution, but not always.

I think that the will of the parties operates in this matter. Since, having chosen a specific arbitration institution, they a priori agree with the provisions of its regulations and rules.

Criteria for determining the place of arbitral proceedings.

Attention should be paid to the criteria that are relevant to the parties to the dispute in determining the place of arbitration.

Geographic criteria. The venue of the dispute proceedings must be equally convenient and accessible to both parties. I mean transport accessibility. Usually, in order to save money, the locations or places of business of the parties are taken into account. But, in some situations, the parties prefer to specify as arbitration a third, neutral country that is not connected either with the parties of contract or with the place of its performance.

Political criteria. A stable political situation in the country is essential, as is the security and availability of the arbitration venue for the parties. You should also pay attention to the possibility of prompt and unhindered issuance of visas and the absence of restrictions on the entry of arbitrators, parties, their representatives and other participants in the dispute.

Economic criteria. They contain the possibility of prompt and unhindered transfer of funds from any country to the country of the place of arbitration, as well as the possibility of import and export of documents and physical evidence. The presence of a developed infrastructure is important, such as offices for conducting hearings, hotels for persons involved in the process, means of communication and transport, the availability of the necessary technical specialists.

Legal criteria. One of the main ones is the participation of the state in the New York Convention of 1958. «In the absence of grounds for a different decision, one should agree to arbitration only in those countries that are parties to this convention»[1].

«Another important aspect to be taken into consideration is the quality of the courts which might be called upon to intervene in arbitral proceedings or to review the award. While the "neutrality" of the courts of all the countries considered here can be assumed, there are marked differences with regard to their powers, their working capacity, the extent of their experience in questions of international arbitration law, the duration and the costs of their proceedings and also with regard to the number of possible appeals»[2].

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[1] Nikolyukin S.V. Arbitration agreements and competence of international commercial arbitration. Moscow: Jurisprudence. 2009. P. 78.

[2] Comparative Law of International Arbitration: Second edition. // Poudret Jean-Frangois, Besson Sebastien. Sweet & Maxwell Ltd. London. 2007. P. 119.

Also reasoned opinion that in international matters the choice of the seat should primarily depend on the contents of the lex arbitrii, which rules the arbitration procedure in the specific country[1].

Virtual arbitration proceedings.

The idea of virtual arbitration of disputes is interesting. This issue is the subject of scientific and practical research. In legal science, the issue is raised about such a legal phenomenon as cybitration[2].

In the United States, with the support of the American Arbitration Association, an online arbitration project was created – Virtual Magistrate, the first award of which was delivered on May 8, 1996 [3].

Note that there is a collision between the territorial nature of the jurisdiction of the courts and the global nature of cyberspace [4].

Here is the definition of online arbitrage. «Online arbitration is the process of resolving a dispute by arbitrators and the subsequent adoption by an arbitral tribunal of a binding arbitral award for the parties using modern methods of data transmission and storage»[5].

This type of arbitration implies that online arbitration is a dispute resolution procedure by a real person, and not by artificial intelligence or a computer algorithm. I agree that «arbitration procedures in which the decision is formulated automatically by a computer program and not by a real person - the arbitrator, cannot be recognized by arbitration for the purposes of enforcement of the final award»[6].

Here is an interesting empirical study by the School of International Arbitration at Queen Mary University of London, in partnership with White & Corpus, the so-called International Arbitration Study 2021[7]. Researched the latest trends in international arbitration and especially how the practice of international arbitration has adapted and continues to adapt to the global changes caused by the COVID-19 pandemic. 1,200 written interviews and 200 oral interviews were conducted with various interested respondents from around the world.

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[1] Bernardini P. The arbitration clause of an international contract. // Journal International Arbitration. No 2. 1992. P. 51 - 55.
[2] Hermann G. Some legal e-flections on online arbitration (cybitration). // Liber Amicorum Karl-Heinz Bockstiegel. Koln. 2001. P. 267.
[3] Kurochkin S.A. On-line arbitration: Theoretical issues. // Journal Arbitration Tribunal. No. 3. 2017. P. 148.
[4] Kaufmann-Kohler G., Schultz T. Online Dispute Resolution: Challenges for Contemporary Justice. The Hague. 2004. P. 27.
[5] Kurochkin S.A. On-line arbitration: Theoretical issues. // Journal Arbitration Tribunal. No. 3. 2017. P. 149.
[6] Rubino-Sammartano M. International Arbitration Law and Practice. New-York. 2014. P. 1728.
[7] https://www.international-arbitration-attorney.com/ru/2021-international-arbitration-survey-adapting-arbitration-to-a-changing-world/

This research found a dramatic increase in the use of virtual hearing rooms, with 72% of users indicating they have participated in virtual hearing rooms.

Note the pros and cons of virtual hearings expressed by the survey respondents.

Advantages of virtual hearings.

- Possibility of greater availability of dates for hearings (65%);

- Increasing efficiency through the use of technology (58%);

- Greater procedural and logistical flexibility (55%);

- Less environmental impact than face-to-face hearings (34%);

- Fewer distractions for lawyers and arbitrators and the possibility of encouraging more diversity in the composition of the tribunals (13%);

- It is better to see people's faces than at personal hearings (12%).

Disadvantages of virtual hearings.

- Difficulty coordinating multiple or different time zones and the impression that it is more difficult for consulting teams and clients to communicate during hearings. (40%);

- Difficulty in controlling witnesses and assessing their credibility (38%);

- Technological failures and/or limitations (including disparity in access to specific and/or reliable technology) and making it more difficult for participants to maintain concentration due to "screen fatigue" (35%);

- Privacy and cyber security issues (30%);

- Opinion that it is more difficult to "read" referees and other remote participants (27%).

The above survey shows both the benefits and challenges of virtual dispute resolution. However, technological progress does not stand still. I believe that the virtual settlement of disputes will take its place in the institution of arbitration and the parties, if desired and necessary, will be able to use this procedure. Moreover, the recent COVID-19 pandemic has shown the need for the development and widespread use of online technologies.

Language of arbitral proceedings.

Legal regulation.

Generally accepted rules on the language in which proceedings are conducted in arbitration in pending cases are available in the legislation of many countries.

The parties to the dispute are free to agree on the language or languages to be used in the arbitration proceedings. Failing such agreement, the language or languages in which the case will be heard shall be determined by the arbitral tribunal. (Article 816 - bis of the Italian

Code; Article 26 of the Finnish Act, Clause 1, Article 22 of the Russian ICA Act 1993, Clause 1, Article 22 of the UNCITRAL Model Law 1985).

The Russian Act 2015 (Clause 1, Article 24) also provides for the right of the parties to choose the language of the dispute, but in the absence of such a choice, the proceedings are conducted in Russian language.

The Norwegian Act (Article 24) provides for the choice of the language of dispute proceedings at the choice of the parties, and in its absence by the decision of arbitrators. Further, there is a provision that proceedings may be conducted in Norwegian, Swedish or Danish languages. This issue is resolved as follows. «If all parties reside in Norway, the language of arbitration will be Norwegian, unless the parties agree otherwise. No express agreement that the language of arbitration will be Norwegian in arbitration without international elements is required, this will be considered implied. This does not follow from the provision of the Arbitration Act governing the language of arbitration, see Article 24, but must nevertheless be regarded as a guaranteed right»[1]. Consequently, in domestic arbitration, the national language is a priori considered to be the language of arbitration proceedings. But, there are also two additional languages of neighboring states, with which Norway has a long common history and intensive economic relations. In international arbitration, if the parties intend to conduct proceedings in another language, they must provide for this in advance in the arbitration agreement.

Some national arbitration laws do not prescribe the language of the proceedings. For example The Swedish Act and the US FAA. Apparently, according to legislators, this issue should be settled exclusively by an arbitration agreement and regulations of arbitration institutions.

The rules of the institutional arbitration institutions give the parties the right to choose, by agreement, the language of arbitration, and if the parties do not agree on the language, then it is determined by the arbitral tribunal. (Article 26 of the SCC Arbitration Rules, Article 20 of the ICC Arbitration Rules, Article 5 of the CAM Arbitration Rules).

Note to Article 23 of the VCCA Arbitration Rules, which gives the parties the right to agree on the language of the dispute, but in the absence of such an agreement, the language of the proceedings is determined by the arbitrators, taking into account the language in which the arbitration agreement is drawn up. Therefore, the language of the arbitration agreement in such a situation is likely to become the language of the dispute.

ICAC Arbitration Rules in the Article 22 establishes, as a general rule, the right of the parties to choose the language of the dispute proceedings, but in the absence of such an

[1] Voldgift. // Geir Woxholth. Gyldendal Norsk Forlag, AS. 2013. P. 637.

agreement, the dispute proceedings are conducted in Russian, which is the localization language of this arbitration institution.

General provisions.

It can be argued that the issue of choosing the language of the dispute is dispositive in nature, that is, it gives the parties the right to determine it and fix their choice in the arbitration agreement.

At first glance, such a rule looks quite logical and democratic. But this is only at first glance, since many modern languages can cause the arbitration tribunal great and sometimes insurmountable difficulties with translation. Therefore, it would be more expedient to give the right to decide on the language of arbitration proceedings to the arbitration tribunal and only to it. The language chosen by the parties creates problems for the arbitral tribunal, for example, it is difficult to find a qualified interpreter, then the arbitral tribunal. guided by the principles of arbitration and the obligation to resolve the dispute, has the right not to accept the language proposed by the parties and to conduct arbitration proceedings either in the national language or in English.

It seems appropriate to provide for issues related to the language of the arbitration proceedings in the rules of the arbitration tribunal. The rules should provide that if, due to objective reasons, the arbitration proceedings cannot be conducted in the language chosen by the parties, they shall be conducted in the national language or in English. It should be noted that in the absence of an agreement between the parties to the dispute, the proceedings in international arbitration, as a rule, are conducted in English, which became international upon the fact. In internal arbitration, as a rule, the proceedings are conducted in the national language of the state where the arbitral tribunal is located.

Associated with the language in which the arbitration proceedings are conducted is the imposition on the parties of the obligation to ensure the translation of documents and other materials into the language of the arbitration proceedings. If translation is required during an oral hearing at an arbitration tribunal session, then interpreters may be invited either by the parties or by the arbitral tribunal, but the costs of paying for the services of interpreters are in any case borne by the parties[1]. In cases where arbitration proceedings are not conducted in the language provided for by the rules of arbitration tribunal, the parties are obliged to transfer to arbitration tribunal main procedural documents translated into the prescribed language, as well as to reimburse arbitration tribunal for costs of translating other materials.

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[1] Clause 2, Article 26 of the SCC Arbitration Rules; Clause 3, Article 5 of the CAM Arbitration Rules; Clause 3, Article 23 of the VCCA Arbitration Rules; Clause 2, Article 22 of the ICAC Arbitration Rules

Paragraph 3. Arbitration costs and fees.

One of the most important issues that arises when choosing between a state court and commercial arbitration is related to expenses.

Legal regulation.

Consider the legal regulation of this issue. The Article 816-septies of the **Italian Code** regulates anticipation of expenses. The parties, by agreement, and in its absence, by decision of the arbitral tribunal, pre-pay the projected costs. In the absence of payment from one of the two parties, the proceedings are not carried out and the parties are considered free from the arbitration agreement. If one party has not paid its part of the costs, the other party may pay for it. It is understood that later in the arbitration award compensation for these costs is possible[1]. «A party, especially if it wins the case, obtains reimbursement of the costs incurred as a whole, or in part»[2].

The **Russian Act 2015** in the Article 22 considers in detail the content of arbitration costs and fees (Clause 1). As a general rule, this issue is governed by the rules of the permanent arbitration institution (Clause 2, Clause 3). In ad hoc arbitration, the costs, primarily the arbitrators' fees, are determined by the parties themselves by mutual agreement, and in the absence of such agreement, the ad hoc arbitration itself (Clause 5).

The **Swedish Act** also regulates arbitration costs and fees. As a general rule, the parties jointly and severally bear the costs within reasonable limits. But, if the arbitral tribunal decides that it does not have competence to resolve the dispute, the party that did not file the request for arbitration shall not bear the costs, except in exceptional circumstances (Article 37). The arbitral tribunal may take interim measures to secure payment of costs and fees, the final amount of which is specified in the award (Article 38). It establishes the requirement that an agreement on costs and fees must be reached by the parties jointly (Article 39). It also provides for possibilities for the parties or arbitrators to appeal to the state District Court to change the award in terms of determining the costs and compensation of arbitrators (Article 41). This provision appears to be mainly relevant to ad hoc arbitration. Since in institutional arbitration institutions the amount of expenses and fees is established by the regulations.

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[1] Commentario breve al diritto dell'arbitrato nazionale ed internazionale. // edit by Massimo V. Benedettelli M.V., Consolo C., Radicati Di Brozolo L.G. CEDAM. Padova. 2010. P. 253.

[2] Arbitration and alternative dispute resolution. How to settle international business disputes. Geneva: ITC. 2001. P. 114.

American law provides for the arbitrator's right to set reasonable costs for arbitration, if the decision does not contradict the law or the arbitration agreement of the parties (Clause b, Section 7 of the US UAA).

Note that some legal acts do not contain provisions on arbitration costs and fees. It is obviously implied that these provisions should be contained in the regulations of arbitration institutions. For example, the UNCITRAL Model Law 1985 and the Russian ICA Act 1993.

Regulations of arbitration institutions.

Institutional arbitration, as a general rule, cannot be initiated before the plaintiff contributes to the arbitration institution a certain amount, commonly referred to as a registration fee, which is not refundable (Clause 1, Article 8 of the ICAC Arbitration Rules; Article 7 of the SCC Arbitration Rules).

Its size, of course, varies. In ICC Arbitration Court – 5000 USD (Article 1, Addition 3 of the ICC Arbitration Rules), in SCC Arbitration institute – 3000 EUR (Article 1, Addition 4 of the SCC Arbitration Rules), in ICAC – 1000 USD (Paragraph 2, Addition 6 (Regulation on arbitration costs) of the ICAC Arbitration Rules), in MAC – 500 USD (Paragraph 2, Addition 3 (Regulation on arbitration costs) of the MAC Arbitration Rules).

The registration fee is a non-refundable fee and must accompany the application for arbitration under the threat that this application will be left without movement (Clause 3, Article 1, Addition 3 of the ICC Arbitration Rules; Article R-55 of the AAA Rules) or will not be considered filed at all (Clause 1, Article 8 of the ICAC Arbitration Rules).

In addition, the claimant or both parties are required to pay an upfront arbitration fee. It may include the expenses of the arbitral institution for the organization and conduct of the arbitration, the fees of the arbitrators and the expenses of the arbitral panel. (Clause 4, Article 1, Addition 3 of the ICC Arbitration Rules; Paragraph 5, Addition 6 (Regulation on arbitration costs) of the ICAC Arbitration Rules) or only the costs of organizing and conducting arbitration (Article R-55 of the AAA Rules).

In the ICAC, the arbitration fee is paid by the claimant in advance when filing a statement of claim. There is no arbitration until the fee is paid. (Clause 2, Article 8 of the ICAC Arbitration Rules).

The amount of this fee is usually determined on the basis of a scale that takes into account the value of the claim. For example, according to the ICC Arbitration Rules (Article 3, Addition 3 of the ICC Arbitration Rules) arbitration costs are usually made up of the administrative costs of this institution and the fees of the arbitrators. Both amounts are set as a

percentage of the price of the claim. In exceptional cases, at the discretion of the arbitration institution, these amounts may be reduced or increased.

Rules similar in principle are provided for in the Regulations of the Arbitration Institute of the Stockholm Chamber of Commerce (Addition 4 of the SCC Arbitration Rules), AAA Rules (Administrative Fee Schedules), ICAC Rules (Paragraph 5, Addition 6 (Regulation on arbitration costs) of the ICAC Arbitration Rules).

The collection of arbitration fees in different arbitrations has its own characteristics. Consider the practice of ICC arbitration provided in Article 1 and Article 2, Addition 3 of the ICC Arbitration Rules**.** Thus, in the ICC, the Secretary General, after receiving the Application for Arbitration, may require the claimant to pay in advance the entire amount of the arbitration fee. Subsequently, when the Act on the powers of arbitrators is signed and the ICC Court will have a more detailed idea of the future arbitration, it will determine the amount of the arbitration fee more precisely. This amount must be paid by both parties in equal shares, and the amounts paid earlier by the plaintiff are counted against his share. If one of the parties fails to fulfill this obligation, the other party has the right to pay for it the appropriate amount. If the administrative fee is not paid within the prescribed period, the arbitration process is suspended by decision of the ICC Court. If, after the expiration of the time period set by the Court, at least 15 days, the corresponding amount is not paid, the corresponding claim (claim or counterclaim) shall be considered withdrawn. In the course of the arbitration process, the size of the administrative fee may be adjusted by the ICC Court, and its final amount is determined by the arbitral tribunal in the decision on the merits of the case and is distributed between the parties or assigned entirely to one of them.

Most regulations allow for the possibility of increasing, and some also reducing, the size of the arbitration fee, depending on the complexity of the case and the costs of its consideration.

In the ICAC, for example, since the arbitration fee includes the fees of arbitrators, its size is reduced by 20% if the case is subject to consideration by a sole arbitrator. In addition, if the proceedings are terminated due to the apparent impossibility of resolving the dispute, the arbitration fee is reduced by 75%. (Paragraph 6, Addition 6 (Regulation on arbitration costs) of the ICAC Arbitration Rules).

B ICC Arbitration Court the arbitral panel may fix the fees of the arbitrators above or below those stipulated if, due to the exceptional circumstances of the case, this becomes necessary (Clause 2, Article 38 of the ICAC Arbitration Rules).

The rules of some arbitration institutions provide for a security fee. The security fee is paid by the party when filing an application for interim measures (Paragraph 3, Addition 6

(Regulation on arbitration costs) of the ICAC Arbitration Rules and Paragraph 3, Addition 3 (Regulation on arbitration costs) of the MAC Arbitration Rules).

It should be noted that a significant amount of arbitration costs and fees, as well as the absence, as a rule, of rules establishing their limits, are typical for many arbitration institutions.

Note that there are other forms of determining arbitration costs.. For example, LCIA developed an alternative system for calculating the cost of resolving a dispute (Schedule of Arbitration Costs, Addition of LCIA Rules). The parties are offered a system of hourly payment for the services of arbitrators, as well as employees for the administration of arbitration, indicating the size of their maximum rates. Thus, the parties can calculate in advance the approximate cost of the case. The LCIA also offers an alternative approach for paying arbitration costs - now the parties may not pay the entire amount at once, but pay separately for each stage of the process.

UNCITRAL Arbitration Rules 2010 and ad hoc arbitration.

Since the UNCITRAL Arbitration Rules 2010 generally deal with ad hoc arbitrations, its regulation of arbitration costs and fees is different from that of institutional arbitration (Article 40 and Article 41 of the UNCITRAL Arbitration Rules 2010). For example, there are no registration or arbitration fees of arbitration institutions. A party shall pay such fees only if it applies to the competent authority, for example, with a request for the appointment of an arbitrator in the event that the respondent misses the deadline for this. The arbitral tribunal itself, after its formation, has the right to require the parties to make deposits (in equal amounts) to cover arbitration costs. Later, during the course of the process, the arbitrators may require the payment of additional amounts for any purpose. The final distribution of arbitration costs is made in the decision on the merits of the dispute.

Arbitration costs, according to Article 40 of the UNCITRAL Arbitration Rules 2010, include the arbitrators' fees and expenses in connection with the arbitration, experts' fees, expenses for witnesses and experts in the amount approved by the arbitrators, the cost of legal assistance and representation of the prevailing party in the case, as well as the fee of the competent authority, if one was involved.

Unless otherwise agreed, payment of the entire amount of the arbitration fee is often the responsibility of the party against whom the award is made. But not in all situations.

Objectively, that «arbitrators have wide discretion in deciding the allocation of the costs of the arbitration, unless the parties to the arbitration agree otherwise»[1].

Theoretical and practical provisions.

There are three different approaches to the distribution of arbitration costs.

American approach (model). The main principle is to pay for yourself. Each party must bear its own costs, regardless of the outcome of the case. This rule provided in the Swedish Act (Article 37) and the Finnish Act (Article 46). But, in case of dishonest behavior of the parties, the arbitrators have the right to deviate from this rule[2].

English approach (model). The main principle is that the loser pays. The losing party must reimburse the winning party for the costs incurred[3].

This principle is reflected in the Clause 1, Article 42 of the UNCITRAL Arbitration Rules 2010.

Factorial approach (model). The main principle is that the costs depend on the circumstances of the case. The parties shall be entitled to reimbursement of expenses in proportion to the satisfaction of their claims and objections by the arbitrators. In other words, the costs of arbitration should be distributed in accordance with the volume of claims settled, as evidenced by arbitration practice.[4].

Also, such rule includes in the Russian Act 2015 (Clause 5, Article 22).

English model in which the losing party is obliged to reimburse the costs of arbitration incurred by the winning party has some reasons. The absence of an obligation to compensate the costs of the winning party in its own way violates principles of justice and fairness.

American model also has rationale, which deters weak claimants whose claims are not well founded. The parties are financially responsible for results and consequences of the arbitration proceedings. On the other hand, there is a restraint on a poor claimant from going to arbitration, since he may be afraid of losing and recovering unbearable expenses.

The author considers factorial model preferable. It is more fairly to allocate arbitration costs depending on the circumstances of dispute and the arbitral award.

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[1] Masyte E. Arbitražo proceso finansavimas: arbitražo išlaidų atlyginimas ir jų užtikrinimas. // Arbitrazas. Teorija ir praktika. Vilnius. No 6. 2020. P. 97.
[2] Rosell J. Arbitration costs as relief and/or damages. // Journal of International Arbitration. 2011. Vol 28. No 2. P. 119.
[3] Manufacturer v. Buyer. ICC Case No. 8486. 1996. The final decision. // https://iccwbo.org/dispute-resolution-services/arbitration/icc-case-information/
[4] Sub-Contractor v. Contractor. ICC Case. No. 5759. 1989. The final decision. // https://iccwbo.org/dispute-resolution-services/arbitration/icc-case-information/

Note an interesting initiative to resolve the issue of arbitration costs and fees[1]. The parties to the dispute should be given the opportunity to plan their arbitration costs before the commencement of the arbitration proceedings. They may agree to hold a preliminary hearing in the case to determine the costs of the arbitration, where they will formulate and present their reasonable expectations of future costs. Then Arbitral tribunal issue a procedural order. Violation of which may lead to the redistribution of arbitration costs and their imposition on the unfair party.

Possibility for the parties of dispute and the arbitral tribunal to determine a reasonable amount of the costs of the parties in the case, which suits everyone, contributes to a more efficient arbitral proceedings. «Both, counsel and arbitrators, can and should contribute to avoid excessive cost by ensuring an efficient case management and focusing on the relevant issues»[2].

Coclusion.

In world practice, the following procedure for determining arbitration costs and fees takes place. In institutional arbitral tribunals, the amounts of costs and fees are established by the rules. If the parties have designated a particular arbitral tribunal in their arbitration agreement, then they agree a priori to that institution's rules regarding costs and fees.

In ad hoc arbitration, these costs and fees may be established by the arbitration agreement or determined by the arbitral panel. There are various approaches to distribution of above costs, which are reflected in national laws. In the process of concluding an arbitration agreement and choosing the applicable procedural law, the parties need to understand all specifics of the regulation of this issue.

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[1] Jones D. Using Costs Orders to Control the Expense of International Commercial Arbitration. // International Journal of Arbitration, Mediation and Dispute Management. Vol. 82. No. 3. August 2016. Sweet & Maxwell. P. 291–301.

[2] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 115.

Paragraph 4. Statement of claim in arbitral proceedings.

Initiation of dispute arbitration.

Arbitration proceedings begin with one party sending an application for the conduct of proceedings to the other party and to the arbitration institution provided for by the agreement of the parties. Or initiating the creation of ad hoc arbitration in accordance with the arbitration agreement. Statement of arbitration may or may not be the same as statement of claim because some arbitration rules (Article 6 and Article 29 of the SCC Arbitration Rules) and the UNCITRAL Arbitration Rules 2010 (Article 3, Article 20) provide for a two-stage procedure for initiating proceedings. A disputing party may first file a statement of arbitration containing only a general statement of the substance of the dispute and the claims to be made, followed later by a detailed statement of claim. In other arbitral tribunals, after the parties have exchanged a detailed statement of claim and a response to the claim, it may be possible to additionally exchange memorandums clarifying and confirming the claims or objections to the claim, if the arbitral tribunal considers this possible or necessary (Article 2, Article 3, Article 28 of the ICAC Arbitration Rules and Article R4 and Article R6 of the AAA Rules).

Different arbitration courts establish different procedures for initiating arbitration. So, the ICC Arbitration Rules (Article 4) provides for the claimant to send an application for consideration of the dispute in arbitration, containing a statement of the merits of the case and the names of the arbitrators. The date of receipt of the Application by the ICC Secretariat shall be considered the date of commencement of the arbitration proceedings. In the ICAC, arbitration proceedings begin with the presentation of a claim; the date of filing the statement of claim is the day of its delivery to the ICAC, and when sent by mail - the date of the stamp of the postal department of the place of poisoning (Clause 2, Article 2 of the ICAC Arbitration Rules). With regard to ad hoc arbitration, the procedure for its commencement is provided for in the UNCITRAL Arbitration Rules 2010 (Article 3), if the parties have agreed on its application, or is established by agreement of the parties.

In some cases, the statement of claim cannot be accepted and considered for the reason that the claimant did not comply with the pre-arbitration procedure for settling disputes provided for by the agreement of the parties. For example, «in construction contracts there are often conditions that all disputes of a technical nature are first transferred to the engineer or architect for consideration, and only then, if one of the parties is not satisfied with the decision, the dispute can be considered. At the same time, non-compliance with the claim

procedure provided for by law for a number of internal transactions cannot serve as a basis for refusing to arbitrate the dispute»[1].

Content of the statement of claim.

The statement of claim is submitted to the court in writing. The content of the statement of claim is formed by its details, the indication of which is mandatory. The statement of claim must clearly and completely indicate the information about the parties. The name of the claimant and defendant, their place of residence must be indicated. If the party to the case is a legal entity, then its location. If several claimants or several defendants are involved in the process, information about each of them is given. (Clause 3 Article 4 of the ICC Arbitration Rules and Article 3 of the ICAC Arbitration Rules).

The need to indicate the place of birth and place of work of an individual is not so obvious, since the failure to indicate in the statement of claim information about the place and date of birth and place of work of the defendant - an individual should not prevent the initiation of arbitration proceedings. Such information may be obtained in the course of arbitration proceedings.

The claimant is obliged to confirm with evidence the circumstances set forth in the statement of claim, substantiating the claims of the plaintiff. However, failure to comply with this requirement, either in the form of failure to provide evidence or in the form of failure to indicate them in the text of the statement of claim, does not prevent the initiation of arbitration proceedings. Evidence may be indicated and presented during the course of the dispute. In the application for consideration of the dispute, it is possible not to indicate evidence.

It is necessary to distinguish between the indication of evidence in the statement of claim and their presentation when filing a claim in an arbitration court. In accordance with the adversarial principle, the parties freely dispose of the evidence and, at their own discretion, decide on the issue of their presentation to the court under pain of adverse consequences caused by the understatement of their position or the abuse of evidence at disposal (Article 25 of the Finnish Act, Article 25 of the Swedish Act, Article 26 of the Russian Act 2015). As a general rule, the parties have the right to submit evidence before the end of the court session and the removal of the court for a decision. Therefore, the failure to provide evidence when filing a statement of claim is not grounds for refusing to initiate proceedings.

The claimant is obliged to indicate his claim in the application. The absence of a specific claim of the plaintiff against the defendant in the statement of claim makes it

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[1] Bruntseva E.V. International Commercial Arbitration (Manual). Saint-Petersburg: Publishing House "September". 2001. P. 185.

impossible to consider the case and resolve the issue of the competence of the arbitration court and should result in a refusal to initiate proceedings (Clause 3, Article 3 of the UNCITRAL Arbitration Rules 2010). For example, if in a claim for the division of common property, the claimant indicates the property that is in common ownership with the defendant and asks to divide it, he does not indicate exactly how, what kind of property he asks to be awarded to him. and which - to the defendant, consideration of such a claim due to the lack of specification of requirements becomes impossible.

Some regulations require the statement of claim to indicate the date of its signing. (Clause 1, Article 3 of the ICAC Arbitration Rules). But such a date does not have any significance. Material and procedural consequences have the date of filing a statement of claim or an application for arbitration to an arbitration court, and not the date of its signing. For example, Clause 2, Article 4 of the ICC Arbitration Rules indicates that the date of receipt of the document by the secretariat is considered the date of commencement of the arbitration proceedings.

Feedback on a claim. Counterclaim.

All rules provide for a time limit, usually a very short one, for the defendant to submit a response to an application for arbitration or a statement of claim. As a general rule, the defendant must, within 30 days after receiving a copy of the statement of claim or application for arbitration, submit a response to it (Clause 1, Article 5 of the ICC Arbitration Rules and Clause 2, Article 6 of the ICAC Arbitration Rules).

The requirements for withdrawal may also be different, from a short to a detailed answer on all points of the statement of claim. Naturally, if the claimant submitted a detailed statement, the defendant is likely to follow his example and answer in the same detail on each point. If the claimant confines himself to a general statement of the merits of the dispute, the response of the defendant is unlikely to be more detailed.

The legislation generally provides that, unless the parties have agreed otherwise, in the course of the arbitration, either party may remediate or supplement its claims or objections to the claim, unless the arbitral tribunal finds it impractical to allow such a change to take into account the delay allowed (Clause 2, Article 23 of the UNCITRAL Model Law 1985; Clause 2, Article 23 of the Russian ICA Act 1993; Article 23 of the Swedish Act).

The rules of arbitration institutions provide for the following general rule. Any party may change or supplement its claims or objections to the claim without undue delay until the end of the oral hearing of the case. The arbitral panel may find it inappropriate to allow such a change or addition of claims or objections to the claim, taking into account the delay allowed

(Article 28 of the ICAC Arbitration Rules; Article 22 of the UNCITRAL Arbitration Rules 2010; Article 30 of the SCC Arbitration Rules).

In the course of proceedings, either party may amend its claim or defenses, provided that the so modified claim continues to be covered by the arbitration agreement, unless the arbitral tribunal finds it inappropriate to allow such a change due to the time of its filing, damages, which may be caused to the other party, or other circumstances.

According with the principle of equality of arms, the defendant is endowed with the possibility of defense against the brought claim. The response to the statement of claim allows the defendant to submit an objection to the statement of claim and to convey his position to the arbitrators (Article 21 of the UNCITRAL Arbitration Rules 2010; Clause 2, Article 29 of the SCC Arbitration Rules).

Some rules of arbitration institutions provide for the right to file a counterclaim (Article 7 of the ICAC Arbitration Rules; Article 8 of the MAC Arbitration Rules).

A counterclaim is one of the remedies, along with the objections of the defendant. Given that the counterclaim is an independent claim of the claimant against the defendant, subject to consideration and resolution by the arbitration court simultaneously with the initial one in the form of a general decision, since the initial claim is the subject of the arbitration court, it is subject to special legal regulation.

The possibility of filing a counterclaim exists with the defendant before the removal of the court for a meeting to decide the decision. However, the parties may agree on a different time limit for filing a counterclaim.

Limitation period.

The legislation of almost all states establishes limitation periods, which usually begin from the moment the right to claim arises. In addition, the contract or arbitration agreement itself may contain an indication of the period of time during which certain claims or claims may be brought against a party, or after which claims or claims cannot be brought.

There is a practical example. In the proceedings of the ICAC No. 415/1994 on a dispute between Yugoslav and Russian commercial organizations, the defendant (a Russian company), without denying the fact of non-payment for the goods received, asked the arbitration to dismiss the claim due to the expiration of the limitation period, which, in his opinion, had begun to flow from the date the claimant sent him an invoice for the delivered goods. The arbitral tribunal did not agree with these arguments, indicating that the limitation period begins to run from the day when the plaintiff knew or should have known that his right

to receive payment was violated, i.e. from the date when the due date for payment on the specified account expired[1].

Here, however, serious problems can arise. First of all, the statute of limitations in different states may not coincide. For example, the general rule establishes a limitation period in the Russian Federation of 3 years (Article 196 of the Russian Civil Code) and 5 years in the Italian Republic (Article 2937 of the Italian Civil Code).

Depending on this, they may be governed by both the law applicable to the merits of the dispute and the law of the place of arbitration. «For example, the law governing a contract may provide for a five-year limitation period, while the law of the seat of arbitration may provide for a three-year limitation period. If an action is brought four years after the right to it arises, then the question arises: what law should be applied? Naturally, the plaintiff will insist that the limitation period is governed by the law applicable to the contract and that the limitation period has not yet expired. The Respondent will equally naturally argue that the statute of limitations is governed by the law of the seat of arbitration, that the Claimant has omitted the statute of limitations and that the dispute cannot take place»[2].

The running of the limitation period is usually interrupted by the filing of a claim. Different countries have different approaches to what counts as filing a claim if the dispute is subject to arbitration. This may include sending a request for arbitration to the other party; sending an application for arbitration to an arbitration institution; sending a request to the other party to appoint an arbitrator or to participate in the procedure for appointing an arbitrator. For example, the UNCITRAL Model Law 1985 (Article 21), the Russian ICA Act 1993 (Article 21), the Russian Act 2015 (Article 23), the Swedish Act (Article 23) regards as the commencement date of the arbitration, unless otherwise agreed by the parties, the day on which the request to submit this dispute to arbitration is received by the defendant.

The rules of many arbitral institutions consider the date of commencement of proceedings on the day the arbitral institution receives the application for arbitration (Article 8 of the SCC Arbitration Rules, Article 2 of the ICAC Arbitration Rules).

Considering the issue of limitation of actions, it should be mentioned that in some cases Convention on the Limitation Period in the International Sale of Goods adopted in June 11,1974 year (amended 11 April 1980 year)[3]. The limitation period is set at four years (Article 8). Subject to certain conditions, that period may be extended to a maximum of ten years (Article 23).

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[1] Rozenberg M.G. Practice of the International Commercial Arbitration Court. Moscow. 1998. P. 135.
[2] Bruntseva E.V. International Commercial Arbitration (Manual). Saint-Petersburg: Publishing House "September". 2001. P. 186.
[3] https://uncitral.un.org/en/texts/salegoods/conventions/limitation_period_international_sale_of_goods

Multiplicity of contracts and connection of claims.

Consider further the issues of multiplicity of contracts and connection of claims.

World arbitration practice recognizes the right to provide in a statement of claim and consider, within the framework of one arbitration proceeding, legal relations arising from two or more separate contracts. Subject to the rules of jurisdiction of the arbitral institution. These provisions are contained in the regulations of many arbitration institutions. For example, Article 9 of the ICC Arbitration Rules, Article 10 of the SCC Arbitration Rules, Article 11 of the ICAC Arbitration Rules).

The Supreme Court of Cassation of Italy held that the submission of a single request for arbitration in respect of different claims, under related contracts, based on identical arbitration agreements (meaning primarily one arbitration institution), is lawful. Therefore, an arbitral award on this basis cannot be challenged and set aside.[1].

Despite the fact that the legislation, as well as the regulations of some arbitration institutions (Article 10 of the ICC Arbitration Rules, Article 15 of the SCC Arbitration Rules) even allow the joining of claims even if there are objections from one of the parties (Article 12 of the ICAC Arbitration Rules), this still does not resolve the issue of the need to obtain the consent of the party to participate in arbitration. In addition, enforcement of an award may be sought in a country that does not allow joining of claims in arbitration without the consent of all parties, and such an action, fully legitimate in the place of arbitration, may serve as a basis for refusing recognition and enforcement of an arbitral award. Therefore, I consider t expedient the provisions of ICC Arbitration Rules and SCC Arbitration Rules, providing for the consent of all parties to combine claims.

New York Convention 1958 proclaims (Clause 1, Article 5), that recognition and enforcement of an award may be refused at the request of the party against whom the award is directed only if that party proves that the arbitral tribunal or the arbitral process was not in accordance with the agreement of the parties. Therefore, the appropriate next approach is to draw up an arbitration agreement in such a way that it provides for the possibility of joining claims.

There are two options here. «Firstly, the signing of a multilateral arbitration agreement with the participation of all interested parties. Secondly, if such an agreement cannot be

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[1] Aliman Immobiliare dell Geon, Roberto Gufler & C.S.A.S., vs. Meridiana Costruzioni srl. // Corte Suprema di Cassazione, 25 May 2007. // http://www.cortedicassazione.it

signed, a "chain" of agreements can be created in which all participants agree to arbitrate their disputes with other participants in the "chain"»[1].

The main objection to joining claims is that the arbitrators thus exceed their powers. However, if the parties authorize arbitrators to join two or more cases, problems can in principle arise only in the appointment of arbitrators. If, for example, there are two defendants in a case, then in an arbitration with three arbitrators, they will either have to appoint a "general" arbitrator, or, in the absence of an agreement between them, the appointment must be made by a third party, most often by an arbitral institution.

Consider further the question of the identity of claims in arbitration and state courts. Recall that the identity of claims as an institution of procedural law is a ban on filing a new claim, which in its elements completely coincides with the previously filed or considered claim, on which the final decision took place, in contrast to leaving the claim without consideration.

Identity of claims.

The issue of the identity of claims in state courts and arbitration is great important.

The UNCITRAL Model Law 1985 lays down as a general rule that the state court before which an action is brought in a matter that is the subject of an arbitration agreement must terminate the proceedings and refer the parties to arbitration if either party so requests no later than the filing of its first statement on the merits of the dispute. But, if the state court establishes that the arbitration agreement is invalid, has become invalid or cannot be executed, then it can accept the case for proceedings (Article 8 of the UNCITRAL Model Law 1985).

Laws on arbitration of some countries completely identically regulate this issue. For example, the Swedish Act (Article 4), the Russian Act 2015 (Article 8), Russian ICA Act 1993 (Article 8).

The laws on arbitration of other states regulate this issue almost identically, but do not make it a mandatory condition for one of the parties to the dispute to go to a state court. It is understood that the state court is obliged to refuse, without additional conditions, to accept the claim on the issue that is the subject of the arbitration agreement. For example, the Finnish Act (Article 5), the Norwegian Act (Article 7), the Danish Act (Article 8), the Canadian Act of 1985 (Clause 1, Article 8, Addition 1), the Ontario Act (Article 7).

Consider Russian procedural legislation. The state court refuses to accept a statement of claim if there is a case on a dispute between the same persons, on the same subject and on

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[1] Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities: Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006. P. 63.

the same grounds in the proceedings of the arbitration tribunal (Article 148 of the Arbitration Procedure Code)[1]. In addition, the judge refuses to accept a statement of claim if there is an arbitration tribunal decision that has entered into force, adopted in a dispute between the same persons, on the same subject and on the same grounds, except in cases where the state court refused to issue a writ of execution. to enforce the decision of the arbitration tribunal, returned the case for a new consideration to the arbitration tribunal that made the decision, but the consideration of the case in the same arbitration court turned out to be impossible (Article 150 of the Arbitration Procedure Code).

US law resolves this issue as follows. A state court, whether federal or state, in filing a claim in respect of a dispute, if it is found that there is an arbitration agreement in writing with respect to the dispute, providing for its consideration by arbitration, must stay consideration of the said claim until arbitration proceedings are provided agreement (Paragraph 3 of the US FAA).

The state court has the power to compel the parties to arbitrate the dispute before an arbitration institution in accordance with the arbitration agreement. That is, it is possible to enforce the arbitration agreement or clause (Paragraph 4 of the US FAA).

An analysis of the legislation allows us to come to the conclusion that the identity of claims between the decisions of arbitration tribunals and state courts is recognized. In other words, consideration of a case by an arbitral tribunal or its decision on an identical claim prevents the filing of the same claim in a state court.

However, there is a problem of feedback between the state court and the arbitral tribunal, especially ad hoc. In other words, there are no obstacles for an unscrupulous counterparty to file a claim with an arbitration tribunal and make a decision on it in the case when a similar case is being considered or has been considered by a state court. In this case, the decision of the arbitration tribunal may be opposite to the earlier decision of the state court. Such collision is not natural and should be resolved by improving the legislation. It seems that the State Court need to use the analogy of law for refuse to issue a writ of execution.

In the Anglo-Saxon system of law, and especially in the USA, the identity of claims, as well as the institution of prejudice, are parts of the same procedural institution called "prevention". Prejudice falls under the concept of prevention (consideration) of the issue. Identity of claims falls under "prevention of a claim".

This is how the purpose and content of this institution are described in American legal literature. «In order to carry out its function of resolving disputes, the judiciary needs a

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[1] Arbitration Procedure Code of the Russian Federation of July 24, 2002 No. 95-FZ. // http://www.consultant.ru

mechanism that ensures the end of the dispute. The courts have developed a doctrine of prevention to ensure the finality of decisions. The prevention of a claim prevents a party from filing a claim with the same subject matter as it was previously filed with another court. The prevention of an issue precludes a new consideration of questions which have been determined to the necessary extent in the previous case, notwithstanding that the subsequent action may concern a different subject matter. Prevention rules help conserve judicial resources, discourage inconsistent rulings, eliminate unnecessary litigation that causes anxiety, and promote public confidence in justice. Prevention is not granted when the opposing party can prove that it did not have the opportunity to fully state its position in the previous case with respect to the issue at hand»[1].

In the European legal tradition, there is the principle of the inadmissibility of reconsideration of a decided case (res judicata), which has long been the subject of scientific research and discussion[2]. The principle res judicata codified in Clause 5, Article 395 of the Italian Code.

The importance of this principle shows situations with one precedent. Called CME cases. The main contents of them is filing two different claims within the same legal relationship with different arbitration institutions. The result of which were two arbitral awards, opposite in content[3].

There is a deserving attention opinion. «The doctrine of res judicata is one of the basic principles of litigation, and more importantly, the importance of their application internationally. Although particular functions differ, the main functions remain the same: to provide a final and binding judgment for a party. As litigation and arbitration are not enemies, they both should gain mutual benefits from its proceedings. There is no doubt that all of the prerequisites which have to be fulfilled before the application of res judicata are also crucial for the arbitration. Although they have partially different scope and methods which determine searching for the identity of the matter, issue and parties and depends on the applicable law. Therefore, the application of res judicata is one of the most effective tools in the prevention of the existence of parallel proceedings»[4].

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[1] Civil Procedure: Cases and Materials. // Cound, J., Friedenthal J., Miller A., Sexton J. 5th edition. St Paul: West Publishing Co. 1989. P. 1084.

[2] Cheng B. General principles of law as applied by international courts and tribunals. Cambridge: CUP. 1953. P. 336.

[3] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 329.

[4] Wyraz E. Res Judicata. Differences between International Arbitration and Litigation. // // Czech (& Central European) Yearbook of Arbitration. Interaction of arbitration and courts. Volume 5. edit by Belohlavek A.J., Rozehnalova N. Juris. 2015. P. 249.

I agree that the identity of claims may lead to the consideration of disputes within the framework of one legal relationship in two or more jurisdictions, both state courts and arbitration institutions. Accordingly, harmful collisions are possible in the form of judicial and (or) arbitral decisions that have entered into legal force and are different, and sometimes directly opposite in content.

Chapter 3. Legal status of participants in arbitral proceedings.

Paragraph 1. Legal status of the arbitrator.

Introduction.

Formation of the arbitral panel is a fundamental beginning of the arbitration proceedings, it is of great importance, since the effectiveness of the arbitration proceedings ultimately depends on the procedure for the formation of the arbitral panel. Objectively, «one of the main procedures carried out in the framework of arbitration proceedings is formation of the arbitration panel»[1].

In this procedure it is necessary to determine, firstly, who can act as arbitrators, secondly, how many arbitrators form the composition of the arbitration court to resolve the disputed legal relationship, and thirdly, what is the procedure for forming the composition of the arbitration tribunal.

Requirements for the candidacy of an arbitrator.

Determining the circle of persons who can directly perform the functions of an arbitrator, the requirements for them and the conditions that impede the performance of the duties of an arbitrator is of great importance. Requirements for the candidacy of arbitrators can be divided into two parts. General requirements for all judges, both state and arbitrators. Special requirements specific only to arbitrators.

Consider the **Italian Code**. It is point that person who in whole or in part has no legal capacity to act cannot be an arbitrator. And no anymore specification (Article 812 of the Italian Code).

Article 815 of the Italian Code indicates the circumstances preventing the performance of the functions of an arbitrator. First of all, the arbitrator should not be directly or indirectly interested in the outcome of the case, have family and business relations with the parties to the dispute (and their representatives). Also, the situation is not allowed if the arbitrator led litigation with one of the parties or acted as a witness in the process with the participation of one of the parties or provided assistance or advice to one of the parties.

The main principle is to exclude the direct or indirect interest of the arbitrator in the outcome of the case.

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[1] Kurochkin S.A. International commercial arbitration and internal arbitration. Moscow - Berlin: Infotopic Media. 2013. P. 102.

Also, the parties may prevent the appointment of an arbitrator if they are dissatisfied with his qualifications (Part 1, Article 815 of the Italian Code), but it does not specify what is considered a proper qualification. I believe that the legislator has given the regulation of this issue to the regulations of arbitration institutions.

In addition, the arbitrator may not be an official or public servant (Article 813 of the Italian Code).

Note, that the Italian Code does not contain requirements for capacity and reputation of arbitrators.

American law does not establish requirements for arbitrators, except for the lack of interest in the outcome of the case (Clause B Section 11 of the UAA). But, what does the history of American law show. The US Supreme Court indicated back in 1854, that «arbitrators are judges chosen by the parties to resolve the issue referred to them by the parties finally and peremptorily»[1]. It was implied the main requirement for the arbitrator - the trust of the parties and their choice.

Legislation of the countries of the continental system of law, as a rule, establishes the requirements for the capacity of the arbitrator.

The **Finnish Act** contains the conditions for the arbitrator's legal capacity, efficiency and majority, and also that the arbitrator is not bankrupt. That is, in relation to the arbitrator there was no bankruptcy procedure for an individual (Article 8 of the Finnish Act).

The **Swedish Act** in the Article 7 also contains requirements of the full legal capacity and efficiency of the arbitrator in relation to his actions and property. In essence, the content is similar to the requirements of the Finnish law, only expressed in different words.

The **Lithuanian Act** also establishes requirements for efficiency of the arbitrator (Clause 1, Article 14 of the Lithuanian Act).

The UNCITRAL Model Law 1985 on the contrary, does not contain such requirements not to the legal capacity, not to the professional qualities of an arbitrator. The only reason for disqualifying an arbitrator is the lack of independence and impartiality (Article 12 of the UNCITRAL Model Law 1985).

There is the general requirement for arbitrators in impartiality and lack of interest as a result of the consideration of the dispute (Article 9 of the Finnish Act; Article 8 of the Swedish Act; Clause 2, Article 15 of the Lithuanian Act).

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[1] Danah. Freyer The American experience in the field of ADR. // Alternative Dispute Resolution What it is and how it works/ Edited by P.C. Rao, William Sheffield/ - Delhi: Universal Law Publishing Co. PVT. Ltd, 1997 Edition Reprint 2002. P. 108.

Consider the **Russian legislation**. The Russian ICA Act 1993 has no differences in regulation case in point with the UNCITRAL Model Law 1985.

The Russian Act 2015 regulates this issue in more details.

An arbitrator is elected (and in the cases provided for in the Law and the Rules of a permanent arbitration court, appointed) exclusively by a natural person. Thus, in accordance with the current legislation, legal entities cannot act as an arbitrator by granting such powers to their representatives. There is a standard rule on the full capacity of the arbitrator. In addition, the age limit for an arbitrator is not younger than 25 years (Clause 8, Article 11 of the Russian Act).

The person elected or appointed as an arbitrator must be able to ensure an impartial resolution of the disputed legal relationship. The arbitrator should not be directly or indirectly interested in the outcome of the case under consideration, he should be independent either materially or in his official capacity from the parties to the disputed legal relationship. Impartiality and independence from the parties, disinterest in the outcome of the case are the most important requirements for arbitrators. Any interest of the arbitrator in the outcome of the dispute is the basis for his challenge (Article 12 of the Russian Act 2015Failure to comply with these requirements is the basis for the cancellation of the decision of the arbitration court and for the refusal to enforce it.

An arbitrator cannot be a natural person who, in accordance with his official status determined by federal law, cannot be elected or appointed as an arbitrator. There are civil servants, federal judges, etc., the list of occupations of which, in addition to the main activity, is exhaustively listed in the relevant laws (Clause 11, Article 11 of the Russian Act).

An arbitrator cannot be an individual who has a criminal record or has been held criminally liable, i.e. conviction must not be expunged (Clause 9, Article 11 of the Russian Act).

The person conducting the arbitration proceedings must have an impeccable reputation. Therefore, the law deprives persons who have committed discrediting acts in the field of jurisprudence of the right to be arbitrators. Thus, an arbitrator cannot be an individual whose powers as a judge of a court of general jurisdiction or an arbitration court, lawyer, notary, investigator, prosecutor or other law enforcement officer were terminated in the manner prescribed by law for committing misconduct incompatible with his professional activities (Clause 10, Article 11 of the Russian Act).

The requirements for the reputation of arbitrators in Russian legislation are much more stringent than in the legislation of most EU countries and the Anglo-Saxon system of law. In world practice, as a rule, the management of arbitration institutions, at its own discretion,

forms a list of arbitrators. Moreover, the issues of reputation, as in Russian legislation, are not prescribed in detail in the regulations. But de facto arbitral institutions with a good reputation try to include in their list of arbitrators also with a good reputation and proven themselves. Consequently, the self-regulation of arbitration institutions, without the prescriptions of the law, makes it possible to prevent unscrupulous arbitrators from practicing.

Requirements for professional level of an arbitrator.

Next, consider the requirements for the professional level of arbitrators. This issue is also subject to strict regulation in Russian legislation.

In the Clause 6, Article 11 of the Russian Act 2015 there are special requirements for arbitrators. They refer to arbitrators who resolve the dispute individually and to the chairmen of arbitration courts. An important requirement for the candidacy of an arbitrator is the presence of a legal, and not just legal, but exclusively higher education, either in the Russian Federation or a foreign state, subject to the recognition of a diploma in the Russian Federation. But, during a collegial consideration of the dispute, the parties may agree that the chairman of the arbitral tribunal does not meet the above requirements (Clause 7, Article 11 of the Russian Act 2015).

The introduction of this criterion is due to the fact that the grounds for canceling the arbitral award, as well as for refusing to issue a writ of execution for its enforcement, according to Article 5 of the New-York Convention 1958, are cases of violations of procedural rules, for the correct observance of which special legal education is required. That is, the arbitrator considering the case alone must have a higher legal education. When a panel of arbitrators resolves the dispute, a chairman of this panel should have higher legal education.

But the totality of high knowledge exclusively in the field of jurisprudence is not always the optimal set of intellectual qualities of an arbitrator. In some disputes, skills from some other, non-legal branch are useful - as a rule, from the one with which the case in question is connected. A special procedure for the formation of an arbitration tribunal allows it to include, along with lawyers, the most qualified specialists in a particular field. This achieves the most effective combination of legal and special knowledge, which contributes to a more effective and objective consideration of particularly complex disputes. Arbitration agreements may contain different requirements for arbitrators. These may be, for example, requirements for legal experience or special qualifications. Legislation of some countries provides for right to challenge an arbitrator if he does not have qualifications specified in an arbitration agreement (Clause 2, Article 15 of the Lithuanian Act).

In some cases, arbitration agreements, especially for ad hoc arbitrations, establish detailed requirements for the qualifications of arbitrators, primarily for the candidacy of the chairman or sole arbitrator. Such conditions, however, can be risky. If the parties set too many requirements for arbitrators, it may not be possible to find arbitrators who meet all the criteria. Therefore, in most cases, arbitration agreements bypass the issue of special requirements for arbitrators in silence.

Regulations of institutional arbitration tribunals may also contain certain requirements for qualifications and professional level of arbitrators. As a rule, the above applies to sphere-specific arbitrations, such as sports.

In order to gain a good reputation and greater influence, the arbitral tribunal is interested in replenishing its membership with well-qualified judges. Among the judges of various arbitration courts there are many representatives of the scientific world, well-known legal figures.

Requirements for nationality of an arbitrator.

The rules of some arbitral institutions contain nationality requirements for arbitrators. For example, Article 6 of the LCIA Rules sets out the following requirement. If the parties are of different nationalities, the sole arbitrator or chairman of the arbitral tribunal may not be of the same nationality as either party. Moreover, citizens of two or more states are considered as citizens of each of the states, and citizens of the European Union are considered as citizens of each of the EU countries. The concept of nationality of a party implies nationality of an owner of a controlling stake or a majority of shares in an authorized capital.

The AAA Rules in Article R-16 regulate this issue somewhat differently. If the parties are nationals of different countries there is a possibility to appoint an arbitrator from a country other than country of the parties. But, the request of any party or initiative of arbitration is needed.

Note that requirements for the nationality of arbitrators are imposed only in common law countries. Moreover, in the LCIA Rules, these requirements are imperative, and in the AAA Rules, they are dispositive.

Consent to perform the duties of an arbitrator.

An important requirement is that an individual elected or appointed as an arbitrator must consent to the performance of such duties. A person who has not agreed to perform the duties of an arbitrator cannot be forced to do so. For example, the Constitution of the Russian Federation in Article 37 establishes a ban on forced labor. It seems that this consent should be

expressed in simple written form in each specific case when a citizen is elected or appointed as an arbitrator and attached to the materials of the case under consideration.

The Italian Code (Article 813) provides a written form of acceptance by arbitrators of a dispute, which implies their consent to the conduct of this proceedings. «In our opinion, the proposal must contain the indication of the subject of the dispute, both because the arbitrator cannot (and should not) accept the assignment in the dark and because it is only after he has known the names of the parties and the implications of the dispute that can assess whether or not there are situations impeding the acceptance of the assignment»[1].

As a rule, the regulations of permanent arbitration institutions ignore this issue. But, VCCA Arbitration Rules in the Clause 1. Article 18 establish the obligation of the arbitrator to sign a declaration of consent, independence and impartiality in the case under consideration before the consideration of the dispute.

It can be assumed that in a permanent arbitration tribunal, when electing or appointing an arbitrator from the recommendatory list of arbitrators, additional written consent from the applicant may not be required, since he once agreed to be included in this list. But it is true that «the mere fact of agreeing to be included in the list of arbitrators of a permanent arbitral tribunal cannot be interpreted broadly and should not deprive such an arbitrator candidate of the opportunity to refuse to perform the duties of an arbitrator in a particular case.

Number of arbitrators.

The parties to a disputed legal relationship have the right to independently determine the number of members of an arbitration panel to resolve their dispute. Such an agreement, along with other conditions for the consideration of a case in an arbitration court, is subject to fixation in an arbitration clause or agreement. However, the parties may conclude an additional agreement on this issue. This right is provided, for example, in Article 13 of the Swedish Act, Article 810 of the Italian Code.

In accordance with generally accepted practice and legal requirements, the number of arbitrators must be odd, which ensures that a decision on the case is subsequently made by a majority of votes. Moreover, a number of legal acts prescribe the appointment of three arbitrators, unless the parties agree otherwise (Article 13 of the Swedish Act, Article 7 of the Finnish Act). Other laws prescribe an odd number of arbitrators without specifying their number (Article 809 of the Italian Code, Article 10 of the Russian Act 2015). The final decision on the number of arbitrators is made by the parties to the dispute.

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[1] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 82.

Some rules of arbitral tribunals also require an odd number of arbitrators (Clause 1, Article 16 of the VCCA Arbitration Rules; Clause 1, Article 16 of the ICC Arbitration Rules).

«In the legislation, this is an imperative norm: there should be an odd number of arbitrators who are part of the court considering the case, both in a permanent court and in a court to resolve a particular dispute»[1].

Most often, arbitration is conducted by three arbitrators, two of whom are appointed by the parties, and the third is elected either by two arbitrators or appointed by agreement of the parties (Clause 2, Article 11 of the UNCITRAL Model Law 1985). It is possible to appoint the presiding arbitrator by the arbitral institution itself (Clause 7, Article 16 of the ICAC Arbitration Rules; Clause 4, Article 15 of the CAM Arbitration Rules). It is assumed that when a party appoints "its" arbitrator, it has greater confidence in the entire arbitral tribunal. However, an increasing number of arbitrations in the world take place with the participation of only one arbitrator.

Well known that the arbitration of a dispute will cost the parties much cheaper and take less time if the dispute is considered by one arbitrator. «Of course, all these advantages of proceedings with the participation of one arbitrator can be outweighed in the eyes of one or both parties by the consideration that when appointing "their" arbitrator, there will be a person among the arbitrators who is more sympathetic to her, and that she will do everything necessary to so that the position of the party is fully stated and best understood by all other arbitrators»[2].

The issue of the number of arbitrators, if not decided by the parties, is usually resolved by the arbitral institution on the basis of its rules or established practice (Clause 2, Article 12 of the ICC Arbitration Rules; Clause 2, Article 14 of the CAM Arbitration Rules).

It should be noted that the legislation of most states provides for the appointment of an odd number of arbitrators in all cases, as mentioned earlier. An agreement between the parties to appoint, for example, two arbitrators will either be null and void in such countries or will result in the appointment of a third arbitrator by the competent national court.

Formation of the arbitral panel.

Composition of an arbitral panel is formed by electing or appointing arbitrators (arbitrator). The main criterion for formation of an arbitral panel is that arbitrators for the resolution of a particular dispute are elected or appointed by the disputing parties.

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[1] Tsyganova E.M. Problems of legal regulation of the organization and activities of commercial arbitration tribunals in the Russian Federation. Moscow. 2004. P. 157.

[2] Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities: Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006. P. 76.

Objectively, «from the arbitration agreement arises the power-burden to appoint or have the arbitrator or arbitrators appointed, where the appointment is not already contained therein»[1].

This criterion is the main advantage of arbitration - democracy, which allows the disputing parties to appoint an arbitrator whom the parties trust, based on the professional and other qualities of the applicant. The ability to choose an arbitrator yourself is the most important principle of the organization of arbitration proceedings and an unshakable trump card of the supporters of arbitration sphere. Many practicing lawyers single out this particular feature as an undoubted advantage of arbitration[2].

The procedure for forming an arbitral panel may be different. In an ad hoc arbitral tribunal, an arbitral panel is formed in the manner agreed by the parties. In the established practice of arbitration, this agreement is fixed in the arbitration agreement.

When forming an arbitral panel, consisting of three arbitrators, each party elects one arbitrator, and the two arbitrators thus elected elect the third arbitrator. If one of the parties does not elect an arbitrator within 30 days after receiving a request to do so from the other party, or two elected arbitrators do not elect a third arbitrator within 30 days after their election, then the consideration of the dispute in the arbitration court shall be terminated, and this dispute may be submitted to the competent state court. If the dispute must be resolved by the arbitrator alone and after one party addresses the other with a proposal to elect an arbitrator, the parties do not elect an arbitrator, then the consideration of the dispute in the arbitral tribunal is terminated, and this dispute may be referred to the competent state court for resolution (Clause 3. Article 11 of the UNCITRAL Model Law 1985).

The formation of the arbitral panel to resolve the dispute in the permanent arbitration tribunal is carried out in the manner prescribed by the rules of the permanent arbitration tribunal. «If there are mandatory rules on the composition of the panel, these must be respected under penalty of nullity»[3]. In the rules that the issue of how exactly the arbitral panel is formed, according to what procedure (election, appointment), from an open or closed list of arbitrators, should be regulated. Thus, the decision on the procedure for formation of an arbitral panel in a permanent arbitration tribunal is decided by the rules of this tribunal. (Article 12 - 13 of the ICC Arbitration Rules, Article 16 -17 of the VCCA Arbitration Rules).

Note that rules of some arbitration tribunals provide for the possibility of appointing alternate arbitrators by the parties, or the possibility of resolving disputes by an arbitral tribunal with an unlimited number of arbitrators, provided there are an odd number of

[1] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 81.
[2] Mélanges offerts à Pierre Van Ommeslaghe. Bruylant. Bruxelles. 2000. P. 925.
[3] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 83.

arbitrators. (Article 19 of the ICAC Arbitration Rules). The role of the reserve arbitrator is, on the one hand, to provide the parties with the right to choose an arbitrator, and on the other hand, to consider the dispute as efficiently as possible. Therefore, if the main arbitrator, for some reason, cannot perform his duties, then he can be replaced by a reserve arbitrator, at any stage of the process. True, if this happened during the consideration of the case on the merits, then the proceedings should be started from the beginning, so that he could familiarize himself with the positions of the parties and the evidence in the case.

It is also necessary to pay attention to an important component of the formation of an arbitral panel in a permanent arbitral tribunal - the issue of appointing arbitrators. In the practice of permanent arbitration tribunals, there are cases when the parties evade the appointment of arbitrators, which leads to a delay in resolving the dispute in an arbitration tribunal with all the ensuing consequences, in connection with which the Rules of many permanent arbitration tribunals (Clause 8, Article 12 of the ICC Arbitration Rules) provides for the possibility of compulsory appointment of arbitrators.

Thus, the Rules of many permanent arbitration tribunals establish the possibility of appointing an arbitrator for the evading party as the chairman of the corresponding permanent arbitration court, or the head of the legal entity under which the permanent arbitration tribunal is organized (Clause 6, Article 16 of the ICAC Arbitration Rules). Thus, the possibility of using the procedural bad faith of the parties is excluded.

Separately, it must be said about the procedure for choosing arbitrators by the parties, which is different in different arbitration tribunals. Thus, most tribunals form a list of arbitrators in advance, from where the parties can choose arbitrators[1]. The list is usually, «fairly complete information about a particular arbitrator is disclosed, including, most often, an indication of the specialty, work experience in the professional field, work experience in a particular arbitration tribunal, one or another professional experience and other data. Often in the list of arbitrators of the arbitration tribunal there are also their photographs»[2].

Termination of the arbitrator's powers.

Consider the issue of termination of the arbitrator's powers. Termination of powers of an arbitrator should be understood not as depriving him of the opportunity to be elected as an arbitrator, but only the termination of his powers in a specific dispute. This procedure is

[1] For example https://www.arbitrazas.lt/arbitru-sarasas-2.htm

[2] Skvortsov O.Y. Arbitration of business disputes in Russia: problems, trends, prospects. Moscow: Wolters Kluwer. 2005. P. 303.

governed by the law on arbitration (Article 812 and 813 – bis of the Italian Code, Article 10 of the Finnish Act, Article 14 of the Russian Act 2015).

It is possible to single out such grounds for termination of the arbitrator's powers, as his legal or actual inability to participate in the consideration of dispute.

By legal incapacity, I mean the circumstances that occurred after the formation of an arbitral panel, preventing him from fulfilling the duties of an arbitrator, i.e. violation of the requirements and prohibitions imposed on the arbitrator.

The actual inability to participate in the consideration of dispute should be understood as his inability to take part in the court session caused by any other reasons, such as illness, moving to another area, heavy workload, etc.

Relatively rarely, but still, such a problem arises as the need to replace the elected arbitrator during the process. This need can be caused by both objective reasons (illness, departure) and subjective ones (failure to appear at the court session, unwillingness to participate in the process). Meanwhile, the arbitral panel has already been formed and it is necessary to change its composition. Legislation of many countries (Article 811 of the Italian Code, Article 15 of the Russian Act 2015, Article 14 of the Finnish Act) provide for the possibility of replacing the arbitrator in order to complete the arbitration of the dispute and make an award on the merits.

In the event of termination of the arbitrator's powers, another arbitrator shall be elected or appointed in accordance with the rules that were applied when the arbitrator being replaced was elected or appointed. A prerequisite for replacement is to notify all participants in the arbitration proceedings about it..

Challenge or self-withdrawal of arbitrators.

The possibility of challenge or self-withdrawal of an arbitrator is very significant. At present, the grounds and procedure for challenging an arbitrator are established by law. For example Article 815 of the Italian Code, Article 12 and 13 of the Russian Act 2015, Article 12 and 13 of the UNCITRAL Model Law 1985, Article 16 of the Swedish Act).

The generally accepted grounds for a challenge relate to education and qualifications established by agreement of the parties, independence from the parties, the ability to ensure an impartial resolution of the dispute, the absence of a direct or indirect interest in the outcome of the case, etc. At the same time, doubts about the ability to provide an impartial resolution of the dispute may arise, for example, if the arbitrator is a relative of the person participating in the case or his representative. Kinship is traditionally defined as a relationship between people based on the origin of one person from another or different people from a common

ancestor and on marriage and family relations. Relatives include children, parents, adoptive parents, adopted children, siblings, grandparents, grandchildren, spouse, uncles, aunts, stepmother, stepfather, as well as the above relatives of the spouse. It should be noted that the fact of kinship in itself is not a basis for challenge. Recusal for this reason can and should be granted only when kinship does not allow for an impartial resolution of the dispute, establishes the existence of a direct or indirect interest or dependence on one of the parties.

Direct or indirect interest or the presence of other circumstances that cast doubt on the impartiality of the arbitrator means, for example, the existence of labor, organizational or other dependence of the arbitrator on the party to the dispute or its representative. Considering that arbitration proceedings are based on the trust of the parties, any doubts about the impartiality of the arbitrator must be interpreted in favor of the challenger.

Another reason for disqualification of an arbitrator is non-compliance with the requirements for his candidacy established by law, the rules of a permanent arbitration tribunal or by agreement of the parties.

The procedure for removal and self-withdrawal of an arbitrator is also unified. If any person is contacted in connection with his possible election or appointment as an arbitrator, this person must report the existence of circumstances that are grounds for his challenge. If these circumstances arose during the arbitration proceedings, the arbitrator must immediately inform the parties about this and declare self-withdrawal. A party may challenge an arbitrator elected by it only if the circumstances that are the grounds for the challenge became known to the party after the election of the arbitrator to be challenged.

Giving the parties the right to challenge the arbitrator is designed to guarantee the impartiality of the arbitration and the equality of the parties. The obligation to track the grounds for challenge lies with both the arbitrators and the parties to the arbitration proceedings.

Both challenge and self-withdrawal are subject to satisfaction or dissatisfaction based on the results of consideration of the application for challenge or self-withdrawal. The question arises: if the application for recusal or self-recusal of an arbitrator is not satisfied or is not declared, is this the basis for canceling the decision or refusing to issue a writ of execution? It seems that in this case the party that has not filed a recusal is counting, first of all, on voluntary execution, since all grounds, except for interest and doubts about impartiality, are relatively easy to prove and verify. The latter is also an unconditional ground for canceling the arbitral award or for refusing to issue a writ of execution, if the party disputing the award or opposing its issuance proves the existence of these circumstances. The fact that the challenge was not declared or that the challenge or self-withdrawal was denied is

not significant, since the arbitrator was obliged to declare self-withdrawal, and the persons considering it were obliged to satisfy it. Accordingly, both parties and the arbitral tribunal itself must ensure that the composition of the arbitral tribunal fully complies with the requirements of the law and the agreement of the parties.

Accordingly, cases are not ruled out when the challenged arbitrator participates in the decision on his challenge, up to the point that he decides alone, and also when the decision on this issue is excluded from the competence of arbitrators. However, given the unnatural nature of considering a challenge to oneself, all the more so alone, such a practice, apparently, will not be widespread.

If the challenged arbitrator does not recuse himself or the other party does not agree with the challenge of the arbitrator, then the issue of challenging the arbitrator shall be resolved by other arbitrators who are members of the arbitral tribunal. The issue of challenging of an arbitrator resolving the dispute alone is resolved by this arbitrator. The legal literature notes that «the approval of the application for challenge does not suspend the arbitration process»[1].

There are cases when an arbitrator appointed by one of the parties deliberately delays the process (by not agreeing to the appointment of a chairman or by not attending arbitration meetings) in order to give the party who appointed him the opportunity to buy time[2]. This practice should be recognized as an abuse of the right. Such dishonest arbitrators must be dealt with within the system and procedures of arbitration institutions.

Conclusion.

Summing up this paragraph, it should be said that the procedure for forming the arbitration panel is quite complicated and can be different even for arbitration tribunals of the same type. Much in this procedure depends on the provisions of the regulations of arbitration institutions. The regulation of the formation of its own composition largely depends on specific arbitration tribunals.

Nevertheless, world arbitration practice has formed generally recognized legal standards and requirements for the process of forming an arbitral tribunal and candidates for arbitrators. For example, legal capacity, efficiency, lack of affiliation with state and law enforcement agencies, impartiality, lack of interest in the case, an even number of arbitrators.

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[1] Arbitrato: profili di diritto sostanziale e di diritto processuale. // edit by Alpa G., Vigoriti V. Torino: UTET Giuridica. 2013. P. 660.

[2] Transformation of activity regulation and competence of international commercial arbitration. // edit. Inshakova A.O., Nikolyukin S.V. Moscow: Yurlitinform. 2015. P. 156.

When researching the status of arbitrators, attention should be paid to the issue of an arbitrator's liability, which is regulated in sufficient detail by Italian law[1]. Issues about the integrity of arbitrators and the suppression of their dishonest actions are also relevant.

The position of women arbitrators and young arbitrators and their non-discrimination is also an important issue in modern arbitration.

The author will consider the above topics in detail in the fourth part of this thesis, devoted to the problems of modern arbitration.

It should be noted that the possibility of choosing arbitrators by the parties is one of the main advantages of arbitration. «Influence of the parties on an arbitral panel is recognized by leading scientists - lawyers as an indisputable advantage of arbitration»[2]. The disputing parties have the right to appoint an arbitrator whom they trust, based on the professional and other qualities of the applicant. The ability to choose an arbitrator yourself is the most important principle of organizing arbitration and an important factor in protecting the rights and interests of the parties to arbitration proceedings. In the legal theoretical literature, this feature stands out as an undoubted advantage of arbitration over state legal proceedings.

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[1] Commentario breve al diritto dell'arbitrato nazionale ed internazionale. // edit by Massimo V. Benedettelli M.V., Consolo C., Radicati Di Brozolo L.G. CEDAM. Padova. 2010. P. 138 -146.

[2] Musin V.A. On the methods of alternative resolution of commercial disputes in the CIS countries. // Collection of reports of the world conference of the International Associatio- n of Procedural Law «Civil process in intercultural dialogue: European context». September 18 – 21, 2012. // edit by M.Y. Maleshin. Moscow. 2012. P. 665.

Paragraph 2. Legal status of the parties and the third parties to arbitration.

Issues about legal status of parties to dispute and third parties are very important and are the subject of research in legal science of Italy[1], Russia[2], USA[3], China[4] and other states[5].

The Author also researched in his publications this issues[6].

Parties and their representatives.

It is well known that the parties to arbitration have their own representatives, usually lawyers. Many national arbitration laws and arbitration rules specifically grant the freedom of the parties to choose representatives. For example, the UNCITRAL Arbitration Rules 2010 (Article 5) provides that the parties may be represented by or be assisted by persons of their choice. And in the ICAC Arbitration Rules (Article 27) it is emphasized that the parties may conduct their affairs in the ICAC directly or through duly authorized representatives appointed by the parties at their discretion.

In Italian law, it is accepted that «parties to an arbitration agreement are those who sign the document or digitally sign the electronic document. The party is also the principal, in case of an agency situation. 808 of the Code of Civil Procedure refers to the arbitration clause, but should be extended to the submission agreement and arbitration agreement inherent to non-contractual relations. For the validity of the arbitral agreement, it is sufficient that an agent has the authority to conclude the main contract in the name and on behalf of the principal»[7].

Also reasonably that «each juridical subject can therefore well carry out its autonomy for the solution of disputes of its interest and "resort to a means, such as that of arbitration, which is legitimized by a regulation of the right of action, valid to the extent that on this right

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[1] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 117.
[2] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 471.
[3] Arbitration law in America: a critical assessment. // Brunet E., Speidel R.E., Sternlight J.R., Ware S.J. New York: Cambridge University Press. 2006. P. 3.
[4] Chinese Arbitration. A Selection of Pittfalls. Antwerpen: Malku and Association for International Arbitration. 2009. P. 71.
[5] Storme M., Demeulenaere B. International commercial arbitration in Belgium. A handbook. Kluwer Law and Taxation Publishers. Deventer. The Netherlands. 1989. P. 8.
[6] Gavrilenko V.A. Parties and third parties in arbitration proceedings. // Scientific journal Bulletin of the University of RTSU. (Russian Tajik Slavic University). Tajikistan. No. 4 (22). 2008. P. 14-18.
[7] Zucconi Elena, Fonseca Galli, Rasia Carlo. Third Parties Between Arbitration Agreements and Review of Arbitral Awards. // Czech (& Central European) Yearbook of Arbitration. Rights and Duties of Parties in Arbitration. Volume 6. edit by Belohlavek A.J., Rozehnalova N. The Hague. The Netherlands. Lex Lata BV. 2016. P. 192.

the single will operates effectively (Constitutional Court 77/127. F. il. 77, I, 5 1849: Constitutional Court 63/2. F il. 63.1. 397)»[1].

Please note the following. «No matter how obvious the right of a party to choose the person who will represent him in the arbitration process may seem to us, there are states where such a right, following the example of local courts, is significantly limited. For example, in Israel, Spain, Indonesia and Saudi Arabia, parties can only be represented by lawyers. In Muslim countries, there may also be gender and religious restrictions. In Malaysia, for example, foreign lawyers are allowed to participate in arbitration as representatives only on the condition that they are assisted by local lawyers. Japan generally does not allow foreign lawyers to participate in arbitration proceedings. Moreover, such participation may even serve as a basis for the annulment of the arbitral award. A party participating in an arbitration in Japan may only be represented by local lawyers. I need to mention that in some Algerian trade associations, participation in arbitration proceedings not only of lawyers, but in general of any representatives is not allowed»[2].

Although the examples given are exceptions to the general rule of free choice of representatives, they must be taken into account. Not without reason, one of the criteria for choosing the place of arbitration by the parties is the free admission of foreign lawyers to participate in the process.

Formalization of the powers of representatives.

With regard to the formalization of the powers of representatives of the parties, the corresponding requirements are different in various states. «So, in some countries (Austria, Greece, Argentina) a power of attorney is required from all representatives, while in others (Netherlands) a power of attorney is needed only when the representative is not a lawyer, in some countries (Italy, Denmark) a power of attorney may be required , but in principle it is not necessary»[3].

The regulations of arbitration institutions also solve the issue of formalizing the powers of representatives in different ways. For example, the Rules of the American Arbitration Association (Article R-12) requires each party to notify the other party and the arbitration administrator of the names, addresses and telephone numbers of its representatives. A similar rule is provided for in Article 4 of the UNCITRAL Arbitration Rules 2010. The

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[1] Commentario breve al diritto dell'arbitrato nazionale ed internazionale. // edit by Massimo V. Benedettelli M.V., Consolo C., Radicati Di Brozolo L.G. CEDAM. Padova. 2010. P. 806.

[2] Bruntseva E.V. International Commercial Arbitration (Manual). Saint-Petersburg: Publishing House "September". 2001.. P. 188.

[3] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod. 2007. P. 92.

ICAC requires representatives to be "duly authorized", which can only mean that they present a power of attorney issued in accordance with the requirements for such documents in the country of issue (Article 27).

Subjects of economic activity using the services of commercial arbitration courts should have sufficient business experience that allows them to independently determine who can best represent their interests. Guarantees of legal qualification for the parties to proceedings in international commercial arbitration may turn out to be less significant than such qualities of their possible representatives as competence in a particular sector of the economy, technical knowledge, knowledge of a certain language.

As a general rule, powers of attorney of legal entities are signed only by their heads. As regards the powers of attorney of natural persons, they, as a rule, must be certified in accordance with national legislation. For example, in the Russian Federation, powers of attorney of individuals are subject to notarization, and when issued abroad, legalization at the consulate.

Presence of the parties at proceedings.

Continuing the topic, consider the problem of the absence of one party or even both parties in the proceedings, this is a fairly common phenomenon in the practice of arbitration tribunals.

Cite as an example the provisions of the Russian ICA Act 1993 (Article 25) and the Lithuanian Act (Article 35). The absence of a party duly notified of the time and place of the hearing does not prevent the trial of the case and the issuance of an award, unless the party who did not appear filed a written request to postpone the hearing of the case for a good reason, the evidence of which must be submitted to the court together with the petition.

Also the UNCITRAL Model Law 1985 (Clause C, Article 25) also entitles the arbitral panel to continue proceedings in the absence of either party.

The issue of continuing arbitration proceedings in the absence of one of the parties or, contrary, postponing the hearing of case is decided by the arbitral tribunal, taking into account petitions of the parties.

But this rule does not always correspond to the essence and principles of arbitration proceedings. The following opinion seems to be justified.

«Firstly, the validity of the reason for non-appearance of a party is a subjective moment, the assessment of which depends entirely on the discretion of the tribunal and, therefore, makes it possible to take different approaches to recognizing the same circumstances - for example, employment or illness of a hired lawyer, lack of tickets for

intercity or international transport, etc. Respectful or not respectful. Secondly, this rule ignores the interests of the other party to the dispute, which has appeared or is ready to appear in the arbitration tribunal on the day appointed to it. Thirdly, this rule does not provide for restrictions on the duration and number of possible adjournments of the case»[1].

Arbitration is a confidential procedure, so the hearing takes place behind closed doors. Persons not participating in the arbitral proceedings may attend the proceedings only with the consent of the arbitrators and the parties. As regards the parties, the arbitrators have no right to refuse their participation in the hearing of the case. «Only in extraordinary circumstances, when the improper conduct of a party or its representative makes it impossible for the normal course of the proceedings, the person concerned may be required to leave the courtroom. In such a case, the proceedings may continue ex patre, as if the party had withdrawn from the proceedings. Such a scenario, however, may give rise to serious problems related to the right of a party to participate in the process, including to have a representative»[2].

Analyzing the aspects of appearance of the parties at the hearing, it is necessary to take into account objective circumstances, namely, road distances, an increase in transport and hotel costs. Therefore, the use of modern telecommunication technologies should be gradually introduced into the practice of arbitration tribunals. One possible option is to hear the case through a teleconference. These technologies make it possible to establish contacts between the court and absent parties in the “on-line” mode of direct communication, which does not prevent the implementation of the principles of competition and equality of rights of the parties to the dispute in full. The experience of the Vilnius Commercial Arbitration Court (VCCA) is interesting. This arbitral tribunal developed the arbitration case management system online. On the arbitration case management will be held online, and 24 hours a day parties are able to participate on-line in arbitration proceedings[3].

Third parties in arbitration proceedings.

Some authors argue that third parties cannot take part in arbitration proceedings against the will of the parties, who provided for the resolution of the dispute between them in an arbitration tribunal[4]. However, other processional scientists argue, that «the multiplicity of persons in material legal relations entails the multiplicity of persons in the process»[5].

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[1] Lebedev K.K. Improving the arbitration procedure at the present stage. // Journal Arbitration Tribunal. No. 3/4. 2002.P. 211.
[2] Redfern A. Hunter M. Law and Practice of International Commercial Arbitration. Sweet&Maxwell. London. 1999. P. 330.
[3] https://arbis.lt
[4] Zuccone E., Fonseca G., La convenzione arbitrale rispetto a terzi. Milano: Giuffre. 2004. P. 681.
[5] Lunts L.A. International civil process. Moscow. 1966. P. 122.

Consideration of the dispute in the absence of any of the persons having a substantive legal interest in this case may serve as a basis for canceling the arbitral award. It happens that a person who has an interest in participating in a dispute is not a party to the arbitration agreement. «When we talk about "rights" over which the parties have no discretion, we mean any rights that affect the position of others, in particular third parties, as well as the community in general»[1].

It follows from this that persons who have an interest in the case and are not parties to the main dispute are third parties. Third parties, in turn, are divided into persons who make independent claims on the subject of the dispute, and those who do not make such claims.

Third parties with independent claims.

Third parties with independent claims enter into the proceedings so that the arbitration court, by its decision, does not award the object of the dispute to another person. If a third party does not know about the existence of such a dispute, which can be easily imagined, since, without participating in the case, he is not notified of the proceedings, a decision may be made that contradicts the real picture of legal relations involving this third party.

The participation of a third party with independent claims in a case considered by a state court is mandatory, provided, of course, that there are grounds for such participation, in the sense that the court is obliged to admit to the proceedings a third party making independent claims on the subject of the dispute. At the same time, the procedural legislation provides, although not perfect, a mechanism for protecting the rights of this third party by filing a claim with a state court.

But also a third party cannot present his claims in arbitration proceedings without the consent of the parties. Note, that Article 816 – quinquies of the Italian Code provides that the voluntary intervention or joining of a third party in an arbitration is admissible only with the agreement of the third party and the parties and with the consent of the arbitrators. The need for this participation of third parties is due to «in the first case, because no expansion of the thema decidendum is determined, in the second, because the intervention allows a defect in the procedure to be remedied»[2].

The Norwegian Act (Article 5) allows participation of third parties in dispute proceedings with the consent of the parties.

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[1] De Boer T. Facultative Choice of Law. The Procedural Status of Choice-of-law Rides and Foreign Law. RCADI. vol. 1. 1998. P. 347.

[2] Corso di diritto processuale civile / 3: L' esecuzione forzata, i procedimenti speciali, l'arbitrato, la mediazione e la negoziazione assistita. // Mandrioli C., Carrata A. Giappichelli. Torino. 2019. P. 360.

Also the US UAA (Clause A Section 10) also provides for participation in proceedings of third parties with independent claims.

Other legal acts researched in this thesis do not address this issue, implying the responsibility of arbitrators for its resolution.

In this case, obviously, the claimant is likely to object to such participation, since a third party with independent claims is suing him. Most often, a third party sues at the same time against the defendant, so the defendant is also likely to resist the entry of a third party into the process. In this way, the parties or one of the parties may prevent third parties with independent claims from participating in dispute proceedings. The final decision on this issue remains with the arbitrators.

When the arbitral award will require enforcement, for example, if it is an award decision, not a recognition decision, and if the defendant does not voluntarily comply with this decision, then a third party will usually be able to appeal against the state court's order for the issuance of a writ of execution.

When, if the arbitral award does not require enforcement, then the only remaining possibility for a third party will be to file an independent claim in a state court. If the state court makes a decision contrary to an arbitral award, then the question arises as to which of them should prevail. Thus, a complex collision can take place, which is very difficult to resolve. I present the opinion, that «based on the fact that enforcement of an arbitration award requires its consideration by a state court, it can be concluded that the decision of a state court prevails over a arbitration award that has not become the subject of consideration of a state court. Within the framework of legal reasoning, the basis of this conclusion is nothing more than the analogy of law»[1]. But, it is worth noting here that the state court is not a higher instance in relation to the arbitration tribunal, which is an alternative justice organization.

Third parties without independent claims

It should further reflect issues related to third parties without independent claims. Third parties without independent claims are involved in the case because the legal relationship in which they are with one of the parties to the dispute is connected with the legal relationship that is the subject of the dispute. For example, such a situation arises when a chain of transactions is concluded, one of which, at the beginning of this chain, turns out to be invalid, which may lead to the invalidity of subsequent transactions.

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[1] Popov M.A. Theoretical and practical problems of the Russian model of functioning of arbitration tribunals. Candidate of legal sciences thesis (PhD). Saint - Petersburg. 2002. P. 77.

National legislation and regulations of arbitral tribunals ignore this issue, leaving its regulation to arbitrators. But the US UAA (Clause C Section 17) postulates the obligation of arbitrators to take into account interests of these persons.

Persons who are parties to subsequent transactions are very interested in the outcome of the dispute on the recognition of the initial transaction as invalid. Their non-participation in the original dispute deprives them of the opportunity to present their own arguments in defense of their position, which could lead to a different decision. Therefore, the non-participation of third parties without independent claims in the case may be the basis for challenging the arbitral award.

Analyzing the foregoing, I come to conclusions very similar to the conclusions obtained in the analysis of the status of third parties with independent claims in arbitration proceedings.

Practical issues of participation of third parties in arbitration proceedings.

In the same way and for the same reasons, their participation in a case before an arbitration tribunal is impossible without the consent of the parties. The decision of the arbitral tribunal, which affects the legal relationship in which they are involved, cannot be directly appealed by them. However, they can appeal against the decision of the state court that enforces the decision of the arbitration tribunal. In addition, they can bring their own claim in state court for recognition of the right or defend themselves in state court against claims brought against them based on the decision of the arbitration tribunal. But this situation, when the decision of state court contradicts the decision of arbitration tribunal, can create a complex conflict.

The above circumstances allow us to argue that it is necessary to establish in the legislation the free and unhindered participation of third parties in arbitration proceedings, without asking the consent of the parties.

It should be noted that the involvement of third parties to participate in commercial arbitration is currently actively supported at the law enforcement level. Mechanisms are being developed to attract third parties to participate in arbitration. Pay attention on Article 7 of the ICC Arbitration Rules and Addition 3, Article 4 of the SCC Arbitration Rules. These regulations establish provisions on the participation of third parties in dispute resolution.

It can be argued that «participation of third parties in arbitration proceedings is conditioned by the fact that future decision of the arbitration tribunal may affect their legitimate interests»[1].

But objectively, «arbitration is an institution born from the will of the parties, which has to be the result of their expressed choice. Due to this, the involvement of a third party is more complicated in arbitration than in an action before the State Court»[2].

However, there are currently legal mechanisms for protecting the rights and interests of third parties in the arbitration of disputes.

[1] Zaitsev A.I. Commentary on the Model Law "On Arbitration Tribunals and Arbitration Proceedings". Yurayt: Moscow. 2019. P. 75.
[2] Zucconi Elena, Fonseca Galli, Rasia Carlo. Third Parties Between Arbitration Agreements and Review of Arbitral Awards. // Czech (& Central European) Yearbook of Arbitration. Rights and Duties of Parties in Arbitration. Volume 6. edit by Belohlavek A.J., Rozehnalova N. The Hague. The Netherlands. Lex Lata BV. 2016. P. 210.

Chapter 4. Issues of procedure for arbitral proceedings.

Paragraph 1. Procedure for arbitral proceedings.

Introduction.

In the process of conducting proceedings, arbitration tribunal first of all applies the provisions of its own rules. In the activities of institutional arbitration institutions, following principle applies. When resolving issues not regulated by the regulations, not by agreement of the parties, the arbitral tribunal conducts the dispute in a manner that it considers appropriate. Of course, equal treatment of the parties is observed and each party is provided with the necessary opportunities to protect their rights and interests. As for ad hoc arbitrations, the procedure for arbitrating disputes is governed by an arbitration agreement. In matters not regulated by an agreement, arbitral tribunal conducts proceedings at its own discretion. Note that ad hoc arbitration agreements refer to the UNCITRAL Arbitration Rules of 2010.

Familiarization with the case materials.

At the beginning of this chapter, I will consider the issue of familiarization with the case materials. Persons participating in the case have the right to get acquainted with its materials. This right is actively exercised by them. Arbitration rules usually provide that each party must send all documents provided to the arbitrators by the other party (Clause 2, Article 10 of the ICAC Arbitration Rules; Clause 1, Article 3 of the ICC Arbitration Rules).

It is generally accepted that each party must send copies of all documents provided to the arbitrators to the other party. Detailed rules in this regard may be contained in the so-called acts on the powers of arbitrators, the drafting of which at the initial stage of the consideration of the case is provided for in the rules of some arbitration institutions (Article 23 of the ICC Arbitration Rules).

However, in this case, especially if the number of copies of documents is large, a mistake may be made and the participant in the dispute will be deprived of the opportunity to take into account all the evidence that may form the basis of the decision. It cannot be ruled out that an unscrupulous party may commit abuse and intentionally "forget" to send any document to the other party.

It should be noted that in practice of arbitration proceedings, multi-volume cases are not an exception, but rather the rule. Therefore, possibility of the parties of dispute to get acquainted with the materials of the case ensures the right of parties to effectively protect their own legitimate interests.

I also say, that many institutional arbitration courts, in order to avoid the above situations, contain provisions in their regulations that the obligation to send all documents on the case lies with the secretariat of the arbitration tribunal (Clause 1, Article 10 of the ICAC Arbitration Rules; Clause 1, Article 9 of the SCC Arbitration Rules). This practice seems appropriate, it contributes to the implementation of the principle of equality of parties.

I believe that it is advisable to include in the rules of arbitration institutions operating in any country and legal system, rules that will allow the parties to access the case materials and thereby eliminate far-fetched inconveniences in preparing for arbitration proceedings.

Preliminary hearing.

After its formation and before the start of hearing, the arbitral tribunal often holds preliminary meetings, designed primarily to decide on the organization of the hearing. (Article 24 of the ICC Arbitration Rules). Practice has confirmed the expediency of this experience and such meetings have become a ubiquitous phenomenon.

In 1996, the United Nations Commission on International Trade Law (UNCITRAL) adopted a document called "Comments on the organization of arbitration proceedings"[1], designed to assist the arbitrators and the parties by listing and concisely describing issues that it is appropriate to resolve in preparation for arbitration. These "Comments" are advisory in nature and are not arbitration rules. Nevertheless, this document contains useful guidelines that should be used in the arbitration of a dispute.

«In some countries, arbitration law allows preliminary hearings to hear the testimony of witnesses. These include, in particular, Belgium, Austria, USA, Italy, the Netherlands and Germany. But in most countries, a witness can only be called to a preliminary hearing for special reasons, for example, if he is old, seriously ill, preparing to leave the country, that is, only in cases where it may be difficult or impossible to call a witness to participate in a hearing later»[2].

Really, Article 816 – ter of the Italian Code and Paragraph 7 of the FAA provides this opportunity.

«Preparatory hearings shall be used to discuss and determine with counsel the factual and legal issues which in the tribunal's preliminary assessment are of particular importance. My personal experience shows that such initiatives by the tribunal are generally well received,

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[1] https://www.un.org/ru/documents/decl_conv/conventions/pdf/arb-notes-r.pdf

[2] Bruntseva E.V. International Commercial Arbitration (Manual). Saint-Petersburg: Publishing House "September". 2001. P. 194.

particularly when the parties, or their representatives, are present at such preparatory hearings»[1].

There are a number of issues that must be resolved at the very beginning of the arbitration proceedings. These include, first of all, the competence of the arbitral tribunal, the choice of the applicable substantive law, the limitation period, the delimitation of issues of liability and the amount of damages, and some others. Without a decision on them, arbitration in some cases simply cannot continue. Resolution of these issues occurs in the form of arbitration acts. Arbitration act is an official document adopted in accordance with the procedure specified by law and regulations by the arbitration panel or the administration of arbitration institution within its competence and aimed at resolving the dispute on the merits or issued on procedural, administrative, technical and other issues arising during the arbitration of the dispute. Arbitration acts are binding on the parties. The above interim arbitration acts may be in the form of orders (Article 25 of the ICAC Arbitration Rules, Article 41 of the SCC Arbitration Rules, Article 26.1 of the LCIA Rules).

As already mentioned, if the arbitrators recognize their lack of competence, the decision on this matter will be the last procedural act adopted by them and the arbitration will come to its end, barely having time to begin.

If the arbitrators acknowledge their competence to consider the dispute, then the decision on the matter may either be in the form of an order or be attached to the final decision on the merits of the dispute. The same applies to the ruling on the definition of applicable law. «It is noted that if the arbitrators do not make a formal decision on this matter, the parties can participate in the process and argue their positions, referring to various national systems of law»[2].

But it must be said that an arbitration order, as well as final award, can be challenged by the interested party in the state court. This will entail, firstly, a certain intervention of the court in the arbitration proceedings, and secondly, material and time costs for conducting a lawsuit in parallel with arbitration.

Point out that the UNCITRAL Model Law 2010 (Clause 3, Article 16) and the national arbitration laws following it (For example Clause 3. Article 16 of the Russian Act 2015) establish a very short time limit for appealing to the court of a preliminary decision on the issue of competence of 30 days.

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[1] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 114.

[2] Skvortsov O.Y. Arbitration of business disputes in Russia: problems, trends, prospects. Moscow: Wolters Kluwer. 2005. P. 294.

Hearing of the case.

In order for the parties to present their positions on the basis of the evidence presented and for oral arguments, an oral hearing of the case is held. The hearing is held, unless otherwise agreed by the parties, behind closed doors. This rule is specified in the regulations of most arbitration institutions. For example Clause 4, Article 27 of the CAM Arbitration Rules and Clause 3, Article 32 of the SCC Arbitration Rules. Persons who are not parties to the arbitration may attend the hearing with the permission of the arbitral tribunal and with the consent of the parties. Usually, a protocol is kept during the hearing. The oral hearing ends when the arbitral tribunal considers that all circumstances have been sufficiently clarified.

The parties may conduct their cases in arbitration directly or through duly authorized representatives (Clause 2, Article 27 of the CAM Arbitration Rules). The failure of a party duly notified of the time and place of the hearing does not prevent the hearing of the case and the delivery of a decision, unless the non-appearing party has filed a written request to postpone the hearing for a good reason, and the party may also request that the hearing be heard in his absence (Clause 4, Article 30 of the ICAC Arbitration Rules).

Arbitration tribunal independently determines the need to hold a meeting with the participation of the parties or their representatives or resolve the dispute only on the basis of documents and other evidence, unless otherwise agreed by the parties. Subject to any such agreement by the parties, the arbitral tribunal must necessarily decide whether to hold an oral hearing for the presentation of evidence or for oral argument, or to proceed only on the basis of documents and other materials. However, except where the parties have agreed not to hold an oral hearing, the arbitral tribunal must hold such a hearing at any stage of the arbitration that it deems appropriate if one of the parties so requests. The parties must be notified in advance of the meeting of the arbitral tribunal by letter, messages by teletype, telegraph or using other means of communication that ensure the recording of such notice. The arbitral tribunal is also required to give the parties advance notice of any hearing and of any arbitral hearing held for the purpose of inspecting goods, other property or documents.

The possibility of an oral hearing of a case or a case based on written materials is the direct right of the parties to the dispute and is enshrined in the current legislation of many states (Article 27 of the Russian Act 2015, Article 24 of the Swedish Act).

It should be noted that almost all arbitration rules (Clause 1, Article 26 of the ICC Arbitration Rules; Article 31 of the ICAC Arbitration Rules) allow the possibility of considering disputes on the basis of documents submitted by the parties. But most arbitration tribunals go through an oral hearing stage. It may take place both at the request of any party, and at the initiative of arbitral tribunal itself. The parties may agree to resolve the dispute on

the basis of written submissions only without holding an oral hearing. Also, the arbitral tribunal may conduct proceedings on the basis of written materials without the agreement of the parties, if neither of them asks for an oral hearing. However, arbitrators may order an oral hearing if the materials submitted are insufficient to resolve the dispute on the merits. Oral hearings are usually relatively short. This is because all arbitrators have duties other than arbitration; the proceedings are often held in a country that is foreign to at least one of the parties and to some of the arbitrators. «The resolution of disputes based on documents is more typical for "maritime" arbitrations, as well as arbitrations within some trade associations»[1]

In one of the previous paragraphs, the possibility of conducting dispute proceedings on-line was considered in detail. Similarly, proceedings may take the form of oral hearings, by electronic means, or on the basis of written submissions. General rules and regulations apply.

I will refer to one of my early works on the issue of combining oral and written forms of arbitration of disputes.

The combination of oral and written forms of legal proceedings in arbitration trial contributes to more effective protection of the rights and interests of the parties. In a situation where the arbitral tribunal considers the case on the basis of the available written materials, the time and resources of the parties to the proceedings are significantly reduced, since they only need to send the relevant documents to arbitration and to each other. In this case, commercial organizations do not need to send their representatives, distracting them from their daily work, the dispute is resolved in a shorter time. Of course, it is not advisable to conduct every arbitration proceeding on the basis of written materials, since the situations are different. But, it should be noted that for business entities, saving time is essential, and, therefore, the practice of considering a dispute without holding a hearing should be recognized as effective and meeting the goals and objectives of arbitration proceedings.

The rules of some arbitration institutions provide for the possibility to suspend or postpone the hearing of the case (Article 35 of the ICAC Arbitration Rules). If necessary, at the initiative of the parties or the arbitral panel, the hearing of the case may be postponed or its proceedings suspended. An order is issued to postpone the hearing of the case or to suspend the arbitration proceedings.

It should be noted that a number of leading arbitration institutions, such as SCC, LCIA e.t.c. do not contain provisions in their regulations on suspension of the hearing of the case. Apparently, the solution of this issue is entirely at the discretion of the arbitral tribunal and is not regulated additionally.

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[1] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod. 2007. P. 115.

In addition, some national arbitration laws (Article 819-bis of the Italian Code) also contain rules on the suspension of the dispute proceedings.

Since the arbitrators have the final say in determining the order of the hearing, hearings can be more or less formal.

I agree with this point of view. «The arbitrators make all efforts to maintain an informal climate. The informal atmosphere enhances the chance of an amicable settlement. After the parties have put across their arguments and documents, there is a better understanding of each other's legal position, what may lead to a settlement of their dispute»[1].

Regardless of how the process proceeds, arbitrators must ensure that two fundamental requirements are met: giving each party a full opportunity to state their position on the case and equal treatment of the parties.

A typical course of a commercial arbitration hearing can be summarized as follows. After the opening of the meeting, each of the parties is given the opportunity to briefly state their position on the case, since the arbitrators usually have on hand copies of all documents submitted by the parties in support of their claims or objections to the claim. This is followed by an interrogation of witnesses represented by each party. Witnesses are most often interviewed by the arbitrators themselves, after which the parties may be allowed to question and cross-examine them. Witnesses are generally not entitled to attend an arbitration before they have been called to testify. After interrogation of witnesses, experts may be called and material evidence may be presented.

After the presentation of evidence, the parties are given an opportunity for debate and closing statements, after which the hearing of the case is terminated and the meeting is adjourned. It can only be re-opened in extraordinary circumstances, for example, when after the conclusion of the hearing, but before a decision on the merits of the dispute, new evidence has emerged that is material to the case.

Arbitration is a confidential procedure, so the hearing takes place behind closed doors. Persons not participating in the arbitral proceedings may attend the proceedings only with the consent of the arbitrators and the parties. As regards the parties, the arbitrators have no right to refuse their participation in the hearing of the case. «Only in extraordinary circumstances, when the improper conduct of a party or its representative makes it impossible for the normal course of the proceedings, the person concerned may be required to leave the courtroom. In such a case, the proceedings may continue ex patre, as if the party had withdrawn from the

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[1] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 410.

proceedings. Such a scenario, however, may give rise to serious problems related to the right of a party to participate in the process, including to have a representative»[1].

A very difficult situation can also arise if a party, usually the defendant, refuses to participate in the hearing of the case or if it makes unreasonable and prolonged delays, leading the arbitrators to conclude that the party simply does not want to participate in the arbitration. Most arbitration rules provide for the possibility of continuing the hearing of the case in such a case, while the arbitrators consider the dispute on the basis of the materials at their disposal, and the default of the defendant is not considered as recognition of the claim (Clause 4, Article 30 of the ICAC Arbitration Rules; Article 33 of the VCCA Arbitration Rules). Of particular importance in this situation is the qualitative minutes of arbitration meetings and the reflection of the fact of the defendant's refusal to participate in the hearing in the arbitration award itself.

Protocol of arbitration proceedings.

Protocol keeping of arbitration proceedings is provided for by the current legislation of some states, for example Uniform Arbitration Act of the USA (Clause A Section 9), Russian Act 2015 (Clause 5, Article 27). Moreover, the latter contains a reservation - unless the parties agree otherwise. The parties, for any of their reasons, may refuse to keep protocol in the proceedings of their dispute by mutual agreement.

Most of the legislative acts of various countries, such as Italy, Sweden, Norway, Lithuania, etc., do not regulate this issue.

It should be noted that a number of regulations of arbitration institutions provide for the possibility of keeping minutes of the hearing of the case (Clause 7, Article 30 of the ICAC Arbitration Rules; Clause 3, Article 31 of the VCCA Arbitration Rules). Other regulations do not address this issue (ICC Arbitration Rules, SCC Arbitration Rules).

It seems that the responsibility for organizing the keeping of protocol lies with the arbitral tribunal, and the protocol themself is kept by the technical staff of the arbitration institution. The parties may familiarize themselves with the contents of the protocol. At the reasonable request of the party, amendments or additions may be made to the protocol.

In principle, it seems generally accepted that the issue of protocol keeping in most disputes is resolved directly by the parties and arbitrators. The issues of protocol keeping in legislative and law enforcement practice are not given much attention.

The author, in his previous works, made proposals for a more detailed regulation of this issue.

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[1] Redfern A., Hunter M. Law and Practice of International Commercial Arbitration. 1999. P. 330.

«I think it makes sense to legislate the obligatory keeping of the protocol of disputes in all arbitration institutions without exception. This provision, for example, can facilitate the procedure for the enforcement of the arbitral award, since the competent court, thanks to the presence of the specified protocol, will be able to fully and comprehensively analyze the essence of the dispute and its resolution by the arbitration court. After all, the protocol fully reflects the course of the dispute, the positions of the parties and the evidence base»[1].

Completion of arbitration proceedings.

Consider the issue of timing of the case. Rules of permanent arbitration institutions contain provisions on the time limits for the proceedings. The general rule is to establish a period of 6 months from the date of acceptance of the case for proceedings until the issuance of an arbitral award (Article 31 of the ICC Arbitration Rules, Article 43 of the SCC Arbitration Rules, Article 36 of the CAM Arbitration Rules, Article 35 of the ICAC Arbitration Rules). It is possible to extend the terms of the proceedings at the initiative of the arbitrators or the parties, if there are grounds. Which are evaluated by arbitrators themselves.

Most often, the completion of the hearing means the transition of the process to a new stage in the issuance of an arbitral award. The arbitration is terminated by the issuance of a final award, the approval of a settlement agreement between the parties, and the issuance of an order to terminate the proceedings without an award.

If the parties reach an amicable settlement agreement during the arbitration, the arbitration shall be terminated. At the request of the parties, the arbitration may fix this settlement in the form of an arbitral award on agreed terms (Article 33 of the Russian Act 2015, Article 27 of the Swedish Act, Article 47 of the Lithuanian Act).

An award on agreed terms must be made in accordance with the form requirements of any arbitration agreement and must indicate that it is an award. Such award shall have the same effect and be enforceable in the same way as any other award on the merits of the dispute. However, questions of procedure may be decided by the arbitrator who is the chairman of the arbitral tribunal if he is authorized to do so by the parties or all other arbitrators.

If no final award is made on the case, the arbitration shall be terminated by an order terminating the arbitration.

An order to terminate the arbitration trial shall be issued in the following situations. First, if the claimant waives its claim, unless the defendant raises objections to the termination

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[1] Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities: Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006. P. 129-130.

of the proceedings within the prescribed period after receiving notice of this, and the arbitral tribunal does not recognize the legitimate interest of the defendant in the final settlement of the dispute. Secondly, if there is an agreement between the parties to the dispute to terminate the arbitration proceedings. Thirdly, when the arbitral tribunal finds that the continuation of the proceedings has become, for whatever reason, unnecessary or impossible.

I describe similar reasons for the impossibility or uselessness of the proceedings. For example, in the absence of the prerequisites necessary for the consideration and resolution of the case on the merits, including if, due to the inaction of the plaintiff, the case remains without progress for a certain period. Or there is a decision of a state court or arbitration adopted on a dispute between the same parties, on the same subject and on the same grounds, that has entered into legal force.

In any case, the arbitral tribunal shall decide on its own to terminate the proceedings based on its own assessment of the facts and circumstances.

Paragraph 2. Evidence and proof.

Introduction.

Evidence may be any factual data, on the basis of which the presence or absence of circumstances substantiating the claims and objections of the parties, and other circumstances relevant to resolving the dispute can be established. Although neither the arbitration law nor the regulations give an unambiguous definition of evidence, many of them contain indications of their types: documents and other written evidence, explanations of the parties and third parties, testimony of witnesses, expert opinions, physical evidence.

Unlike the state procedural legislation, where the institution of evidence is regulated quite strictly, less formalized norms are applied in the arbitration of disputes in relation to this institution.

Many issues are resolved directly by arbitral institutions in their rules and by arbitrators. The power conferred on the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and significance of any evidence.

The legislation of some states governing arbitration does not contain a special clause regarding the powers of arbitrators to determine the relevance and admissibility of evidence. Only general provisions are contained that oblige the parties to the dispute to provide evidence, and the arbitrators to accept them (Article 816 - ter of the Italian Code, Article 24 of the Canadian Act of 1985).

Laws of other states (Article 26 of the Russian Act 2015, Article 28 of the Norwegian Act, Article 22 of the Lithuanian Act) and the UNCITRAL Model Law 2010 (Clause2, Article 19) mention the powers of arbitrators to determine the relevance and admissibility of evidence, but do not specify these powers.

However, the right of arbitrators to assess evidence comes from the right of an arbitration tribunal to resolve economic disputes to independently determine the procedure for considering a dispute..

Presentation of evidence.

Evidence in an arbitration process can be presented in a variety of ways, which largely depend on the system of law under which the process takes place. The parties are obliged to prove the circumstances to which they refer as the basis of their claims or objections. However, the arbitral tribunal may require the parties to provide additional evidence.

Note, that in countries of the continental system of law, a judge or arbitrator plays a significant role in the presentation of evidence. He conducts the interrogation of witnesses, he

also has the right to demand documents, appoint experts, etc. In the countries of the Anglo-Saxon system of law, the entire process of presenting evidence is in the hands of the parties, while the judge or arbitrator only “listens” to the evidence, since even documents and expert opinions are presented during oral hearings, and at the end decides whose arguments turned out to be more convincing.

The following point of view on the importance of the procedure for providing evidence for the parties to the dispute is interesting. «Freedom in matters of evidence has a "therapeutic" meaning, because it allows the parties to give vent to their feelings and "throw out" what worries them. The arbitral award will not be set aside due to liberalism in the admission of evidence. Conversely, a refusal to consider relevant evidence may serve as a basis for setting aside the award»[1].

As a general rule, the parties bear the burden of proof. This means that the parties are required to prove the circumstances they refer to as substantiating their claims and objections. This rule on the burden of proof is enshrined, in Clause 1, Article 29 of the ICAC Arbitration Rules; Clause 2, Article 36 of the VCCA Arbitration Rules, Clause A, Article R-35 of the AAA Rules e t.c.

«The burden of proof is held to be satisfied when the required standard of proof is met»[2].

Also, one should point out the possibility of assistance from state courts to arbitration tribunals in matters of claiming and obtaining evidence.

It is interesting to observe that «the great paradox of arbitration is that it seeks to cooperate with state bodies, which arbitration will try to get rid of»[3]. Note, that «arbitration is entirely dependent on state courts, which alone have jurisdiction to rescue the arbitration system when one of the parties tries to sabotage it»[4]. Regarding the complete dependence of arbitrations on state courts, of course, an exaggeration. But, objectively, «although the parties, when choosing an arbitration tribunal, undertake to entrust the resolution of their disputes not to a state judge, but to a private person - an arbitrator, it is not always possible to avoid the participation of the court in arbitration proceedings»[5]. This fact is a reflection of the

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[1] Timokhov Y.A. Some features of the consideration of disputes in international commercial arbitration. // Journal Economy and law. No. 10. 2001. P. 103.
[2] Patti C. Burden of Proof in International Arbitration. // // Czech (& Central European) Yearbook of Arbitration. Conduct of Arbitration. Volume 7. edit by Belohlavek A.J., Rozehnalova N. Lex Lata BV. 2017. P. 101.
[3] Paulsson J. The Idea of Arbitration. New York: Oxford University Press. 2013. P. 30.
[4] Redfern and Hunter on International Arbitration: Student version. Sixth edition. // edit. Redfern A., Hunter M., Blackaby N., Partasides C. New York: Oxford University Press. 2015. P. 415.
[5] Varapnickas T. Teismo pagalba arbitražui įrodymų rinkimo procese. // Arbitrazas. Teorija ir praktika. Vilnius. No 2. 2016. P. 116.

institution of interaction between arbitrations and state courts with the common goal of establishing justice.

Evaluation of evidence.

The evaluation of evidence has its own content. The content of the assessment of evidence includes the determination of the admissibility, relevance, reliability, sufficiency and relationship of the entire body of evidence. Evidence evaluation can be advisory or authoritative depending on who is evaluating the evidence.

The assessment given by the persons participating in the case, representatives, is of a recommendatory nature. Such an assessment of the evidence is contained, in particular, in the speeches of the persons participating in the case, their representatives, speaking in judicial debates. The significance of this assessment lies in the fact that it is one of the conditions ensuring the comprehensiveness of the assessment of evidence by arbitration, taking into account the opinions of all interested participants in the process. The arbitrators take into account the opinions of other participants in the evaluation of evidence, but are not obliged to follow them. The assessment of evidence given by the arbitrators is authoritative, since the rulings in which it is reflected are binding.

Note the features of the procedure for evaluating evidence. The arbitration procedure should be less formal. Rules for the provision of evidence are designed to prevent the presentation of unreliable and unreliable evidence and documents to arbitrators. In arbitration proceedings, a case is heard by an experienced arbitrator, chosen by the parties for his or her knowledge of the law or special knowledge in a particular area. Such a person is able to identify improper evidence and not accept it in the dispute.

Evaluation of the evidence is carried out by the arbitrators, according to their inner conviction, impartially and taking into account the totality of the evidence presented. The failure of a party to provide proper evidence does not prevent the arbitral tribunal from continuing the proceedings and making a decision on the basis of the evidence available to it.

Power of the arbitrators to conduct arbitration proceedings includes power to determine the admissibility, relevance, materiality and weight of any evidence.

According Article R-35 of the AAA Rules the arbitrator is the judge of the relevance and weight of the evidence presented and is not required to follow the legal rules on evidence. The rules of many arbitral institutions also establish the right of arbitrators to evaluate evidence at their own discretion (Clause 3, Article 29 of the ICAC Arbitration Rules; Clause 1, Article 31 of the SCC Arbitration Rules).

International Rules for presentation and evaluation of evidence.

In modern jurisprudence, the idea was expressed of generalizing the procedural rules established in the practice of commercial arbitration in order to create, on this basis, an exemplary set of procedural rules in the field of commercial arbitration, which has a recommendatory character[1].

The International Bar Association, a non-profit organization headquartered in London, acted as the structure that organized the implementation of this large-scale project. This voluntary association of practicing lawyers from more than 100 countries has provided an excellent forum for collecting information, exchanging ideas, evaluating and drafting a rough set of rules under consideration[2].

The first document of this nature was the "Additional Rules for the Presentation and Taking of Evidence in International Commercial Arbitration". They were developed in 1983 based on an analysis of the principles and procedures used in many different legal systems[3].

The following revision of this document was developed by Committee D (Arbitration and Alternative Dispute Resolution) of the Commercial Law Section of the International Bar Association (IBA) in 1999. The new document was named "IBA Rules on the Taking of Evidence in International Commercial Arbitration". The version of these rules was approved on June 1, 1999. The next revision was approved on May 29, 2010.

Currently operating the IBA rules on the Taking of Evidence in International Arbitration. Adopted by a resolution of the International Bar Association Council on 17 December 2020.

The IBA Rules on evidence are non-binding and are advisory in nature. The parties can agree on the use of the IBA Rules on evidence already at the stage of contract preparation.

For this, practicing lawyers recommend including the following text in the arbitration clause: «the parties agree that, in addition to the arbitration rules chosen by the parties (arbitration regulations), the arbitration will be conducted in accordance with the IBA rules of evidence»[4].

The IBA Rules are a codification of international arbitration practice regarding the presentation of evidence. They do not contain any indication that a party must disclose the existence of any documents other than those to which it refers in support of its position in the

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[1] Sachs K., Schmidt-Ahrendts N. Expert Evidence Under the 2010 IBA Rules. // International Arbitration Law Review. Vol. 13. No. 5. 2010. P. 216–219.
[2] https://www.ibanet.org
[3] International commercial arbitration. (Manual). // edit. V.A. Musin, O.Y. Skvortsov. Saint- Petersburg. 2012. P. 56.
[4] Nikiforov I.V. Evidence in international commercial arbitration // Economy and law. No. 10. 2001. P. 122.

case. But, it is possible to address the parties with a requirement to exchange in advance a list of these documents, which are then presented in the process of hearing the case.

The IBA Evidence Rules give the arbitral tribunal the right to exclude, at the request of a party or in its sole discretion, any evidence or to refuse a request for evidence for one of the following reasons: «lack of relevance and materiality; legal obstacles or privileges (professional and other secrets, conflicts of interest); excessive burdensome presentation of evidence; loss or damage to a document; interest in keeping confidential information related to know-how, commercial or state secrets; considerations of fairness and equality of arms that the arbitral tribunal considers to be valid»[1].

I point out that according to legal practice, such recommendatory documents are used in arbitration everywhere, even when they are not binding on the arbitral tribunal. Their strength and recognition are based on their own merit and persuasiveness, and not from a binding nature[2].

Thus, the requirements for evidence in commercial arbitration are formulated quite clearly: the parties bear the burden of proof; the evidence must be relevant; arbitrators independently resolve issues of relevance and admissibility of evidence; the evaluation of evidence by the arbitrators is made on the basis of their inner conviction, and no evidence has any predetermined force for them.

Types of evidence.

Written evidence.

The best evidence in arbitration proceedings is traditionally considered documents, primarily dating from the same period of time as the event that resulted in the dispute. The probative weight of such documents is placed higher than, for example, testimonies or explanations of the parties. Suffice it to say that in a number of cases arbitrators may consider a case solely on the basis of documents and other written materials.

Arbitration rules usually do not contain detailed regulation of the issues of submission of written evidence. Thus, the UNCITRAL Arbitration Rules 2010 provides in Paragraph 3 of article 20, that the plaintiff may attach to his statement of claim all documents which he considers relevant, or may make reference to documents or other evidence which he submits thereafter. As a general rule, the parties in the Statement of Claim and in the Statement of

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[1] Article 9 of the IBA rules on the Taking of Evidence in International Arbitration. Adopted by a resolution of the International Bar Association Council on 17 December 2020. // www.ibanet.org

[2] Railroad Development Corp (United States of America) v. Republic of Guatemala, ICSID, Case No. ARB/07/23 (October 2008), Decision on Provisional Measures. Para. 15.

Defense may submit, together with their statements, all documents which they consider relevant to the case, or may make reference to documents or other evidence which they subsequently submit.

Rules of arbitration institutions (Clause 3, Article 26 of the SCC Arbitration Rules; Clause 1, Article 29 of the ICAC Arbitration Rules) grant arbitrators the right to request written explanations, evidence and other additional documents from the parties. Failure to produce documentary evidence does not affect the possibility of continuing proceedings and issuing an award (Clause 4, Article 29 of the ICAC Arbitration Rules).

Arbitration rules rarely provide guidance on how written evidence should be presented, leaving this to the discretion of the parties and arbitrators.

Explanations of parties and third parties.

Circumstances relevant to the case may be established through explanations of the parties and third parties. Note that in the countries of continental system of law, explanations of parties and third parties are considered as an independent type of evidence, while in the countries of Anglo-Saxon system of law, parties to the process are interrogated as witnesses in the case.

As a general rule, any party may be heard in support of its own position in the case. As parties in commercial arbitration, not only they themselves, but also their representatives, as well as officials and employees of legal entities of the parties to the dispute may be heard.

Physical evidence.

Certain items may serve as a means of establishing the circumstances relevant to the case. These, first of all, include the subjects of the dispute themselves, for example, a construction object or a delivered product in a dispute over their quality. The items in question may either be presented in the arbitration process or examined by the arbitral tribunal at their location.

Arbitration rules contain almost no rules for the presentation of material evidence. As well as the laws governing arbitration. Unless, there is a mention of the possibility of inspecting goods or other property and requiring arbitrators to give advance notice to both parties to the dispute (Clause 2, Article 24 of the UNCITRAL Model Law 1985 and Clause 2, Article 24 of the Russian ICA Act 1993).

Examination of physical evidence at its location can be quite expensive, as it may require the travel of all persons involved in the arbitration process. Therefore, photographs, models, drawings, videos, etc. are often submitted to arbitration.

Witness statements.

Statements of witnesses is often used as evidence in the arbitration process. They may be given in written or oral form. Arbitration rules usually do not contain special provisions regarding the procedure for summoning and questioning witnesses. The parties may establish them by their agreement, in the absence of such an agreement, the procedure is determined by the arbitral tribunal. But, Clause 2, Article UNCITRAL Arbitration Rules contains a mention of the interrogation of witnesses. It is envisaged both to hear the testimony of witnesses in the arbitration session, and to provide the testimony of witnesses in writing.

American law provides for the right of arbitrators to invite non-parties to resolve disputes, whose information may be necessary to resolve disputes (Section 7 of the US FAA, Section 7 of the US UAA).

The legislation of countries of the continental system of law may provide for examination of witnesses (Article 816-ter of the Italian Code; Article 26 of the Swedish Act, Article 27 of the Finnish Act) or not (Russian Act 2015).

The written form of testimonies is also often used. The party submits written testimonies of witnesses and indicates which of them it would like to invite to the meeting. The arbitrators will consider written evidence and, if they deem it necessary, may invite a witness to give oral evidence, or refuse to call a witness on the grounds that his testimony is irrelevant or excessive.

Witness statement can be obtained remotely. «Witness conference call is a new method and, if applied correctly, it produces better results»[1].

In general, the testimony of witnesses in arbitration tribunals is used to a lesser extent than in ordinary courts. A lengthy and detailed interrogation of witnesses, especially if it is carried out through an interpreter, inevitably requires a significant amount of time and is by no means always necessary.

Unlike ordinary courts, in arbitration tribunals, witnesses are not required to take an oath or perform any other formal act, such as signing a protocol. But the Swedish Act (Article 26) gives a party the right, with the consent of the arbitrator, to apply to the State District Court for witnesses and experts to be sworn in. The Lithuanian Act (Clause 2, Article 36) grants the right of a party to apply to the Vilnius District Court for the examination of witnesses. Other laws I have considered do not regulate this issue.

[1] Wyraz E. The Differences in the Use of Expert Witness Evidence between International Arbitration and Litigation. // Czech (& Central European) Yearbook of Arbitration. Conduct of Arbitration. Volume 7. edit by Belohlavek A.J., Rozehnalova N. Lex Lata BV. 2017. P. 185.

Evaluation of witness testimony by arbitrators is made taking into account all the circumstances of the case. This will certainly take into account the relationship between the party and the witness, the interest of the witness in the outcome of the case, his direct participation in the event that served as the basis for the dispute, his competence, if his testimony relates to special issues, etc. According to clause 1 of article 9 of the IBA Rules the arbitrator will decide how much weight to give to the evidence or the statements of any witnesses.

Expert opinion.

In some cases, certain facts necessary to resolve the dispute may relate to special areas of knowledge with which the arbitrators are unfamiliar. Such facts can be proved by the conclusions of experts in the relevant field: engineers, scientists, accountants, etc. Their ability, experience and knowledge in a particular discipline exceeds the qualifications and knowledge of ordinary people. Experts may be invited by the parties to the dispute or appointed by the arbitrators themselves.

I point out that the possibility of attracting an expert is provided for by the national laws on arbitration of many countries (Article 816-ter of the Italian Code, Article 29 of the Russian Act 2015, Article 26 of the Canadian Act of 1985; Article 29 of the Norwegian Act).

The expert's opinion shall be sent by him to the arbitral tribunal, which is then obliged to provide copies of it to the parties of dispute for a sufficient period of time before the hearing of case so that they have the opportunity to study this opinion. Arbitrators may limit themselves to considering a written opinion or, on their own initiative or at the request of any of the parties, call and interrogate an expert in an arbitration meeting. In this case, the parties have the right to ask questions to the expert.

The main responsibility of the expert can be called « duty to establish the facts truthfully»[1]. Also, experts in arbitration proceedings must be neutral and independent of the parties to the dispute.

As for the experts involved by the parties, they are by no means a rarity in arbitration proceedings. The refusal of the arbitrators to consider the opinions presented by them will in no way serve the purpose of a proper resolution of the dispute and may be considered by the party (especially from the country of the Anglo-Saxon system of law) as a serious violation of its procedural rights. The conclusion of the expert involved by the party shall be presented

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[1] Verker Remme. Comparative aspects of expert evidence in civil litigation. // 13 Int'l J. Evidence & Proof. 2009. P. 171.

among other written materials and shall be attached to the case. It is also very important to submit a resume showing the qualifications of the expert.

It is believed that «currently, the trend in international arbitration is to rely more on party-appointed experts rather than tribunal-appointed ones»[1]. «The main shortcoming of an expert appointed by the tribunal is the insufficient confidence of the parties in the personal and professional qualities of an expert they have not chosen. More importantly, parties often fear that their dispute will ultimately be decided by an expert instead of a tribunal»[2].

Cost of the examination appointed by the arbitral tribunal is covered from the deposits made by the parties and forms part of the arbitration costs (Clause 1, Article 22 of the Russian Act 2015). As for the experts involved by the parties, they are paid by the respective parties.

There is a procedure for obtaining expert evidence generally followed by most arbitral institutions. First of all, each party to the proceedings may submit expert opinions as evidence of its claims. Unless otherwise agreed by the parties of arbitration trial, the arbitral tribunal may, on its own initiative, in cases where special knowledge is required to resolve a dispute, appoint an expert (Article 34 of the SCC Rules; Clause 1, Article 29 of the ICAC Rules).

Note that it is not in vain that great and undeniable importance is attached to the expert opinion as evidence in arbitration proceedings. The nature of the dispute between the parties can be very complex and confusing, and many questions can only be answered by an expert who has special knowledge that arbitrators do not have. In the absence of expert evidence, many disputes could not be resolved by arbitration. Making an award would be impossible. Moreover, «lawyers who represent parties in arbitration have great opportunities to use and present expert evidence»[3].

Conclusion.

There is the issue of bad faith of the parties in providing evidence. I agree with the proposal that «it is necessary to establish in the arbitration process a presumption that illegally collected evidence is inadmissible evidence»[4]. It should also be pointed out that the falsification of documents in resolving a dispute submitted to an arbitration tribunal does not qualify as a crime against justice in the legislation of many countries. In this situation, it is

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[1] Waincymer J. Procedure and evidence in international arbitration. Walters Kluwer: Law & Business. 2012. P. 932.

[2] Wyraz E. The Differences in the Use of Expert Witness Evidence between International Arbitration and Litigation. // Czech (& Central European) Yearbook of Arbitration. Conduct of Arbitration. Volume 7. edit by Belohlavek A.J., Rozehnalova N. Lex Lata BV. 2017. P. 176.

[3] Ruttinger G., Meadows J. Using experts in arbitration. // Journal Dispute Resolution. No. 1. 2007. P. 62.

[4] Bartkus J. Neteisėtai surinktų įrodymų leistinumas arbitraže. // Arbitrazas. Teorija ir praktika. Vilnius. No 7. 2021. P. 78.

possible to qualify such offenses only as economic crimes, for which the punishment, as a rule, is less. The author believes that such crimes should be qualified as crimes against justice.

Summing up this paragraph, it should be noted that the process of proof in arbitration proceedings is less formalized than similar procedures in state courts. The parties have the right to present any evidence they deem necessary.

Researched types of evidence allow us to assert that the parties to the arbitration proceedings have opportunity to collect an extensive evidence base to confirm their position in the dispute. Those, the principles of competitiveness and equality of the parties are fully implemented here.

Paragraph 3. Interim measures.

Introduction.

Arbitration legislation of most states regulates the legal institution of interim measures. Note, that «at the present time, the power of Arbitral Tribunals to grant interim measures is well established and is included in the rules of most developed arbitration bodies and systems»[1]. The legislator provides the parties to the arbitration dispute with additional guarantees for the preservation of the subject matter of the dispute, determining the possibility of using interim measures.

The institution of interim measures in this sphere is necessary to guarantee the interests of the claimant in relation to the execution of arbitral award by the defendant, who by certain actions, for example, the withdrawal of material assets from the enterprise or the sale of the subject of the dispute, may make it impossible or significantly impede the execution of arbitral award. Pre-security measures may include restrictions on property, ownership, money, intellectual or copyright rights, and other assets. It is also possible to prohibit the defendant or third parties from performing certain actions.

An interim order is an effective legal instrument in legal proceedings. Interim measures are often «stimulate the search for a compromise and are often an incentive for the parties to conclude a settlement agreement»[2]. I agree that the main purpose of interim measures is to protect the rights and interests of the parties and maintain the status quo[3].

Legal regulation.

Theoretically, there are no obstacles to the arbitral tribunal making a ruling on interim measures. Many legal systems allow for measures to be taken to secure a claim in arbitration proceedings. However, the question of who decides on enforcement measures is decided differently in different legal systems of the world.

In some countries, such as the USA, «the appeal of interested party to the arbitration tribunal on the issue under consideration is allowed only until the formation of a "capable" arbitral tribunal and empowering it with competence to make appropriate decisions»[4]. Only

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[1] Price Charles. Conflict with state court. // Interim Measures in International Commercial Arbitration. // Malku Publishers & Association for International Arbitration. Antwerpen. Belgium. 2018. P. 42.
[2] Polyakov Y.A. Securing a claim by an arbitration court: practice raises new questions. // Journal Arbitration Tribunal. No. 1. 1999. P. 24.
[3] Bond S. The Nature of Conservatory and Provisional Measures. // Conservatory and Provisional Measures in International Arbitration. Paris: ICC Publication. 1993. P. 8.
[4] Nosyreva E.I. Alternative dispute resolution in the USA. Moscow. 2005. P. 112.

arbitrators decide on interim measures after they are appointed, receive powers and start their activity.

A disputing party may ask a state court for an interim measure only if the matter is urgent, the arbitral tribunal is unable to act in a timely manner, the arbitrator is unable to apply the appropriate interim measure (Section 23 of the UAA).

In some countries, measures to secure the claim may be taken by the state court, having considered the application of claimant, filed in parallel with the proceedings in arbitration tribunal. Such a statement and decision of the state court does not affect the course of the case in the arbitration tribunal.

Italian law does not give arbitrators the right to seize the assets of the parties and apply other interim measures (Article 818 of the Italian Code). This provision directly encourages a party to a dispute interested in interim measures to apply to a state court[1].

The UNCITRAL Model Law 1985 regulates issues of interim measures in the following order. The Russian ICA Act 1993, developed on the basis of this Model Law, regulates this issue in a similar way.

The parties to arbitration proceedings may apply to the competent state court for provisional measures, notwithstanding the existence of an arbitration agreement. Moreover, the party's application to the state court with an application for securing a claim cannot be considered as incompatible with the arbitration agreement or as a waiver of it (Article 9 of the UNCITRAL Model Law 1985, Article 9 of the Russian ICA Act 1993).

Arbitrators, at the request of any party, may independently order the adoption of interim measures by any party, unless the parties agree otherwise (Article 17 of the UNCITRAL Model Law 1985, Article 17 of the Russian ICA Act 1993).

The legislation of European countries has adopted the UNCITRAL Model Law 2010 and contains provisions on the right of an arbitral tribunal to order interim measures. For example Article 25 of the Swedish Act, Article 19 of the Norwegian Act, Article 17 of the Russian Act 2015.

The legislation of some states does not contain provisions for provisional measures in arbitration proceedings. I believe that this issue is left to the discretion of the arbitration institutions. For example the Finnish Act.

The main problem that international conventions and domestic legislation of states sought to solve in this case is to prevent the transfer of a case to a state court. Filing an application for taking measures to secure a claim in a state court should not mean the

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[1] Commentario breve al diritto dell'arbitrato nazionale ed internazionale. // edit by Massimo V. Benedettelli M.V., Consolo C., Radicati Di Brozolo L.G. CEDAM. Padova. 2010. P. 262.

claimant's consent to the consideration of the dispute by a state court. In particular, Article 6 of the European Convention on International Arbitration 1961 establishes that an application for interim measures filed with a court does not constitute a waiver of the arbitration agreement by the parties.

Note, that an arbitral panel does not have the authority to enforce its own decisions and resolutions. Such awards may be executed by the parties to the arbitration proceedings only voluntarily. Enforcement of interim measures is carried out by a state court, regardless of whether it itself decides on the application of interim measures or this is done by an arbitral tribunal. «However it is generally accepted that res judicata only applies to final and conclusive decisions on the merits and does not apply to interim measures»[1].

It seems, that «effective implementation of the jurisdictional function by arbitration tribunals and international commercial arbitrations is impossible without the participation of the state»[2].

When the state court performs control functions in relation to the decision of the arbitral tribunal to take interim measures, the subject of its control are the estimated circumstances on the need to take appropriate interim measures. When resolving this issue, the judicial discretion is very large and the state court makes a decision on the adoption of interim measures, based on its own position on the need for security. The ruling of arbitration tribunal is rather a set of evidence for the state court to decide on the adoption of interim measures. At the same time, the law does not oblige the state court to assess the ruling issued by the arbitration tribunal or the circumstances established therein.

The disadvantage of this model of legislative regulation, in which adoption of interim measures is carried out by a state court, is that all the evidentiary material is concentrated in arbitration tribunal, which has already formed a preliminary opinion on the rights of parties, and the decision to take measures to secure the claim is made not by arbitration tribunal, but state court.

Another option, i.e., the adoption of measures to secure a claim by an arbitration tribunal, in its pure form is also not without drawbacks. For measures to secure a claim, the main thing is timeliness. «In many countries, the court does not specifically notify the defendant that he is considering an application for taking measures to secure the claim, so that these measures come as a surprise to him»[3].

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[1] Price Charles. Conflict with state court. // Interim Measures in International Commercial Arbitration. // Malku Publishers & Association for International Arbitration. Antwerpen. Belgium. 2018. P. 52.
[2] Kurochkin S.A. State courts in arbitration proceedings and international commercial arbitration. Moscow: Wolters Kluwer. 2008. P. 1.
[3] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod. 2007. P. 126.

Arbitration law and standing arbitration rules require that copies of all documents submitted to the arbitration tribunal be given to the other party. Consequently, when deciding on interim measures by the arbitration tribunal, the defendant will be aware of this. He will have time and opportunity to perform those acts against which interim measures are directed before their enforcement by a state court.

Many regulations of permanent arbitration tribunals (Article 37 of the SCC Arbitration Rules, Article 28 of the ICC Arbitration Rules) and model rules for the consideration of a case in an arbitration tribunal (Article of the UNCITRAL Arbitration Rules 2010) provide for the right of arbitral tribunal to take interim measures.

At the request of claimant or defendant, it is allowed to replace one interim measure with another. The issue of replacing one provisional measure with another shall be resolved by the state court in accordance with the established procedure. The replacement of one type of securing a claim with another is carried out, in particular, in cases where the previously established measure does not protect the rights of the plaintiff and cannot guarantee the execution of the decision, or when this measure unjustifiably infringes on the rights of the defendant.

«Arbitral tribunal may also impose an interim measure deviating from the content of the party's request, if it deems it necessary for the enforcement of such a measure. If as a result it turns out that the measure imposed by the court at the request of one of the parties is initially unreasonable, the party at whose request it was executed is obliged to compensate the other party for the damage caused to it as a result of the execution of such a measure. Such a claim may be made in an ongoing arbitration»[1].

Note that arbitration tribunals are not authorized to take interim measures. But when examining a case, the arbitral tribunal is much better informed about the content of the dispute under consideration than the state court, and, therefore, most fully represents the need or, conversely, the needlessness of taking interim measures. Therefore, it seems that definition of the arbitral tribunal on the adoption of interim measures should be one of the main grounds for the adoption of a decision by the state court.

It is also possible for the parties to voluntarily enforce interim measures taken by the arbitrators without using of imperative instruments.

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[1] Mayshev M.V. Impact of the Uncitral Model Law 1985 on regulation of international commercial arbitration in Germany: Diss. ... candidate of law sciences (PhD). Moscow. 2011. P. 102.

Content of interim measures.

Consider the interim measures themselves, namely their types and content.

Firstly, this is the seizure of money or other property belonging to the defendant and being held by him or other persons. Arrest of funds or other property consists in prohibition to dispose of the relevant property or funds belonging to the defendant. Property and funds may be in this case both with the defendant himself and with other persons. When property is seized, it cannot be sold, exchanged, donated, leased, pledged or destroyed. Seizure of property, in the form of a general rule, does not prevent its use, if it does not entail the destruction of property and does not reduce its value. Such a measure cannot be applied to perishable goods. Seizure of property is the most common form of securing a claim by a court. It is noteworthy that the adoption of such a measure as the seizure of funds on the account of the defendant simultaneously affects the legally protected rights and interests of third parties (other creditors of the defendant). Therefore, the court, at the request of the defendant, in necessary cases, has the right to request the plaintiff to provide evidence confirming that he can compensate the defendant for the losses incurred by him due to the seizure of funds.

Seizure of property is possible if it does not lose its qualities during long-term storage. Such a measure cannot be applied to perishable goods. In cases where an application is filed to invalidate an act on the basis of which funds are written off or property is sold, at the request of the plaintiff, the issue of prohibiting the defendant from writing off these funds or selling property can be resolved.

Secondly, an interim measure is the prohibition of defendant and other persons to perform certain actions relating to the subject of dispute. The legislation provides for the right of court to prohibit the performance of certain actions not only by the defendant, but also by other persons, of course, if these actions relate to the subject of dispute. This ban is intended to preserve the status quo. Thus, demolition by the defendant of a certain structure may be prohibited. As for other persons, the prohibition to transfer property to the defendant, to fulfill the obligations given to him, to perform any other specific actions can be cited as an example. At the same time, other persons are understood to mean any persons, and not just those participating in this case.

Thirdly, this is the imposition on defendant of the obligation to take certain actions in order to prevent damage, deterioration of the disputed property.

Fourthly, there may be a transfer of the disputed property for storage to the plaintiff or another person. Such interim measures as imposing on the defendant the obligation to take certain actions in order to prevent damage, deterioration of the disputed property and the

transfer of the disputed property for storage to the plaintiff or another person are appropriate in a number of situations.

And fifthly, an interim measure is the suspension of sale of property in the event of a claim for the release of property from arrest. This rule is aimed at protecting the rights of other persons in the execution of the decision of the arbitration court. A civil law dispute filed by other persons related to the ownership of the property subject to foreclosure is considered by the court on a general basis as a claim for the release of property from arrest. These claims can be brought by both owners and owners of property not belonging to the debtor. Defendants are the debtor and the claimant.

Conclusion.

At the end of this paragraph, it should be said about the great importance of interim measures for effective legal proceedings. The institution of interim measures in the arbitration sphere is important for guarantee rights and interests of a claimant in relation to an execution of arbitral award by a defendant.

An unscrupulous party can always take measures to avoid the execution of a decision in favor of the other party. Arbitration, using interim measures, can prevent such situations and ensure effective protection of the rights and interests of the party in whose favor the decision will be made. Recall that, as a general rule, arbitration can issue acts of a coercive nature only in relation to the parties[1] and only in a dispute over which it has exclusive jurisdiction on the merits[2].

The decision to apply interim measures is taken by the arbitral tribunal, but only authorities of the state judicial system have imperative powers to apply them. In cooperation between state courts and arbitration tribunals, including on the issue of interim measures, the principle of facilitating arbitration by the state is manifested.

It can be said that the presence of a legal institution of interim measures in arbitration proceedings is necessary.

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[1] Redfern A., Hunter M., Blackaby N. Law and Practice of International Commercial Arbitration. Sweet&Maxwell. London. 1986. P. 232.

[2] International Commercial Arbitration. Cases, materials and notes on the resolution of international business disputes. // edit. by Reisman M., Craig L., Park W., Paulsson J. New York: Westbury. 1997. P. 754.

Part 3.
Arbitral award.

Chapter 1 - Legal features of arbitral award.

Paragraph 1. Concept and types of arbitral award.

Introduction.

In this chapter, I will consider the topic of an arbitral award. The legal institution of an arbitral award is one of the fundamental in arbitration sphere, since an award is the result and the main goal of the entire procedure of trial, summing it up and being the logical conclusion of arbitration process. An arbitral award is an act of application of law, which is made following the results of proceedings by authorized arbitrators. This award must comply with applicable law, sublegislative law and arbitration agreement.

Indeed, «an arbitral award completes arbitration proceedings and therefore objectifies in itself its entire course, all its features»[1]. It is also true that «effectiveness of protection of violated right depends not only on maximum provision of real enforcement of an arbitration award, but is also achieved due to its quality»[2].

Theoretical issues of an arbitral award.

Arbitral award in the framework of the contractual theory is considered as a new contract, which is concluded by arbitrators who are representatives of the parties. «As a result of the consideration of the case and the issuance of a decision by the arbitral tribunal, the main legal relationship that has become the subject of arbitration proceedings is novated into a new legal relationship, the rights and interests of the parties to which are protected by the state in a simplified manner (enforcement of the arbitral tribunal's decision). The process of arbitration itself only completes a single civil legal relationship»[3].

On the other hand, there is criticism of this concept. «The concept of denying the civil law nature of an arbitral award is also confirmed by the possibility of concluding a settlement agreement by the parties to the arbitration proceedings. The existence of one agreement (arbitration award) approving another agreement (settlement agreement) does not look

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[1] Chupakhin I.M. Arbitration award: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2012.P. 158.
[2] Kalamova Y.B. Execution of an arbitration award as an alternative guarantee for the protection of violated or disputed rights and legitimate interests: Candidate of legal sciences thesis (PhD). Saratov. 2020. P.87.
[3] Lebedev S.N. International trade arbitration. Moscow. 1965. P. 22-23.

entirely appropriate, especially if we take into account the fact that arbitration tribunal may not approve the settlement agreement»[1].

Interesting opinion, that «competence of the arbitration tribunal is limited only to civil law disputes and is formed by the will of the parties. However, the decision of arbitral tribunal does not act as a continuation of the will of the parties, since the arbitral tribunal, in establishing and assessing the circumstances of the case, forming its position, only takes into account the will of the parties, but is not guided by it. By virtue of such a legal structure, legal significance cannot be equated in its consequences with an ordinary civil law transaction»[2].

Within the framework of the procedural theory, the decision of arbitral tribunal is considered as an act containing an authoritative prescription, an act that has the same legal significance as a court decision. According to the proponents of this theory, «an arbitral award is, indisputably, a jurisdictional act»[3]. Unlike a contract, an arbitral award can be reviewed, which confirms that it is a judgment and not a contract.

Followers of the procedural concept point out that «arbitrators, like judges, resolve disputes and establish the validity of the respective allegations of the parties, while adhering to the rules of procedure based on the order of cases in judicial institutions»[4].

The traditional example of implementation of the procedural concept is the United States of America [5].

According to mixed theory, there is a largely similar position that the legal consequences of an arbitral award binding the parties follow from the will of the parties themselves, expressed in the arbitration agreement. But at the same time, the consequences of an arbitral award and its execution are related by them to the field of procedural law..

Some scientists understand the dual nature of an arbitral award as follows. «On the one hand, the acts of arbitration tribunal are the result of contractual relations between the parties and arbitrators; and on the other hand, subject to certain requirements established by the legislation of the country of the place of arbitration, the arbitral award is endowed by legislative acts with the properties inherent in acts of public authority»[6].

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[1] Kurochkin S.A. Theoretical and legal foundations of arbitration proceedings in the Russian Federation: Candidate of legal sciences thesis (PhD). Yekaterinburg 2004. P. 174.
[2] Morozov M.E. Legal nature of legislation governing arbitration proceedings. Novosibirsk: Institute of Philosophy and Law SB RAS. 2008. P. 74.
[3] Tarasov V.N. Arbitration process. Saint-Petersburg. 2002. P. 108.
[4] Kurochkin S.A. Arbitration trial of civil cases in the Russian Federation: theory and practice. Moscow. 2007. P. 58.
[5] Ilizirov V.R. Consideration and resolution of trade disputes by international commercial arbitration in the United States. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 2007. P. 12.
[6] Dubrovina M.A. International commercial arbitration in Switzerland. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 2001. P. 11.

The essence of this theory lies in the recognition by arbitration of the status of a «mixed institute», «containing elements of the contractual order in its genesis and elements of the procedural-legal order in its jurisdictional nature»[1].

Legal properties of arbitral awards.

They are divided into general, inherent in the decisions of both arbitration tribunals and state courts, and special, inherent only in arbitration decisions.

General properties of arbitral awards.

Legality of the arbitral award lies in strict and steady compliance with the norms of substantive law to be applied in the case, with strict observance of the norms of procedural law in accordance with their content and purpose.

In the absence of the rules of law governing the disputed legal relationship, tribunal applies the rules of legislation act governing similar relationships, which is called the analogy of the act. If there are no such norms, tribunal resolves the case on the basis of the general principles and meaning of the legislation, which is called the analogy of law.

In general, the legality of an arbitral award depends on its compliance with the arbitration agreement and the law of the place of arbitration[2].

The validity of an arbitral decision lies in the requirement that the judgments expressed in the decision be in accordance with the circumstances of the case established by the court. As rightly noted «a decision should be recognized as valid and justified when it reflects the facts that are relevant to the case, confirmed by evidence verified by the court that meets the requirements for their relevance and admissibility, or well-known circumstances that do not need to be proven, and also when it contains exhaustive conclusions of the court, arising from established facts»[2].

At the same time, both the court and the arbitral tribunal should not be limited to only listing the evidence in their decision, which confirms certain circumstances relevant to the case, but must state them in detail and convincingly motivate their conclusion about this in the decision.

Judicial and arbitral decision must also satisfy the requirement of completeness, be exhaustive. This requirement is one of the essential properties for arbitral awards. This means

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[1] Lunts L.A., Maryshev N.I. Course of international private law. Volume 3. International civil process. Moscow: Legal Literature. 1976. P. 218-219.

[2] International Arbitration: a handbook. Third edition // Capper Philipp. Lowels. London, Singapore. 2004. P. 117.

[2] Resolution of the Plenum of the Supreme Court of the Russian Federation "On the Judgment" of December 19, 2003 No. 23 (as amended by the Resolution of the Plenum of June 23, 2015 No. 25). // http://www.consultant.ru

that arbitration, by means of an arbitral award, must give a comprehensive and complete answer to all the requirements and objections of the parties that were considered by the tribunal. That is, the decision must state what the tribunal ruled on each claim, counterclaim, claim of a third party.

The sign of unconditionality, which a judicial and arbitral decision must meet, means that the effect of a judicial decision cannot be made dependent on the occurrence or non-occurrence of any conditions. This means that the decision must be final.. The sign of unconditionality is closely related to the sign of certainty, which means that the decision cannot establish an alternative right of the party or an alternative right to choose the order of execution of the decision. The decision must confirm one specific subjective right or legal obligation and exclude the possibility of choosing the method and order of execution.

This requirement of certainty excludes the possibility of establishing alternative solutions. However, it allows for optional solutions. Facultative awards are arbitral awards by virtue of which the defendant is obliged to take certain actions, but if this is not possible, he is obliged to take another action in return[1].

I also point out such a property of a judicial and arbitral decision as its enforceability. Enforceability is the fundamental ability of the parties to execute the decision, both voluntarily and involuntarily.

Enforceability of arbitral awards can be characterized, as «compliance of the possibility of implementing the provisions of the arbitration award with the obligation of voluntary execution provided for by law and evidence of the absence of legal grounds for the arbitration parties to apply to the procedure for the enforcement of the award»[2]. Also note that «legal enforceability of an arbitration award is not identical with the enforcement force that a decision of the competent court on issuing a writ of execution has»[3].

Special properties of arbitral awards.

It should be noted that the arbitration award is characterized by features that distinguish it from the decisions of state courts. For example, «for the decision of arbitral tribunal, its verification by a state court in the manner prescribed by law is required, only on the basis of the results of such verification can a writ of execution be issued»[4]. But I need to correct this statement. The state court cannot review the arbitral award on the merits, but only

[1] Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P. 11.
[2] Kalamova Y.B. Execution of an arbitration award as an alternative guarantee for the protection of violated or disputed rights and legitimate interests: Candidate of legal sciences thesis (PhD). Saratov. 2020. P. 13.
[3] Nestoliy V.G. Remove from the jurisdiction of arbitration tribunals (commercial arbitration) disputes on rights to real estate. // Arbitration and civil procedure. 2015. No. 2. P. 34.
[4] Dmitrieva G.K. International private law. Moscow. 2004. P. 653.

assesses its procedural properties. In addition, there is a presumption of voluntary enforcement of the arbitral award by the parties to the dispute. If the parties, by their will, initiated this proceedings. So, in most cases, the assistance of a state court is not necessary for the enforcement of an arbitration award.

It is possible to single out the property of the exclusivity of the arbitral award. This property is understood as the inadmissibility of initiating proceedings and resolving a case by a court on a second filed claim, the subject of which is identical with the original claim, the dispute on which was considered by an arbitration court and an arbitral award was made.

The irrefutability of an arbitral award means the impossibility of the courts to review an arbitral award that has entered into legal force on the merits. Note that «the currently existing procedure for contesting decisions of arbitration tribunals has nothing to do with checking for legality and validity, and given the absence of higher instances in the system of arbitration tribunals, as well as the absence of the system of arbitration tribunals itself, the property of irrefutability becomes inherent in the arbitral award from the moment its adoption»[1].

Note that the property of the finality of the arbitral award correlates with the above property. In the legal literature, some authors talk about the finality of an arbitral award[2]. «The decision made by the arbitral tribunal cannot be canceled either by the arbitration panel itself (due to the termination of the powers of arbitrators), or by other persons, since they cannot have such powers»[3].

The above position is debatable to some extent. «In the current legislation, it is possible to challenge and even cancel the arbitration award on certain grounds. It is also possible to appeal the decision of state court on the issuance of a writ of execution against the decision of arbitration tribunal»[4]. Undoubtedly, «the number of grounds for challenging arbitration decisions is much less than in relation to decisions of state courts, but, nevertheless, the finality of the decision of arbitration courts is very relative»[5].

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[1] Chupakhin I.M. Arbitration award: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2012.P. 142.
[2] Niboyet J. P. Traité de droit international privé français.Tome VI. Paris, 1950. P. 137.
[3] Morozov M.E. The property of the finality of the decision of the arbitral tribunal. // Journal of the Arbitration Court. No. 2/3. 2016. P. 175.
[4] Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P.22.
[5] Gavrilenko V.A. Arbitration (Manual). Veliky Novgorod. 2007. P.150.

Content of arbitral awards.

Arbitration award must be made in writing and signed by the sole arbitrator or arbitrators (Article 823 of the Italian Code, Article 31 of the Swedish Act, Article 34 of the Russian Act 2015).

«The decision of an arbitral tribunal must be in writing, which is a general rule and is certainly not rebutted in our and other European jurisdictions»[1].

But the arbitral award must also include other elements that make it optimal in terms of resisting attempts by the party against whom it is made to have it set aside or efforts to frustrate the enforcement of the award in any country where the party against which it is awarded it has been taken out, there is property. Therefore, it is important that the arbitrators ensure that the award complies with the formal requirements of the place where it was made, such as the legal reasons for the decision, the location and date of the award, and the signatures of all arbitrators.

Requirements for an award under national law[2] and regulations of arbitration institutions[3], concern, first of all, its form and content. Additional requirements may be provided by agreement of the parties. Note that the laws of a number of states do not contain detailed requirements for an arbitral award[4], obviously delegating this issue to the regulations of arbitration institutions. But, the regulations of not all arbitration institutions specify in detail the requirements for arbitral awards[5], what should be considered a gap in regulation.

Consider briefly the constituent elements of an arbitral award. I will quote from my earlier works.

«Note that the award of arbitration tribunal must indicate:

1) Date of its adoption, the composition of the arbitral tribunal, the place and time for the consideration of the dispute;

2) Names of the parties to the dispute, the names and positions of their representatives, indicating their powers;

3) Essence of the dispute, statements and explanations of the persons participating in the consideration of the dispute;

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[1] Arbitrato: profili di diritto sostanziale e di diritto processuale. // edit by Alpa G., Vigoriti V. Torino: UTET Giuridica. 2013. P. 295.

[2] For example Article 823 of the Italian Code, Article 34 of the Russian Act 2015, Article 34 of the Lithuanian Act.

[3] For example Article 33 of the CAM Arbitration Rules, Article 37 of the ICAC Arbitration Rules.

[4] For example the Swedish Act, the Norwegian Act.

[5] For example Article 42 of the SCC Arbitration Rules, Article 32 of the ICC Arbitration Rules.

4) Circumstances of the case established by the tribunal, the evidence on the basis of which the decision was made, the legislation by which the court was guided in making the decision;

5) Distribution of fees and other expenses related to the consideration of the case;

6) Terms and procedure for the execution of this award;

7) Legal reasoning of the award, namely a consistent, clear and understandable statement of the reasons for the decision of the arbitration should be the main goal of the arbitrators»[1].

Italian legislation provides for the following constituent parts of an arbitral award (Article 823 of the Italian Code), which largely coincide with the previous list, such as: 1) names of the arbitrators; 2) indication of the location of arbitration tribunal; 3) names of the parties; 4) indication of the arbitration agreement and requirements of the parties; 5) brief indication of reasons for the dispute; 6) content of the arbitral trial; 7) signatures of the arbitrators; 8) date of signing.

If to compare these requirements with the requirements for decisions of state courts (Article 132 of the Italian Code), there are some differences. «Lacks the title "Italian Republic", the indication of defenders and the legal reasoning of court decision»[2].

The motives for which the arbitrators came to a certain decision are no less important than the actual conclusions. This is due to the fact that, firstly, the arbitration rules provide for a statement of reasons as a procedural requirement for giving effect to an award; secondly, the statement of motives forces the arbitrators to accurately formulate their thoughts for subsequent correct conclusions.

The presentation of the parties' arguments must be exhaustive and carefully worded. It is not advisable to limit yourself to simply reiterating the arguments presented by the parties in a written exchange of views, as they can be duplicated and become vague. A thorough analysis of all materials of the case is required.

Resolutive part of the arbitral award, where the conclusions regarding the claims and objections to them are expressed in the form of decisions on the implementation of payment or other actions, refusals on the grounds of the merits of the case or statements of a declarative nature in relation to controversial issues, is undoubtedly the main goal of arbitration, provides the possibility of enforcement arbitral award.

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[1] Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P.12-13.
[2] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 173.

A concise and consistent presentation in the award of the most significant points of arbitration proceedings greatly facilitates the familiarization of the relevant court or executive body with the case and helps in assessing controversial issues.

The practice of confirming the consent of the parties or the decisions of the arbitrators with respect to such procedural issues as the formation of the arbitral tribunal, the absence of grounds for challenging arbitrators, the place of the arbitration, the language of the arbitration, the applicable law, etc., also deserves a positive assessment. This is significant, even if in the course of there were no disputes in relation to these matters.

Types of arbitral awards. Final and non-final award.

The arbitral award is often referred to as final in the sense that it ends the consideration of the dispute. In principle, any award is final in the sense that it is binding on the parties.

However, the established terminology only refers to the final award made at the end of the arbitral proceedings on the merits of the dispute and relating to the issues at issue. Such an award is not only final, but also the last in the case.

Along with the final arbitration award, arbitrators often make other decisions. «Arbitrators can make interim, preliminary or partial awards»[1].

For example, preliminary decisions, most often rendered on issues of competence of the arbitral tribunal, as well as on the issue of determining the applicable law. Preliminary decisions may also be taken when separating the issue of a person's liability from the issue of the amount to be reimbursed. Along with them, there may be intermediate or partial decisions that resolve only some of the stated claims, for example, awarding a certain amount or thing in respect of which, in the opinion of the arbitrators, the claims of the plaintiff are indisputable, or decisive issues of acceptance interim measures. These decisions can also be referred to as decrees, orders or definitions, but in fact the general term is used award.

Arbitral awards on the merits or final awards should be distinguished from arbitral awards or orders concerning procedural matters such as the organization of the arbitration, the manner and timing of the submission of evidence, etc. Only final arbitral awards are subject to recognition and enforcement under the New York Convention and other international agreements, and only arbitral awards may be quashed at the place of award (Article 1 of the New-York Convention 1958).

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[1] Comparative Law of International Arbitration: Second edition. // Poudret Jean-Frangois, Besson Sebastien. Sweet & Maxwell Ltd. London. 2007. P. 632.

In some, extremely rare cases, arbitration proceedings end with a declarative award[1]. It defines the rights and obligations of the parties, but not the property consequences of a violation committed by one or both parties. Declarative awards are subject to recognition, but not execution.

The author positively evaluates this type of arbitral award, which has been repeatedly expressed earlier. «The possibility of making a declarative award is an advantage of arbitration proceedings over the state, which does not have such an opportunity. This type of award allows arbitration courts to recognize and fix rights and obligations and establish and consolidate various facts without imposing property penalties on the parties, which is very necessary in resolving some disputes»[2].

But, this type of award is not enshrined in international and national legislation. It is enshrined only in the regulations of some arbitration institutions (Article 26.1 of the LCIA Rules). I believe that there is a need to regulate the procedure for issuing a declarative arbitration award in the current legislation in order to fix this feature of arbitration proceedings in a legal order.

There is also such a type of arbitral award as an additional award, the possibility of making which is provided for by some national laws (Article 37 of the Russian Act 2015, Article 33 of the Canadian Act of 1985) and arbitration rules (Article 48 of the SCC Arbitration Rules, Article 36 of the ICC Arbitration Rules). It is an integral part of the main award and cannot be considered as an independent variety of arbitral awards.

There is another classification of arbitral awards. These decisions are divided into: recognition decisions, conferment decisions and transformation decisions.

Prejudicial power of arbitration awards.

At the beginning of the consideration of this topic, consider that the problem of the prejudicial force of arbitration awards in modern jurisprudence has not been finally settled. The prejudice is that «the facts and circumstances established by the court decision, established in the decision that has entered into legal force, if it is not canceled by the competent authorities, cannot be questioned and re-examined when considering a dispute between the same parties, on the same subject and basis»[3].

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[1] Kurochkin S.A. Arbitration trial of civil cases in the Russian Federation: theory and practice. Moscow. 2007. P. 209-210.

[2] Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P.15.

[3] Dubrovina M.A. International commercial arbitration in Switzerland. // Abstract of the Candidate of legal sciences thesis (PhD). Moscow. 2001. P. 23

Russian legal science recognizes the possibility of resolving the issue of prejudice for state courts by applying the following rule. «If the court in a new case comes to a conclusion that contradicts the conclusions set out in earlier decisions, the court must suspend the case and apply for a supervisory protest in the previous case. Depending on the decision of the issue in the order of supervision, the court will either have to agree with the previous decision and proceed from the facts established in it, or be based on its own conclusions about these facts»[1].

The issues of prejudice in relation to the arbitration awards can be considered in the following features.

Prejudice of arbitral awards in relation to judicial acts of state courts in state legal proceedings.

Prejudice of judicial acts of state courts in relation to arbitral awards in the arbitration proceedings.

Prejudice of arbitral awards in relation to decisions of the same or another arbitral tribunal.

Consider the prejudice of arbitral awards in state legal proceedings.

There is no consensus in the theory of law on this issue. There are many points of view, sometimes the opposite direction.

For example, «among the acts of public organizations that have pre-judicial significance for the court considering a civil case, include decisions of arbitration tribunals»[2]. «Acts of arbitration tribunals, being jurisdictional acts, have the property of prejudice»[3].

There is another opinion. «The only conclusion that can be drawn in view of the foregoing is the statement of the absence of a pre-judicial connection between the decisions of arbitration tribunals and acts of state justice. But the legislator's approach looks at least not consistent, since, by giving the parties the opportunity to resolve a fairly wide range of disputes through arbitration, in fact, the correctness of the conclusions of the arbitration tribunal, which the state court could subsequently accept without proof, is in fact questioned in advance»[4].

If to talk about the prejudicial force of arbitral awards, then with regard to the continental legal system, it can be argued that the facts established by the decision of the

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[1] Popov M.A. Theoretical and practical problems of the Russian model of functioning of arbitration tribunals. Candidate of legal sciences thesis (PhD). Saint - Petersburg. 2002. P. 62.

[2] Gromov N. Application of prejudicial acts when considering civil cases by courts on newly discovered circumstances. // Journal Legality. No. 2. 1998. P. 58.

[3] Minakin A. Prejudice in the arbitration process. // Soviet justice. No.1. 1970. P. 17.

[4] Chupakhin I.M. Arbitration award: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2012. P. 148.

arbitral tribunal must be proved again when considering another case in the state court. At the same time, the decision of the arbitral tribunal can play only the role of one of the proofs of these facts.

«At present, an arbitral award is considered as a rebuttable presumption, since it does not bind the state court when considering another case, and the court has the right to evaluate both the same factual circumstances differently and give them a different legal assessment»[1].

Decisions of state courts on the enforcement of decisions of arbitral tribunals does not resolve the issue, since it is not required, when issuing a ruling on the issuance of a writ of execution, to indicate the circumstances investigated in connection with this case, contained in the decision.

The following author's point of view seems to be true. «Only those facts and legal relations that the state court deems necessary to reflect in the ruling on the issuance of a writ of execution for the enforcement of arbitration award or in the ruling on the refusal to satisfy the petition for the annulment of arbitration award will be prejudicial»[2].

Consequently, «in relation to the arbitral award, another type of verification is applied that is not provided for by law, which does not contribute to the stabilization of civil circulation relations, the reduction of conflicts and the acceleration of jurisdictional activities»[3].

Note that in the Anglo-Saxon system of law, and especially in the United States, prejudice and identity of claims are parts of the same procedural institution called prevention. Prejudice falls under the concept of preventing considering the issue.

«The prohibition to review the decision in another process or in another instance is based on the principle of the finality of the judgment (res judicata)»[4]

Interesting opinion, that «collateral estoppel, by contrast, operates like a scalpel, dissecting a lawsuit into its various issues and surgically removing from reconsideration any that have been properly decided in a prior action»[5].

But, pay attention, that institution «Res judicata» applies more to acts of state courts than to arbitral tribunals. In world practice, the prejudicial force for arbitral awards is not established by special legislation on arbitration and general procedural legislation.

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[1] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 567.
[2] Gavrilenko V.A. The property of prejudice of arbitration awards. // Journal Executive law. No.3. 2006. P. 11.
[3] Kurochkin S.A. Theoretical and legal foundations of arbitration proceedings in the Russian Federation: Candidate of legal sciences thesis (PhD). Yekaterinburg 2004.P. 186.
[4] Zagainova S.K. Judicial acts in civil and arbitration process: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2008. P. 372.
[5] Glannon J.W. Civil procedure: examples and explanations. New York: Aspen Law & Business (4th ed. 2001). P. 485.

Next, I will consider the issue of prejudice of decisions of state courts and arbitral awards in arbitration proceedings.

International and national legislation on the arbitration sphere does not establish rules on the prejudice of decisions of state courts for arbitration. «Therefore there is no effect of res judicata from the decision of a national court as far as the international jurisdiction is concerned»[1]. The above statement is also true for arbitral institutions.

Other authors deny the possibility of contesting the facts established by a judicial act of a state court that has entered into legal force within the framework of arbitration proceedings. Otherwise, the principle of legal certainty is violated, as it allows the simultaneous existence of two conflicting jurisdictional acts[2].

«On the issue of prejudice of judicial acts of state courts in relation to arbitral awards, note that the lack of proper legal regulation of the issue under consideration predetermined the emergence of some uncertainty»[3].

Prejudice of arbitration awards in relation to another awards of the same or another arbitration tribunal is also not regulated by legal acts.

The arbitral tribunal independently determines the procedure for considering the dispute in it, in the absence of a special agreement of the parties. Consequently, «if the parties did not provide for the rules of prejudice by their agreement, then the rules of arbitration tribunal should regulate this issue. In the absence of specific rules in this regard, or in the absence of a rule as such, the arbitral tribunal may, at its sole discretion, decide whether to exempt a party from the obligation to prove a certain fact due to the prejudice of another decision»[4].

The foregoing is also true with regard to the prejudicial force of the decision of one arbitral tribunal in relation to proceedings in another or in it within the framework of another proceedings.

With regard to the issues of prejudice, I agree with the following point of view.

«The current state of affairs cannot be considered appropriate, since the lack of proper regulation of the issue under consideration leads to an absurd situation where, in the presence of confirmed facts and their qualification by a state court, the parties to arbitration proceedings are obliged, by virtue of the rules on the distribution of the burden of proof and

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[1] Brownlie I. Principles of public international law. Oxford: Clarendon Press. (6 th. ed.). 2003. P. 50.
[2] Malyushin K.A. Principles of civil executive law: problems of concepts and systems. Moscow. 2011. P. 208 – 213
[3] Chupakhin I.M. Arbitration award: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2012.P. 149.
[4] Popov M.A. Theoretical and practical problems of the Russian model of functioning of arbitration tribunals. Candidate of legal sciences thesis (PhD). Saint - Petersburg. 2002. P. 67.

competitiveness, to prove the facts previously established by the state court, and the arbitral tribunal, in turn, is obliged to examine them, but at the same time, the latter is not entitled to give them an assessment different from the assessment given by the state court in a previously considered case involving the same persons and under the same circumstances. Obviously, this leads to an unjustified increase in the terms of arbitration proceedings and does not pursue any goal other than formal compliance with the requirements of the law»[1].

Fair conclusion about «the presence of both theoretical and applied prerequisites for the normative consolidation of the prejudicial connection of arbitral awards with judicial acts of state courts»[2].

I also agree with the opinion on the equivalence of establishing the truth both in commercial arbitration and in a state court[3].

At the end of this paragraph, indicate that the author considers it appropriate to give an arbitral award the property of prejudice, including in relation to the consideration of cases in state courts of general jurisdiction and state arbitration courts, by improving legislative acts. The foregoing is also true with respect to the prejudice of arbitral awards in arbitration proceedings in another case.

This proposal is justified, since the arbitration tribunals, having considered the dispute, give a qualified and reasonable decision on its merits, which meets the requirements for evidence, and can be used as the latter, both in state and in arbitration proceedings. There is no need to re-prove the circumstances already recognized by the decision of the arbitral tribunal.

The prejudicial nature of the decisions of state courts that have entered into legal force is also appropriate in arbitration proceedings. The parties are thereby relieved from the obligation to prove previously proven and established circumstances and facts.

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[1] Chupakhin I.M. Arbitration award: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2012. P. 151.
[2] Chupakhin I.M. Arbitration award: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2012. P. 27.
[3] Kostin A.A. Problem of the prejudicial force of awards of international commercial arbitrations in legislation of the Russian Federation. // Actual problems of Russian law. No. 3. 2014. P. 495.

Paragraph 2. Procedure for arbitral award.

Introduction.

Consider award-making procedure by arbitration tribunals. The decision is made at a closed meeting by a majority vote of the arbitral panel. If the decision cannot be reached by a majority of votes, it is taken by the chairman of the arbitral panel[1]. After the decision is made, its operative part is announced to the parties orally, and in case of their absence, it can be communicated to them in writing.

If the dispute is resolved by one arbitrator, then he makes an award independently. If three arbitrators are involved in a case, different approaches are possible. Of course, a unanimous award is ideal.

In a situation where one of the arbitrators refuses to participate in the discussion and decision-making or is unable to participate, the remaining arbitrators usually continue to discuss the case and may make an award with a "truncated" composition. This possibility is provided for by the regulations of some arbitration institutions. (Clause 5, Article 42 of the SCC Arbitration Rules), but other regulations are silent on this issue (ICC Arbitration Rules, ICAC Arbitration Rules).

Almost all of the national and model laws I have reviewed, as well as the regulations of arbitral institutions, contain a requirement for a written form of an arbitral award.

It should be noted that international and national legislation considered in this paper, as well as regulations of arbitration tribunals, do not establish deadlines for making decisions by arbitrators. It is clear that the meeting of arbitrators in practice fits within a reasonable time. But, theoretically, arbitrators have the right to deliberate for a long time. The fair opinion that «the upper limit of a period for making a reasoned arbitration award, of course, should be fixed by law»[2].

Dissenting opinions of arbitrators.

If the arbitrator does not agree with the award, he may state in writing his dissenting opinion, which is attached to the award. Consider this issue in more detail, since not all national laws and regulations of arbitration institutions contain an indication of a dissenting opinion of arbitrators.

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[1] Article 32 of the ICC Arbitration Rules, Article 41 of the SCC Arbitration Rules, Article 36 of the ICAC Arbitration Rules.

[2] Kalamova Y.B. Execution of an arbitration award as an alternative guarantee for the protection of violated or disputed rights and legitimate interests: Candidate of legal sciences thesis (PhD). Saratov. 2020. P. 82.

Dissenting opinion or separate opinion of an arbitrator is a statement of an arbitrator's opinion other than that of the majority. Arbitrator may not agree with the decision as a whole or with some of its individual parts. The dissenting opinion may relate to the merits of the case or relate to the procedural rulings of the majority of the arbitrators. A type of dissenting opinion is a concurring opinion — a written statement of the position of an arbitrator who agrees with the essence of the award or ruling of the majority of the arbitrators, but sets out reasons different from or additional to those adopted by the majority.

A certain difficulty in the arbitration sphere may be the question of the admissibility of dissenting opinions of arbitrators. Quite often, the arbitral tribunal cannot reach a unanimous award. In other cases, the arbitrator may support the decision but disagree with its reasoning. In such situations, he may wish to make his opinion known not only to his colleagues on the arbitral tribunal, but also to the parties and the arbitral institution.

«Traditionally, in most countries of the continental system of law, dissenting opinions of judges or arbitrators are in principle not encouraged, as contrary to the collegiate principle of the court, and therefore are kept secret. Accordingly, great importance is attached to the secrecy of court deliberations. In common law countries, by contrast, dissenting opinions are commonplace. They are announced and published along with the decisions on the case, often acting as a tool for the development of judicial practice. Just as often there are "concurring" opinions in which the judge or arbitrator agrees with the decision, but not with its motivation»[1].

Modern practice of commercial arbitration in the world generally allows dissenting opinions of arbitrators.

The following is true. «Commercial arbitration in the matter of dissenting opinions is closer to the Anglo-Saxon than to the Continental tradition. Dissenting opinions appear in many cases, are attached to decisions and are not considered as an obstacle to their execution. However, a dissenting opinion is not part of the award, even if it is attached to the latter and its content becomes known to the parties to the dispute»[2].

The ability of an arbitrator to go against the opinion of fellow arbitrators, who are usually reputable and experienced specialists, is a significant indicator of his professional independence and viability.

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[1] Lebedev S.N. International commercial arbitration: Competence of arbitrators and agreement of the parties. Moscow. 1988. P. 193.

[2] Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P. 18.

But, in some situations, a dissenting opinion may be an attempt by the arbitrator to "save face" in front of the party who appointed him, or be considered by him as an opportunity to state his views on a theoretical problem.

It is also possible that a dissenting opinion is formulated in such a way as to indicate to the losing party the weak points of an award. This information may help to set aside the award or prevent its enforcement. Or it is possible to indicate imaginary shortcomings of the arbitral award, which objectively do not exist. This can also help the unscrupulous party to challenge the arbitral award, or prevent its execution. That is, a dissenting opinion may be a sign of dishonesty of an arbitrator who tacitly supports one of the parties to the dispute. This kind of arbitrators are wittily called arbitrators - partisans [1].

I will describe this problem in more detail in the fourth part of this research.

However, the existence of a dissenting opinion in itself is unlikely to serve as grounds for setting aside an award, unless the applicable law, the arbitration rules or the agreement of the parties requires a unanimous award. However, an indication of a procedural error may form the basis of an act of a state court to set aside an arbitration award. For example, this was the case in court proceedings challenging the decision of the ICAC in case No. 382/1998. The Judicial Collegium for Civil Cases of the Supreme Court took into account the arguments set forth mainly in the dissenting opinion of the arbitrator[2].

I also note the positive value of the dissenting opinion of the arbitrator. The possibility of issuing a qualitatively motivated dissenting opinion of one of the arbitrators makes other arbitrators more responsible in the performance of their professional duties. A dissenting opinion may also point to procedural errors in the arbitral award, which it is preferable not to allow.

A number of regulations of arbitration institutions expressly allow dissenting opinions of arbitrators. For example, Clause 3, Article 36 of the ICAC Arbitration Rules provides for an arbitrator who disagrees with an award, a real opportunity to state in writing his dissenting opinion, which is then attached to the award.

Other regulations do not contain provisions for a dissenting opinion of arbitrators (ICC Arbitration Rules, SCC Arbitration Rules).

In national laws, the provision on the dissenting opinion of arbitrators and the right to append it to the decision is contained only in the Federal Law of December 29, 2015 No.

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[1] Kalish Y.V. To the discussion on the choice of arbitrator in international commercial arbitration. 28 March 2019.// https://journal.arbitration.ru/ru/analytics/k-diskussii-o-vybore-arbitra-v-mezhdunarodnom-kommercheskom-arbitrazhe

[2] Ruling of the Supreme Court of the Russian Federation of July 19, 2002. No. 5-Г02-81. // http://www.consultant.ru

382-FZ “On Arbitration (Arbitration Proceedings) in the Russian Federation” (Clause 1, Article 34). Other legal acts considered in this thesis, including the UNCITRAL Model Law 2010, do not contain provisions for a dissenting opinion.

But, need to remember the well-known principle - what is not prohibited by law is allowed. Therefore, there is room for the arbitrator to issue a dissenting opinion. The procedural issues of this action, in the absence of regulation, are determined by the arbitration panel.

Sending an arbitral award.

Consider the issue of sending an arbitral award. Within the time limit set by the arbitral panel, a reasoned decision shall be sent to the parties.

This period differs in legal acts and regulations of arbitration institutions, but, as a rule, does not exceed 30 days[1].

General rule, that at the end of oral hearing arbitral panel can decide to send for parties an arbitral award without an oral announcement of its operative part.

After the arbitral award has been made, copies of it shall be handed over to the parties. This may be done by the arbitrators themselves in ad hoc arbitrations (Clause 6, Article 34 of the UNCITRAL Arbitration Rules 2010) or an institutional arbitration institution (Clause 4, Article 42 of the SCC Arbitration Rules). Also, copies of an arbitral award may be transmitted by the arbitral institution, for example, the secretariat under whose auspices the arbitration took place (Clause 1, Article 35 of the ICC Arbitration Rules).

As a general rule, the parties receive copies of the award in their hands only after they have paid all the amounts of arbitration costs and fees specified in the award.

Correction of arbitral award defects.

In the case when the arbitration award contains errors, typos, misprints, they can and often should be corrected. Correction of the decision can be made both at the request of one of the parties, necessarily with a notification of the other party, and at the initiative of the arbitral tribunal itself. The parties may themselves set a period during which any of the parties, upon receipt of the decision, may ask the arbitration to do so.

There are legislative norms in this regard. For example Article 826 of the Italian Code, Article 37 of the Russian Act 2015, Article 33 of the Russian ICA Act, Article 32 of the Swedish Act. These laws, apart from the Italian Code, largely repeat the provisions of the Article 33 of the UNCITRAL Model Law 1985.

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[1] Article 824 of the Italian Code sets a period of 10 days.

The general rules provide, unless otherwise agreed by the parties, a 30-day period[1] from the date of receipt of the arbitral award for filing a request of the party to make corrections to it and the same period, but counted from the date of the award, for its correction at the initiative of the arbitral tribunal itself. After that, if the arbitral tribunal considers the request justified, it is obliged to make the appropriate corrections no later than 30 days[2] after receiving this request. The arbitration itself can correct these errors without the request of the parties. In this case, this must be done no later than 30 days after the arbitration decision.

Mandatory norms concerning the terms for correcting the award may lead to the fact that if the parties miss the specified deadlines, it will be impossible to correct the award In this regard, even at the stage of the proceedings, the parties themselves need to take care to prevent errors, misprints and typographical errors. To this end, it is recommended that the arbitration be provided with written explanations containing the necessary data that can form the basis of an award.

According to generally accepted rules, either party, upon notice to the other party, may request the arbitral tribunal to interpret any particular paragraph or part of the award. The deadline for initiating the interpretation of the award is 30 days after the receipt of the award, unless otherwise agreed by the parties[3].

The interpretation of any paragraph or part of the award is made by the arbitrators at the request of one of the parties, if such a possibility is provided for by agreement of the parties. The interpretation given by the arbitrators becomes part of the award.

Rules for the correction and interpretation of awards are provided for by UNCITRAL Model Law 1985 and national laws adopted on its basis.

Unless the parties agree otherwise, either party, upon notifying the other party, may, within 30 days[4] upon receipt of the award, ask the arbitral tribunal to issue an additional award on claims that were made during the arbitration but were not reflected in the award. If the arbitral tribunal considers the request to be justified, it must issue an additional award within 60 days of receipt of the request.

If necessary, the arbitral tribunal may extend the period established by the Law, during which it must correct errors, give interpretations or make an additional award.

Correction, interpretation of an arbitral award or the issuance of an additional arbitral award must be carried out taking into account the requirements for the form and content of an

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[1] Article 826 of the Italian Code sets a period of 1 year.

[2] Article 826 of the Italian Code sets a period of 60 days.

[3] The Italian Code does not contain provisions on the interpretation of the arbitral award.

[4] Rule is established by the UNCITRAL Model Law 1985 and national laws adopted on its basis. The Italian Code does not contain provisions for additional arbitral awards.

arbitral award, provided for by the current legislation. For example Article 31 of the UNCITRAL Model Law 1985, Article 34 of the Russian Act 2015, Article 823 of the Italian Code.

In the ICC Arbitration Rules there is an option of arbitral award control (Article 34). Verification of an arbitral award may be carried out by the court at the place where the award was made, by the arbitral institution itself or by another body that has the right to make changes to the award regarding its form, as well as to draw the attention of the arbitral tribunal to issues related to the content of the award. Until the award is approved by the arbitral institution, it cannot be signed by the arbitrators and communicated to the parties. Note that the regulations of other leading arbitration institutions do not contain this option.

The foregoing shows that the procedure for correcting the shortcomings of arbitration deprivation exists and successfully functions in domestic and foreign arbitration institutions. Of course, this procedure is necessary, since any arbitral tribunal may make mistakes in its own decision or provisions that need interpretation. Consequently, the correction and interpretation of arbitration awards correct their shortcomings and contribute to the most complete protection of the rights and interests of the parties in the arbitration trial.

Consider the issue of ***storage of cases*** *dealt with by arbitration tribunals.* Cases considered in a permanent arbitration tribunal are stored in the archives of this arbitration tribunal[1].

The case considered by ad hoc arbitration tribunal is submitted by it for storage to the state court of the region in whose territory the decision was made by this ad hoc arbitration tribunal (Clause 1, Article 39 of the Russian Act 2015) or to the Municipality in whose territory the dispute was settled (Article 35 of the Norwegian Act). Note that neither the UNCITRAL Model Law 2010, nor other national laws other than those mentioned above, govern this issue. Apparently, it is understood that the issues of keeping cases and arbitral awards should be regulated by the arbitral institutions themselves or by the arbitration agreement of the parties.

Legality of an arbitral award.

It is clear that an award of an arbitral tribunal must be legal. «The legality of a decision is the state or quality of a court decision, characterized by the correct application by

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[1] According to Article 39 of the Russian Act 2015 materials must be kept for five years from the date the arbitration trial is terminated.

the court, when considering a particular case, of substantive law, procedural and judicial norms»[1].

It can be said that a court decision as an arbitral award creates a presumption of the validity of the facts that it has established. I believe that an award, if it has not been set aside or denied enforcement, has the same characteristics.

There is no practice in global arbitration for confirming the arbitral award by the state court, except for the case when the defendant does not execute the arbitral award on a voluntary basis. Then the state court issues a writ of execution against an arbitral award, in parallel exercising control over the legality of this award.

Based on the foregoing, it should be recognized that the current legislation, both international and national, gives the arbitration award a force comparable to the force of the court decision, in particular, that the legal relations established by the arbitration award are recognized as valid by other subjects of law, in addition to persons involved in the case.

The arbitral award tribunal that has entered into legal force is binding on the parties and other persons participating in the case. It can be called «a dynamic element of the legal force of an award»[2] any court, including arbitration tribunal. The obligatory property also includes the obligation to voluntarily execute the arbitration award. «The arbitral award, in terms of the meaning and legal content of the arbitration agreement, is presumed to be executed by the parties voluntarily»[3].

When entry into force, tan arbitral award acquires properties of irrefutability, which means the impossibility for an arbitration tribunal and a state court to review an arbitral award that has entered into legal force and the impossibility for parties to initiate this review.

In other words, the recognition and enforcement of international arbitration awards does not mean at all that these awards come into force only from the moment they are recognized and enforced by a judicial act of some state court. These decisions come into force immediately from the moment of their adoption and must, as a rule, be executed by the parties to the dispute voluntarily.

Limits of the legality of an arbitration award.

Continuing the topic, consider the issue of the validity of arbitration decisions. I agree with the opinion that «within its objective limits, the legal force of the decision acts on certain

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[1] Shcheglov V.N. Legitimacy and validity of the judgment. // Abstract of the Candidate of legal sciences thesis (PhD). Tomsk. 1955. P. 5.
[2] Maslennikova N.I. The legal force of a court decision in Soviet civil procedural law. // Abstract of the Candidate of legal sciences thesis (PhD). Sverdlovsk. 1975.
[3] Anufrieva L.P. International private law. In 3 volumes. Volume 3: Cross-border bankruptcies. International commercial arbitration. International civil process. Moscow. 2001. P. 146.

objects. Such objects of the legality of the decision are: firstly, the conclusions of the court on the presence or absence of legal facts in reality, the basis for the disputed legal relationship of the parties; secondly, the court's conclusions about the actual subjective rights and obligations of the parties; thirdly, the order of the court arising from these conclusions to the defendant in the claim for the award of the performance of his obligations»[1]. The above statement applies equally to the arbitral award[2].

The subjective limits of the legal force of arbitration award are determined by the circle of persons who expressed their consent to the jurisdiction of the arbitration tribunal and were involved in the case. «The legal consequences of the arbitral award, binding the parties, follow from the will of the parties themselves, expressed in the arbitration agreement»[3]. n jurisprudence, the position was expressed that «by its nature, the arbitration tribunal cannot make decisions affecting other subjects, in addition to persons bound by the arbitration agreement»[4].

Thus, there is no big difference on this basis between arbitration and state jusice, and «subjective limits of the legal force of an arbitration decision, first of all, are determined by the basis of participation in the case, and only then - by the criterion of concluding an arbitration agreement»[5].

Conclude this paragraph with the following statement, which is worth agreeing with. «The legal force of an arbitral award is another phenomenon of arbitration that distinguishes it from all other alternative methods of dispute resolution. It allows you to finally resolve the dispute that has arisen between the participants in civil legal relations, introducing certainty into the relations existing between them. Legal force ensures the stability of the adopted act, as well as its effect as an act of application of law. This explains its great importance»[6].

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[1] Semenov V.M. Mutual obligation of decisions and sentences in the Soviet civil process. // Collection of scientific works. Sverdlovsk. 1964. P. 15.
[2] Gavrilenko V.A. On the issue of the legal force of arbitration awards. // Journal Executive Law. No. 1. 2008.
[3] Lebedev S.N. International trade arbitration. Moscow. 1965. P.21.
[4] Popov M.A. Theoretical and practical problems of the Russian model of functioning of arbitration tribunals. Candidate of legal sciences thesis (PhD). Saint - Petersburg. 2002.P. 16.
[5] Kurochkin S.A. Theoretical and legal foundations of arbitration proceedings in the Russian Federation: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2004. P. 188.
[6] Chupakhin I.M. Arbitration award: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2012. P. 159.

Chapter 2 - Challenging of arbitral award.

Paragraph 1. Procedure for challenging of arbitral award.

Introduction.

It can be argued that the parties to the arbitration proceedings have the right to challenge the arbitral award, which is indicated in the works of legal scientists of Italy[1], Russia[2] and other European[3], Middle Eastern[4] and Far Eastern states[5].

It should be noted that the legislator does not use the term "appeal" against the arbitration award. The difference in terms also reflects a big difference in the institutions of challenging and appealing. An appeal involves going to a higher court and, accordingly, a new consideration of the case (appeal), or a review of the decision in terms of legality and validity (cassation).

But, the general concept of legislation on arbitration and its principles states that state courts are not higher courts in relation to arbitration tribunals and, therefore, it is not entitled to carry out an appeal and cassation review of decisions taken by the arbitration tribunal. State courts exercise only a control function in relation to decisions made by arbitration tribunals, however, the performance of this function is strictly limited by law and should not go beyond the verification of the procedure for the activities of arbitration tribunals and only on the most important procedural issues. State courts have no right to intrude into the essence of decisions taken by arbitration tribunals. That is why the legislator grants the right to the participants in the arbitration proceedings to challenge the arbitration award from the point of view of non-compliance with the basic procedural rules, but not from the standpoint of incorrect resolution of the case.

State courts cannot be a higher authority in relation to arbitration tribunals, since they are not entitled to revise the decision on the merits, limiting themselves to checking the formalities[6]. I agree that «the arbitral tribunal decides in good faith, therefore supervision by a state court is not allowed»[7].

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[1] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 211.
[2] Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P. 77.
[3] Storme M., Demeulenaere B. International commercial arbitration in Belgium. A handbook. Kluwer Law and Taxation Publishers. Deventer. The Netherlands. 1989. P. 82.
[4] Practical Guide to Litigation and Arbitration in the United Arab Emirates. // edit. by Essam Al Tamimi. Kluwer Law International. 2003. P. 160.
[5] Tao J. Arbitration law and practice in China. Kluwer Law International. The Netherlands. 2008. P. 164.
[6] Golmsten A.H. Textbook of Russian civil proceedings. Saint-Petersburg. 1907. P. 147.
[7] Fursov D.A. Arbitration tribunals: the limits of legitimacy of their decisions (Manual). Moscow: Statute. 2009. P. 30.

It is true that challenging the arbitration awards differs significantly from the revision of judicial acts for legality and validity.

«Challenging an arbitral award, although it is an ordinary procedure, but the cancellation of the said decision is possible only in connection with such violations, the presence of which would make it possible to overcome res judicata in state legal proceedings»[1].

It can be argued that, the possibility of applying to the state court with an application for the annulment of the arbitration award as a means of challenging it occurs in fact in the same procedure as the recognition and enforcement of the arbitration award, when the state court does not act as a second instance in relation to the arbitration tribunal, but only checks the arbitration award within the limits limited by lawHowever, it is possible to consider the issue of challenging the arbitral award, as «those related to the different appeal of the judgment and of the award that has decided about the validity of the clause»[2].

Legal regulation.

Consider the legal regulation of the issues of contesting an arbitral award.

According to Articles 827 and 828 of the Italian Code it is possible to file an application to challenge the arbitral award with the appellate court of the district where the arbitration took place within ninety days after notification of the party of the arbitral award. In addition, a revision (revocazione) of the arbitral award is possible on the following grounds. Firstly, the decision was the result of fraudulent actions, or if the court verdict revealed signs of fraud in the actions of one of the arbitrators. Secondly, if the decision was based on falsified evidence, recognized as such by a court decision. Thirdly, if after the decision was made, previously lost documents were found that are crucial for resolving the dispute[3].

According to the UNCITRAL Model Law 2010 (Article 34) and the national laws of many countries (Article 34 of the Swedish Act, Article 40 of the Russian Act 2015, Article 34 of the Russian ICA Act 1993; Article 50 of the Lithuanian Act, Article 41 of the Finnish Act; Article 34 of the Canadian Act of 1985) the arbitral award may be challenged before the state court of the country in which the arbitration took place. The state court with which an application for setting aside an arbitral award is filed may, if it considers it appropriate and if one of the parties so requests, stay the proceedings on the matter for a specified period in

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[1] Chupakhin I.M. Arbitration award: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2012. P. 111.

[2] Zucconi E., Fonseca G., Rasia C. Arbitrator versus Judge. // Czech (& Central European) Yearbook of Arbitration. Interaction of arbitration and courts. Volume 5. edit by Belohlavek A.J., Rozehnalova N. Juris. 2015. P. 307.

[3] Kurochkin S.A. Arbitration in Italy. // Journal Arbitration Tribunal. No. 3 (81). 2012. P. 150.

order to enable the arbitral tribunal to reopen the arbitration trial or take other action, which, in the opinion of the arbitral tribunal, will eliminate the grounds for setting aside the arbitral award.

It should be noted that applications for challenging of an arbitral award are considered by the competent state courts (Article 34 of the Russian ICA Act 1993, Article 41 of the Finnish Act), or by courts of appeal (Article 828 of the Italian Code, Article 43 of the Swedish Act).

In the Republic of Lithuania, these applications are submitted to the Court of Appeal of Lithuania (Clause 1, Article 50 of the Lithuanian Act).

The competent state court is considered to be the court of first instance, which has territorial jurisdiction over the place of arbitration (Clause 1. Article 50 of the Finnish Act), or the court in the territory of whose jurisdiction an arbitral institution is located and (or) the dispute is directly resolved (Article 6 of the Canadian Act of 1985).

In the Russian Federation, such petitions are considered both by state courts of general jurisdiction and by state arbitration courts at the location of the debtor. In the Russian judicial system, the system of courts of state economic justice is called state arbitration courts. It seems that the competent state court in this situation can be both a state court of general jurisdiction and a state arbitration court. The party to dispute submitting the above petition has right to choose the type of state court.

The question of which state court is competent to consider petitions to challenge an arbitral award or to recognize and enforce an arbitral award is currently ambiguous and is decided differently in each state.

Obviously, the process in state courts, as a rule, is open. Therefore, at the stage of their consideration of the said applications, the efforts of the parties and the arbitral tribunal to maintain the confidentiality of information relating to the dispute between the parties may be largely in vain.

Grounds for challenging arbitral awards.

Grounds for contesting arbitral awards arise in two cases. Firstly, various violations related to the arbitration agreement. In this case, the party challenging an arbitral award must itself submit evidence to the state court on a basis of which an award can be canceled. Secondly, violations related to arbitrability of dispute or competence of an arbitral panel. In this case, the party challenging an arbitral award may not provide any evidence.

Review of the arbitral tribunal on the indicated grounds is both the right and at the same time the duty of the competent state court, that is, the duty ex officio[1].

There is an example of the above ex officio in the form of a decision of the Federal Arbitration Court of the Moscow District. This document, at the level of the cassation instance, indicates the right of the state arbitration court to note the decision of the arbitration tribunal if it is established that the dispute considered by the arbitration tribunal cannot be the subject of arbitration in accordance with the current legislation. Or also, if the decision of the arbitral tribunal violates the fundamental principles of national law, regardless of whether there is a reference to this circumstance in the application of the party to the state court[2].

This issue will be discussed in more detail in the next chapter.

An interesting experience of the American Arbitration Association, which put into effect on November 1, 2013 Optional Appellate Arbitration Rules[3] (hereinafter AAA Appelate Rules). Under these Rules, parties of arbitration proceedings may file an appeal against an award on the basis that it is based on an error of character that is material and of a prejudicial nature, or on a manifest misstatement of the facts of the case. At the same time, as follows from the name AAA Appelate Rules, the parties have the right to decide on their application.

New claim to the arbitration tribunal.

The parties, submitting the case for resolution by arbitration tribunal, express their confidence in the arbitration tribunal in the arbitration agreement, establishing in the agreement that the future arbitration award cannot be canceled, the parties trust the arbitration tribunal to an even greater extent, since they exclude an additional possibility of control by the state court for the activities of arbitration tribunal.

The cancellation of arbitration award by the competent state court does not entail the automatic referral of the case to the arbitration tribunal for a new consideration. In this case, a new arbitration proceeding is possible on the basis of a new application of the interested party to an arbitration tribunal. Such an appeal is possible on the basis of an arbitration agreement that binds the parties.

It should be added that both parties have the right to re-apply to the arbitration tribunal in accordance with the arbitration agreement with the requirement to resolve the dispute.

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[1] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 641.

[2] Resolution of the Federal Arbitration Court of the Moscow District of November 6, 2003 in case No. KG-A40 / 8699-03.// http://www.consultant.ru

[3] https://www.adr.org/sites/default/files/AAA-ICDR_Optional_Appellate_Arbitration_Rules.pdf

However, there are exceptions to this rule that are valid in most national legal systems, which boil down to the fact that the interested person is not entitled to initiate the arbitration procedure in in the following situations. Firstly, if the arbitration agreement is invalid and this is established by the competent state court decision. Secondly, if the arbitral award is made on a dispute that is not provided for by the arbitration agreement or does not fall under its conditions and this is established by the competent state court decision. Thirdly, if the dispute is not subject to further consideration in an arbitration tribunal and this is established by the competent state court decision.

After a new claim of the interested person to the arbitration tribunal, arbitration proceedings begin anew.

It seems that the repeated reopening of the case in the arbitration tribunal, after the initial decision was canceled by the state court, is not an obstacle to the fact that the case in the arbitration tribunal was considered in the same composition. But, of course, this can only be done with the appropriate expression of the will of the parties participating in the arbitration.

In the end I indicate, that «if the losing party has well-founded legal objections, the award may be challenged»[1].

[1] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 406.

Paragraph 2. Procedure for cancellation of arbitral award.

Introduction.

The issue of cancellation of arbitral awards is of great importance. In fact, the cancellation of the decision of the arbitration court means the impossibility of its enforcement.

Before analyzing the grounds for the cancellation of arbitral awards provided for by international law and national legal acts, mention the following. As a general rule, «legislators, when formulating the indicated grounds for the cancellation of the arbitration award, actually relies on the principle known since Roman times tantum devolutum quantum appellatum (how many complaints - so many judgments), which is used in the construction of procedural institutions for challenging and canceling judicial acts»[1]. But, state courts can, even in the absence of a petition from a party to a dispute, initiate the issue of annulment of an arbitral award in a situation of violation of the rules of arbitrability of disputes and the public policy of the country.

Analysis of international laws.

At the beginning of this paragraph, examine the provisions of the UN Convention "On the Recognition and Enforcement of Foreign Arbitral Awards" dated June 10, 1958. The Convention establishes a strictly limited list of grounds for refusing recognition and enforcement of foreign arbitral awards. This list is exhaustive and not subject to expansion. The list includes 5 grounds for refusal of recognition and enforcement of the award, which may be invoked by the losing party of the arbitration, and 2 grounds for refusal on the initiative of the competent authorities of the state where recognition and enforcement is sought, due to considerations of public policy.

I will quote in detail the convention itself, since it contains fundamental rules recognized by most countries of the world.

Recognition and enforcement of an arbitral award may be refused at the request of the party against whom it is directed only if that party furnishes to the competent authorities in the place where recognition and enforcement is sought evidence that:

a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

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[1] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 640.

b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made" (Clause 1. Article 5 of the New-York Convention 1958).

Recognition and enforcement of an award may also be refused if the competent authority of the country in which recognition and enforcement is sought finds that:

a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

b) The recognition or enforcement of the award would be contrary to the public policy of that country. (Clause 1. Article 5 of the New-York Convention 1958).

The proviso to Article 5 (Clause 1c) of the New York Convention also permits the severance of those parts of the award made in excess of the tribunal's jurisdiction[1].

Agree with the following opinion. «Article 5 of the New York Convention 1958vcontains an exhaustive list of grounds for refusing recognition and enforcement of a foreign arbitral award, and these grounds are divided into two groups. The first group covers circumstances, the burden of proving the existence of which lies with the losing party requesting the refusal to enforce the arbitration award (clause 1, article 5). The second group includes factors excluding the enforcement of the arbitration award, regardless of whether the losing party referred to them and whether it raised the question of refusal to enforce the award at all (clause 2, article 5)»[2].

The European Convention 1961 limits the application of Clause 1, Article 5 of the New York Convention 1958 to cases expressly provided for in Clause 1, Article 9. This

[1] International Arbitration: a handbook. Third edition // Capper Philipp. Lowels. London, Singapore. 2004. P. 77.
[2] Musin V.A. Contradiction to public policy as one of the grounds for refusal to enforce an award of international commercial arbitration. // Journal Arbitration Tribunal. No. 6 (30). 2003.P. 83.

means that the cancellation of an arbitral award in the country where it was made serves as a basis for refusing to recognize and enforce it in the territory of the states which are parties to the European Convention 1961, if such an annulment is made on the following grounds:

a) The parties to the arbitration agreement were in any way incompetent under the law applicable to them, or the agreement was invalid under the law to which the parties submitted it, or, failing such indication, under the law of the country where the award was made; or

b) The party requesting the annulment of the award was not properly notified of the appointment of an arbitrator or of the arbitration proceedings, or was otherwise unable to submit its explanations; or

c) The arbitral award was made on a dispute not covered by or not subject to the terms of the arbitration agreement or contains rulings on matters beyond the scope of the arbitration agreement, however, that if rulings on matters covered by the arbitration agreement can be separated from those that are are not covered by such an agreement, then that part of the award, which contains rulings on matters covered by the arbitration agreement, may not be canceled; or

d) The composition of the arbitral panel or the arbitral procedure was not in accordance with the agreement of the parties (Clause 1, Article 9 of the European Convention 1961).

At the same time, according to the mentioned formal features, the arbitration decision can be canceled by the state court only at the location of the arbitration tribunal, and not in any other country.

Also consider the following document. European Convention «On the introduction of a uniform law on arbitration» ETS No. 563, adopted at Strasbourg on January 20, 1966[1].

Annex 1 to this Convention establishes the grounds for the annulment of an arbitration decision by a competent state court.

This is non-compliance with the formal requirements for the content of the award of arbitration (arbitral tribunal); - groundlessness of the award; - internal inconsistency of the arbitral award (Part 2, Article 25 Annex 1 to the Convention).

In addition, the arbitral award may be canceled if it: - is based on facts declared false by the decision of the state court, or on facts recognized as false; - after the arbitration (arbitral tribunal) made a decision, a document or other evidence was discovered that would have a decisive influence on the decision and was concealed by the other party (Part 3, Article 25 Annex 1 to the Convention).

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[1] http://humanrts.umn.edu/euro/ets56.html or https://docs.cntd.ru/document/901909541

The present grounds for the potential cancellation of the arbitral award are quite reasonable. They can be perceived in national laws, as they create the preconditions for a certain uniformity in the preparation of decisions by arbitrators.

Also, this convention provides for the regulation of the actions of the parties to the dispute after the issuance of an arbitral award. Only after the expiration of the period for challenging this decision, the interested party has the right to bring it to enforcement (Part 1, Article 25 Annex 1 to the Convention).

Consider further The UNCITRAL Model Law 1985. Article 34 provides for the right of a party to appeal against the award and to request that it be set aside. The grounds are listed in Clause 2, Article 34 of this law. Note that they fully coincide with the grounds for refusal to enforce an arbitral award, which are specified in Clause 2, Article 36 of this law.

The list of the above grounds is similar to the grounds provided for the New York Convention 1958.

Analysis of national laws.

The legislation on commercial arbitration of various countries contains, for the most part, similar grounds for cancellation of arbitral awards with minor changes and additions. Since many national arbitration laws have adopted the UNCITRAL Model Law 1985 in one way or another.

In the legislation of many countries of the world, non-observance by the arbitral tribunal of its form and mandatory details is indicated as the basis for the annulment of an arbitral award (Korea, Brazil, Belgium, the Netherlands, Greece, France, Japan, Italy, etc.). Lack of motives is sometimes singled out as a separate aspect in an arbitral award (Korea, Belgium, the Netherlands, Luxembourg, France, Japan, Israel, etc.).

The following grounds for cancellation of an arbitral award can be defined as non-compliance by the arbitral tribunal with the time frame of the arbitration agreement, which includes the following cases: the very fact of the non-conclusion of an arbitration agreement (China, Austria), the arbitration agreement has terminated (Canada, Austria, Spain, Egypt, Brazil, Greece, France, Israel), expiration of the time limit for rendering an award (Italy).

Another ground is the commission by the arbitrator or arbitrators of illegal actions related to deceiving the parties, committing embezzlement, taking a bribe or other similar misconduct, indicating that an arbitral award was obtained in a fraudulent way (China, Canada, Scotland, Belgium, the Netherlands, Luxembourg).

The next ground is the issuance of an arbitral award by a disqualified arbitrator (Brazil) or a person who could not perform the functions of an arbitrator due to a discrepancy

between his social characteristics: a minor, incompetent, bankrupt or civil servant (Italy), or procedural characteristics by analogy with the status referees (Norway) or an arbitrator whose disqualification was unjustifiably denied by one of the parties (Austria).

Another group of grounds relates to the lack of evidence base of the arbitral award: falsification of evidence (China), and this must be confirmed by a court decision that has entered into force (Belgium), the appearance of new evidence after the issuance of an arbitral award, which should have played a decisive role in dispute resolution (Belgium, Norway, the Netherlands).

Some grounds relate to the defect of the arbitral award, which consists in its incompleteness, i.e., the absence of a decision on one or more issues referred to arbitration (Brazil, Belgium, Spain, Finland, Italy, Israel), the presence of conflicting provisions (Belgium , Greece)[1].

It should be noted that the issues of recognition, enforcement and cancellation of arbitral awards are regulated by international legal conventions ratified by most states of the world[2]. The above described conventions provide for a single mechanism for all member states of the recognition and enforcement of decisions, with the help of certain state courts, in a certain order.

Consider the national legislation of some states, governing the cancellation of arbitral awards.

Firstly, The **Italian** Code of Civil Procedure, Book 4, Title 8 Arbitration. Consider the issues of canceling the arbitral award. Article 808 ter of the Italian Code provides a list of grounds for annulment of an arbitral award by a competent state court. I list these grounds: invalidity of the arbitration agreement or the decision by arbitrators outside the arbitration agreement (if a party raised an objection during the dispute), violation of the rules for the appointment of arbitrators (or the terms of the arbitration agreement on the appointment of arbitrators), the issuance of an award by a person who does not have the right to be an arbitrator, violation the rules of the proceedings (provided for by the arbitration agreement or the rules of arbitration), failure to comply with the adversarial principle.

Consequently, if the arbitrators, in the course of the dispute settlement, go beyond their own competence, it is possible to annul the arbitral award, subject to the aforementioned conditions.

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[1] Information about the norms of foreign legislation is taken from the book: Bruntseva E.V. International Commercial Arbitration (Manual). Saint-Petersburg: Publishing House "September". 2001.
[2] UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, June 10, 1958), European Convention on Foreign Trade Arbitration (Geneva, April 21, 1961).

Also, Article 829 of the Italian Code contains an extensive list of grounds for invalidating an arbitral award. In addition to the grounds provided for in Article 808 ter of the Code, there are also other grounds related to the arbitration decision, such as: failure to comply with the rules for drawing up a decision (provided for by this Code), announcement of the decision after the expiration of the established period, contradiction of the decision with another arbitration or court decision that has entered into legal force. decision, inconsistency of the decision, if the decision does not define the essence of disputes and the resolution of issues proposed by the parties.

Moreover, the basis for canceling the arbitral award is non-compliance with formal procedures during the proceedings, if it may entail adverse consequences associated with legal nullity. The wording is not very clear, but it is possible to interpret it as a violation of the jurisdiction of the arbitration to consider the dispute. If the arbitration tribunal resolves a dispute that cannot be arbitrated by law, the award will be null and void.

Also, «the non-existence of the arbitration agreement, as well as the extraneousness of the matter entrusted to the decision of the arbitrators to those likely to be the subject of said agreement, lead to the root denial of the arbitrators' position, whose award is legally qualified as non-existent»[1].

Next, I will examine the practice of the **United States of America** and the US Federal Arbitration Act, which came into force on February 12, 1925 (hereinafter the FAA). These issues are regulated in more detail by the Revised Uniform Arbitration Act) (hereinafter UAA), developed in 1955, the last amendments to which were adopted in 2000.

The state court does not have the right to enforce the arbitration agreement if circumstances have been established that prevent its legal execution (Clause C, Section 7 UAA). If the above circumstances are not established, then the state court cannot, in its sole discretion, refuse to conduct arbitration proceedings (Clause D, Section 7 of the UAA).

To challenge an arbitral award, a party must file a motion to set aside or amend it no later than three months after it was made. (Paragraph 12 of the FAA).

After the arbitral award has been made, the competent state court has the right to issue an order confirming it at the request of one of the parties, if the said award has not undergone a procedure for addition, modification or cancellation (Paragraph 9 of the FAA, Section 22 of the UAA).

The competent state court also has the power to order set aside the arbitral award at the request of one of the parties (Paragraph 10 of the FAA, Section 23 of the UAA). Moreover, if

[1] Commentario breve al diritto dell'arbitrato nazionale ed internazionale. // edit by Massimo V. Benedettelli M.V., Consolo C., Radicati Di Brozolo L.G. CEDAM. Padova. 2010. P. 807.

the petition is rejected, the state court must issue an order confirming the decision (Paragraph D (6) of Section 23 of the UAA).

One of the grounds for setting aside an award is the arbitrator's abuse or improper exercise (Clause 4 Paragraph 10 of the FAA, Clause 4 Section 23 of the UAA). But, the content of the term abuse of authority is not disclosed and is left to the discretion of the court in each specific case. The court establishes excess of authority or lack of it using precedents.

Another ground for setting aside an arbitral award is the absence of an arbitration agreement. However, the party to the dispute must submit a statement of this no later than the commencement of the arbitration (Clause 5 Section 23 of the UAA). There are Corresponding recognized precedents in American law. Finding out whether an arbitration agreement exists cannot be made for the first time after the award has been made[1]. A party to a dispute who participates in the proceedings without presenting an objection to the validity of the arbitration agreement may not subsequently challenge the arbitration agreement[2].

I indicate a number of grounds for the annulment of an arbitration award, enshrined in Paragraph 10 of the FAA, such as whether the decision involves corruption, fraud, or improper means; obvious lack of impartiality or corruption component of the arbitrators; the arbitrators unlawfully refused to postpone the hearing of the case, despite the presence of valid reasons, or to consider evidence directly related to the case and essential to the resolution of the dispute, or committed other illegal actions that resulted in a violation of the rights of the parties; the arbitrators have exceeded their powers or exercised them improperly, as a result of which a joint final and final decision on the issue referred to them was not made.

Note the position of the US Supreme Court, which, when considering the case Hall Street Associates, L.L.C. v. Mattel, Inc[3]. decided, that Paragraph 10 of the FAA contains an exhaustive list of grounds for setting aside an arbitral award.

Consider the issues of regulation of arbitration in **Canada** by the Commercial Arbitration Act of year 1985, which entered into force on June 17, 1986. (Hereinafter the Act of 1985).

The research also used the Ontario Arbitration Act 1991 and the British Columbia Arbitration Act 2020. (Hereinafter Ontario Act and BC Act).

Consider the grounds for challenging arbitral awards in Canadian law. The grounds are standard, such as incapacity of a party, improper notice to the parties, invalidity of the arbitration agreement, the discrepancy between the dispute being considered and the

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[1] Borg, Inc. v. Morris Middle Sch. Dist. No. 54, 3 Ill.App.3d 913, 278 N.E.2d 818 (1972)
[2] Spaw-Glass Constr. Serv., Inc. v. Vista De Santa Fe, Inc., 114 N.M. 557, 844 P.2d 807 (1992)
[3] Hall Street Associates, L. L. C. v. Mattel, Inc., 552 U. S. 576, 578 (2008). https://www.supremecourt.gov/opinions

arbitration agreement, the subject matter of the dispute cannot be considered in arbitration, in accordance with applicable law (Article 34 Appendix 1 of the Act of 1985, Article 46 of the Ontario Act, Article 58 of the BC Act). Note also that Canadian federal law separately provides grounds for state courts to refuse to enforce arbitral awards. The grounds are identical to the above (Article 36 Appendix 1 of the Act of 1985).

However, the Act of 1985 also provides for a ground for challenging an arbitral award and refusing to enforce it, such as a contradiction of an arbitral award to Canadian public policy (Article 34 and Article 36 Appendix 1 of the Act of 1985).

Continue this review of Canadian legislation. Note that any of the parties to the dispute may appeal to the competent state court to challenge the arbitral award no later than three months from the date of receipt of this award (Clause 3 Article 34 Appendix 1 of the Act of 1985).

Also pay attention to the provision of the Ontario Act, according to which a state court can stop the arbitration trial and declare it invalid at any stage of the dispute. The reason for this is the invalidity of the arbitration agreement, the incapacity of one of the parties (or the lack of authority of the employees of the legal entity) signing the agreement, the discrepancy between the dispute under consideration and the arbitration agreement, and also if the subject of the dispute cannot be the subject of arbitration. An injunction against arbitration is issued (Article 48 of the Ontario Act).

I also mention that the cancellation of an arbitration award by a state court may be possible if this is expressly provided for in the arbitration clause.

Next, consider legislation of **Finland** and the Law “On Arbitration” No. 967/1992, adopted on October 23, 1992 (hereinafter Finnish Act).

It is interesting to regulate the procedure for invalidating an arbitral award by a competent state court. I point out such reasons for invalidating arbitral awards as making a decision on a dispute that is not within the competence of the arbitration tribunals, according to the current legislation; the arbitral award is so confusing or incomplete that it is not clear how the case was decided; the arbitration award was not made in writing or was not signed by the arbitrators or the arbitral award is contrary to public order in Finland (Clause 1 Article 40 of the Finnish Act). Accordingly, the dispute cannot be subsequently resolved through arbitration.

There is a public policy clause similar to Canadian law. Public policy issues will be discussed later.

Cancellation of the arbitral award is possible, and it does not mean the impossibility of arbitration of this dispute in the future. The cancellation of an arbitral award is carried out by

a competent state court on the basis of an application by one of the parties, and the party is not entitled to submit an application if in the course of the arbitration it did not file a protest claim against the circumstances that are grounds for canceling the award (Clauses 1 - 2 Article 41 of the Finnish Act).

Note such a ground for canceling an arbitral award as the arbitrators' excess of their powers (Clause 1 Article 41 of the Finnish Act). It seems that the concept of abuse of power also includes the determination by the arbitral tribunal of its own competence to adjudicate the dispute, if there were no legal grounds for that.

Another grounds for canceling an arbitral award are: arbitrator not appointed in appropriate order; arbitrator was incapacitated; arbitrators did not leave the necessary opportunity for the party to continue their case.

The decision to enforce the award is made by the competent Finnish state court of first instance (Article 43 of the Finnish Act). Moreover, the state court may refuse to enforce it if the arbitral award is canceled or declared invalid (Article 44 of the Finnish Act).

Consider the law of **Sweden**. The Law "On Arbitration" No. SFS 1999: 116, which entered into force on April 1, 1999, regulates the issues of arbitration (hereinafter Swedish Act).

There is the issue of invalidity of the arbitral award. An award is void if it is made in a dispute not subject to arbitration in accordance with Swedish legislation and if the award or the procedure for its adoption is clearly incompatible with the basic principles of the Swedish legal system. Moreover, part of the arbitral award may be declared invalid (Article 33 of the Swedish Act). That is, issues of arbitrability and public policy.

The issue of public policy is also raised when the grounds for refusing to enforce a foreign arbitral award are indicated. The reasons are as follows: the award contains a ruling on a matter that cannot be referred to arbitrators under Swedish legislation or the recognition and enforcement of a foreign award would clearly contradict the foundations of the Swedish legal system (Article 55 of the Swedish Act). That is, the priority of national legislation over foreign is established.

Next, consider the grounds for challenging and canceling the arbitral award, that are of interest in the framework of this research. If the arbitral award is not covered by a valid arbitration agreement between the parties; the arbitrators have exceeded their powers or acted outside their powers; if the arbitration was not to take place in Sweden; if the arbitrator was appointed in violation of the agreement of the parties or the provisions of this Act; the arbitrator was not authorized to act as an arbitrator due to his incapacity and interest in the outcome of the case; if, in the absence of fault of the party, any other violation was committed

during the proceedings, which is likely to have affected the outcome of the dispute (Article 34 of the Swedish Act). Also draw attention to the fact that a party to a dispute does not have the right to refer to these circumstances, if it has not stated them when participating in the arbitration proceedings. The appointment of an arbitrator by a party should not be construed as agreeing with the arbitrator's competence to resolve the dispute submitted to them (Article 34 of the Swedish Act).

Note the following. «As a general rule, Swedish courts do not consider it appropriate to intervene in the arbitration procedure. They are reluctant to set aside an award after it has been challenged, and they are also reluctant to refuse recognition and enforcement of a foreign arbitral award. The burden of proof for most of the grounds for refusal rests with the party alleging an impediment to enforcement under Art. 54 of the Arbitration Act, which provides that a foreign award must not be recognized and enforced in Sweden if the party against whom the award is to be enforced proves that one of the impediments exists»[1].

In **Norway**, the institution of arbitration is regulated by the Law "On Arbitration" No. LOV-2004-05-14-25 dated May 14, 2004, which entered into force on May 1, 2005 (hereinafter Norwegian Act).

Consider further the issues of challenging and canceling an arbitral award. It is possible to cancel the arbitral award as invalid upon the presentation of a claim by one of the parties to the dispute (Article 42 of the Norwegian Act). Moreover, the statement of claim must be filed with the state court no later than three months after the receipt of the arbitral award (Article 44 of the Norwegian Act).

Further, there are some grounds for the invalidity of the arbitral award, such as: the incapacity (and incapacity) of one of the parties; the invalidity or absence of the arbitration agreement; the award was made in violation of the limits of the arbitration competence; party has not received sufficient notice of appointment of an arbitrator or it was not possible state one's opinion on a case; the arbitral panel was incorrect; the arbitration procedure was contrary to law or the agreement of the parties, and it is obvious that this could influence the decision (Article 43 of the Norwegian Act).

I also note that the state court has the right, even without the parties' statement of claim, to independently initiate proceedings on the cancellation of the arbitral award and to decide on its cancellation in the following situations. The dispute cannot be resolved by arbitration in accordance with Norwegian legislation or the arbitral award is contrary to public

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[1] Danelius H. Application of the New York Convention in Swedish courts. // Journal Arbitration Tribunal. No. 6 (30). 2003. P. 31.

policy (ordre public) (Article 43 of the Norwegian Act). Again, the public policy doctrine we discussed above is used.

The arbitral award can be recognized and enforced by a state court (Article 45 Law of the Norwegian Act). However, there are grounds for refusal to recognize and enforce arbitral awards, which are almost identical to the grounds for their cancellation. The incapacity (and incompetency) of one of the parties, the invalidity or absence of the arbitration agreement, or violation of the limits of the arbitration jurisdiction are grounds for refusing to enforce arbitral awards (Article 45 of the Norwegian Act). In addition, the state court has the right, at its own request, regardless of the appeal of the parties to the dispute, to refuse to recognize and enforce the arbitral award if the dispute cannot be resolved through arbitration in accordance with Norwegian law or the arbitral award is contrary to public policy (ordre public) (Article 45 of the Norwegian Act).

Consider the arbitration proceedings of disputes in the **Russian Federation** and the provisions of the Federal Law dated December 29, 2015 No. 382-FZ "On Arbitration (Arbitration Proceedings) in the Russian Federation" (hereinafter Russian Act 2015) and of the Federal law "On international commercial arbitration" of July 7, 1993 No 5338-1 (hereinafter the Russian ICA Act 1993).

Note that Article 42 of the Russian Act 2015 speaks about the grounds for refusing to enforce an arbitral award and issue a writ of execution, but does not directly indicate them, referring to procedural legislation. Nothing more is explained and references are also not indicated. Note. The previous Federal Law “On Arbitration Tribunals in the Russian Federation” of July 24, 2002 No. 102-FZ regulated this issue in the Article 42 in details.

Consider Article 421 and Article 426 of the Civil Procedure Code of the Russian Federation[1]. Those articles governing the procedures of cancellation (and grounds of cancellation) of an arbitral award and grounds for refusing to issue a writ of execution. Grounds from both Articles are identical.

There are invalidity of the arbitration agreement; incapacity of the parties; if the award to some extent does not fall under the conditions of the arbitral agreement; failure to notify the party properly; the arbitral panel does not exist the arbitral agreement or legislation. Then the state court refuses to issue a writ of execution. Also, a writ of execution will not be issued if the dispute considered by the arbitral tribunal cannot be the subject of arbitration in accordance with applicable law or the arbitral award contradicts the public order of the Russian Federation.

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[1] Civil Procedure Code of the Russian Federation of November 14, 2002 No. 98-FZ. // http://www.consultant.ru

Article 418 of the Civil Procedure Code of the Russian Federation provides the principal opportunity of challenging and cancellation of an arbitral award.

This issue is resolved similarly by the Arbitration Procedural Code of the Russian Federation[1]. Article 230 of the Arbitration Procedure Code of the Russian Federation provides the principal opportunity of challenging and cancellation of an arbitral award, and Article 233 and Article 239 regulate the procedures of cancellation (and grounds of cancellation) of an arbitral award and grounds for refusing to issue a writ of execution. Those grounds are identical with above mentioned grounds of the Civil Procedure Code.

In the Article 34 of the Russian ICA Act 1993 the possibility of challenging the arbitration award is provided and the grounds for its cancellation are indicated. Clause 1, Article 36 indicates mostly similar grounds for refusal to recognize or enforce an arbitral award. The list of the above grounds is similar to the grounds provided for by the New York Convention 1958 and the UNCITRAL Model Law 1985

The legislation of the Russian Federation prescribes that, regardless of whether the time limit for challenging an arbitration award has passed, on the basis of such an award, a writ of execution may be issued and it may be enforced, however, if an application for annulment or on the suspension of the execution of the decision of the arbitral tribunal, the court in which the application for the issuance of a writ of execution for the enforcement of this decision is being considered may, if it deems it appropriate, postpone consideration of the application for the issuance of a writ of execution (Article 5, Article 238 of the Arbitration Procedure Code; Clause 5, Article 425 of the Civil Procedure Code).

Issues of contradiction of an arbitral award with public policy.

In the continuation of this paragraph, it is necessary to consider in more detail the issue of the contradiction of an award of arbitral tribunal with public policy or public order, as a basis for refusing to recognize and enforce this award. Public policy and public order in this case are synonyms.

To begin with, I will analyze two concepts of public policy: positive and negative. The basis of the first was laid by French law, the second by German law. Positive public policy is a set of particularly important laws that must always apply to all legal relations, including those with a foreign element. Legal provisions of a positive public policy are applied due to their special significance, regardless of the properties of foreign law. In the enforcement of foreign arbitration awards, the main issue is not the content of the enforcement itself, but the unhindered operation of these important laws. «In the French

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[1] Arbitration Procedure Code of the Russian Federation of July 24, 2002 No. 95-FZ. // http://www.consultant.ru

doctrine, the concept of public policy had the meaning of a set of certain French laws, which, due to their special importance, apply even in cases where the French conflict rule refers to foreign law. It was about the operation of a certain kind of laws of French law, displacing the application of norms ... of foreign law, regardless of the properties of these latter»[1].

Negative public policy is also considered to be a set of certain particularly important laws, which, however, exclude the application of foreign law and the possibility of enforcing a foreign decision, not due to their own properties as especially important, but due to the negative properties of the foreign law itself or the content of the enforcement of a foreign decision, negative from the point of view of laws.

If with a positive concept «public order is understood as a set of substantive legal norms that, due to their special properties, eliminate the effect of a foreign law»[2], then in a negative concept «we are talking about the properties of a foreign law that make this law inapplicable»[3].

In general, both concepts of public policy pursue the same goal, the non-application of foreign law or the refusal to enforce a foreign court or arbitral decision.

The public policy clause is a mechanism that secures the priority of national interests over private interests and thereby protects the public policy of the state from any negative influences on it, i.e. it will not allow an arbitral award on the territory of the country if, as a result of its execution, actions are committed that are either expressly prohibited by law or that damage the sovereignty or security of the state.

Cases when the rendered arbitration awards are canceled on the grounds of their contradiction to public policy take place in the world arbitration practice.

The New York Convention 1958 and the European Convention 1961 contain provisions about public order as a ground to refuse in executing an arbitral award. The CIS Model Law in the Article 50 also contains the provision about public order.

But, «the decision by a state court on arbitrability of the subject of the dispute in accordance with foreign law may lead to a violation of the public order of the country whose court decides this issue»[4].

Such a circumstance is noted. «Often, appealing against decisions of international arbitration tribunals on the grounds that they contradict public policy becomes an element of a political nature that can be more or less actively used by one state against another through the

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[1] Lunts L.A. Course of private international law. Common part. Moscow. 1973. P. 307.
[2] Lunts L.A. Course of private international law. Common part. Moscow. 1973. P. 312.
[3] Lunts L.A. Course of private international law. Common part. Moscow. 1973. P. 312.
[4] Karabelnikov B.R. Execution and challenging of awards of international commercial arbitrations. Commentary on the New York Convention of 1958 and Chapters 30 and 31 of the Arbitration Procedure Code of the Russian Federation of 2002. Moscow: Statut Publishing House. 2008. P. 195.

functioning of the judicial system, despite the separation of powers and independence of the judiciary declared by the Constitution. This thesis applies both to the states of the European Union and to neighboring countries»[3].

The concept of public order is not directly and clearly defined in the legislation of states and international legal acts, and in the literature and in scientific works, a variety of interpretations are given.

The extensible nature of this definition often leads to abuse by the parties of the concept of public policy, when the decisions made are appealed on this basis in order to delay issues with their actual implementation. After all, there is no specific and clear definition of public order, and through well-structured procedural actions, it is possible to achieve the actual neutralization of the entire positive effect achieved after the arbitration court has made a decision on a conflict legal relationship.

The Russian legal doctrine uses the concept of "fundamental principles of Russian law" as a synonym for the concept of "public policy of the Russian Federation". They are doctrinal, multidimensional and controversial concepts. Their use as grounds for refusing to issue enforcement documents or for canceling decisions of arbitration courts may lead to unnecessary disputes, abuse of procedural rights by the parties to arbitration, and the appearance of conflicting court decisions.

It can be argued that there is a need to give an official interpretation of the concept of the fundamental principles of law or public order.

I need to explain that the definition of the public order of the Russian Federation is broadly given in Article 1228 of the Civil Code of the Russian Federation in the form of the foundations of the legal order of the Russian Federation. The foundations of the law and order of the Russian Federation include, in addition to the fundamental principles of Russian law, the foundations of morality, the main religious tenets, the main economic and cultural traditions that formed Russian civil society.

But it is difficult to establish these bases in the legislation. For example, many social phenomena can fully comply with the law, but at the same time are in serious conflict with the finer regulators of social relations - morality and traditions. A contradiction with these phenomena may be found in the decision of international commercial arbitration due to the fact that the dispute is considered on the basis of foreign law, or on the basis of principles that have formed a different public order.

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[3] Aleksandrov Ilya. The most important practical problems of international commercial arbitration in some countries of the CIS and the EU. 2004. // http://www.yurclub.ru

In the legislation of various states, the concept of public order is interpreted differently. For example, «in Germany, these are the good morals and goals of German law (Article 30 of the German Civil Code or 328 of the German Civil Procedure Charter), in the US precedent system, these are the most basic ideas of the country's courts about morality and justice»[1].

Here is an opinion, that «in many states, a foreign decision based on American tradition, which provides for damages on the basis of the principle of "punitive damage", will be recognized as violating public policy. This principle involves the recovery from the debtor not only of the amount of the debt, but also the imposition of a fine several times greater than it. In other words, punitive damage acts as a punitive measure, in the form of a punishment for a person who has not fulfilled the contract, for example. Thus, the international commercial arbitration in the case of THO "Production Corp" against "Allians Resources Corp" forced the defendant to pay penalties 526 times the amount of damages»[2].

Obviously, the enforcement of such a decision would be contrary to the legal principle of compensation for property damage in many countries, since the application of punitive measures for violations of contractual relations is not practiced everywhere. Thus, an arbitral award made using the above principle of "punitive damage" may be subject to challenge on the basis of a contradiction to the public policy of many states.

There is an another example. Sharia law in Saudi Arabia prohibits interest rates and therefore state courts will not enforce foreign arbitration awards that require payment of interest.

Also «examples of violations of public policy include: impartiality of the arbitrator, allegations of bribery or illegality, fraud, award without reasons, time limits, lack of due process»[3].

Consideration should be given to the final definition of public policy or the fundamental principles of law.

Some authors claim, that «under the fundamental principles of law, it was precisely the contradiction of public order that was meant. Contradiction to public order is a far from frequent thing. This is necessary so that the decision really contradicts some fundamental, as a rule, constitutional norms in force in our country»[4]. Also approved, that «when deciding

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[1] Stephen Judge. Business law. London: Macmillan Press Ltd, Second Edition, 1999. P. 108.
[2] Neshataeva T.N. Commentary on Article 233 of the Arbitration Procedure Code of the Russian Federation. // www.zakon.ru
[3] Khadeja Al-zarraa. Recognition and enforcement of foreign arbitral awards. Case Study on the State of Qatar. Dispute Resolution Journal. JurisNet, LLC. 2015. P. 71.
[4] Makovsky A. The system of arbitration tribunals will develop, but their life will not be easy. 2003. // www.bpi.ru

whether or not the arbitral award violates the fundamental principles of law, it should be based on comparison and compliance of the content of the decision with constitutional principles»[1].

Other authors claims, that «the concept of public order (ordre public – French) can be defined as rules, requirements, norms that are fundamental and produce the integrity of the social community, having a moral platform and considered as a criterion for the balance between the private and public interests of the actors of the social community»[2].

Classical legal scientific writings state that «public order can indeed be nothing else than what everyone understands as law and order... public order is nothing but the will of the legislator himself... the legislator, not the judge, decides what is necessary for the common good... the judge must manage not with their ideas of the common good, but with the will of the legislator. He usually does so, and thereby does not do what some specific and mysterious public order dictates, but simply what the law or legal order prescribes»[3].

Continuing the topic, we should mention the opinion of the Supreme Court of the Russian Federation regarding this issue. Its definition says that «the content of the concept of public policy of the Russian Federation does not coincide with the content of the national legislation of the Russian Federation. The public order of the Russian Federation is understood as the foundations of the social system of the Russian state. A public order clause is possible only in those individual cases where the application of a foreign law could give rise to a result that is unacceptable from the point of view of Russian legal consciousness»[4].

Here is another example of judicial practice. «Competence of the state court considering the application for cancellation of an arbitral award does not include checking the correctness of the application of substantive law by the arbitral tribunal, but its compliance with the fundamental principles of law, that is, its basic principles, which have universality, supreme imperativeness and special general validity, since only their violation may serve as grounds for the annulment of the decision of the arbitral tribunal»[5].

I also note above. «Transnational public policy is a particularly convenient notion when the public policy principle is universally recognised, and where, at the same time, there is no doubt that it has been violated. When it is not universally recognised, much depends on

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[1] Zaitsev A.I. Commentary on the Model Law "On Arbitration Tribunals and Arbitration Proceedings". Yurayt: Moscow. 2019. P. 136.

[2] Morozova Y.G. Public policy clause in private international law: concept and modern application. // Abstract of the Candidate of legal sciences thesis (PhD). Tambov. 2009.

[3] Brun M.I. Public policy in private international law. Petrograd. 1916. P. 73-74.

[4] Ruling of the Judicial Collegium of the Supreme Court of the Russian Federation of September 25, 1998 in case No 5-G98-60. // https://www.garant.ru

[5] Resolution of the Federal Arbitration Court of the North-Western District of January 16, 2003 in case No. A56-33172/02. // https://www.garant.ru

the subjective views of the arbitrator; that cannot be avoided. Also, where the exact scope of the principle is uncertain, other mechanisms may have to be preferred. Transnational public policy therefore undoubtedly appears as one, but only one, of the devices which the international arbitrator may use to protect values which the parties are not allowed to ignore»[1].

Since the definition of public policy is normatively uncertain, in most states its application and, consequently, the definition of its scope and content is left to the courts.

The doctrine of public order or fundamental principles of law is quite common in modern law and serves to maintain the priority of national law in relation to foreign and international law.

The problem is that a clear and consistent concept of public order is not enshrined in the legislation of many states. That is, the issue of compliance of the arbitral award with public order is decided by the court in each specific case, which is natural for countries belonging to the common law system, but not autumn is natural for countries with a continental legal system. It seems expedient to establish the term "public order" as clearly as possible in the legislation.

The author proposed the following formulation of this term in earlier publication. This formulation is actual now. «Public order should be considered the fundamental rules and principles governing the life of the state and society, enshrined in legislative acts. This definition is not final and may be the subject of legal discussions. The main thing is not the very wording of the definition of public order, but its presence in the legislation of the country. The legislator must give a clear and consistent definition of public policy so that this concept does not give rise to different interpretations. Accordingly, signs of contradiction of the arbitration award to public policy will be immediately apparent, which will help to avoid unnecessary confusion in the procedure for the recognition and enforcement of the arbitration award, or its cancellation»[2].

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[1] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 69.
[2] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod. 2007. P. 199.

Chapter 3 - Execution of arbitral award.

Introduction.

Issues of executions of arbitral awards are the subject of attention of legal science Italy[1], France[2], other EU states[3], Russian Federation[4], USA[5] and other states[6].

It can be argued about the presumption of voluntary execution of the arbitral award by all parties to the dispute, even in a situation where the decision is not in their favor. The very fact of concluding an arbitration agreement implies the consent of the parties to the arbitration of their dispute and voluntary submission to any decision of the arbitral tribunal.

«In practice, the arbitration award is enforced voluntarily. This also corresponds to the nature of this jurisdiction, and indicates a high level of business culture of the rival parties»[7].

«Really arbitral award is rendered, in a great majority of cases, it is performed voluntarily. Therefore, most of the time, the parties' dispute ends here. Only 11% of cases did participants need to proceed to enforce an award»[8].

«It is advisable to apply the principle of inadmissibility of dishonest behavior of a party in the voluntary enforcement of an arbitration award. A guarantee of compliance with such a principle can be considered by a competent court as a basis for issuing a ruling on the issuance of a writ of execution for the enforcement of an arbitration award»[9].

But it could be different situations. «Faced with a recalcitrant opponent, a "successful" party may seek the assistance of the state courts to compel its opponent to give effect to the award. In doing so, the "successful" party will ask the courts either to "recognise" or to "recognise and enforce" the award»[10].

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[1] Verde Giovanni. Lineamenti di diritto dell'arbitrato. Torino: Giappichelli. 2015. P. 177 -183.
[2] French arbitration law and practice. // edit by Delvolve J.L., Rouche J., Pointon G.H. Kluwer law international. 2003. P. 287 – 295.
[3] Dunmore M. Enforcement of Arbitral Awards: The Role of Courts at the Seat. // // Czech (& Central European) Yearbook of Arbitration. Interaction of arbitration and courts. Volume 5. edit by Belohlavek A.J., Rozehnalova N. Juris. 2015. P. 69 - 86.
[4] Kurochkin S.A. International commercial arbitration and internal arbitration. Moscow - Berlin: Infotopic Media. 2013. P. 207 - 237.
[5] Arbitration law in America: a critical assessment. // Brunet E., Speidel R.E., Sternlight J.R., Ware S.J. New York: Cambridge University Press. 2006.P. 275 - 307.
[6] Gailard Emmanuel. Aspetti filosofici del diritto dell'arbitrato internazionale. // edit and translate Di Martines Paolo. Napoli: Editoriale Scientifica. 2017. P. 155-170.
[7] Mayshev M.V. Impact of the Uncitral Model Law 1985 on regulation of international commercial arbitration in Germany: Diss. ... candidate of law sciences (PhD). Moscow. 2011. P. 140.
[8] Scherer M. Effects of International Judgements Relationing to Awards. Pepperdine Law Review. Volume 43. Issue 5. 2016. P. 637.
[9] Kalamova Y.B. Execution of an arbitration award as an alternative guarantee for the protection of violated or disputed rights and legitimate interests: Candidate of legal sciences thesis (PhD). Saratov. 2020. P. 13.
[10] International Arbitration: a handbook. Third edition // Capper Philipp. Lowels. London, Singapore. 2004. P. 121.

Despite the fact that state courts don't formally have the opportunity to review the acts of arbitral tribunals in fact, however, they often act, essentially, as an appellate instance in relation to the system of arbitral tribunals and international commercial arbitration. The decision of the arbitral trial towards which there was received a writ of execution for its enforcement, in its legal force it is equivalent to the judicial acts of the courts of general jurisdiction and state economy courts that have come into legal force. Possibly, in the future the use of various measures to encourage enforcement, similar to those applied towards the decisions of state courts.

Theoretical and practical issues of enforcement of arbitral awards.

The possibility of mandatory enforcement and international recognition of the arbitration award take place almost everywhere in the world. Arbitral awards achieve international recognition not rare than decisions of state courts. The United Nations Convention «On the recognition and enforcement of foreign arbitral awards» of June,10 1958, known as the "New York Convention", has been ratified by a majority of the world countries. Besides this, the «European concept of foreign trade arbitration» of April, 21 1961 is in force. The above mentioned conventions provide a single mechanism for all the member countries to recognize and enforce decisions, with the help of certain state courts, in due course.

Objectively, «the norms of an international legal nature reflect public ideas about the minimum standards on which justice should rest»[1].

It should be noted that cases related to the implementation of entrepreneurial and other economic activities are not limited to economic disputes. Among these cases, there are "other cases". At the stage of issuing a writ of execution, the economic dispute has already been resolved by the arbitration tribunal and a new dispute has arisen - a dispute on the execution of the relevant decision. This dispute is connected with giving the decision of a non-state body a coercive force, supported by the entire power of the state. Prior to giving such coercive force to the decision of the arbitral tribunal, some legal scientists consider the arbitral award legally flawed.

For example, in Russian legal science, the point of view was expressed that «before the issuance of a writ of execution, the arbitration award is an absolute legal nothing»[2]. I strongly disagree with this statement. The procedure for arbitrating disputes is recognized throughout the world, regulated by international conventions and national legislation. The

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[1] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 643.

[2] Muranov A.I. Problems of determining the court competent to consider the issue of enforcement in the Russian Federation of foreign awards on commercial issues. // Moscow Journal of International Law. No.1. 2000. P. 330.

arbitral award shall enter into force immediately upon its adoption. At the beginning of this paragraph, the principle of voluntary enforcement of an arbitral award was indicated. In a normal situation, this decision is enforced by bona fide parties voluntarily without the participation of the state judicial system.

But, in case of dishonest behavior of one of the parties, it is possible to assist the state courts in the enforcement of the arbitral award. The refusal to issue a writ of execution for the enforcement of an arbitration award, its sanctioning by the state are associated exclusively with the verification of formal signsв.

These signs are related to the validity of the arbitration agreement, the limits of the arbitration clause, the formation of the arbitration panel and the observance of the procedure for the trial, the compliance of the arbitration award with the fundamental principles of national law, the proper notification of the parties about the formation of the arbitration panel and the conduct of the arbitration proceedings.

There is an interesting observation. The last of these formal conditions looks especially contradictory. If the interested person was deprived of the opportunity to provide the arbitral tribunal with his explanations and evidence on the case, then the decision made by the arbitral tribunal is not subject to execution. «However, courts generally reject claims of due process violations if the defendant has been given the opportunity to participate in the arbitration»[1].

If explanations and evidence are presented, but the arbitral tribunal erroneously or deliberately evaded their consideration, ignored or gave them an unintelligible assessment with conclusions reaching the point of absurdity, then in this case the state court is obliged to sanction with its authority the execution of such a decision, without appealing in any case to verify its legitimacy and validity.

From the other hand, «the court in a Contracting State may refuse to enforce an award if the arbitrators exceeded their powers listed in the parties' agreement. This is due to the nature of arbitration being a party driven process and thus the arbitrators derive their authority form the consent of the parties»[2].

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[1] Khadeja Al-zarraa. Recognition and enforcement of foreign arbitral awards. Case Study on the State of Qatar. Dispute Resolution Journal. JurisNet, LLC. 2015. P. 68.

[2] Khadeja Al-zarraa. Recognition and enforcement of foreign arbitral awards. Case Study on the State of Qatar. Dispute Resolution Journal. JurisNet, LLC. 2015. P. 68.

It is important to note that, according to established practice, in the process of confirming an arbitral award, the burden of proof is not placed on the applicant, but on the party that opposes the enforcement of this award[1].

The inability of the state court to assess the essence of the decision taken by the arbitration tribunal, the consolidation of such a state of affairs in the law is associated with guarantees of the stability of decisions made by arbitration tribunals, a beneficial effect on reducing the time for settling disputed relations.

But, as mentioned earlier, national courts may refuse to enforce arbitral awards in case of gross violations of the procedure for arbitrating disputes.

Analysis of international laws.

Next, consider International Conventions governing the recognition and enforcement of arbitral awards.

The foundations of the international regime for the recognition and enforcement of foreign arbitral awards were laid down by the New York Convention of 1958, which is universal. The Convention applies to any foreign arbitral award, regardless of whether it is made in the territory of a state party to the convention or not. This Convention evaluated as «the most effective instance of international legislation in the entire history of commercial law»[2].

This Convention does not apply to arbitral awards made in the same state where recognition and enforcement are sought. The Convention does not apply to the procedure for contesting a decision, which falls within the competence of the court of the state in whose territory it was made. However, the UNCITRAL Model Law 1985 and many national laws developed on its basis adopted the provisions of this convention on the enforcement of arbitral awards. So, it can be argued that the basic principles for the execution of decisions of international and internal arbitration are identical.

The procedure for recognition and enforcement of a foreign arbitral award is as follows. The party applying for recognition and enforcement of the award, when filing an application with the competent authorities of the relevant state, shall present a duly certified original award or a duly certified copy of it, as well as an original arbitration agreement or a duly certified copy of it.

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[1] Encyclopaedia Universalis S. A. v. Encyclopaedia Britannica, Inc.,403 F.3d 85,90. (2d. Cir. 2005). // https://caselaw.findlaw.com/us-2nd-circuit/1133324.html

[2] Kronke H. Introduction: The New York Convention Fifty Years on: Overview and Assessment. Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention Kluwer Law International. 2010. P. 1.

If the award or agreement is not set out in an official language of the country where recognition and enforcement of the award is sought, the party that requests recognition and enforcement of the award shall provide a translation of those documents into such language. The translation is certified by an official or sworn translator or a diplomatic or consular office (Clause 2, Article 1 of the New York Convention 1958).

Each state - party to the convention recognizes arbitral awards as binding and enforces them in accordance with the procedural rules of the territory where recognition and enforcement of these awards is requested. The recognition and enforcement of arbitral awards to which this Convention applies shall not be subject to substantially more onerous conditions or higher fees or charges than those that exist for the recognition and enforcement of internal awards. (Article 1 of the New York Convention 1958).

The Convention establishes a strictly limited list of grounds for refusing recognition and enforcement of foreign arbitral awards. This list is exhaustive and is not subject to broad interpretation. The list includes 5 grounds for refusing recognition and enforcement of the award, which may be invoked by the party that lost the arbitration proceedings, and 2 grounds for refusal on the initiative of the competent authorities of the state where recognition for enforcement is sought, due to public policy considerations. The above grounds have been explored in detail in the previous paragraph.

The European Convention 1961 also contains provisions about invalidation of the arbitral award, which make impossible enforcement of arbitral awards (Article 9 of the European Convention 1961).

The UNCITRAL Model Law 1985 in the Article 35 also contains provisions about enforcement of the arbitral award.

Analysis of national laws.

In fact, «each legal system has its own enforcement rules»[1]. And «most countries have developed national arbitration laws for solving commercial disputes and enforcing foreign arbitral awards»[2].

But, in fact, the legislation of most states contains similar provisions governing the enforcement of arbitral awards. I repeat that many national laws have adopted the provisions of the UNCITRAL Model Law 2010 and the international conventions I have discussed above.

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[1] Hans Van Houtte. The law of international trade. Second edition. Sweet & Maxwell Ltd. London. 2002. P. 371.
[2] Khadeja Al-zarraa. Recognition and enforcement of foreign arbitral awards. Case Study on the State of Qatar. Dispute Resolution Journal. JurisNet, LLC. 2015. P. 61.

The **Italian Code** (Article 824 – bis) provides that an arbitral award has the same legal effect as a decision of a state court.

However, in order to enforce the arbitral award, the parties shall deposit the original or a certified copy of the arbitral award, together with the original or certified copy of the arbitration agreement, with the office of the state court in whose jurisdiction the dispute was arbitrated. The state court, after establishing that the arbitral award meets all the formal requirements, must declare its enforceability by appropriate notification. An appeal is possible within 30 days of receipt of the notice (Article 825 of the Italian Code).

«The refuse of an exequatur can be appealed to the Court of Appeal, whose decision on the issuance of an exequatur is final»[1].

The role of state courts in the enforcement of arbitral award is due to the following circumstances. «In fact, it is considered incompatible with the constitutional provision is the attribution to arbitrators, by the legislator, of the same jurisdictional powers as those of state judges, an attribution that would conflict with the prohibition of the establishment of extraordinary or special judges (Article 102 of the Constitution)»[2].

Consider the **USA** legislation. Repeat, that after the arbitral award has been made, the competent state court has the right to issue an order confirming it at the request of one of the parties, if the said award has not undergone a procedure for addition, modification or cancellation (Paragraph 9 of the FAA, Section 22 of the UAA).

The competent state court also has the power to order set aside the arbitral award at the request of one of the parties (Paragraph 10 of the FAA, Section 23 of the UAA). Moreover, if the petition is rejected, the state court must issue an order confirming the decision (Paragraph D (6) of Section 23 of the UAA).

According to FAA, as a general rule, federal courts have jurisdiction to hear cases of confirmation of arbitral awards. After the decision of the court to confirm the arbitral award, the latter can be enforced.

Note also that «under the Federal Arbitration Act, and under New York Statute, the parties have three months to apply to the court to modify, amend, or even set aside the award»[3].

In **Finland** the decision to enforce the arbitral award is made by the competent Finnish state court of first instance (Article 43 of the Finnish Act). Moreover, the state court may

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[1] Kurochkin S.A. Arbitration in Italy. // Journal Arbitration Tribunal. No. 3 (81). 2012. P. 149.

[2] Commentario breve al diritto dell'arbitrato nazionale ed internazionale. // edit by Massimo V. Benedettelli M.V., Consolo C., Radicati Di Brozolo L.G. CEDAM. Padova. 2010. P. 807.

[3] Civil Procedure: Cases and Materials. // Cound, J., Friedenthal J., Miller A., Sexton J. 5th edition. St Paul: West Publishing Co. 1989. P. 1276-1277.

refuse to enforce it if the arbitral award is canceled or declared invalid (Article 44 of the Finnish Act).

In the **Swedish** legal system, the Swedish Act does not contain provisions for the enforcement of internal arbitration awards, apparently referring to national procedural law. But, Articles 53 – 60 of the Swedish Act contains provisions about enforcement of foreign arbitral awards. An application for the enforcement of a foreign arbitral award is filed with the Swea Court of Appeal. The application shall be accompanied by the original or a certified copy of the award, translated into Swedish (Article 56 of the Swedish Act). If the application is granted, the arbitral award will be enforced as a valid decision of a Swedish court. But, it is possible to appeal the decision of the Court of Appeal on the recognition of the arbitral award in the Supreme Court of Sweden (Article 59 of the Swedish Act).

In **Norway** the arbitral award can be recognized and enforced by a state court, if there are no grounds for refuse (Article 45 Law of the Norwegian Act). Those grounds was researched in the previous paragraph.

In the **UK**, Arbitration Act of England 1996 does not allow the parties to conclude such agreements, which eliminate the possibility of challenging the arbitration award to a state court. The mandatory rules of the Arbitration Act, from which the parties cannot deviate in the agreement, are listed in Appendix 1 to the Arbitration Act, among which one can find Art. 67,68,70,71 of the arbitration act, providing for the right to appeal the arbitration award[2].

There is an analyze legislation of the **Russian Federation.** Note that Article 41 of the Russian Act 2015 speaks about the opportunity for enforcement of arbitral awards. The arbitral award is recognized as binding and subject to voluntary execution by the parties. Otherwise, the arbitral award is enforced by issuing a writ of execution by a state court, if there are grounds for this.

Article 35 of the Russian ICA Act 1993 also provides for the right to enforce an arbitral award. The party shall file an application with the competent state court, attaching a certified copy of the award and the arbitration agreement. If these documents are in a foreign language, the party must submit a duly certified translation into Russian language.

It can be argued that the parties that have entered into an arbitration agreement assume the obligation to voluntarily execute the arbitration award in the manner and terms established in this decision, and if the decision of the arbitration court does not set a deadline, then it is subject to immediate execution.

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[2] Stephen Judge. Business law. London: Macmillan Press Ltd. Second Edition. 1999. P. 47-48.

Also, «voluntarily executed under an arbitration award rendered in Russia cannot be reclaimed either, i.e. in this case no contractual obligation arises»[1].

Objectively, that «Russian legislation recognizes the quality of binding international commercial arbitration awards»[2]. This also applies to awards of internal arbitration tribunals.

Judicial practice states that arbitral awards refer to non-normative acts subject to mandatory execution throughout the territory of the Russian Federation[3].

As a result of consideration of the application for the issuance of a writ of execution, the competent court shall issue a ruling on the issuance of a writ of execution or refusal to issue it. Refusal to issue a writ of execution for the enforcement of a decision of an arbitration tribunal is not an obstacle to re-applying to an arbitration tribunal if the opportunity to apply to an arbitration court has not been lost (Article 427 of the Civil Procedure Code).

It should be recalled that in modern Russia there are both state courts of general jurisdiction and state arbitration courts.

It can be concluded that the interested party can file a petition for the enforcement of an arbitral award both in a state court of general jurisdiction and in a state arbitration court.

In this situation, conflicts are possible with the unfair behavior of the parties to the dispute. Thus, one party may file a petition with a state court of general jurisdiction for the enforcement of an arbitral award. And the other party may, at the same time, file a motion with the state arbitration court to cancel the award. If information is available, consideration of the issue of execution of the decision may be suspended until the issue of its cancellation is resolved. But, there may be a lack of information in the courts about such parallel consideration of issues of the same case and the issuance by state courts of decisions that are opposite in content, but legal.

I believe that it is necessary to develop state electronic systems in which it is possible to quickly and efficiently track cases heard by state courts. And to oblige the offices of state courts to monitor these issues in order to avoid legal collisions.

Problematic issues of enforcement of arbitral awards.

Pay attention to some problems related to the consideration in state courts of issues related to the arbitration of disputes.

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[1] Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P. 55.

[2] Muranov A.I. Once again on the obligation nature of international commercial arbitration awards and internal arbitration awards under Russian law. // Moscow Journal of International Law. No.1. 2002. P. 162.

[3] Resolution of the Federal Arbitration Court of the Volga District, dated April 4, 2000 in case No. Bx1850y-5/99. // http://www.consultant.ru

The problem of confidentiality is recognized and analyzed in legal science. Here is the opinion of one of the leading Russian researchers in the field of arbitration.

«The problem lies in the fact that if, as a general rule, the procedures for arbitration proceedings are closed, then the proceedings in a state court are, as a general rule, open. Hypothetically, this creates a threat of disclosure in the process conducted by the state court of the information that was considered in confidence in the arbitration tribunal. The dispute considered in the arbitration tribunal, getting into the state court, becomes publicly available. In some foreign states, procedural legislation allows obtaining a special court decision, which limits access to such a decision of third parties. However, according to researchers, in practice this rule is not always possible to implement. In this regard, it would be advisable to introduce a rule into the Russian procedural legislation that would establish the obligation of the competent state courts to consider cases of contesting or enforcing arbitral awards behind closed doors, unless the parties have declared otherwise»[1].

I agree with this point of view, since the principle of confidentiality is one of the most important principles of arbitration and determines one of its advantages over state legal proceedings.

Consider further the following problem related to the enforcement and annulment of arbitral awards. Is it possible to enforce an arbitral award canceled in another state?

On the one hand, some scientists provide the opinion that recognition or enforcement of a cancelled arbitral award should always be refused. This opinion is based on the argument that an arbitral award that has been cancelled no longer exists and there is nothing to recognize[2].

On the other hand, cancellation of an arbitral award is not the reason for refuse its recognition or enforcement. Because international arbitration sphere do not depend on any national legislation, even the legislation of its seat[3].

There is also compromise position. Need to share and consider the grounds of cancellation of an arbitral award. For example, cancellation based on local and not on international recognized reasons should not lead to refusing recognition and enforcement of an award[4].

The following point of view is interesting.

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[1] Skvortsov O.Y. Problems of arbitration of business disputes in Russia: Doctor of legal sciences thesis. Saint-Petersburg. 2006. P. 180.

[2] Procedural law in international arbitration.\\ Petrochilos Georgios. New York: Oxford University Press Inc. 2004. P. 336.

[3] Gaillard Emmanuel. Legal Theory of International Arbitration. Martinus Nijhoff Publishers. 2010. P. 35.

[4] Born G.B. International Commercial Arbitration. 2nd ed. The Hague: Wolters Kluwer. 2014. P. 3394.

«In practice, if the foreign set-aside judgment complies with the forum's principles of private international law (for example, it has been rendered by a competent court, in fair proceedings, and does not violate the forum's public policy), the foreign set-aside judgment should be given effect and the award refused recognition and enforcement under Article V (l) (e)[1] of the New York Convention 1958. Conversely, if the foreign set-aside judgment does not comply with the forum's principles of private international law (for example, it has been rendered by a non-competent court, in unfair proceedings, or violates the forum's public policy standards), the award may be recognized and enforced despite the set-aside judgment and Article V (l) (e)»[2].

Pay special attention to the following circumstance. «The decision of the state court refusing the application for recognition or enforcement does not have the effect of setting aside or otherwise invalidating the award. The award remains valid and, even though it may not be recognised or enforced in the country in which the application has been refused, it remains possible (subject to the defences which may be established in the relevant court) that the award will be recognised and/or enforced in another jurisdiction where assets may be located»[3].

One of the significant and well-known precedents on the above issue is the case Societe Hilmarton Ltd. v. Societe OTV[4]. The award was made in Switzerland and was subsequently set aside by a Swiss state court. However, this fact did not serve as a basis for refusing to enforce this decision on the territory of France.

There is the following example from practice. «The review of the merits of a foreign court's decision is generally not permitted under private international law principles. As clearly stated by Justice Walker in Malicorp, «an assertion that a foreign judgment is 'wrong' is not a sufficient basis to refuse to recognise it»[5]. The prohibition of the review of the merits thus leads to situations where one might have to accept a set-aside at the seat, even though it is based on an obviously wrong decision»[6].

[1] of the New York Convention 1958.
[2] Scherer M. Effects of International Judgements Relationing to Awards. Pepperdine Law Review. Volume 43. Issue 5. 2016. P. 640 – 641.
[3] International Arbitration: a handbook. Third edition // Capper Philipp. Lowels. London, Singapore. 2004. P. 134.
[4] Polkinghorne M. Enforcement of Annulled Awards in France: The Sting in the Tail. White & Case LLP. 2008.
[5] Malicorp Ltd. v. Government of the Arab Republic of Egypt. Malicorp, [2015] EWHC (Comm). // https://www.macmillandictionary.com/dictionary/british/ewhc
[6] Scherer M. Effects of International Judgements Relationing to Awards. Pepperdine Law Review. Volume 43. Issue 5. 2016. P. 643.

Proposal for writ of execution of arbitral tribunals.

There is a proposal on writ of execution in arbitration proceedings of disputes.

In the legal literature, even long ago, proposals are made to give, as an experiment, to one or more arbitral tribunals the authority to issue a writ of execution on their own decision, similar to the writ of execution of the state court[1]. The Author supported this suggestion in general[2].

If the results of this practice are positive it is necessary to use it everywhere and make appropriate changes to the legislation. In our opinion, this idea is attractive because the state court that issues the writ of execution for the decision of the arbitration tribunal did not consider the case on the merits, and has a worse idea about it than the corresponding arbitration tribunal. Therefore, the issuance of the writs of execution by arbitral tribunals will make the process of the decisions execution faster and less bureaucratic. The above mentioned proposal does not apply to the decisions of the international commercial arbitrations, as the named organizations are usually located in a different state than the one where their orders are to be enforced. Therefore, it is advisable to participation of the state courts.

Objectively, such advantages of arbitration as speed, less formality of the proceedings and the finality of the decision in this practice will manifest themselves in full force. It is also obvious that there is an increase in the efficiency of the activities of permanent arbitration tribunals and a significant reduction in the number of applications to state courts on cases of arbitration tribunals.

Of course, this issue needs to be carefully considered. It will be necessary to amend and supplement some legislative acts. It will be necessary to improve the mechanism of state control over the activities of arbitration institutions. Also, if such an experiment in any state is carried out in practice, it will be necessary to carefully select arbitration institutions for it, paying attention to reputation, quality of work and organizational capabilities.

Therefore, it seems that the idea of an experiment with the issuance of writ of execution, voiced above, has a rational grain. And the results of the experiment will show the prospects or futility of such a practice. Unfortunately, there is no such practice until now.

But, even now it is possible to predict, in the implementation of this proposal, the reduction of existing arbitration tribunals. The reason will be the use of more stringent

[1] Sergeev A. Arbitration tribunal: work experience. // Economy and law. No.12. 1993. P.104.
[2] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod, 2007. P. 154. and
Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P. 52. and
Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities. // Abstract of the Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006. P. 8.

requirements for arbitration institutions and a strictly permissive rather than notification procedure for their registration. And this is fair, since non-state institutions will receive an imperative right to enforce their own decisions by the state.

Or, it is possible to divide arbitration institutions into two categories: those that have the right to issue a writ of execution and those that do not. Accordingly, the requirements for the first arbitration institutions at the legislative and law enforcement levels will become tougher.

But, note that at present in the Russian Federation there is a strict permissive procedure for the formation of permanent arbitration institutions. Accordingly, there are a small number of them[1], passed through a rigorous approval and registration process. There are all conditions for carrying out the proposed experiment.

Conclusion.

Concluding the study of the procedure for the execution of arbitration awards, it should be said that in case of non-execution of an arbitration award voluntarily, there are opportunities enshrined in the legislation to enforce them forcibly. This opportunity is of great importance for the implementation by arbitration tribunals of protection of the rights and interests of business entities. Arbitration tribunals are not state organizations, but, despite this, their decisions can be enforced. Otherwise, the arbitration awards would be just a declaration, and the unfair party to the proceedings could freely ignore their implementation.

Nevertheless «there is no universal instrument on recognition and enforcement of court decisions»[2]. International conventions such as the New York Convention 1958 and the European Convention 1961 establish generally accepted rules for recognition and enforcement of arbitral awards. But, only state courts directly resolve the issue of issuing a writ of execution against an arbitration award. The practice of national courts and their interpretation of the above international conventions may differ. It should be recognized as positive the jurisprudence given in this chapter on the recognition and enforcement of arbitral awards in general and the possibility of recognition and enforcement of arbitral awards canceled by the national courts of other states. The latter issue needs further elaboration and consolidation in international conventions.

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[1] http://minjust.ru/ru/deyatelnost-v-sfere-treteyskogo-razbiratelstva/deponirovannye-pravila-arbitrazha

[2] Bagner H. Article I. Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention. Kluwer Law International. 2010. P. 19.

Part 4.
Problems of commercial arbitration, and ways of their solving.

Introduction.

In this part, the author researches three main blocks of issues.

First block considers the main problematic and perspective issues of commercial arbitration. Their content, regulation by international and national legislation and and evaluation by legal scientist are analyzed.

Second block explores some gaps and shortcomings in the legal regulation of commercial arbitration. Ways and means of improving legislation and law enforcement in this area are proposed.

Third block discusses global issues and development trends of commercial arbitration in the modern world. The author analyzes these trends and proposes postulates about formation of unified global legal standards governing arbitration.

1. Problematic and perspective issues of commercial arbitration.

Issues of an arbitration procedure.

The issue of formalization of commercial arbitration procedure is relevant. Objectively the opinion that «the arbitration form of protection of civil rights arises from the contract, but is carried out according to procedural rules»[1].

«On the one hand, one can observe that the more international arbitration has become the principal means of dispute resolution in international business, the more it has been transformed from a rather informal proceeding to a judicial procedure which resembles more and more traditional litigation. At least this is the civil law perspective. The times have long gone by when arbitration was conceived as a true alternative to resolve commercial disputes among peers»[2].

On the other hand, it is probably true that the subject matters in dispute over the years have become more complex, both in technical and legal terms. «Often the amounts at stake are enormous, and quite naturally, each party wants to win its case. Parties are aware that there is no appeal on the merits. So they know that unlike litigation there is only one round to

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[1] International and internal protection of human rights. // edit. Valeev R.M., Moscow. 2011. P. 532.
[2] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 112.

fight, and they want to present their claim and their defence, respectively, in the best possible way»[1].

The main thing in this matter is to strike a balance in the formalization of an arbitration procedure. A clear and detailed regulation of arbitration is necessary for the quality work of arbitration tribunals. At the same time, it is necessary to avoid excessive formalization and bureaucratization of the dispute resolution procedure.

Note that in world arbitration practice there are fairly unified rules for the procedure for resolving disputes, which I consider a positive factor. However, the current legislation, as a rule, sets only general framework for the procedure for litigating a case. The detailed procedure is established by regulations of institutional arbitration institutions and by agreement of parties. Accordingly, there are legal instruments that establish a clear framework for legal regulation, but take into account the individual characteristics of case proceedings.

Legal status of parties to dispute and third parties.

Pay attention to behavior of the parties to dispute and their representatives, who, in order to win the case, may commit unseemly actions.

Firstly, it is true that «many of the disputes that are nowadays brought before arbitral tribunals are much more complex both in terms of law and facts than they were some decades ago. Often tons of documents and huge amounts of information have to be analysed for preparing the case. Dozens of witnesses have to be interviewed, expert witnesses have to be consulted, extensive legal research has to be done and comprehensive submissions have to be prepared»[2].

Secondly, «one can also observe that parties' counsel spend more and more often much energy and time on fierce battles on procedural issues: they challenge the jurisdiction of the tribunal; they claim the extension of the arbitration clause to a non-signatory party; they make challenges against an arbitrator; they introduce requests for various interim relief; they request the production of documents; they file applications for the exclusion from the file of privileged documents; they submit applications for security for costs; and so forth. In some cases, these actions may be legitimate for the proper defence of the case, but often they are used as tactical manoeuvres. Whatever the motives, these procedural battles resemble more

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[1] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 112.

[2] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 113.

and more traditional litigation and are a serious challenge to the smooth conduct of arbitration proceedings»[1].

There is an interesting opinion that «arbitral tribunal is the ultimate solution to limit the guerilla tactics used by the parties and their counsels and to counterbalance them with strategic, correct, concrete and feasible procedural measures, as well as to insure the smooth forward motion of the process in an efficient manner and, moreover, to protect the award from due process challenges»[2].

Thus, the tribunal should quickly eliminate peripheral issues, particularly on the procedural level, wherever possible and focus on the essence of the dispute[3].

Objectively, correctly developed and used procedural rules allow for the proper organization of the arbitration of disputes and prevent dishonest behavior of the parties.

«And it is rather clear that, on balance, such policy is ultimately to the benefit of the parties since an efficient case management reduces the duration of the proceedings and, by way of consequence, the lawyers' fees»[4].

I also suppose that it is necessary to establish in the legislation the free and unhindered participation of third parties in arbitration proceedings, without asking the consent of the parties. Because third parties cannot present their claims in arbitration proceedings without the consent of the parties. However, the parties may often object to such participation. The proposed provision will prevent attempts by an unscrupulous party to delay the hearing of the case.

Responsibility and integrity of arbitrators.

An interesting issue about the responsibility of arbitrators. Consider the Italian Code regulating this issue in the Article 813 – ter.

The responsibility of an arbitrator comes for the untimely consideration of dispute or failure to perform other actions that he was obliged to perform, as well as failure to comply with the terms for issuing a decision or its correction. Responsibility comes when «provided that the final award is set aside on that basis»[5].

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[1] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 113.

[2] Florescu C.I. Excessive Judicialization - an Obstacle to Efficiency in Arbitration. // Czech (& Central European) Yearbook of Arbitration. Interaction of arbitration and courts. Volume 5. edit by Belohlavek A.J., Rozehnalova N. Juris. 2015. P. 93.

[3] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 113.

[4] Pervasive problems in international arbitration. // Edit. by Mistelis L.A., Lew J.D.M. Kluwer Law International. 2006. P. 107.

[5] Kurochkin S.A. Arbitration in Italy. // Journal Arbitration Tribunal. No. 3 (81). 2012. P. 147.

An important condition for the liability of an arbitrator is the presence of dishonesty and fraud (dolo) or negligence (copla grave) in his actions. The arbitrators are then liable within the limits provided for by Italian law, namely Paragraphs 2 and 3, Article 2 of the Law No.117 of April 13, 1988.

The arbitrator convicted of these violations must compensate the injured party for damages. Moreover, the arbitrator is responsible only for his own actions, but not for the actions of his colleagues in the arbitral panel.

Objectively, Italian legislation prescribes the issues of liability of arbitrators in the most detail, when the arbitration laws of other countries do not specify this issue. It is understood that arbitrators for dishonest actions are liable on the general grounds provided for by civil, criminal and administrative legislation.

One can talk about the positive role of this provisions on real responsibility of arbitrators, but it is necessary to approach this issue in a very balanced and cautious manner. It is necessary to carefully qualify the illegal actions and negligence of the arbitrators in order to exclude contradictions in the interpretation of this issue.

«Arbitrators are normally rewarded by the Court when they are perceived as performing their functions with expedition and efficiency. Conversely, an arbitrator's remuneration may suffer for lack of diligence»[1].

Continuing the theme of unfair behavior of arbitrators, consider an issue about arbitrators – partisans, who tacitly supports one of the parties to the dispute. This term was proposed in one of the scientific works[2]. Arbitrator – partisan acts entirely in the interests of one party that appointed or nominated him, clearly to the detriment of the principles of impartiality, fairness and equal treatment of the parties. A situation is possible when such an arbitrator abuses his right to a dissenting opinion, with the help of which he tries to create a reason to challenge the arbitral award. This was discussed in detail in the previous part of this work.

The actions of an arbitrator-partisan are to support one of the parties to dispute in every possible way and make it as difficult as possible to enforce the arbitral award, which he does not support.

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[1] Derains Yves, Schwarz Eric A. Guide to the New ICC Rules of Arbitration. Kluwer Law International. 1998. P. 330.

[2] Kalish Y.V. To the discussion on the choice of arbitrator in international commercial arbitration. 28 March 2019.// https://journal.arbitration.ru/ru/analytics/k-diskussii-o-vybore-arbitra-v-mezhdunarodnom-kommercheskom-arbitrazhe

Note that it is not always possible to identify the arbiter - partisan and declare him a timely challenge. There may be no formal reasons for disqualification, and the partiality of such an arbitrator is not always clearly manifested in the course of the dispute.

It seems that institutional arbitral tribunals should control their own list of arbitrators and monitor their integrity. However, timely identification of dishonest arbitrators and their removal from the lists is often difficult.

But, to be objective, note that the parties are also responsible for the arbitral panel, because choose their own arbitrators. And the parties to the proceedings have every opportunity to form a qualified composition of the court, able to competently and professionally consider the dispute. And the mechanism for challenging arbitrators is an effective tool for protecting the rights and interests of the parties.

True that «nothing is more important than choosing the right arbitral tribunal»[1].

Equal representation of arbitrators.

Currently, the international arbitration community is debating the need to achieve equal gender representation among arbitrators. Pay attention on the activities of the organization - Arbitral Women[2], which promotes women in arbitration dispute resolution. This organization developed the Pledge of equal representation in arbitration[3], which to date has been signed by more than 5,000 prominent representatives of the global legal community, including representatives of leading law firms and institutional arbitrations. This petition seeks to increase, on an equal opportunity basis, the number of women appointed as arbitrators in order to achieve fair representation.

In the context of the foregoing, the question was raised of limiting the possibility of appointment of arbitrators by parties in favor of the appointment of arbitrators by institutional arbitral institutions in order to achieve equal representation[4].

But, in turn, many corporate clients are now insisting that arbitration institutions include candidates of different genders in the lists of proposed arbitrators[5].

Also note the activity of the association Young Arbitrators Sweden (YAS)[6], which was established in 2003. YAS is an association for young practitioners (aged 45 and below) in

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[1] Redfern A., Hunter M., Blackaby N., Partasides C. Law and Practice of International Commercial Arbitration (Fourth edition). Sweet&Maxwell. London. 2004. P. 216.
[2] http://www.arbitralwomen.org
[3] http://www.arbitrationpledge.com
[4] Ross A. London: Party-appointed arbitrators — love them or loathe them? // https://globalarbitrationreview.com/article/london-party-appointed-arbitrators-love-them-or-loathe-them
[5] Rogers C.A. The Key to Unlocking the Arbitrator Diversity Paradox?: Arbitrator Intelligence. // http://arbitrationblog.kluwerarbitration.com/2017/12/27/on-arbitrators/
[6] https://youngarbitrators.se

the field of arbitration and commercial litigation, with more than 400 members in Sweden and abroad. This organization is not only a platform for young professionals, but also contributes to the fight against age discrimination in arbitration.

Many young specialists have excellent qualifications and professional level to perform the functions of an arbitrator. But, in some cases, the parties to dispute take a conservative approach to the candidates for arbitrators, choosing older ones with more experience. These factors do not always indicate a higher level of arbitrators. There are age biases here.

Against discrimination against arbitrators, a system was created Arbitrator Intelligence[1], which contributes to maintaining transparency, public scrutiny and representativeness in the appointment of arbitrators. The system contains information about arbitrators, their practical and professional experience and achievements, as well as reviews about arbitrators from parties to disputes and their representatives. This system makes it possible to determine the reputation of an arbitrator by the quality of his work, and not by gender or age characteristics. I consider it fair and expedient to fight against discrimination of arbitrators and to achieve their equal representation. I point the great role of the above-mentioned public organizations in this. Their activities are not of an imperative and coercive nature, but contribute to a change in the social climate in the field of arbitration and, as a result, the elimination of discrimination.

New technologies in arbitration.

In the modern world the leading role of on-line technologies, including the arbitration of disputes, can be traced.

In the present work (Part 2, Chapter 2, Paragraph 2) these issues were analyzed. It is objective to assert that there is a need for a gradual introduction into the practice of arbitration tribunals of the use of modern telecommunication technologies. One option is to have an online hearing. These technologies make it possible to establish contacts between the court and absent parties in the on-line mode of direct communication, which does not prevent the implementation of the principles of competition and equality of rights of the parties to the dispute in full. In addition, the principle of prompt arbitration of disputes is implemented and its costs associated with travel and business trips of the parties or their representatives, witnesses and experts are reduced.

The experience of the Vilnius Court of Commercial Arbitration is interesting (VCCA) is interesting. This arbitral tribunal developed the arbitration case management system online.

[1] https://arbitratorintelligence.com

On the arbitration case management will be held online, and 24 hours a day parties are able to participate on-line in arbitration proceedings[1].

But, there is a collision between the territorial nature of the jurisdiction of tribunals and the global nature of cyberspace[2].

As for the above collision, it is resolved as follows. An institutional arbitration tribunal is registered in a certain territory and has territorial jurisdiction. If this institution tribunal conducts remote virtual dispute proceedings, this does not change anything in its jurisdiction. Ad hoc arbitrations are organized by an arbitration agreement, where any type of dispute settlement can be prescribed, including online.

It is possible to state both the advantages and the difficulties of litigating disputes online. However, technological progress does not stand still. I believe that the virtual settlement of disputes will take its place in the institution of arbitration and the parties, if desired and necessary, will be able to use this procedure. Moreover, the recent COVID-19 pandemic has shown the need for the development and widespread use of online technologies.

I believe that new technologies in the field of arbitration have a great future and good prospects. But, already now it is necessary to regulate them in current national and international legislation in general terms and in regulations of institutional arbitration tribunals in more detail. Also need similar regulation in UNCITRAL model documents for legislative example and use by ad hoc arbitrations.

2. Gaps and shortcomings in the legal regulation of commercial arbitration.

Form of an arbitration agreement.

Arbitration agreement of the parties to dispute is basis for arbitrating the conflict situation. This agreement excludes jurisdiction of a state court. The right of parties to conclude an arbitration agreement is an expression of the principle of dispositivity, which implies the possibility for subjects of legal relationship to choose any legal measures and ways to protect their own rights and interests.

The appropriateness of the written form requirement should be assessed. Objectively, there are many situations where the parties have agreed to arbitrate, and this is confirmed by written evidence, however, the validity of the arbitration agreement, however, is called into question due to strict formal requirements.

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[1] https://arbis.lt

[2] Kaufmann-Kohler G., Schultz T. Online Dispute Resolution: Challenges for Contemporary Justice. The Hague. 2004. P. 27.

It seems, that «it is completely unjustified that a party who has freely entered into an agreement providing for the settlement of disputes in arbitration should have the right (often on the basis of false arguments) to violate the obligations assumed and go to a state court»[1].

Accordingly, «the requirement for a written form of arbitration agreement is due to the fact that by entering into it, the parties thereby waive their constitutional right to apply to a state court, which justifies the strict requirements for the form of an arbitration agreement»[2].

I agree that the written form of the arbitration agreement and its signing by authorized persons in the prescribed manner provides a clear legal fixation of the agreements and prevents possible attempts to violate or challenge the agreement in the future.

But, modern development of technologies dictates new rules. It seems that the electronic form of the arbitration agreement, certified by the electronic signature of authorized persons, does not differ in any way from the traditional written form.

As for other ways of formalizing arbitration agreements described earlier, such as electronic messages, telegrams, telexes, magnetic media, or even more so verbally, the author is very skeptical about them.

For example, a party to a dispute wishing to avoid arbitration may be able to claim that various types of communications containing an arbitration clause were sent by unauthorized persons and are not the position of the company. A legally controversial situation arises, which will be resolved most often in the state court and its various outcomes are possible.

Therefore, the author recommends providing in international legal documents, national laws and arbitration regulations such forms of arbitration agreements or clauses that exclude their various interpretations that may be the reason for their challenge. Such forms are seen as a written form with official seals of the counterparty and signatures of authorized persons or an electronic form with an electronic signature of authorized persons of the counterparty. Currently, there is software for electronic document management that provides for verifiable electronic signatures.

I believe that the arbitration agreement shall be in writing, and it shall constitute a separate document or be contained in another document signed by the parties, or shall be concluded by exchange of letters or other communications fixing such agreement. The rules on compliance with the written form of the arbitration agreement almost completely coincide with the procedure for concluding the contract in writing.

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[1] Brynner R. New York Convention: philosophy and purposes of the convention. // Journal Arbitration Tribunal. 2003. No. 6 (30). P. 16-17.

[2] Kiseleva T.S. Form and procedure for concluding an arbitration agreement: a comparative legal analysis. // Journal Arbitration Tribunal. No. 1/2. 2002. P. 75.

Issues of arbitrability of disputes.

In this research, issues of arbitrability of disputes were considered in detail. Repeat the main postulates and proposals of the author.

There are limitations on the jurisdiction of types of disputes to arbitration. Legal relations in the field of administrative and criminal law cannot be resolved through the arbitration procedure under any circumstances. The imposition of administrative and criminal penalties is an imperative procedure carried out on behalf of the state by authorized state authorities. Legal relations related to public law and the activities of public authorities within their own powers are also not subject to arbitration.

Arbitration tribunals are subject to disputes between the parties to civil law relations, including individuals and legal entities, unless otherwise provided by law. Some types of disputes cannot be considered by arbitration courts, because they are of a public-legal nature. It is necessary to specify the main types of these disputes, including disputes on consumer protection, disputes on contracts in the field of public procurement, disputes in the field of antitrust regulation, disputes on privatization of state and municipal property, disputes on bankruptcy, etc.

But in the considered legislation of various states, and to one degree or another this applies to all the legislation studied above, there is no clear definition of the types of disputes subject to arbitration, and the definitions that exist are often vague and contribute to contradictory interpretation of laws. Still, as a rule, the legislation does not clearly indicate the types of disputes that are not subject to arbitration proceedings. The national procedural legislation indicates non-arbitrable types of disputes, but this information, as a rule, is not contained in one place, but there are many references to various legal acts, which makes it difficult for lawyers to work with sources of law. The exception is Law of Lithuania "On Commercial Arbitration" of April 2, 1996 No I-1274, where Article 12 specifies the types of non-arbitrable disputes. I consider the experience of Lithuanian legislators to be positive.

The author considers it necessary to provide for the indication of all types of disputes that are not subject to arbitration proceedings and are not subject to arbitration courts in one article of one legal act, if necessary, making references to it in other legal acts. From the point of view of the scientific provisions of legal technology, the implementation of this proposal will significantly increase the convenience of working with legal acts and, as a result, the quality of legislation.

Also, in my opinion, one can trace the trend of increasing importance of commercial arbitration, both international and internal, accompanied by a decrease in the role of state in controlling economic activity and a decrease in the role of state courts in resolving private law

disputes. The above should contribute to the expansion of the types of disputes that can be resolved under the arbitration procedure. This trend will continue to develop.

I also affirm that arbitral tribunals have the right to consider any disputes, except the cases of direct legislative restrictions.

The problem of jurisdiction of arbitral tribunal is very important. «If a tribunal lacks jurisdiction altogether, it has no authority to continue with the arbitration. If it does so, any award that it makes will be void and if a party attempts to rely on such an award, it will be set aside and enforcement refused»[1].

Accordingly, in modern legal science it is necessary to develop and formulate clear and understandable legal standards for the arbitrability of disputes. These standards should be recognized by the global legal and arbitration community and recorded in international legal documents of a recommendatory or (better) mandatory nature. Thus, it is possible to avoid many contradictions and legal collisions in the sphere of jurisdiction of disputes to arbitration institutions.

Protocol of arbitration proceedings.

The issue of a protocol of hearing in arbitration proceedings was analyzed in this research (Part 2, Chapter 4, Paragraph 1). It is necessary to repeat the main postulates.

Protocol keeping of arbitration proceedings is provided for by the current legislation of some states, for example Uniform Arbitration Act of the USA (Clause A Section 9), Russian Act 2015 (Clause 5, Article 27). Most of the legislative acts of various countries, such as Italy, Sweden, Norway, Lithuania, etc., do not regulate this issue.

It should be noted that a number of regulations of arbitration institutions provide for the possibility of keeping minutes of the hearing of the case (Clause 7, Article 30 of the ICAC Arbitration Rules; Clause 3, Article 31 of the VCCA Arbitration Rules). Other regulations do not address this issue (ICC Arbitration Rules, SCC Arbitration Rules).

In principle, it seems generally accepted that the issue of protocol keeping in most disputes is resolved directly by the parties and arbitrators. The issues of protocol keeping in legislative and law enforcement practice are not given much attention.

The author, in his previous works, made proposals for a more detailed regulation of this issue. This proposal still actual at present time.

«I think it makes sense to legislate the obligatory keeping of the protocol of disputes in all arbitration institutions without exception. This provision, for example, can facilitate the procedure for the enforcement of the arbitral award, since the competent court, thanks to the

[1] International Arbitration: a handbook. Third edition // Capper Philipp. Lowels. London, Singapore. 2004. P. 77.

presence of the specified protocol, will be able to fully and comprehensively analyze the essence of the dispute and its resolution by the arbitration court. After all, the protocol fully reflects the course of the dispute, the positions of the parties and the evidence base»[1].

Language of arbitral proceedings.

The issue of the language of arbitration proceedings was analyzed in this research (Part 2, Chapter 2, Paragraph 2). It is necessary to repeat the main postulates.

Objectively, the issue of choosing the language of dispute is dispositive in nature, that is, it gives the parties a right to determine it and fix their choice in the arbitration agreement.

At first glance, this rule looks quite logical and democratic. But this is only at first glance, since many modern languages can cause great and sometimes insurmountable difficulties for the arbitration tribunal with translation. Therefore, it would be more expedient to give the right to decide the issue of the language of arbitration proceedings to the arbitration tribunal and only to it.

The language chosen by the parties may create problems for the arbitral tribunal, for example, it is difficult to find a qualified interpreter. Especially if the use of such a language is not common in international commercial relations.

In this situation, arbitration tribunal guided by the principles of arbitration and the obligation to resolve the dispute, has the right not to accept the language proposed by the parties and to conduct arbitration proceedings either in the national language or in English. But, examined in this thesis, the current national and international legislation, as well as the regulations of arbitration institutions, ignore this issue.

It seems appropriate to provide for issues related to the language of arbitration proceedings in the rules of the arbitration tribunal. The rules should provide that if, due to objective reasons, arbitration proceedings cannot be conducted in the language chosen by the parties, they shall be conducted in the national language or English.

Prejudicial power of arbitration awards.

Consider the institution of prejudice in relation to commercial arbitration. This issue was analyzed in this research (Part 3, Chapter 1, Paragraph 1).

A fair conclusion about «the presence of both theoretical and applied prerequisites for the normative consolidation of the prejudicial connection of arbitration awards with judicial acts of state courts»[1].

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[1] Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities: Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006. P. 129-130.

I also agree with the opinion on the equivalence of establishing the truth both in commercial arbitration and in a state court[2].

«The practice of applying the New York Convention of 1958, as well as the need to comply with the principles of legal certainty and consistency of judicial acts, indicates that the essence and legal goals of prejudice inevitably lead to the recognition of prejudicial force for decisions of international commercial arbitration»[3].

Really «jurisdictional activity of international commercial arbitrations is inherently the administration of justice»[4]. In international jurisprudence, there are decisions of the European Court of Human Rights (ECHR), which argue that the term "court" should not necessarily be understood as a classical type of jurisdiction integrated into the general judicial system of the state[5].

The above confirms the general recognition of arbitration awards as full-fledged jurisdictional acts. Accordingly, they may well have prejudicial effect both in state proceedings and in other arbitration proceedings.

The author considers it appropriate to give an arbitral award the property of prejudice, by improving the current legislation, including in relation to the consideration of cases in state courts and arbitration institutions. The foregoing is also true with regard to the prejudice of arbitral awards in arbitration proceedings in other cases.

This proposal is justified, since arbitration trbunals, having considered a dispute, give a qualified and reasonable decision on its merits, which meets the requirements for evidence, and can be used as the latter, both in state and in arbitration proceedings. There is no need to re-prove the circumstances already recognized by the award of the arbitral tribunal.

The prejudicial nature of decisions of state courts that have entered into legal force is also appropriate in arbitration proceedings. The parties are thereby relieved from the obligation to prove previously proven and established circumstances and facts.

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[1] Chupakhin I.M. Arbitration award: theoretical and applied problems: Candidate of legal sciences thesis (PhD). Yekaterinburg. 2012. P. 27.

[2] Kostin A.A. The problem of the prejudicial force of awards of international commercial arbitrations in the legislation of the Russian Federation. // Actual problems of Russian law. No. 3. 2014. P. 495.

[3] Sergeev A.P., Tereshchenko T.A. On the issue of the role of international arbitration proceedings and the property of prejudice of decisions of international commercial arbitration. // International commercial arbitration and private law issues: a collection of articles. // comp. and resp. edit. Greshnikov I.P. Moscow. 2015. P. 65.

[4] Sergeev A.P., Tereshchenko T.A. On the issue of the role of international arbitration proceedings and the property of prejudice of decisions of international commercial arbitration. // International commercial arbitration and private law issues: a collection of articles. // comp. and resp. edit. Greshnikov I.P. Moscow. 2015. P. 69.

[5] Paragraph 76 of the ECHR judgment of 28 June 1984 in Campbell and Fell v. the United Kingdom. // https://echr.coe.int

Enforcement of arbitral awards.

Considering the issue of enforcement of arbitral awards the author expressed the following proposal in one his earlier publications[1]. This idea is still relevant today.

It seems expedient to suggest that one or several arbitration tribunals, on an experimental basis, be given the right to issue a writ of execution against their own award. This practice will make the process of enforcement of arbitration awards faster and less bureaucratic, i.e. no need to waste time getting a writ of execution in a state court. Such advantages of arbitration proceedings as speed, less formality of the proceedings and the finality of the decision in this practice will manifest themselves in full force. In the case of positive results of this experiment, it makes sense to introduce the proposed practice everywhere and introduce appropriate changes in the legislation.

The foregoing does not apply to the institution of international commercial arbitration, since the above organizations are usually located in a state other than the one where their prescriptions are to be enforced. Therefore, the participation of state courts is expedient here.

This proposal was considered above (Part 3, Chapter 3) and its pros and cons were indicated. But, I believe that the right of arbitration institutions to issue a writ of execution against their own decision can only be objectively assessed in practice. For this purpose, a similar experiment is proposed in a limited scope.

Definition of public policy.

The issue of defining public policy was analyzed in details in this research (Part 3, Chapter 2, Paragraph 2). It is necessary to repeat the main postulates.

In the practice of enforcement of arbitral awards, there are cases when arbitral awards rendered are canceled on the grounds of their contradiction to public policy, since, according to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, this situation is the basis for refusal to recognize and enforce an arbitral award. The public policy clause is a mechanism that secures the priority of national interests over private interests and thereby protects the public policy of the state from any negative influences on it.

But the concept of public order is not defined in the legislation of most states, and in the legal literature there are a variety of interpretations of it. Based on this situation, it is advisable to fix in the legislation, both at the international and national levels, a clear and consistent concept of public order, in order to avoid any contradictions and inconsistencies in

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[1] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod, 2007. P. 154. and
Gavrilenko V.A. Judgment in arbitration (Monograph). Veliky Novgorod. 2008. P. 52. and
Gavrilenko V.A. Arbitration as a guarantee of the protection of the rights and interests of business entities. // Abstract of the Candidate of legal sciences thesis (PhD). Saint-Petersburg. 2006. P. 8.

the interpretation of legal norms. Then the signs of contradiction of an arbitration award to public policy will be immediately obvious, which will help to avoid unnecessary confusion in the procedure for recognition and enforcement of an arbitration award, or its cancellation.

The author proposed the following formulation of this term in earlier publication. This formulation is actual now. «Public order should be considered the fundamental rules and principles governing the life of the state and society, enshrined in legislative acts. This definition is not final and may be the subject of legal discussions»[1].

3. Global issues and development trends of commercial arbitration.

Dualism of arbitration legal regulation.

When the activities of international commercial arbitrations and domestic arbitration courts are regulated by various laws, it is called regulatory dualism[2]. This issue was considered in this thesis above (Part 1, Chapter 2, Paragraph 1). There are the main ideas and postulates.

Presence of two different laws entails the need to apply the institute of jurisdiction for the distribution of cases between internal and international arbitration tribunals. This is due to some differences in the legal regime of arbitration in international commercial arbitration and in the internal arbitration tribunal.

In the legal literature, there is a point of view that there is no fundamental obstacles to a single legal act regulating the activities of both international and "internal" commercial arbitrations[3]. Really, the issue of an identical legal regime for international and domestic commercial arbitration is relevant.

There are three options in legislative practice. International and internal arbitration are governed by the same (Italy, Finland, USA, etc.) or different (Russian Federation, Switzerland, Kazakhstan, etc.) legal acts. There is a compromise option that the legislators of Sweden and the UK have chosen, when one legal act is in force, but the issues of international arbitration are regulated by separate provisions.

Considering the issue of improvement and unification of law, I recognize it as fair that there are no fundamental obstacles to regulating the activities of both international and internal commercial arbitrations by a single legal act. In many states, this is how the law

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[1] Gavrilenko V.A. Arbitration trial of disputes (Manual). Veliky Novgorod. 2007. P. 199.

[2] International commercial arbitration. // edit. Skvortsov O.Y., Savransky M.Y., Sevastyanov G.V. Moscow: Statute. 2018. P. 207.

[3] Novikov E.Y. To the issue of the legal nature of arbitration proceedings. // Russian Yearbook of Civil and Arbitration Procedure. No. 2. 2002-2003. St. Petersburg. 2003. P.310.

operates. In almost all aspects, the principles of legal regulation of these two types of arbitration are identical.

The author adheres to the point of view on the need to regulate international and internal commercial arbitration by a single law. It is inappropriate to have an excessive number of legal acts that essentially regulate one legal institution, and in some aspects do not coincide with each other. This introduces unnecessary entanglement and bureaucratization into the current legislation. .

In the modern Russian Federation, there are separate laws governing international and internal commercial arbitration. For the most part, these laws are the same. I consider it justified to develop and adopt a single law in this area. It is possible either to establish completely unified rules for international and internal arbitration, or, according to the experience of Swedish and British legislators, to separate these rules within the framework of one law. There is a need for a broad discussion of the proposed change in legislation by the legal community and representatives of the legislative, executive and judicial authorities.

Uniform legal standards and unification of legislation.

Next, consider the following trend. The development of global economy and trade has now led to a significant expansion of the circle of its participants. Accordingly, the obvious merits of arbitration as a means of resolving commercial disputes encourage the development of a legal infrastructure to expand the use of arbitration. The above is true for both international and domestic arbitration. International organizations develop and create unified instruments of legal regulation of the institute of arbitration. This work has been going on for many years.

International legal instruments such as New York Convention 1958, European Convention 1961, UNCITRAL Model Law 1985, UNCITRAL Arbitration Rules 2010 and a number of others have developed unified rules for the regulation of commercial arbitration, which are recognized and practically applied in most countries of the world.

Previously, the legal regulation of commercial arbitration was formed mainly on the basis of national law, the norms of which sometimes did not coincide in different countries. This factor adversely affected the popularity of arbitration as a method of resolving disputes among economic entities. There was a high level of legal uncertainty and thus increased the risks of economic activity.

There is the theory of arbitration delocalization, which was considered at the beginning of the dissertation. Need to repeat its main postulates.

To substantiate this theory, one can point out the need to eliminate the interfering effect on international arbitration from national legal systems, the specific rules of which in different countries may differ significantly from each other. Pay attention to the fact that the place of arbitration is often chosen by the parties based on considerations of geographical convenience, and not in connection with the merits of the dispute. It would be unreasonable to attach particular importance to the country's legal system, which could be chosen not so much by the will of the parties as by practical considerations.

The issue of the theory of delocalization should be the subject of further scientific discussions. I only point that excessive interference by the state in the field of commercial arbitration distorts its legal nature as an alternative way to resolve legal disputes based on the freedom of contractual relations when entering into arbitration clauses by the parties, as well as on trust in arbitrators. Consequently, the legal regulation of use by the parties of commercial arbitration should be based on the principle of inadmissibility of arbitrary state interference in private law relations.

Currently, the legal regulation of commercial arbitration, both at the international and national levels, is largely unified. As mentioned earlier, many national laws have adopted provisions UNCITRAL Model Law 1985. The reviewed international conventions in the field of arbitration, especially the New York Convention 1958, have been adopted by most states.

I believe that these trends are purely positive. Uniform legal standards play a significant role in regulating the institution of commercial arbitration and contribute to its popularity and distribution. This is especially true of international commercial relations, the subjects of which can count on uniformity in general rules for the arbitration of disputes in any country.

True that already now there is a uniform regulation of commercial arbitration issues by laws and regulations in many aspects. However, there are also discrepancies, which are analyzed in this paper. Or some laws and regulations regulate a specific issue, while others are silent.

The development of a uniform arbitration procedure and its consolidation in model laws and regulations seems appropriate, given the above global trends.

It is necessary to continue work on the improvement and unification of legislation and regulations (for example, the rules of institutional arbitration) in the future. It is fair to say that if «arbitration tribunals will be created and function uniformly, on the basis of general rules, which will exclude or at least reduce to a minimum cases of state courts refusing to issue writ of execution for the enforcement of their decisions, which often takes place precisely due to

poor quality preparation of the Regulations and Regulations»[1]. Please note that this quote is still valid. Of course, this does not apply to the leading arbitration institutions, but many ordinary arbitration courts have problems with regulation of their own activities.

Repeat once again about the benefits of model laws on commercial arbitration and model regulations, the implementation of which in national legislation and regulations of arbitration institutions will improve the quality of legal regulation of this institution.

Of course, it is necessary to improve model laws and arbitration rules, taking into account modern legal trends. In the present study, a number of proposals for such an improvement have been developed.

The author, of course, does not call for complete copying and absolute unification of the provisions of national laws and arbitration rules with model documents. There may be specifics in different legal systems. For example, as already mentioned, there is more time to challenge of arbitral award in Italian legislation then in the UNCITRAL Model Law 1985. The regulations of institutional arbitration institutions also have their own specifics.

Situations are possible if the legal traditions of individual states have some differences, which are problematic to unify without violating those same legal traditions. For example, approaches to the distribution of arbitration costs and fees between the parties differ. Therefore, it is necessary to take a balanced and responsible approach to the unification of legal regulation of such issues.

But, it is expedient in rule-making to use a unified form of these documents and generally recognized principles of arbitration, taking into account the necessary features characteristic of a particular system of law. Uniform legal forms make it possible to reduce the procedural costs of all participants of arbitration proceedings.

Conclusion.

It can be argued that, due to its advantages over other methods of resolving commercial disputes, arbitration will become increasingly popular in the modern world. In this regard, there is a need for further improvement and unification of international and national legislation in this area and the elimination of its shortcomings.

The currently existing regulatory and legal framework governing the organization and activities of arbitration tribunals is sufficient for their successful functioning, but not ideal. There are some gaps and shortcomings. In this study, some of them were considered and ways to eliminate them were proposed.

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[1] Zaitsev A.I. Problems in the activities of arbitration tribunals and ways to overcome them. // Journal Arbitration Tribunal. No. 3. 2000. P. 37-38.

Further, in conclusion to this dissertation research, the author will present the main provisions and postulates of his work and briefly indicate his proposals for improving the regulation of commercial arbitration, formulated earlier in this thesis.

Conclusion.

In this dissertation research, the institute of commercial arbitration and its activities aimed at protecting the rights and interests of economic entities were analyzed. The present study was conducted in such main directions.

Issues and problems of procedural regulation in the field of arbitration of disputes at all stages are considered. The main characteristics of the arbitration procedure are identified and a number of recommendations for its improvement are developed.

International and national legislation, as well as other normative acts regulating this legal institution, were researched. For my thesis, the law and practice of states of the continental and common law systems with high development of the commercial arbitration sphere and states with relatively recent traditions in the commercial arbitration sphere, but interesting experience in its development, were selected.

The advantages of arbitration sphere were identified, allowing them to conduct dispute resolution more efficiently than state litigation, as well as advantages in legislative regulation and practice. Recommendations were developed to improve the legal and procedural regulation of commercial arbitration. The author also developed and formulated conclusions about the trends and directions of development of commercial arbitration in the modern world and put forward postulates on the development of unified global legal standards governing the institution of commercial arbitration.

The main postulates and proposals of this study are given in Chapter 4 of the thesis. Here, the author briefly formulates the main conclusions based on the results of this work.

1) In the modern world, various methods of resolving legal disputes, alternative to state justice, including commercial arbitration, are becoming more widespread, which is primarily associated with the development of economic relations and business activity, as well as an increase in the volume of internal and international economic relations..

Arbitration is supported by international organizations and most states of the world at the legislative and law enforcement level, contributing to the further spread and popularity of this method of conflict resolution.

2) At the global and national level, a legal infrastructure is being developed to expand the activities of arbitration. International organizations develop and create unified instruments of legal regulation of the institution of arbitration. National law is also developing in this direction. This work has been carried out for many years and is expressed in establishing of recognized international conventions and model laws accepted by the law of many states.

However, there are a number of gaps and shortcomings in the legal regulation of procedural legal relations arising in connection with arbitration proceedings. It is necessary to carry out further legislative work to improve the legal framework of the institution of arbitration at the international and state levels.

3) Uniform legal standards play a significant role in regulating the institution of commercial arbitration and contribute to its popularity and distribution. Subjects of economic legal relations can count on the general uniformity of the rules for arbitration of disputes in any country.

This trend is positive and further work is needed in this direction. The uniformity of national laws and regulations of arbitration institutions allows economic entities to use a single procedural procedure for arbitrating disputes in various states and legal systems. This contributes to the effectiveness of resolving conflicts and disputes in the business environment, reducing the procedural costs of participants in legal relations and, ultimately, increasing economic turnover and the growth of world and national economies.

4) The practice of regulating the activities of both international and internal commercial arbitrations by a single legal act seems justified. In many states, this is how the legislation operates. In almost all aspects, the principles of legal regulation of these two types of arbitrations are identical.

The author adheres to the point of view on the need to regulate international and internal commercial arbitration by a single law. It is inappropriate to have an excessive number of legal acts that essentially regulate one legal institution, and in some aspects do not coincide with each other. This introduces unnecessary entanglement and bureaucratization into the current legislation.

5) Arbitration of disputes has a number of advantages for protecting the rights and interests of the subjects of legal relations than litigation of a dispute in a state court. These advantages are expressed in the confidentiality of dispute proceedings, the possibility of choosing an arbitral institution and arbitrators, the possibility of choosing an applicable law, the possibility of choosing an arbitration procedure, and less formalization of the dispute resolution process. Commercial arbitration is non-state in nature and differs from the judicial procedure for considering and resolving disputes by a completely voluntary nature.

The use of the arbitration form of conflict resolution is justified by significant internal and international legal practice.

6) It should be recognized that there is a presumption of voluntary enforcement of an arbitral award by parties to a dispute. If parties, by their will, initiated arbitration proceedings, they are a priori ready to accept an arbitral award, even if this award is not in their favor. Most

arbitral awards are enforced on a voluntary basis and the assistance of a state court is not required for their enforcement. But, if the award is not enforced voluntarily, there is a well-established procedure for enforcement through the state judicial system. This procedure is regulated in detail by international legislation and national laws.

7) The author identified a number of gaps and shortcomings in the legal regulation of commercial arbitration and formulated proposals for eliminating these shortcomings and improving the current legislation.

A) Arbitration agreement shall be in writing. I suppose that the written form of the arbitration agreement and its signing by authorized persons in the prescribed manner provides a clear legal fixation of the agreements and prevents possible attempts to violate or challenge the agreement in the future. I recommend providing in international legal documents, national laws and arbitration regulations such forms of arbitration agreements or clauses that exclude their various interpretations that may be the reason for their challenge. Such forms are seen as a written form with official seals of the counterparty and signatures of authorized persons or an electronic form with an electronic signature of authorized persons of the counterparty. Currently, there is software for electronic document management that provides for verifiable electronic signatures.

B) It seems appropriate to provide for issues related to the language of arbitration proceedings in the rules of the arbitration tribunal. The rules should provide that if, due to objective reasons, arbitration proceedings cannot be conducted in the language chosen by the parties, they shall be conducted in the national language or English.

C) In the considered legislation of various states, and to one degree or another this applies to all the legislation studied above, there is no clear definition of the types of disputes subject to arbitration, and the definitions that exist are often vague and contribute to contradictory interpretation of laws. Still, as a rule, the legislation does not clearly indicate the types of disputes that are not subject to arbitration proceedings. National procedural legislation indicates non-arbitrable types of disputes, but this information, as a rule, is not contained in one place, but there are many references to various legal acts, which makes it difficult for lawyers to work with sources of law.

I consider it necessary to provide for the indication of all types of disputes that are not subject to arbitration proceedings and are not subject to arbitration courts in one article of one legal act, if necessary, making references to it in other legal acts. From the point of view of the scientific provisions of legal technology, the implementation of this proposal will significantly increase the convenience of working with legal acts and, as a result, the quality of legislation.

D) In modern arbitration practice, the issue of maintaining the protocol of arbitration proceedings in most disputes is resolved directly by the parties and arbitrators. The procedure for keeping a protocol in legislative and law enforcement practice is not given much attention.

I consider it appropriate to regulate this issue in the following way. Provide in the current legislation for an obligatory keeping of a record of disputes in all arbitration institutions without exception. This provision will simplify the procedure for the enforcement of an arbitral award, since the competent court, thanks to the presence of the specified protocol, will be able to objectively and comprehensively analyze the essence of the dispute and its resolution by the arbitral tribunal. After all, the protocol fully reflects the course of the dispute, the positions of the parties and the evidence base.

E) There is a need for a gradual introduction into the practice of arbitration tribunals of the use of modern telecommunication technologies. One option is to have an online hearing. These technologies make it possible to establish contacts between the tribunal and the absent parties in the mode of direct communication "on-line", which does not prevent the implementation of the principles of competition and equality of rights of the parties to the dispute in full. In addition, the principle of prompt arbitration of disputes is implemented and its costs associated with travel and business trips of the parties or their representatives, witnesses and experts are reduced. I believe that the virtual settlement of disputes will take its place in the institution of arbitration and the parties, if desired and necessary, will be able to use this procedure. Moreover, the recent COVID-19 pandemic has shown the need for development and widespread use of online technologies.

F) I consider it appropriate to give an arbitral award the property of prejudice, by improving the current legislation, including in relation to the consideration of cases in state courts and arbitration institutions. The foregoing is also true with regard to the prejudice of arbitral awards in arbitration proceedings in other cases. The prejudicial nature of decisions of state courts that have entered into legal force is also appropriate in arbitration proceedings. The parties are thereby relieved from the obligation to prove previously proven and established circumstances and facts by qualified and reasonable court judgment or arbitral award.

G) In the practice of enforcement of arbitral awards, there are cases when arbitral awards rendered are canceled on the grounds of their contradiction to public policy. The public policy clause is a mechanism that secures the priority of national interests over private interests and thereby protects the public policy of the state from any negative influences on it.

But the concept of public order is not defined in the legislation of most states, and in the legal literature there are a variety of interpretations of it. Based on this situation, it is

advisable to fix in the legislation, both at the international and national levels, a clear and consistent concept of public order, in order to avoid any contradictions and inconsistencies in the interpretation of legal norms. Then the signs of contradiction of an arbitration award to public policy will be immediately obvious, which will help to avoid unnecessary confusion in the procedure for recognition and enforcement of an arbitration award, or its cancellation.

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