REVIEW OF ARBITRAL TRIBUNALS ACTIVITY IN UZBEKISTAN (2015-2016)

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Currently, there is a period of sustained economic development in Uzbekistan. The entrepreneurship activity is growing and commercial circulation is accelerated and expanded. Of course, the more intense the developed communication between entrepreneurs, the greater the probability of legal conflicts between them. At the same time, any conflict in economic relations slows the development of entrepreneurship activity. In these circumstances, it is important that the legal mechanisms have been formed, which could ensure a speedy, fair and lawful resolution of disputes and the protection of the violated rights in the society.

The most common and reliable method of protection of violated civil rights is judicial protection by state courts (courts of general jurisdiction and economic courts). However, a society that bases its life on the principles of a market economy has concluded about the necessity to form also an alternative dispute resolution methods. One of the most effective method is considered ***an arbitration institution***. Feeling that necessity, Uzbekistan has created and improved the legal basis for the organization and activity of the arbitral tribunals. In following paragraphs, the author gives a snapshot of legal system of Uzbekistan on arbitration.

1. Legal Acts Regarding the Formation and Activity of Arbitral Tribunals.

As a result of the Presidential Decree on June 14, 2005 #3619 'On measures to further improve the legal protective system of business entities' aiming to ensure the legitimate rights and interests of businesses that unconditionally complies with the requirements of Article 53 of the Constitution of the Republic of Uzbekistan, the Law 'On arbitral tribunals' (hereafter, Arbitration Law) was adopted in October 16, 2006. This law regulates the formation and activity of arbitral tribunals, the transfer of disputes to arbitral tribunals, the form and content of the arbitration agreement, the costs of arbitration, arbitral litigation, the arbitral tribunals acts, appealing and enforcement of the arbitral decisions.

To simplify the procedure for securing the claim, Article 32 of the Arbitration Law was amended in accordance with the Law dated on May 14, 2014 #372, which excluded the provision obliging the arbitral tribunal to issue the decision concerning the measures to secure the claim. Thus, currently, the parties of the arbitration should attach to the application of securing the claim only the evidence of suing in arbitral tribunal. Before, they had to attach also the decision of the arbitral tribunal regarding the measures taken to secure the claim.

In addition to the Arbitration Law, the Civil Code, Civil Procedure Code, Commercial Procedure Code, Tax Code, and some other laws also regulates the activity of arbitral tribunals.

The economic courts may consider the following cases with respect to the decision of the arbitral tribunals:

1) a statement on the abolition of arbitral tribunal's decisions;

2) a statement to issue writs for forcible execution of arbitral tribunal's decisions.

Cases listed in Article 25^1 of the Commercial Processual Code are considered by economic courts under the general rules of economic proceeding with exceptions and additions, which are indicated in chapters 20^1 and 20^2 of the Commercial Processual Code. They determine the procedure for disputing the arbitral tribunal's decision, a form and content of the statement for repealing the decision and the issuance of a writ for forcible execution of an arbitral decision, the procedure of the statement consideration, the procedure for the ruling of economic courts on such case categories. Similar provisions are also contained in the Civil Procedure Code.

Pursuant to the rules established by the law 'On the execution of judicial acts and acts of other bodies', besides the execution of judgments, rulings and court decisions in civil cases and economic disputes, arbitral tribunal's decisions must also be executed. (Article 6). Executive documents in this case are the writs of execution issued by courts (civil court or economic court) to enforce the decision of arbitral tribunals (Article 7).

Currently, the party of arbitration proceedings who seeks the enforcement of award shall pay a state fee in the amount of two minimum wage to obtain a writ of execution from a competent court. According to the Presidential Decree dated October 5, 2016 # 4848, since the January 1, 2017 business entities are exempted from the payment of the state fee.

In accordance with Article 8 of the Arbitration Law, the Ministry of Justice of the Republic of Karakalpakstan, the regional and Tashkent city justice departments carry out the registration of permanent and temporary arbitral tribunals.The procedure for the registration of permanent and temporary arbitral tribunals is determined by the Statute on registration of arbitration tribunals approved by the Cabinet of Ministers on October 30, 2008 # 235.

The current number of registered arbitral tribunals is 208, including 155 under the Association of arbitral tribunals, 16 under the Chamber of Commerce and Industry of the Republic of Uzbekistan (hereafter, CCI) and 37 in other business entities.

Thus, legal acts regulating the formation and activity of arbitral tribunals combine the substantive and procedural elements, and therefore has a specific regime of regulation different from both private and public law.

2. Local Acts on the Formation and Activity of Arbitral Tribunals

The Arbitration Law and other regulations define only the general rules (the procedure of formation of the arbitral tribunals, their competence and general rules of arbitration proceedings), and do not regulate in details all procedural aspects of dispute resolution. In permanent arbitration institutions, the detailed rules of the arbitration and procedural issues of dispute resolution are regulated by local acts approved by the legal entity that formed the arbitral tribunal. These local acts are the statute and regulation of the permanent arbitral tribunal.

Since these acts are not regulatory ones in accordance with the law 'On normative legal acts', in contrast to the codes and laws regulating the procedure of dispute settlement before the competent court, the rules contained in the Regulation of the arbitral tribunal are not compulsory nature. However, in case

of conclusion of the arbitration agreement on the transfer of the dispute to an arbitral tribunal, the parties who have entered into such agreement make permanent arbitration court's Regulations an integral part of the arbitration agreement and thus are obligated to obey and follow the rules of the Regulation. Therefore, those rules are binding on the parties of arbitration agreement in dispute resolution.

Furthermore, the Arbitration Law and regulations of the arbitral courts are flexible and leave enough freedom to define and regulate the rules of arbitration by the disputing parties that can harmonize these rules in the arbitration agreement or during the dispute resolution process. Because of this, the use of arbitration maximizes dispute settlement on terms that are best suited to the interests of the parties involved. Consequently, it helps to boost their confidence in the efficient dispute resolution.

The local acts of permanent arbitration courts include provisions on fees, costs and expenses in the arbitral tribunal and the admission of the arbitrators. For instance, the Executive Committee of the CCI approved the Statute, the Regulations, the rules on fees, costs and expenses in the arbitral tribunal and the admission of arbitrators for Arbitral tribunal on January 7, 2008.

In order to attract a wider range of business entities, the CCI takes systematic measures to reduce the size of arbitration fees by amending the Statute on the fees, costs and expenses of the parties in the Arbitral tribunal at the CCI that gives positive results. For instance, the amount of arbitration fee in disputes stipulated by the Regulation of the arbitral tribunal is 0.5% of the claim price, but not less than 2 times the minimum wage (previously 1% of the amount of the claim), except that the solution the Executive Commission of the CCI from 25 November 2014 (minutes # 35 / 1) sets preferences for the members of the CCI (they pay the arbitration fee by 25% smaller than the others).

The decision the Executive Commission of the CCI from June 13, 2016 (#17 minutes) grants the right to the arbitral tribunal in exceptional cases to reduce the size of the arbitration fee. As a result, the number of claims received by the Arbitral tribunal at the CCI for the first nine months of this year has doubled compared to the same period of 2015.

3. Arbitral Tribunals in the CCI and its Regional Branches

Arbitration court at the CCI was established in January 12, 2007, and today it is one of the most reputable and reliable arbitration institution in Uzbekistan. Furthermore, there are 14 regional arbitration courts under the territorial departments of CCI. At present, the list of arbitration courts includes 32 highly qualified specialists in the field of law, economics, computer science, and others. Among them, there are four doctor of law, professors, six PhD candidates of legal sciences and two PhD candidates in Economics.

A commercial bank addressed to the arbitration court at the CCI with a claim against the defendants (Joint-stock company and individual persons) regarding the debt recovery under the credit agreement by the foreclosure of the mortgaged property (based on the mortgage contract). The loan agreement had an arbitration clause stated that,

'any dispute, controversy or claim arising out of this agreement, including ones with respect to the conclusion, alteration, execution, breach, termination and invalidity or the delivery of the collateral

should be settled by the economic court of Tashkent city or the arbitration court at the CCI. The right to choose economic court or arbitration court rests with the claimant'.

Nevertheless, in the mortgage agreement arbitration clause stated as follows:

'the disputes arising between the parties with respect to the execution of the agreement, its amendment, early execution or termination shall be settled through friendly negotiation between them. In case of failure to reach agreement in the prescribed manner, the parties may request an arbitration court in Tashkent city'.

Due to the textual differences of arbitration clause, the defendant objected during the proceedings, because of the absence of a written agreement to transfer the resolution of the dispute to the arbitration court at the CCI. However, CCI arbitration court rejected his objection on the following grounds:

(1) the defendant stated the absence of jurisdiction of the arbitration court in the proceedings (examination of the case was several times postponed at the request of the defendant), and had to argue before the proceedings starts;

(2) since the parties entered an arbitration agreement to refer the dispute to an arbitration court, based on the defendant's request the case was dismissed in the inter-district civil court;

(3) mortgage agreement is concluded for repayment of credit issued under the contract, where the name of the arbitration court is clearly stated;

(4) the arbitration court has seen unjustified delay of the proceedings in defendant's actions.

Based on the aforementioned, arbitrator alone has decided the question of jurisdiction to consider the dispute and ruled on the merits. Subsequently, inter-district civil court has denied the defendant's request to satisfy the statement on annulment of the arbitral tribunal's decision.

In case when the court concludes that it has no jurisdiction, it draws' ruling on termination of the arbitration "(Part 1 of Art. 44 of the Law). In all cases, the law does not provide the possibility to challenge the decision of the arbitral tribunal on its jurisdiction by a competent court. If the arbitral tribunal decides that it has no competence to consider the dispute, in accordance with Art. 44 of the Arbitration Law, the proceedings will be terminated, which should be reflected in the decision.

For instance, the company appealed to the Arbitral tribunal at the CCI with a claim against an individual entrepreneur requesting the property ownership from illegal possession, the lease payment in the amount of three million sums, loss of profits -5.4 million sums, to pay compensation spent for the representative aid - 5 million sums. A dispute has arisen between the parties comes out of civil relations regulated by Chapter 21 and 34 of the Civil Code, and in accordance with the first paragraph of Article 9 of the Arbitration Law may be considered by the arbitration court.

However, the defendant claimed the absence of the jurisdiction by arbitration court to consider the dispute prior to the trial. Since the name of the permanent court of arbitration is missing in arbitration clause of the lease contract, in accordance with Section 3 of Article 13 of the Arbitration Law, led to the invalidity of the arbitration agreement. Taking into consideration the above situation, the arbitral tribunal in its ruling stopped proceedings on the plaintiff's statement.

Therefore, the question of jurisdiction should always be the focus of the arbitration courts from the receipt of the statement of claim to the decision. In this case the arbitral tribunal must confirm the following:

- The presence of the arbitration agreement (clause) concluded between the parties;
- The validity of the arbitration agreement (clause);
- Applicability of the arbitration agreement (clause) to the dispute.

CCI Arbitration court located in Tashkent dealt with 664 cases in the amount of 118.9 billion sums from 2007 to 2016, 195 thousand euros and 45.7 million U.S. dollars. Furthermore, regional arbitration courts of CCI handled with 7602 cases in total, amounting to 373.3 billion sums, 45.7 million dollars and 195 thousand euros respectively.

4. Statistics

Cases Considered by the Arbitral Tribunal at the Chamber of Commerce of the Republic of Uzbekistan

№	Year	Number of cases	The price of the claim
1	2007	2	2 116 thousand sums
2	2008	20	501 294 thousand sums
3	2009	106	1 217 582 thousand sums
4	2010	114	3 312 408 thousand sums
5	2011	90	1 978 844 thousand sums
6	2012	100	16 725 149 thousand sums
7	2013	73	29 060 228 thousand sums 2 129 608 U.S. dollars 195 025 euros
8	2014	50	16 302 258 thousand sums
9	2015	46	34 018 003 thousand sums
10	2016 (9 months)	63	15 761 399 thousand sums 43 601 230 U.S. dollars
	Total	**664**	**52 797 620 099 sums** **45 730 838 U.S. dollars** **195 025 euros**

Cases considered by the arbitral tribunals at the CCI of the Republic of Uzbekistan and territorial departments of the CCI

№	Year	Number of cases	The price the claim
1	2007	2	2 116 thousand sums
2	2008	20	501 294 thousand sums
3	2009	497	30 621 120 thousand sums
4	2010	1281	29 730 095 thousand sums
5	2011	463	8 179 480 thousand sums
6	2012	1226	91 898 721 thousand sums
7	2013	668	50 080 430 thousand sums 2 129 608 U.S. dollars 195 025 euros
8	2014	1421	47 220 029 thousand sums
9	2015	1142	57 403 927 thousand sums
10	2016 (9 months)	882	57 669 803 thousand sums 43 601 230 U.S. dollars
	Total	**7602**	**373 307 015 thousand sums**

			45 730 838 U.S. dollars **195 025 euros**

5. Future challenges

In this area, there is still to do a lot. The practice shows a lack of understanding the basics of arbitration proceedings. The global issue is the lack of awareness of the status of the arbitration institution in the legal system, balance and its relationship with related legal institutions. Some modern issues often seem intractable, and therefore need in-depth theoretical study that is closely linked to the existing practice and international standards.

In particular, it is necessary to improve legislation on defining the rules with respect to the return or refusal to accept the statement of claim. The Arbitration Law and many regulations of arbitration courts fail to set rules about return or the refusal to accept the statement of claim. The Chairman of the court may refuse to accept the claim, if the dispute is not subject to the arbitral tribunal, and he can return the statement of claim and the documents attached thereto, unless:

1) the statement of claim fails to comply with the form and content set out in article 29 of the Law;

2) the statement of claim is not signed or signed by a person not entitled to it, or a person whose official status is not specified;

3) no documents confirming the payment of the arbitration fee in the established order and amount;

4) until deciding on the adoption of the statement of claim, the plaintiff applied for the return of the statement of claim.

The practice of arbitral tribunals shows that about 35-45 percent of cases completed with a settlement agreement in Uzbekistan. In this regard, we consider that it would be appropriate to supplement the Arbitration Law with the following standards, which provides the use of mediation in the dispute, which is on the resolution in the arbitral tribunal.

Article 4[1]. The use of mediation in the dispute that is on the resolution in the arbitral tribunal

1. The use of mediation is permitted at any stage of the arbitration proceedings.

2. In case the parties came to conclusion to hold a mediation, either party has the right to declare the arbitral tribunal a petition. The parties must submit to the court a writing agreement to conduct mediation.

3. If the arbitral tribunal receives the agreement indicated in paragraph 2 of this Article, the court shall issue a ruling on mediation.

4. The term of the mediation procedure should be established by agreement between the parties and specified in the determination of the arbitral tribunal. Arbitration proceedings should be delayed for that period.

5. A writing mediation agreement concluded by the parties as the results of the mediation procedure can be approved by the arbitral tribunal as a settlement agreement.

In addition, it is also necessary to improve legislation on the followings:

a) the establishment and termination of permanent arbitration courts;

b) the appointment of experts;

c) challenging the decision of the arbitral tribunal by third parties, if they submit evidence that the arbitral tribunal decided the question of their rights and responsibilities.

Further problematic issues are the questions with respect to the training, re-training and advanced training of arbitrators, teaching special course on ‘Alternative Dispute Resolution’ in the law schools.