ISSUES OF PRIVATE LEGAL REGULATION OF SOCIAL RELATIONS

UDC 341.6
DOI: 10.31733/2078-3566-2020-5-125-133

Alla AVSIIEVYCH©
Ph.D in Law
(Khmelnytskyi Institute of Interregional Academy of Personnel Management, Khmelnytskyi, Ukraine)

HISTORICAL STAGES OF DEVELOPMENT OF THE ARBITRATION AGREEMENT AND ARBITRATION

Алла Авсієвич. ІСТОРИЧНІ ЕТАПИ РОЗВИТКУ АРБІТРАЖНОЇ УГОДИ ТА АРБІТРУВАННЯ. Міжнародний комерційний арбітраж є одним із значущих інститутів сучасного права, важливою формою розв'язання спорів, що виникають у зовнішньоекономічній діяльності. Історія міжнародного комерційного арбітражу істотно вплинула на його нинішній стан і тому потребує детального розгляду.

Міжнародний комерційний арбітраж – це третейський суд, постійно діючий або спеціально створений у кожному конкретному випадку. Основна його мета – розгляд і вирішення міжнародного комерційного спору по суті. Міжнародний комерційний арбітраж створюється для вирішення спеціальної категорії справ, а саме комерційних спорів, які містять іноземний елемент. Така системна суперечність і неорганізованість тогочасного судочинства, що включало іноземний елемент, не могла не покликати до життя альтернативні методи врегулювання спорів. Для дослідження цієї тематики необхідно чітко розрізняти різновиди арбітражу, які існували в той чи інший період. Визначено, що основним чинником розвитку арбітражу поставала потреба у додатковій можливості передання спору на вирішення третім особам, які повинні були діяти неупереджено і надавати сторонам рівні можливості для представлення свого погляду на справу та її обставини, факти, права та зобов'язання, що часто надавало змогу не застосовувати державні судові механізми. Виділено та проаналізовано п'ять етапів розвитку міжнародного комерційного арбітражу, в тому числі закцентовано увагу на найважливіших нормативно-правових актах, які регулюють питання арбітражу загалом і арбітражної угоди, зокрема.

Ключові слова: *арбітр, міжнародний комерційний арбітраж, арбітрування, державний суд.*

Relevance of the study. International commercial arbitration is one of the most important institutions of modern law, an important form of resolving disputes arising in foreign economic activity. The history of international commercial arbitration has significantly affected its current state and therefore needs detailed consideration. International Commercial Arbitration is an arbitral tribunal, permanent or specially created in each case. Its main purpose is to consider and resolve an international commercial dispute on the merits. International commercial arbitration is created to resolve a special category of cases, namely commercial disputes with a foreign element.

Recent publications review. It should be noted that the issue of International Commercial Arbitration has traditionally been of considerable academic interest. In particular, the following Ukrainian scholars are worth noting: T. E. Abova, S. S. Alekseyev, A. G. Bobkova, T. S. Kiselyova, V. V. Laptyev, S. A. Lazarev, L. A. Lunz, M. M. Malskiy, V. K. Mamutov, V. S Martemyanov, V. F. Opryshko, I. H. Pobirchenko, D. M. Prytyka, H. V. Pronska, O. M. Sadikov, H. A. Tsyrat, A. S. Vasiliyev, O. H. Yuldashev and others.

ORCID iD: https://orcid.org/0000-0002-8192-8569
avsiievych.alla@maup.com.ua

The article's objective is to determine the stages development of international commercial arbitration and its application to resolve international commercial disputes.

Discussion. The arbitration method of dispute resolution and the arbitration agreement have gone through several stages of historical development. The etymology of the Latin term «arbiter» is unknown. Initially, this word had several meanings: «witness, professor, owner» [1, p.8]. The use of the term has become established and assigned a specific meaning – «justice of the peace, mediator» with the popularization of arbitration. The arbitrator was an independent, respected person who acted impartially, fulfilling a high moral obligation to decide on a particular dispute. In commercial disputes, arbitrators were often noble traders with an unblemished reputation, who had considerable experience in trade and could give useful advice on how best to resolve the dispute, or resolved it [2, p. 45].

Well-known French lawyer F. Fouchard notes that arbitration is «an elementary method of resolving disputes, as it consists in transferring them to ordinary persons, whose only qualification is that they were chosen by the parties» [3, p. 1, pp. 30-31]. Quite popular idea is that arbitration originated before the emergence of the state court [4, p. 395]. As V. Burobin notes, «the idea of settling disputes by arbitration without state intervention, i.e. by appealing to famous and respected people, exists as many years as commerce itself» [5, p. 10]. G. Tsirat calls the inability of national courts to effectively satisfy the wishes of the parties as «failures that occur in the activities of these courts due to mismatch between the location of the parties to the dispute and the place of contract, place of dispute and place of execution, etc.» [6, p. 28].

Such systemic contradictions and disorganization of the judicial proceedings of that time, which included a foreign element, could not fail to bring to life alternative methods of dispute settlement. To study this topic, it is necessary to distinguish clearly types of arbitration that existed at one time or another. The main reason for the arbitration development was the need for additional opportunities to refer the dispute to third parties, who had to act impartially and give the parties equal opportunities to present their views on the case and its circumstances, facts, rights, and obligations, which often allowed to avoid state judicial mechanisms. The arbitration agreement has always been an element of the will of the party in respect of such consideration because it is on the expression of respect and trust of both parties to the third is based on the appointment of the latter as an arbitrator. State courts had not had enough experience in resolving commercial disputes [2, p. 45].

It is believed that interstate arbitration preceded arbitration between non-state actors. This is contradicted by the statement made by V. Burobin that «arbitration of disputes has existed for as long as commerce itself» [5, p. 10]. And commerce originated much earlier than states or similar formations began to use arbitration. At the same time, it is indisputable that arbitration in different epochs differed qualitatively, as well as the fact that the decisions of arbitrators in disputes between countries were recorded much more often than in private disputes and thus have survived in more reliable sources. In such situation, it is advisable to use an informal approach, to perceive the first signs of similarity to modern arbitration as those that meet the basic principles of today's arbitration.

The famous French scientist R. David also spoke about the history of arbitration. He believed that «arbitration in the past was perceived mainly as an institution of peace, the main task of which was not to guarantee the rule of law, but rather to maintain harmony between persons who had to coexist. In some cases, the rules and procedures provided by law were too strict. The legislators were prepared to give effect to the arbitration agreement concluded by the parties to transfer the dispute to the arbitrator, but only after the dispute had already arisen. Arbitrators were often chosen on the principle of intuitu personae. This principle means that certain legal relations between the parties are established considering the person with whom a particular contract is concluded. R. David claimed that «the parties trusted the arbitrators or were ready to give them certain powers only because they were relatives, mutual friends or sages, who were expected to be able to find a satisfactory solution to the dispute» [7, p. 29].

Today, there is no consensus on where the arbitration and the arbitration agreement originated as its precondition. M. Mastyl claims that «even from historical sources it is impossible to obtain reliable statistical data on cases of application and types of arbitration, as many cases of dispute settlement have remained undescribed» [8, p. 43]. It is known that almost every national legal system has developed such an institution of law as arbitration. According to some scholars, the emergence of arbitration coincides with the period of formation of states.

V. Nikiforov singles out «five stages of development of international commercial arbitration» [9, p. 20]. V. Nikiforov's periodization emphasizes the most important normative legal

acts, which regulate the issues of arbitration in general and the arbitration agreement but is limited to the twentieth century as a period of development of arbitration. At the first stage, the preconditions for the emergence of international commercial arbitration appear institutions are formed, in which over time international commercial arbitration is created and functions, and the international legal framework is developed. At this stage the International Congress of Chambers of Commerce (1905) has been created, and later the adoption of this Congress Boston Resolution (1912) has been made, which emphasized the need to create international law to resolve disputes arising in international trade. V. Nikiforov includes here the establishment in 1912 of the Arbitration Institute of the Stockholm Chamber of Commerce and the establishment of the International Chamber of Commerce in Paris in 1914. The second stage – «the formation of international commercial arbitration» – involves creation of the International Chamber of Commerce in 1923, the International Court of Arbitration, the signing of the Geneva Convention on the Enforcement of Foreign Arbitral Awards in 1927. This stage, according to the scientist, lasted until the 50s of the twentieth century. At the third stage – «stage of improving the mechanism of enforcement of international commercial arbitration» – at the initiative of the International Chamber of Commerce Convention on the Recognition and Enforcement of Foreign Arbitration was developed and later in 1958 it was adopted in New York, to which many countries acceded, including Ukraine. The unification of the rules governing arbitration and the adoption of the UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law) in 1985 formed the basis of the fourth stage. The fifth stage is characterized by the implementation of the UNCITRAL Model Law adopted at the previous stage in various jurisdictions of the world.

Speaking about characteristics of the last stage, it should be borne in mind that the full adoption of the provisions of the UNCITRAL Model Law is accompanied by incomplete special modeling of certain provisions and institutions of arbitration law. Based on this, it is more appropriate to define the last stage not as an «implementation stage» but as a «stage of formation of national laws on international commercial arbitration», and in its context to analyze deviations from the provisions of the UNCITRAL Model Law. Analyzing the periodization of the development of international commercial arbitration, proposed by V. Nikiforov, we conclude that to link the emergence of international commercial arbitration with the beginning of the twentieth century and distinguish it as a category along with international arbitration and arbitration is impractical, because it does not allow full understanding. Therefore, based on the periodization of another scientist, S. Lazarev [10, p. 178-179], below is the proposed periodization, which also consists of five, but somewhat different stages. This periodization makes it possible to analyze the historical development of arbitration by tracing the genesis of the legislation on the arbitration agreement. The first stage began in antiquity and lasted until the end of the first millennium BC. The origins of arbitration in this period are evidenced by the procedures for settling various interstate disputes in the Ancient East, Ancient Greece and Ancient Rome. Ancient Chinese rulers agreed to settle all disputes among themselves peacefully, through diplomacy, or, if no agreement was reached, to go to arbitration. Contracts dating from the VI century, BC, can rightly be considered the primary sources of arbitration agreements. The written arrangements that have come down to the present day suggest that earlier oral arrangements may have existed. In the following centuries, certain manifestations of arbitration were also observed, but the establishment of the institution of law was still far away, as it was too early to talk about the emergence of regulations governing the conclusion, execution of the arbitration agreement and arbitration procedure.

Rather, these were the first attempts to create a system that used not force but respect for the fair decision of the arbitrators.

In ancient Greece, arbitration became more important, for which A. Popkov proposes to consider it «the source of modern international arbitration» [11, p. 17]. Sometimes even separate agreements on the establishment of permanent arbitral tribunals were concluded. These treaties were elements of the union treaties. For example, the second treaty of alliance between Sparta and Argos in 418, BC provided that the parties undertake to submit their disputes to arbitration. With integration into unions, such agreements became more popular. In ancient Rome, the possibility of transferring disputes was enshrined in law by Justinian in the V century. The fourth book of Digests states that «the agreement of the parties to transfer the dispute to arbitration acts similarly to the court and is aimed at the final settlement of the dispute». V. Roche, talking about the emergence of arbitration in Rome, quotes an ironic phrase of the speaker: «Arbitration is a method of incompletely winning a good case and incompletely losing

a bad process». This phrase has gained popularity among modern legal practitioners. Thus, during the first stage, the basis for the further development of arbitration was formed and the first agreements were concluded, which provided for an arbitration procedure for the settlement of disputes. However, the emergence of regulations governing the conclusion, implementation of the arbitration agreement and the arbitration procedure was still far away.

The second stage covers the period of XI-XVIII centuries, the Middle Ages, and the period of absolutism. In the Middle Ages, the practice of arbitration became widespread of international disputes. The affiliation of arbitrators to certain classes or groups is indicative: in the Middle Ages, arbitrators were most often either representatives of the Catholic Church, including the Pope, or the emperors of the Roman Empire [13, p. 61]. It is known that an arbitration agreement was concluded between Voldemar of Denmark and Manus of Sweden, according to which each party must appoint 24 bishops and 12 knights as arbitrators.

Under conditions of absolutism, the development of international commercial arbitration slowed down and resumed, as noted by T. Kiselyov, «only in the XVIII century» [14, p. 16]. However, in some countries, where the arbitration system was born with certain features, the development of arbitration has not stopped. In general, the reasons for the partial suspension of arbitration lie in the fact that in the period of absolutism, especially in the XV-XVI centuries, many arbitral awards were not enforced, which undermined the prestige of this legal institution, which was just the beginning of its legal existence. Later, in the XVI-XVIII centuries, despite the rapid development of international law, there was no increase in number of arbitrations [15, p. 66]. Thus, the second stage is characterized by a certain «calm period» in the formation of arbitration as an alternative method of dispute resolution, before the rapid development that took place during the third stage.

The third stage began during the formation and development of bourgeois states, in the late eighteenth century, from striking the «Jay's Treaty» between the United States and Great Britain and lasted until the end of the nineteenth century. The Arbitration Act of England of 1697 is known in the theory of law. However, British scholars believe that arbitration existed long before the adoption of this law, although there is no more precise indication of the beginning of the existence of formal, non-regulated arbitration in the scientific literature. The first mention of arbitration in England is contained in the decision of the national court, dated 1215. Sovereigns, realizing the importance of upholding the will of the parties, did not interfere in their affairs if their relations corresponded to the basic principles of law. With the development of basic legal institutions, there was a need to legislate certain mandatory rules. In the late eighteenth and early nineteenth centuries, interstate arbitration developed most rapidly. According to M. Mikhailovsky, with whom M. Hudson agrees, the impetus for the revival of arbitration was the England-American Treaty of Friendship, Trade and Navigation, concluded on November 19, 1794, also known as the «Jay's Treaty» [16, pp. 30-33].

The agreement was initiated by US President G. Washington, who wanted to resolve the dispute between the former colony and the metropolis as soon as possible after the end of the American Revolutionary War. The treaty provided for the establishment of three commissions: the first is to resolve the border dispute over the southeastern border between the United States and Canada along the St. Croix River; the second is to consider the claims of British creditors for legal barriers imposed by some states to pay off debts and reimburse the relevant damages; and the third is to resolve the conflict over the seizure of merchant ships by Great Britain during the war between Great Britain and France (1755-1763). The first commission consisted of three members, the other two – of five members each. The arbitrators were people of both American and British nationalities. In general, all these disputes were settled by 1802, and arbitration proved to be an effective method of settling disputes. The third commission managed to consider 565 claims during 6 years of its activity.

The «Alabama case» of 1872 is also known, according to which, due to the encouragement and support of the civil war in the United States, England had to pay significant compensation [13, p. 91]. The case dealt with a situation in which Britain breached its commitment to neutrality. Under a treaty between England and the United States, the dispute was to be settled by five arbitrators. After considering the merits of the case, the arbitrators concluded that England should pay compensation in the amount of $ 15.5 million for direct damage caused by its violation of neutrality. The decision was not signed by an English arbitrator, but it was signed by four others – citizens of the United States, Switzerland, Brazil, and Italy. This event is the first example of the use of ad hoc arbitration to resolve a large-scale dispute [17].

M. Hudson notes that «for the next 30 years after 1872, arbitrations considered more

than 100 cases. The United Kingdom was involved in 30 cases, the United States in 20, European countries were parties up to 60 disputes, and Latin American countries were involved in about 50 arbitrations. As early as 1873, members of various scientific societies and scholars of law faculties made the first attempts to codify the norms of the international arbitration process. «The most successful in this period, according to H. Schlohauer, was the activity of the Association of Reforms and Codification of the Law of Nations, which later changed its name to the Association of International Law. The main task of the Association was to create a code of international law, which was to include rules on international arbitration. This was to serve as a basis for creating a new system of international arbitration» [18, p. 19].

Thus, in the XVIII century, the conditions favorable for the development of international arbitration were re-established, and this period can be considered the period of formation of the concept of modern international arbitration. The fourth phase began with the Hague Peace Conferences of 1899 and 1907, which drafted several important conventions on the peaceful settlement of disputes between sovereigns and lasted until the 1965 Washington Convention on the Settlement of Investment Disputes between States and Foreign Persons. Arbitration between England and the United States, as well as the initiatives of individual scholars, prompted the conclusion of the Hague Conventions of 1899 and 1907, as well as the establishment of the Permanent Court of Arbitration in the Hague. According to Art. 41 of the Hague Convention of 1907, the Permanent Chamber of Arbitration was established to enable member states to apply to the arbitral tribunal without delay in cases of international disputes that cannot be settled through diplomatic means. The arbitral tribunal consisted of judges chosen by the parties concerned, and decisions were based on respect for the law.

As a result of the growing confidence in arbitration, permanent courts (chambers, tribunals, etc.) of arbitration began to appear to hear disputes of various kinds. According to G. Tsirat, «The Geneva Protocol on Arbitration Reservations of 1923 is the first multilateral international legal act devoted to the regulation of arbitration agreements in the field of international commercial relations» [6, p. 23]. Following the approval of the text of the Protocol by the member states, in 1927, because at that time there was no international legal agreement on the enforcement of arbitral awards, the Convention on the Enforcement of Foreign Arbitral Awards was signed.

For the development of modern international commercial arbitration, the creation by the International Chamber of Commerce in 1953 of a draft convention on the recognition and enforcement of international arbitral awards was important. The Convention on the Enforcement of Foreign Arbitral Awards of 1927 contained a few shortcomings and was not widely applied, especially since the international community considered it inexpedient to maintain the distinction between the subjects of regulation of the 1923 Protocol and the 1927 Convention. They were replaced in 1958 by a new document – the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which introduced a fundamentally new mechanism for implementing one of the most important legal institutions of the international arbitration process. At that time, scientists, politicians, and lawyers-practitioners perceived the draft convention as something «super-progressive» [19, p. 3]. The three-week conference at the United Nations headquarters in New York ended with the approval of the text of the draft, which led to the decision to open a convention for accession. This convention is still an important component of the international legal system, which has proven its effectiveness by thousands of successfully recognized and enforced decisions of foreign arbitrations in many jurisdictions around the world. The development of the international arbitration process was not left out, and the United Nations Commission on International Trade (UNCITRAL) was established in 1966 by the UN General Assembly. The aim of the commission was to create more favorable conditions for trade and to remove legal obstacles in its path. On April 28, 1976, the Commission unanimously approved the draft UNCITRAL Arbitration Rules. Even today, the parties often resort to this regulation while resolving international commercial disputes, especially in ad hoc arbitrations. Another important contribution of the UNCITRAL Commission was the adoption in 1985 of the UNCITRAL Model Law. The UN General Assembly recommended that all countries take due account of this model law, which would contribute to the development of a unified approach to law, to arbitration proceedings, as well as to the needs of international commercial arbitration. In 1961, at the initiative of the United Nations Economic Commission for Europe, an equally progressive European Convention on Foreign Trade Arbitration (European Convention) was developed and opened for accession. The novelty of this convention was that it allowed an oral form of arbitration agreement, if the law of both parties allowed it [6, p. 26]. Thus, it was during the fourth stage that the legal

framework for the regulation of international commercial arbitration was formed, regarding the conclusion and execution of the arbitration agreement. It was at this time that national legislation on international commercial arbitration, as well as international arbitration practice, developed. Arbitration was formed as an alternative to national courts in international commercial disputes.

The fifth stage began with signing the Convention on the Settlement of Investment Disputes between States and Foreign Persons in 1965 and continues to this day. S. Lazarev does not single out this stage. However, we consider it appropriate to single it out, because it was after this event that the rapid development of so-called investment arbitration began – a fundamentally new type of arbitration [20], according to which an arbitration agreement between a sovereign and a citizen of another sovereign may be contained in a bilateral interstate agreement.

The development of arbitration had its own specifics in each state. An interesting example is development of arbitration in Sweden, which illustrates peculiarities of the development of arbitration in general. The chronology of events compiled by the Stockholm Arbitration Institute dates to 1359, when the provisions on arbitration first appeared in Swedish law. In 1669, the legislator developed provisions for the recognition and enforcement of arbitral awards, and in 1887 the first law was passed, devoted exclusively to arbitration. In 1917, the Arbitration Institute was established at the Stockholm Chamber of Commerce and Industry. In 1929, Sweden signed the Geneva Protocol of 1923 and the Geneva Convention of 1927, in the same year adopted a new arbitration law instead of the law of 1887. In 1949, the Stockholm Arbitration Institute developed and adopted new regulations. In 1972, Sweden ratified the New York Convention. The Rules of Procedure of the Arbitration Institute have changed twice more, each time gaining a more systematic focus on resolving international disputes. In 1995, the rules of the accelerated procedure were adopted, and 1999 was a landmark year for Swedish arbitration, as this year, for the first time, a new arbitration law was adopted, which replaced the law approved in 1929; secondly, the arbitration rules have once again undergone significant changes; third, a specialized institute of reconciliation was established on the basis of the Stockholm Chamber of Commerce and Industry. Similar development patterns were typical for some other European countries. The principles on which modern international commercial arbitration is based in their activities apply not only to private law, but also to public relations. Such a reflection can be found in Part 1 of Art. 1 of the Charter of the United Nations, which defines one of the activities of the organization «to maintain international peace and security and to this end to take effective collective measures to prevent and eliminate threats to peace and suppress acts of aggression or other violations of peace, and conduct peaceful means, in accordance with the principles of justice and international law, the settlement or settlement of international disputes or situations which may lead to violations of the peace». Although in this quote the clear purpose of regulation is to achieve and maintain peace among the participating countries, it is difficult not to notice the analogy with the ancient methods of resolving commercial disputes, namely: the prevalence of peaceful settlement of disputes over aggression and the importance of justice regardless of the strength of the parties. The very reference to international law indicates the importance of the formation of legal customs of social turnover, and in relation to commercial relations – the customs of trade.

The role of arbitration continues to grow, with each passing year more and more cases are resolved this way, although arbitration, like other methods, has both advantages and disadvantages. Arbitration is firmly rooted in the modern dispute resolution system, primarily because arbitration is more humane than traditional courts, giving the parties more leeway. The proposed division of the historical development of arbitration into five stages makes it possible to fully explore the development of the arbitration agreement and arbitration. Although with the development of international trade and economic relations in the nineteenth and twentieth centuries, we see the most rapid development of arbitration law, the preconditions for this arose in the Ancient East, Ancient Greece, and Ancient Rome. From ancient times, we can observe the emergence of the first regulations governing certain aspects of arbitration. Since the arbitration agreement is a prerequisite for the arbitration of disputes, in the relevant regulations, first we can find the rules that relate to the arbitration agreement. These or other legal acts should be evaluated considering the historical context. Such a historical analysis makes it possible to investigate the legal acts that currently regulate the consideration of disputes in international commercial arbitration more thoroughly, in particular the procedure for concluding and executing arbitration agreements. The beginning of the development of arbitration in Ukraine is associated with the period of Kyiv Rus, where the most common form of contractual dispute was resolution through arbitration. The explanation of this fact, among other things, may be the

presence of the obligatory payment of a high state fee for disputes in state courts of that time [21, p. 37].

Despite the lack of obvious influence of Roman law in the practice of courts, you can still find many analogies with Roman law [22, p. 6]. Arbitration agreements of the time generally provided that the princes of both sides sent boyars to settle disputes, who, without reaching an agreement, had to jointly appoint another link – a third arbitrator, normally the prince or metropolitan. To settle private disputes during the time of the Grand Duchy of Lithuania, there were amicable (the term is still preserved in Polish) and friendly courts. The desire to settle the dispute by compromise was communicated by the parties to the Prince's Chancellery, which appointed judges to settle the dispute. This method of appointment has been used for a long time, and since the XVI century the parties have the right to appoint arbitrators themselves, and the decision of the arbitrators came into force the decision of the state court. The charter of 1566 provided that if one of the parties refused to comply with the decision of the arbitral tribunal, the other party has the right to apply to the district court for enforcement. The role of state courts was also that they were an appellate court for a party that did not agree with the arbitrators' decision. During the following period, the arbitration proceedings continued to develop and improve. This period ended with the approval in 1831 of the Regulations on the Arbitration Court, which, replacing all previous regulations of the relevant regulation, quite clearly regulated the activities of arbitration courts.

The institute of arbitration formally existed under Soviet rule [23, p. 12], but in fact arbitration courts were under control of the state. The state has developed a negative attitude to any non-state settlement of disputes of a commercial nature and, especially, with a foreign element. In the Soviet Union there was a monopoly of foreign trade, which allowed the operation of the country only two permanent arbitration institutions – the Arbitration Court and the Maritime Arbitration Commission of the USSR Chamber of Commerce and Industry. Ukraine, like other ex-Soviet republics, did not have its own international arbitration tribunals. In 1930 the Maritime Arbitration Commission was established, and in 1932 the Foreign Trade Arbitration Commission, which was reorganized into the Arbitration Court at the USSR Chamber of Commerce and Industry in 1987 and was transformed into the International Commercial Court at the Chamber of Commerce and Industry of the Russian Federation in 1992.

Conclusion. Today, two permanent international commercial courts operate successfully in Ukraine – the International Commercial Arbitration Court (ICAC) and the Maritime Arbitration Commission (IAC), both at the Ukrainian Chamber of Commerce and Industry (CCI of Ukraine). Ukraine is also a party to the New York and European conventions. The Law of Ukraine «About International Commercial Arbitration» was developed in 1994 and based on the UNCITRAL Model Law.

Modern legislation concerning the arbitration agreement also cannot be considered perfect, it needs further development, as with the development of society need to review regulations that do not meet the requirements of today.

References

1. Мальський М. М. Арбітражна угода: теоретичні та практичні аспекти : монограф. Львів : Літопис, 2013. 374 с.

2. Collier J., Lowe V. The Settlement of Disputes in International Law: institutions and procedures. Oxford : Oxford University Press, 1999. 395 p.

3. Fouchard P. L'Arbitrage Commercial International. Paris : Dalloz, 1965. 611 p.

4. Бендевский Т. Международное частное право ; пер. с македон. С.Ю. Клейн. Москва : Статут, 2005. 448 с.

5. Буробин В. Н. Альтернативное судопроизводство или умирающий способ разрешения хозяйственных споров? *Бизнес-Адвокат*. 2006. №22. С. 10.

6. Цірат Г. А. Міжнародний комерційний арбітраж : навч. посібник. Київ : Істина, 2002. 304 с.

7. Rene D. Arbitration in International Trade. The Hague: Kluwer Law and Taxation Publishers, 1985. 482 p.

8. Mustill M. Arbitration: History and Background. *Journal of International Arbitration*, Kluwer Law International. 1989.Vol. 6. Issue 2. pp. 43-56.

9. Никифоров В. А. Международный коммерческий арбитраж в системе третейских судов: история и современное состояние : автореф. дис. … канд. юрид. наук : 12.00.03 / МГЮА. Москва 2002. 254 с.

10. Лазарев С.Л. Международный коммерческий арбитраж. Москва : Международные отношения. 1991. 216 с.

11. Попков А. Концепция международного арбитража и ее историческое развитие. *Белорусский журнал международного права и международных отношений.* 1998. №4. С. 27–34.

12. Roş V. Arbitrajul comercial international. *Regia Autonoma «Monitorul Oficial»* Bucuresti/ Palatul Parlamentului. Str. Izvor nr. 2-4, Sector 5, 2000. 242 p.

13. Merrills J. International Dispute Settlement. 2nd ed. Cambridge: Grotius Publications Limited, 1991. 416 p.

14. Кисельова Т. С. Оспорювання та примусове виконання рішень міжнародного комерційного арбітражу: порівняльно-правове дослідження : автореф. дис. … канд. юрид. наук : 08.02.03 / ДНУ МОНУ. Донецьк, 2008. 185 с.

15. Оппенгейм Л. Международное право. Т. 2. Полутом 1. Москва : Иностр. лит., 1949. 547 с.

16. Хадсон М. О. Международные суды в прошлом и будущем. Москва : Гос. изд-во иностр. лит-ры, 1947. 540 с.

17. Голубев Н.Н. Международные третейские суды XIX в. Москва : Унив. тип., 1903. 316 с.

18. Schlochauer H. Arbitration / Encyclopedia of Public International Law – Settlement of Disputes, Vol. 1, Oxford, 1981. P – 19 seq.

19. Sanders P. The making of the Convention. Enforcing Arbitration Awards under the New York Convention. Experience and Prospects. United Nations Publication No. E.99.V2., 1999. 52 p.

20. Мальський М. Інвестиційний арбітраж. *Юридична газета*. 2008. №16. С. 83.

21. Веселов А.В. История развития третейского суда в России. *Политология в России.* 2001. №11/12. С. 37.

22. Третейські суди в Україні / Ю. А. Михальський, В. П. Самохвалов, В. І. Рижий та ін. ; за ред. В.П. Самохвалова, А.Ф. Ткачука. Київ : Ін-т громадянськ. сусп., 2007. 187 с.

23. Торгашин О. Актуальні аспекти становлення та розвитку міжнародного комерційного арбітражу в Україні. *Підприємництво, господарство і право*. 2006. №8. С. 10-14.

Submitted 14.12.2020

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1. Mal′s′kyy M. M. (2013) Arbitrazhna uhoda: teoretychni ta praktychni aspekty [Arbitration agreement: theoretical and practical aspects] : monohraf. L′viv : Litopys. 374 p. [in Ukr.].

2. Collier J., Lowe V. (1999) The Settlement of Disputes in International Law: institutions and procedures. Oxford : Oxford University Press. 395 p.

3. Fouchard, P. L. (1965) Arbitrage Commercial International. Dalloz, Paris. 611 p. [in Fr.].

4. Bendevskyy, T. (2005) Mezhdunarodnoe chastnoe pravo [Private international law] ; Per. s makedon. S. Yu. Kleyn. Moscow : Statut. 448 p. [in Russ.].

5. Burobyn, V.N. (2006) Al′ternativnoye sudoproizvodstvo ili umirayushchiy sposob razresheniya khozyaystvennykh sporov? [Alternative litigation or a dying way of resolving economic disputes?] *Biznes-Advokat,* no 22, p. 10 [in Russ.].

6. Tsirat H. A. (2002) Mizhnarodnyy komertsiynyy arbitrazh [International Commercial Arbitration] : navch. posibnyk. Kyiv : Istyna. 304 p. [in Ukr.].

7. Rene D. (1985) Arbitration in International Trade. The Hague: Kluwer Law and Taxation Publishers. 482 p.

8. Mustill M. (1989) Arbitration: History and Background. *Journal of International Arbitration*, Kluwer Law International.Vol. 6, issue 2, pp. 43-56.

9. Nikiforov V. A. (2002) Mezhdunarodnyy kommercheskiy arbitrazh v sisteme treteyskikh sudov: istoriya i sovremennoye sostoyaniye [International commercial arbitration in the system of arbitration courts: history and current status] : avtoref. dis. … kand. yurid. nauk : 12.00.03 / MGYuA. Moscow. 254 p. [in Russ.].

10. Lazarev S. L. (1991) Mezhdunarodnyy kommercheskiy arbitrazh [International Commercial Arbitration]. Moscow : Mezhdunarodnyye otnosheniya. 216 p. [in Russ.].

11. Popkov A. (1998) Kontseptsyya mezhdunarodnogo arbitrazha i yeyo istorycheskoye razvitiye [The concept of international arbitration and its historical development]. *Belorusskyy zhurnal mezhdunarodnogo prava i mezhdunarodnykh otnosheniy*, no 4, pp. 27–34 [in Russ.].

12. Roş V. (2000) Arbitrajul comercial international [International Commercial Arbitration]. *Regia Autonoma «Monitorul Oficial»* Bucuresti/ Palatul Parlamentului. Str. Izvor no 2-4, Sector 5. 242 p. [in Rom.].

13. Merrills J. (1991) International Dispute Settlement. 2-nd ed. Cambridge: Grotius Publications Limited. 416 p.

14. Kysel′ova, T. S. (1949) Osporyuvannya ta prymusove vykonannya rishen′ mizhnarodnoho komertsiynoho arbitrazhu: porivnyal′no-pravove doslidzhennya [Appelation and enforcement of international commercial arbitration: a comparative legal study]: avtoref. dys. … kand. yuryd. nauk : 08.02.03 / DNU MONU. Donets′k, 2008. 185 p. [in Ukr.].

15. Oppenheym L. Mezhdunarodnoye pravo [International Law]. Vol. 2, semivol. 1. Moscow. 66 p. [in Russ.].

16. Khadson M. O. (1947) Mezhdunarodnyye sudy v proshlom i budushchem [International Courts in the Past and Future]. Moscow : Gos. izd-vo inostr. lit-ry. 540 p. [in Russ.].

17. Golubyev N. N. (1903) Mezhdunarodnyye treteyskiye sudy XIX v. [International arbitration

courts of the XIX century]. Moscow : Univ. tip. 316 p. [in Russ.].

18. Schlochauer H. (1981) Arbitration / Encyclopedia of Public International Law – Settlement of Disputes, Vol. 1, Oxford. P – 19 seq.

19. Sanders P. (1999) The making of the Convention. Enforcing Arbitration Awards under the New York Convention. Experience and Prospects. United Nations Publication No. E.99.V2. 52 p.

20. Mal′s′kyy M. (2008) Investytsiynyy arbitrazh [Investment Arbitration]. *Yurydychna hazeta,* no 16, p. 83 [in Ukr.].

21. Veselov A. V. (2001) Istoriya razvitiya treteyskogo suda v Rossii [History of the development of the arbitration court in Russia]. *Politologiya v Rossii,* no 11/12, p. 37 [in Russ.].

22. Treteys′ki sudy v Ukrayini [Arbitration courts in Ukraine] / Yu. A. Mykhal′s′kyy, V. P. Samokhvalov, V. I. Ryzhyy ta in. ; za red. V. P. Samokhvalova, A. F. Tkachuka. Kyiv : In-t hromadyansk. susp. 2007. 187 p. [in Ukr.].

23. Torhashyn O. (2006) Aktual′ni aspekty stanovlennya ta rozvytku mizhnarodnoho komertsiynoho arbitrazhu v Ukrayini [Current aspects of the formation and development of international commercial arbitration in Ukraine]. *Pidpryyemnytstvo, hospodarstvo i pravo,* no 8, pp. 10-14 [in Ukr.].

Abstract

International commercial arbitration is one of the most important institutions of modern law, an important form of resolving disputes arising in foreign economic activity. The history of international commercial arbitration has significantly affected its current state and therefore needs detailed consideration. To study this topic, it is necessary to clearly distinguish between the types of arbitration that existed at one time or another.

The article is devoted to the stages of development of international commercial arbitration and its application to resolve international commercial disputes. The article examines the provisions of legal acts that for the first time define the concept and legal status of international commercial arbitration.

Keywords: *arbitrator, international commercial arbitration, arbitration, state court.*

UDC 347.45/.47
DOI: 10.31733/2078-3566-2020-5-133-138

Oleksandr KOSYCHENKO©
Cand. of Eng-ing,
Docent
(Dnipropetrovsk State University of Internal Affairs, Dnipro, Ukraine)

Illia KLINYTSKYI©
PhD Graduate Student
(University of Silesia in Katowice, Poland)

FEATURES OF THE IMPLEMENTATION OF A PUBLIC OFFER AGREEMENT IN E-COMMERCE IN UKRAINIAN, POLISH AND RUSSIAN LAW

Олександр Косиченко. Ілля Клиницький. ОСОБЛИВОСТІ РЕАЛІЗАЦІЇ ДОГОВОРУ ПУБЛІЧНОЇ ОФЕРТИ В E-COMMERCE В УКРАЇНСЬКОМУ, ПОЛЬСЬКОМУ І РОСІЙСЬКОМУ ПРАВІ. Всесвітня мережа, розвиваючись стрімкими темпами, фактично відразу стала засобом для встановлення зв'язків між людьми, і в таких відносинах далеко не останнє місце посідають послуги й товари. Необхідно зазначити, що з 90-х років XX століття, на тлі росту популярності Інтернет-технологій, суттєво розвивається напрямок економічних відносин в електронному середовищі – електронна комерція. Установлення комерційних відносин у мережі має низку значущих переваг: швидкість – ухвалення рішення про угоду може займати секунди, а його акцептація (офіційне виявлення згоди) дуже часто обумовлюється виконанням кількох нескладних

© Kosychenko O. O., 2020
ORCID iD: https://orcid.org/0000-0002-6521-0119
kosichenko-inform@meta.ua

© Klinytskyi I., 2020
ORCID iD: https://orcid.org/0000-0002-7401-8233
illia.klinytskyi@us.edu.pl