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PECULIARITIES OF APPLICATION OF INTERIM MEASURES IN ARBITRATION

Vilija Šlajienė, Renata Šliažienė
Lithuania Business University of Applied Sciences

Abstract
With the entry into force of the new version of the Law of Commercial Arbitration, various amendments have emerged which have advantages and may have disadvantages, one of the main changes - the expanded list of measures of protection. Arbitration is a peaceful way of resolution of disputes, but the Institute for Interim Measures needs to be used in order for the arbitral award to be made. This article discusses specifics of application of interim measures in arbitration. The application of interim measures by the arbitral tribunal may have adverse consequences for the defendant. Therefore, this article will also discuss the possible damages resulting from the application of interim measures in arbitration, indemnity and compensation institute. An analysis of the case law provides conclusions as to whether an intermediate search and a balance of interests are maintained. The findings will also be made or the arbitral tribunal will grant the interim measures without the determination of the state court. In order to discuss in detail the peculiarities of the application of interim measures in arbitration, not only the legal acts and case law of the Republic of Lithuania are reviewed, but also the case law of foreign courts on this issue is analyzed. Problems arising from application of interim measures in national and foreign arbitration courts were also discussed. The analysis of the scientific literature provided preconditions for the formulation of questions, the answers to which would provide a deeper analysis of the scientific problem of this article. According to the results of scientific literature analysis, the general interview questions were formulated in order to get the in-depth insights of the experts about peculiarities of application of interim measures in arbitration. The 5 experts Arbitration specialists perform work functions in the arbitral tribunal were selected and interviewed using the interview method. According to the survey, four out of five respondents consider that it is not necessary for the legislature, in order to address the issue that the arbitral tribunal does not have the possibility to apply coercive procedural measures in the absence of an interim injunction, to allow the claimant to apply for excessive coercive measures. in an arbitration case, in parallel to bring a civil action before a court of general jurisdiction, requesting the use of coercive procedural measures.
KEY WORDS: interim measures; arbitration; incurred due to the application of the interim relief in the arbitration.
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Introduction

Arbitration is one of the alternative ways of resolution of a dispute, when natural or legal persons, according to their agreement, apply to a third person or persons chosen by their agreement to resolve a dispute between them (Kaminskiene, Sondaite, etc. 2019). This is a general concept of arbitration, but in Lithuania the Institute of Commercial Arbitration is also distinguished. Article 3 of the Law on Commercial Arbitration the concept of commercial arbitration is presented more precisely, i.e. a method of resolution of a commercial dispute, when natural or legal persons, on the basis of a general agreement, apply or undertake to apply to an arbitrator (arbitrators) appointed by their agreement or in accordance with the procedure established by the Law on Commercial Arbitration, who) adopts an arbitral award binding on the parties to the dispute (2012, Nr. XI-2089).

Unlike courts, arbitration is more flexible - the parties can agree on the language and location, the person and number of arbitrators and the procedure for their appointment, and the law applicable to the settlement of disputes. State court proceedings in Lithuania take quite a long time, therefore the choice of commercial arbitration as an alternative method of dispute resolution may be more operative and economical (Grasis, Sliaziene, 2016). It can be argued that this reflects the current global trend to recognize the powers of arbitrators (it is considered that an entity examining the substance of a dispute can best resolve the issue of interim measures) and provide an opportunity to enforce such measures (Mikelenas, Nekrosius, 2016).

Following the entry into force of the new Law on Commercial Arbitration, the legislature extended the list of protection measures for interim measures that an arbitral tribunal is entitled to apply without, in exceptional cases, without notification of the defendant (2012, No. XI-2089). The previous version of the law lacked clarity in the application of interim measures, in particular as regards the powers and competence of arbitration. There was also no clear procedure of application for dealing with requests for measures, what measures the arbitral tribunal is entitled to apply, how they are implemented. The parties may even by common agreement waive the possibility of application of interim protection measures (Jokubauskas, Kirkutis et al., 2020).

The main aim of the article is To analyze the changes in the legal regulation of commercial arbitration via application of interim measures.

Objectives of research

1. To submit the main amendments to the Law of Commercial Arbitration.

2. To identify problems in the application of interim measures in arbitration.

Methods of research: qualitative analysis of scientific literature and documents, statistical data analysis, method of comparative document analysis.

The main aim of the article is to analyze changes in the legal regulation of commercial arbitration while application of measures of interim protenction.

Theoretical background

July 1, 2017 amendments of the Law on Commercial Arbitration entered into force and highlighted the advantages of the arbitration process as an alternative way of resolution of commercial disputes. The main and substantial change took place in setting a time limit for appealing against the annulment of an arbitration award. Upon filing an appeal against the annulment of the arbitration award, the Lithuanian Court of Appeal has to examine such appeal not later than within 90 days from the date of acceptance of the appeal in court. Such a change in the law makes the arbitration process even faster, as until then there was no maximum time limit for a court to appeal against the annulment of an arbitration award, and an appeal against the arbitration award postponed the final settlement of the dispute to a time limit not defined by law.

Another novelty of the wording of the Law on Commercial Arbitration is the granting of the status of an enforceable document to the decisions of the arbitral tribunal regarding the application of interim protection measures. This means that due to a non-enforceable arbitral award, Vilnius Regional Court issues a writ of execution at the request of one of the parties. An enforcement order is not issued in exceptional cases, and a separate complaint may be filed against the decision of Vilnius Regional Court to refuse to issue an enforcement order (2012, Nr. 76-3932, consolidated version 01-07-2017).

The Law on Commercial Arbitration provides an opportunity for the parties to apply to Vilnius Regional Court for the application of interim measures "regardless of the state in which the place of arbitration is located or where separate arbitration proceedings are performed". This means that even if the parties choose foreign jurisdiction as the seat of arbitration for one reason or another, they can successfully use the assistance of local courts guaranteed by the Commercial Arbitration Act to apply the interim measures provided for in the Code of Civil Procedure in the context of foreign arbitration. Article 26 of the Law on Commercial Arbitration establishes the possibility to apply to the Lithuanian Court of Appeal regarding the recognition and enforcement in Lithuania of foreign arbitral awards or rulings on the application of interim measures. The courts also consistently rule on the application of interim measures in accordance with the rules of jurisdiction and the extension of the list of interim measures. It should be noted that in case law, an application for interim measures does not have to be based on the rules of jurisdiction in civil proceedings). The issues of application of judicial interim measures in arbitration proceedings are regulated by special norms of Article 147 of the CPC. 1 d. and Article 2 of the Law on Commercial Arbitration. 2 d. and Art. 1 d. (Order of the Court of Appeal of Lithuania of 26 August 2021 in civil case No. e2-639-330 / 2021).

One of the innovations is the extension of the list of interim measures. The new wording of the Law on Commercial Arbitration gives the Arbitration Court the right to prohibit a party from participating in certain transactions or performing certain actions, or to oblige a party to protect property related to arbitration, to provide a cash deposit, bank or insurance guarantee (2012, No. 76-3932, summary edition 2017-07-01). This innovation has both positive and negative aspects, such as. so far, the Commercial Arbitration Law does not give the arbitral tribunal the right to seize a property of the party; on the other hand, the parties to the arbitration proceedings are not limited to the list of interim measures laid down in Article 20 (2) of the Law on Commercial Arbitration. The Law on Commercial Arbitration provides the parties with an opportunity to apply to Vilnius Regional Court for the application of other interim protection measures provided in the Code of Civil Procedure.

It should be noted that the Act of Commercial Arbitration provides for ex parte preliminary rulings on the application of interim measures. The arbitral tribunal shall make a preliminary ruling in cases where notification to the other party of the application for interim measures is likely to prejudice substantially the purposes of those measures. Although this change is an advantage, the effectiveness of preliminary rulings remains questionable for the time being because, unlike rulings under Article 20 of the Act of Commercial Arbitration, preliminary rulings are not enforceable documents. Vilnius Regional Court may also grant interim measures ex parte if there is a legal and factual basis for doing so.

Thus, it can be stated that the innovations in the wording of the Law on Commercial Arbitration of 30/06/2012 - granting the status of an enforceable document to arbitral awards on interim measures, extension of the list of interim measures, regulation of ex parte preliminary rulings on interim measures, possibility to apply to the Court of Appeal of Lithuania regarding the recognition and enforcement of foreign arbitral awards or rulings on the application of interim measures in Lithuania are very significant in the application of interim measures in arbitration, as the powers of the arbitral tribunal have been sufficiently extended

Methodology

The analysis of the scientific literature provided preconditions for the formulation of questions, the answers to which would provide a deeper analysis of the scientific problem of this article. According to Kardelis (2016), expert interviews are appropriate for this purpose, as the researcher talks to experts to gain deeper insights into the phenomenon under study. Data from experts are obtained through in-depth interviews. Based on the assessments of the interviewed specialists, the degree of agreement of their opinions with the research question and the objectivity of the experts' conclusions are determined, which is determined by the essential, real connections between analyzed topics. For the specialist interview procedure, the interview interview method was chosen according to the pre-prepared questions. There was a problem in selecting specialists using this method. The interviewees do not have equal competence, different experience, legal areas of activity, etc. When selecting specialists, the most important criteria were their legal work experience in arbitration courts, as well as possible links with the use of special knowledge in their work. A

total of 5 respondents were interviewed, whose activities have implicit links with the analyzed topic. The obtained answers are systematized, analyzed and interpreted, qualitative data analysis data are used. Thus, carrying out the qualitative research there was sought to answer the general questions in Table 1.

Table 1. In-depth interview general questions for experts

Questions
Q 1. Do you agree with the prevailing view that an emergency arbitrator who has ruled on interim measures may not later be a member of the arbitral tribunal in the same case?
Q 2. Has the emergence of the institute of urgency arbitrator led to an even greater autonomy of arbitration in civil proceedings, concentrating all the issues to be resolved in an arbitration case in one institution?
Q 3. What is your view on the need to provide for the possibility of ex parte interim measures in arbitration in the Model Law and the Commercial Arbitration Law?
Q 4. Is the arbitral tribunal likely to become less attractive to the plaintiff than a court of general jurisdiction, which has the discretion to grant interim measures without notifying the defendant?
Q 5. What criteria should arbitration tribunals use to determine the extent and amount of damages incurred as a result of the application for interim measures?
Q 6. What is the main advantage of a state court as an alternative to an urgent arbitrator?

To achieve this purpose, there were selected 5 experts at one of the who works in arbitration courts. The following criteria for the selection of respondents were established for the in-depth expert interview:

1) judges, mediators who work in arbitration courts.

2) mediators with at least 5 years of practical work and arbitration courts work experience.

Based on these criteria, there were selected five experts for the in-depth interview. Table 2 shows the reasons for the selection of experts.

Table 2. Reasons for selection of experts

Expert	Reasons for selection of an expert
First Expert	The associate professor of the Faculty of Law of Vilnius University, Event and Improvement of the Code of Civil Procedure of the Republic of Lithuania, Member of the Department of Humanities and Social Sciences of the Lithuanian Academy of Sciences. Research interests - civil procedure, Roman law, notary.
Second Expert	The associate professor, who has worked for 10 years in international arbitration disputes, in particular, ones arising under bilateral and multilateral investment treaties and high-value commercial agreements, having served as a consultant or representative to company claimants and respondents as well as government claimants and respondents.
Third Expert	The associate professor, partnership at the Faculty of Law of Vilnius University, a legal scholar, a practice lawyer, an artificial lawyer of private companies, as well as an advisor to the Chairman of the Civil Cases Division of the Supreme Court of Lithuania.
Fourth Expert	Experienced Professor with a demonstrated history of working in the higher education industry. Skilled in Mediation, Alternative Dispute Resolution, Public Procurement, and Management. Strong education professional with a Doctor of Law focused in Law from Mykolo Romerio Universitetas.
Fifth Expert	Lawyer, who has specializes in dispute resolution courts and arbitration, has valuable experience in international (cross border) civil and family, inheritance cases, expertise in recognition and enforcement of foreign courts and arbitration decisions in Lithuania and abroad, has arbitrated several arbitration disputes, is recommended by VKAT arbitrator.

All selected experts legal scientists, mediators or judges with large experience, therefore they meet the objectives of in-depth research. In order to preserve the confidentiality of the experts, they were randomly coded: Q1, Q2, Q3, Q4 and Q5.

The reliability and comprehensibility of a qualitative research is based on the fact that the researcher can discover the answers to the main questions of the research, and the answers of the respondents are repeated, which shows that they are talking about the same thing.

Results

Article 20 (1) of the Law on Commercial Arbitration lays down the basic provisions for the application of interim measures.

Firstly, it can be unequivocally concluded in accordance to Paragraph 1 of Article 20 of the Law on Commercial Arbitration of the Republic of Lithuania "unless the parties have agreed otherwise" that a separate agreement of the parties on granting powers to the arbitral tribunal to grant interim measures is not necessary. In the event that the parties have entered into an arbitration agreement, the arbitration shall be deemed to be entitled to apply for interim measures or to secure evidence at the request of one of the parties. In accordance with the principle of autonomy of a party, this also means the right of the parties to agree that the arbitral tribunal does not have such powers. Furthermore, the right of arbitration to grant interim measures does not mean that the parties are not entitled to apply to the national courts for interim measures. Although the arbitration agreement prevents the parties from the application to the state courts for the settlement of the dispute, the right of the parties to apply to the court with a request for the application of interim measures or securing evidence remains (Mikelenas, Nekrosius, Zemlyte, 2016).

Secondly, it is obvious that according to the norm in Article 20 (1) of the Law on Commercial Arbitration of the Republic of Lithuania the arbitral tribunal does not have the right to apply interim measures ex officio and they can be applied only if one of the parties (usually the plaintiff) request. (Mikelenas, Nekrosius, Zemlyte, 2016).

Thirdly, interim measures are granted by an arbitral tribunal, so it is firstly necessary to form them. As the formation of the arbitral tribunal takes a long time, it may also be necessary to wait a long time for the arbitral tribunal to grant interim relief. On the other hand, the rules of the arbitration institution for arbitration, or special rules, provide the possibility of urgent application of interim measures by appointing an interim arbitrator before the formation of the arbitral tribunal (Annex No. 1 to the formation of an arbitral tribunal).

Thus, the application of interim measures, if the parties agree, is also possible before the formation of an arbitral tribunal in order to hear the dispute on the merits.

Discussing in detail the emergence of the institute of urgency arbitrator - it is related with the complicated application of interim measures before the formation of the arbitral tribunal and the promotion independence of the arbitration process (Bliuvaite, 2015).

The first time, the appointment of an urgent arbitrator (since 2006) is incorporated into the regulations of International Centre for Dispute Resolution (ICDR) (Regulations of International Centre for Dispute Resolutions (ICDR), 2006). Since 2012 The Institute of Urgency Arbitrator also appeared in the Regulation of Arbitration of the International Chamber of Commerce: "The decision on interim measures to be applied expeditiously shall be made by the Urgency Arbitrator and shall be binding on the parties, but the arbitral tribunal constituted subsequently shall have the right to amend or abolish them". The Regulations of Arbitration of the International Chamber of Commerce extended the possibilities for parties to decide on interim measures without recourse to a national court. (Chvalej, Pavan, Zukova, 2013). In 2013 In Lithuania, the Regulations of Arbitration Procedure of Vilnius Commercial Arbitration Court was supplemented with an annex on the procedure for application of interim measures before the formation of the arbitral tribunal (Annex No. 1 of Vilnius Court of Commercial Arbitration Regulation of Procedure of Arbitration "Procedure (procedure) of the application of interim measures before the formation of the arbitral tribunal."

The provisions of this Annex are broadly in line with the procedure for the appointment of an urgent arbitrator established by the International Chamber of Commerce. The procedure of submition of applications for the appointment of an interim arbitrator, the competence of an interim arbitrator, the procedure for examining applications, the costs of the procedure and other issues are detailed. This extends the ability of parties to defend themselves against non-compliance and to deal with the issue of interim relief as a matter of urgency, as the general deadlines for appointment of interim arbitrator are 3 days from receipt of the request and 3 days from referral. On the other hand, the Lithuanian Law on Commercial Arbitration does not regulate the institute of urgent arbitrator at all and provides only the right of a party to apply to Vilnius Regional Court to procedure interim measures or to guarantee the provision of evidence before the commencement of arbitration proceedings or formation of an arbitration tribunal. However, the same law states that because of common agreement the parties of the dispute have the right to deviate from all the rules of that law, with the exception of mandatory rules, and the agreement of the parties of arbitration includes the application of any arbitration regulations included in that agreement. Thus, for example, the regulation of Vilnius Commercial Arbitration Court substantially expands the possibilities of a party of an arbitration agreement to apply for urgent interim measures, as the law provides possibility to apply to a state court, but does not preclude an urgent application for arbitration.

As regards institutional but ad hoc arbitration (ad hoc arbitration is arbitration where, by agreement of the parties, the dispute resolution proceedings are not organized by a permanent arbitral tribunal), the issue of urgent interim measures remains debatable and should be included in the arbitration clause (Bliuvaite, M. 2015). The arbitration clause states that the urgent arbitrator should be appointed by the ad hoc arbitral tribunal. In practice, such a procedure, and in particular the enforcement of urgent arbitration awards, is still quite complicated and uncertain. For example, in 2010 The UNCITRAL Arbitration Rules, one of the most commonly used and applied to ad hoc arbitration proceedings (although they are also used for institutional arbitration and are followed by some arbitration bodies in the administration of disputes), do not regulate the urgency of arbitration and interim measures pending arbitration. Thus, while ad hoc arbitration may offer the possibility of appointmentof an urgent arbitrator, the practical model for that implementation does not have adequate guidance yet.

The main problematic issue with the Institute for Urgent Arbitration is the enforcement of decisions. Up till now, the status of an urgent arbitrator compared to an arbitrator in an arbitral tribunal remains questionable, as the question arises whether an emergency arbitrator can in fact be considered as an arbitrator under national arbitration laws in which this institute has not been and is not established? (Kidane, L. 2017). If we consider that the urgency arbitrator can be treated in the same way as an arbitrator of an arbitral tribunal, then the legal force and enforcement of his decisions will be the same as that of an arbitral tribunal. Otherwise, the theoretical aspect of the issue of the definition of an urgent arbitrator is less important than the practical one, where state courts will not enforce decision of an emergency arbitrato because of the questionable powers of that arbitrator. Another important aspect that complicates enforcement is the temporary nature of the decision (Bliuvaite, 2015). Enforcement of decision of an urgent arbitrator is often complicated by its temporary nature - a provisional, unconfirmed procedural decision. The fact that the arbitral tribunal formed may reverse the decision of the urgent arbitrator makes it temporary not even in terms of the final decision of the case, but even in terms of another procedural decision.

Another problematic issue with regard to the Institute of Urgent Arbitrator is the procedure of appointment of an urgent arbitrator, which raises questions about the criteria for selecting an urgent arbitrator and the competence to examine an application for interim measures. An emergency arbitrator is normally appointed by the chairperson of the arbitral tribunal from a list of arbitrators of that authority. Also, the arbitral tribunal has the right to appoint as an emergency arbitrator a person who is not included in the list of arbitrators but who has the necessary knowledge and competence to do so. (Annex No. 1 to the Rules of Arbitration Procedure of Vilnius Commercial Arbitration Court "Procedure for Application of Interim Safeguards (Procedure) Prior to the Formation of the Arbitration Court", Article 1, paragraph 5 d).

According to the authors of the article, however, the status of an urgent arbitrator should be established in national arbitration laws by equating the status of an urgent arbitrator with an arbitrator of an arbitral tribunal,

so that the decisions and decisions of an urgent arbitrator have the same legal force and enforcement as an arbitral tribunal.

Unfortunately, national arbitral tribunals do not publish official statistics how often the parties of arbitral tribunals are granted with interim measures . Could it be assumed, because arbitration is settled faster than in national courts and therefore does not even require interim measures? Perhaps for this reason, the application of interim measures in arbitration cases is such and so rare?

As mentioned above, Paragraph 1 of Article 20 of the Law on Commercial Arbitration of the Republic of Lithuania clearly establishes the right of arbitrators to apply interim protection measures. It should be noted that the arbitral tribunal is deemed to be entitled to grant interim relief, although the jurisdiction of the arbitral tribunal to hear the dispute is in process of discussion. Such approach is entirely logical, since otherwise an objection of jurisdiction alone would be sufficient to prevent the arbitral tribunal from being applied. On the other hand, this does not mean that the arbitral tribunal does not consider the question of its jurisdiction at all while considering an application for interim measures. It is common practice for arbitrators to prima facie assess the merits of an objection of jurisdiction (if so stated or if one of the parties does not take part in the proceedings) and to refuse interim measures if it finds that there is no jurisdiction. The fact that arbitrators have such an obligation is also confirmed by Article 25 of the Law on Commercial Arbitration of the Republic of Lithuania, according to which Vilnius Regional Court may refuse to issue order of enforcement if the arbitral tribunal clearly exceeded its competence (Mikelenas, Nekrosius, 2016).

It is noted that an arbitral party may apply to Vilnius Regional Court for interim measures both before the commencement of the arbitration proceedings or before the conclusion of the arbitral tribunal and after the establishment of the arbitral tribunal (Article 27 (1) of the Law on Commercial Arbitration of the Republic of Lithuania, 1996, no. 39 - 961, consolidated version 01/07/2017). Vilnius Regional Court, having applied interim measures before filing a claim with the arbitral tribunal, determines the term within which the claim must be filed. This period may not exceed fourteen days. If the claim is to be submitted to foreign arbitration, the time limit may not exceed thirty days. If no action is brought within the time limit set by the court, the interim measures are revoked). It is noted that Vilnius Regional Court, assessing the claims and evidence submitted in accordance with Article 144 (1) of the Code of Civil Procedure prima facie, does not draw any conclusions regarding the validity of the arbitration agreement. According to the doctrine of competence - competence, this issue is left to be decided by the Arbitration Court (Order of the Lithuanian Court of Appeal of 26 April 2018 in case no. E2S-921-796 / 2018).

A party seeking interim measures pending the formation of the arbitral tribunal has to state the reasons justifying the urgency of the application of such measures in the request to the arbitral tribunal. (Annex No. 1 to the Rules of Arbitration Procedure of the Vilnius Commercial Arbitration Court "Procedure for Application of Interim Safeguards (Procedure) Prior to the Formation of the Arbitration Court", Article 1, Paragraph 3). Extreme urgency is essentially the main criterion for the selection of applications, on the basis of which the interim arbitrator decides on the granting of interim measures. Although neither the Lithuanian Law on Commercial Arbitration nor the UNCITRAL Rules provide the right to apply interim measures without notifying the other party to the urgent arbitrator, it can be assumed that further extension of the special urgency element is likely to occur where ex parte application is already established after referral. In addition, the balance of interests of the parties remains doubtful, when due to special urgency measures of temporary protection are applied without issue of securing losses consideration. (Bliuvaitė, M. Urgency Arbitrator Institute, 2015). A party which has not been informed of the interim measures imposed on it may apply for damages after those measures have been imposed on it. However, it is not clear whether an urgent arbitrator whose term ceases as soon as an arbitral tribunal is formed should also address this issue. Otherwise, the arbitral tribunal, having taken over the right to impose, amend or revoke interim measures, should also take over the right to consider the losses arising from the provision of instruments used by the emergency arbitrator (Mikelenas, Nekrosius, Zemlyte, 2016).

Thus, to summarize the emergence of the institute of urgency arbitrator, it can be stated that the emergence of this institute has led to even greater independence of arbitration in civil proceedings, concentrating all issues to be resolved in an arbitration case in one institution.

Next, with regard to the grounds for interim measures in arbitration, an important provision is that the examination of the application for interim measures must be notified to the other party. As mentioned above, this provision is one of the essential differences between institutes of protection in institutes of court and arbitration, as the application of such measures is usually decided ex parte in court. In a study conducted by the authors of the article, three (out of four) arbitrators emphasized that, in this respect, the arbitral tribunal becomes less attractive to the parties to the dispute than the court of general jurisdiction. Since, as is clear from Article 20 (1) of the Commercial Arbitration Act, the general rule states that the examination of interim measures must be notified to the other party, giving latter the right to comment on the application, thus enabling that party to get prepared for future interim measures and possible actions in order to avoid their consequences (Mikelenas, V. et al. Ibid., p. 99).

As an exceptional rule, the arbitral tribunal has the power to make preliminary rulings when the other party has not been informed of the acceptance of the request for a preliminary ruling. It goes without saying that the arbitral tribunal has the power to make preliminary rulings if the parties have agreed to this clause. The parties may also agree that the arbitral tribunal does not have such a right, and they may supplement or amend the rules laid down in the Commercial Arbitration Act regarding the conditions and procedure for making preliminary rulings. In summary, a party to a dispute which wishes interim measures to be granted ex parte and

this order to be enforced is obliged to apply to a national court because he cannot count on the assistance of an arbitral tribunal.

The fifth, the decision of the arbitral tribunal to grant interim measures is formalized by an order and not by a decision. Arbitration awards on interim measures are enforceable. An arbitral award is made instead of a decision, therefore the institute of annulment of an arbitration award does not apply to interim measures, such orders may be considered by a court of general jurisdiction only during the enforcement procedure and only on limited grounds provided for in Article 25 of the Commercial Arbitration Law (Mikelenas, V. , Nekrosius, V., Zemlyte, E. 2016). Meanwhile, under Article 21 (7) of the Commercial Arbitration Law, a preliminary ruling is binding on the parties, but, unlike interim injunctions under Article 25 of the Commercial Arbitration Law, it is not an enforceable document. There is therefore no procedural possibility to compel the other party to comply with the preliminary ruling. That is why the Institute of Preliminary Rulings is one of the most controversial institutes of the UNCITRAL Model Law: although it allows interim measures to be granted without notifying the other party, it cannot compel such a party to comply with an obligation imposed by an arbitral tribunal. On the other hand, the meaning of preliminary rulings is not insignificant because they are binding on the parties. Thus, although a breach of or non-compliance with a preliminary ruling does not have procedural consequences, it can be regarded as an unlawful act of a party. Under other circumstances of civil liability, the defaulting party may be required to pay damages.

The essential principles of the application of interim measures in arbitration should be mentioned here: Article 20 of the Law on Commercial Arbitration. 3 d. it is provided that the party seeking interim measures must in particular prove that:

(1) its claims are likely to be well founded; the determination of this probability shall not prejudice the right of the arbitral tribunal to render a different award or ruling at a later stage in the arbitral proceedings;

2) in case of the absence of such measures, the enforcement of the award of the arbitral tribunal may become substantially more difficult or impossible;

(3) Interim measures are economical and proportionate to the aim pursued.

Lithuanian Court of Appeal in civil case no. e2-316-241 / 2017: “The case law of the Lithuanian Court of Appeal clarified that interim measures must be applied taking into account the factual circumstances of the case and in accordance with the principles of justice, economy and proportionality. The principle of economy requires the court to apply such and such interim measures seeking to ensure the enforcement of a future judgment, and the principle of justice obliges the court to maintain a balance of interests between the parties to the proceedings. The application of the principle of proportionality in deciding interim measures means that the court, when applying such measures, should assess the legitimate interests of both the plaintiff and the defendant and not give any of them unreasonable priority [...]. ”(Lithuanian Court of Appeal March 9, 2017 Order in Civil Case No. e2-316-241 / 2017). Thus, interim measures in arbitration are applied on the basis of the basic principles of economy and proportionality. This means that, in the first instance, the party must, when applying for interim measures in arbitration, prove that the interim measures granted are economical and proportionate to the aim pursued. On the other hand, the arbitral tribunal must comply with these general principles before granting interim measures.

Conclusions

With the entry into force of the new version of the Law on Commercial Arbitration, arbitral awards, appeals procedures and deadlines comply with the provisions of the UNCITRAL Model Law, but the Lithuanian Court of Appeal has the exclusive right to decide on annulment of arbitral awards. The new wording of the law defined the granting of the status of an enforceable document by arbitration court rulings on the application of interim measures, extension of the list of interim measures, regulation of ex parte preliminary rulings on the application of interim measures. Also, the possibility to apply to the Lithuanian Court of Appeal for recognition and enforcement of foreign arbitral awards or interim measures in Lithuania is very significant in the application of interim measures in arbitration, as the powers of the arbitral tribunal in the field of interim measures have been sufficiently extended and foreign arbitration has been developed. ensuring the rights of the parties in Lithuania.

The arbitral tribunal must, as a general rule, notify the other party of the examination of the application for interim measures, whereas in the meantime, the court will normally decide on the application of such measures ex parte. In this respect, the arbitral tribunal becomes less attractive to the plaintiff than the court of general jurisdiction. It is noted that applications for interim measures are not intended to settle the case, but only to enable a future arbitral award in favor of a party to be enforced. Even if several applications for interim measures were made in the courts of different States, such decisions (orders) of different courts on the (non) application of interim measures would not change the final outcome of the case, as the claims are decided by only one arbitral tribunal and the courts. there is no risk of incompatibility of decisions. An application for interim measures must not be based on the rules of jurisdiction in civil proceedings. It is noted that the issues of application of judicial interim measures in arbitration proceedings are regulated by a special norm of Article 147 of the CPC. 1 d. and Article 2 of the Law on Commercial Arbitration. 2 d. and Art. 1 d.

As the criteria are not regulated by national arbitration law, the scope and extent of the provisions on the determination of arbitral tribunals that may be applicable to interim measures should be taken into account, and negative incomes should be taken into account. the loss of income must be proved with reasonable certainty that the interim measures granted have led to a loss of the defendant's future income; the actions of the defendant himself, whose assets have been subject to procedural restraints, must be assessed - whether he acted actively to change the interim measures.

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Vilija Slajiene, Lecturer of Law, Lawyer of Lithuanian Business University of Applied Sciencesthe, Research Areas of Law (01S). 1 scientific article has been published. Phone: +37046314320. El. E-mail teisininke@ltvk.lt

Renata Sliaziene, Head of Department of Law of Lithuanian Business University of Applied Sciences, Lecturer in the field of law, Law (01S) research areas. 4 scientific articles have been published. Tel: +37065653964, el. E-mail renata.sliaziene@ltvk.lt