Current Developments in the Field of Arbitration in Croatia

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I. INTRODUCTION

As a means of resolving business disputes, arbitration is getting more and more popular in the countries of Central and Eastern Europe. Among these countries, Croatia has a prominent role. Once a center of arbitral doctrine and practice in the former Yugoslavia[1] Croatia has continued the development after acquiring independence ten years ago. The years of war and instability in the region were, certainly, not a favorable environment for the growth of business and international trade. However, in spite of difficulties, arbitration community in Croatia was astonishingly active. Therefore, Croatia and its capital Zagreb are important places on the regional map of arbitral venues today. Since 2000, political environment has largely improved, and economy is moving in the positive direction. Direct foreign economic assistance has more than tripled, and several large business deals have shown that an era of investments and business growth might be approaching.[2] Such economic development will, certainly, create new challenges for the present law and practice of arbitration in the country.

The most important recent developments can be traced in the three areas: one deals with the reform of Croatian arbitration law, which is just completed[3]; the other concerns the practice of arbitration in the country, that is mostly connected to the oldest and the most influential arbitral institution, the Permanent Arbitration Court at the Croatian Chamber of Commerce; last but not least, there are important doctrinal and promotional activities, both on the national and the international level. In this paper, we will briefly outline the major trends and achievements in all of these areas.

II. REFORM OF CROATIAN ARBITRATION LAW

1. The Course of the Reform

The reform of Croatian arbitration law may well be described as one of the most carefully prepared legislative projects in the country. The legislative framework that existed after 1991 – the adopted former Yugoslav Code of Civil Procedure and Conflict of Laws Acts[4] – was slightly amended in order to cure the most apparent insufficiencies, but was, generally, not considered to be obviously inappropriate. The needs of business and global arbitration developments commanded the changes, but it was considered to be more important to ensure the quality solutions that could last in the decades to come, than to urgently provide a patchwork of quasi-reform that would not be long-standing. In addition, political priorities were frequently elsewhere, what contributed both to the duration of the whole project, and to the fact that the project was pursued calmly, in the circles of legal and arbitration

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[1] It should be noted that former Yugoslavia had a more liberal arbitration policy than the countries of

professionals. The whole project, from the first draft to the adoption, lasted more than five years. In the meantime, several drafts were widely distributed, discussed and amended. The whole process was happening transparently, with the participation of international audience and arbitration experts that had opportunity to follow the evolution and improve the text of the proposal. Only after a very thorough examination and intense debates was the final proposal adopted by the arbitration community and communicated to the Ministry of Justice as the result of the professional consensus.[5] The official part of the legislative process started in the 1999 and, after lingering for a while due to the change of government, it was finally completed and submitted to Croatian Parliament (*Sabor*) in 2001. In the final stages of the legislative procedure very few amendments were made to the Third Draft. Some of the most important were those that attempted to incorporate, at least partially, the most recent developments in the work of UNCITRAL and its Working Group on the International Commercial Arbitration.

2. The Reform Concept

As is the case with the recent arbitral legislation enacted in other countries (with the exception of Germany), the intention was to collect all provisions on arbitration in a single act – Law on Arbitration. Thereby, the previous less transparent bifurcation of arbitral topics between two acts (CCP and CLA) in which arbitration was only a small and less significant part would be abandoned.

The other strategic decision taken in the process was to follow, to the largest extent possible, the provisions of the UNCITRAL Model Law on International Commercial Arbitration (hereinafter: UML). The reason was not only because the norms of UML represent a common standard and tend to become a matter of international consensus, but also the need to provide transparency of the legislation for possible foreign users. However, it was considered that the Model Law, being a compromise acceptable for many legal systems and cultures, might need adjustments and additions in order to ensure its flawless incorporation into domestic law. In particular, in discussions about the Draft Law the examples of other countries that recently adopted UML (in particular Germany and, to a lesser extent, England) were closely studied, as well as the legislative models of other popular arbitration venues in Europe (e.g. Switzerland).

As a result, we may say that the new law is a blend of several components. The UNCITRAL part is, naturally, the strongest one (recognized by the UNCITRAL itself, that is supporting the legislative project as UML-based legislation). However, to a lesser extent, one can distinguish some influences of models of other countries (Germany, Switzerland, and England). There are also some specific national provisions that are either drawn from the domestic tradition and legal culture, or were necessary to adopt and implement the new legislation to local needs and circumstances.

3. The most important changes introduced by the new Law

Although the development of national legislation may be rather seen as an evolution than as a revolution, there are still several significant changes in the new legislation. The most important are those dealing with arbitrability (with respect to several aspects), form of arbitral agreement, formal requirements for concluding arbitral agreements through an agent or attorney, interim measures in arbitral proceedings and reasons for setting aside of an arbitral award. Some less visible, but still significant amendments were done regarding the provisions on communications and notice, recognition and enforcement of awards, and various other issues. If all of the proposed amendments would be assessed together, a conclusion that the reform brings substantially different approach, which strongly favors arbitration, would be obvious. In the following text we will briefly outline only the several most important changes.

Perhaps the most important change in the new act concerns the arbitrability of domestic disputes. Previously, in domestic disputes arbitration was permissible only at a limited number of national arbitral institutions. Such arbitral institutions had to be established by law, or be formed at the national chambers of commerce. According to the new proposal, the restrictions on the formation of arbitral

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[5] See Triva, Siniša, *Report on the Achievements of the Working Group for the Reform of the Croatian Arbitration Law*, 4 Croatian Arbitration Yearbook 193 (1997); an English translation of the Final Proposal ("Draft Three") with introduction and commentary is published in 5 Croatian Arbitration Yearbook 9 (1998).

The UNCITRAL Model Law was also largely followed in the provisions that regulate the request for setting aside of an award. The consequence was the abandoning of the previous approach, derived from the Austrian legislation. In practice, that means that setting aside would be no more possible by relying on the reasons for another remedy in judicial proceedings – the request for reopening the case (*ponavljanje postupka*). In particular, this means that new facts and evidence cannot be any more used as a reason for setting aside.[12] This is in line with the findings that invoking new evidence was in several cases misused in practice.[13] However, to preserve a part of traditional regulation, it is provided that parties may provide the possibility of setting aside if new facts and evidence are found – but this is applicable only if parties have an express agreement to this effect.[14]

4. Status of International Instruments

Croatia has ratified the most relevant international arbitration instruments, such as New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and European Convention on International Commercial Arbitration, as well as the older instruments (Geneva conventions). Most recently, Croatia ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.[15] There are also many bilateral agreements that *inter alia* deal with arbitration – most notably the agreements on promotion of investments and trade agreements.[16]

III. The Practice of Arbitration in Croatia

1. The practice and activities of the Permanent Arbitration Court at the Croatian Chamber of Commerce

The Permanent Arbitration Court at the Croatian Chamber of Commerce is without doubt the central institution for arbitration in Croatia. Having tradition that reaches to 1853, it may count as one of the oldest arbitration institutions in Europe.[17] In Yugoslav times, it had a vivid practice of resolving domestic business disputes. Although the PAC-CCC is in the recent history active in the field of international arbitration only since 1991, the record of the past 10 years is significant.

In the 1991-2001 period, the share of international cases regularly amounted to 40-50 percent (the rest being the national i.e. domestic cases). During that time, about 300 cases were filed with the court, with the participation of the parties from 25 different countries. The total value of accumulated claims in that period amounted to over 700 million German Marks, which indicates their economic importance and confidence that the Court enjoyed as a highly professional body for settlement of complicated and important business disputes. Statistical data show that the court mostly receives cases in which the amount in dispute is in the range between 100.000 DM and 500.000 DM. There are still some smaller claims below this level, but in the recent times there was a trend of high-value disputes, especially in the domestic arbitration.

Proceedings in domestic and international cases are regulated by two different sets of rules. International cases are governed by the Rules of International Arbitration of the PAC-CCC (Zagreb

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[12] For a detailed study of this issue see Triva, Siniša, *New Facts and Evidence as Grounds for Setting Aside Arbitral Awards,* 3 Croatian Arbitration Yearbook 29 (1996).

[13] See Uzelac, Alan, *Setting Aside Arbitral Awards in Theory and Practice,* 6 Croatian Arbitration Yearbook 55 (1999).

[14] Croatian Law on Arbitration, Art. 36 para 5.

[15] See Off. Gaz. International Agreements, No. 2/98 (publication: Off. Gaz. 13/98). The Convention came into force on October 22, 1998. See Sajko, Krešimir, *Washington Convention on Settlement of Investment Disputes,* 6 Croatian Arbitration Yearbook 131 (1999).

[16] A collection of relevant arbitral provisions of such agreements was published in: 1 Review of Arbitration in Central and Eastern Europe 232-295. See also Sajko, *Arbitration in the Bilateral Treaties for Promotion and Protection of Investments,* 5 Croatian Arbitration Yearbook 123 (1998).

[17] See Dika, *Arbitral Settlement of Disputes According to the 1852 Provisional Civil Procedure Code,* 5 Croatian Arbitration Yearbook 187 (1998).

Rules), enacted in 1992.[18] It is expected that the enactment of the new law will initiate the first changes of the Rules, further improving the set of provisions that has proved to be a fair and reliable basis for international arbitration.

The panels of arbitrators of the PAC-CCC correspond to the two sets of rules. The both panels have been newly selected in 2001, for the 2001-2005 period. Currently, there are 110 arbitrators at the domestic list, and 98 arbitrators at the list of arbitrators in international disputes (48 of them are foreign nationals from 17 different countries). Although the panel of arbitrators in international disputes is composed of highly qualified individuals, it is still not binding upon the parties – they may appoint a suitable arbitrator also outside that list. Following the policy of transparency and informed choice of the parties, a set of information on the members of the panels (including areas of specialization, basic contact data and short curricula) was recently published on the Internet. It will also be available in separate publications.[19]