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PROCEDURE AND DOCUMENTS UNDER ARTICLES III AND IV OF NEW YORK CONVENTION ON RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS: COMPARATIVE PRACTICE OF LATVIA AND GEORGIA

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Abstract

The publication aims to inform foreign legal professionals of the procedural steps and hurdles that they may face when seeking recognition and enforcement of foreign arbitral awards in Latvia and Georgia. It is also hoped that the article will facilitate uniform interpretation and application of 1958 *New York Convention on Recognition and Enforcement of Arbitral Awards* in Latvia and Georgia. With comparative analyses of case law regarding Article IV of Convention the authors indicate the inaccuracies made by the judges in the respective jurisdictions when recognizing and enforcing foreign arbitral awards and suggest how to comply with the spirit of *New York Convention*.

Keywords: 1958 New York Convention, Article IV, Latvia, Georgia, recognition and enforcement of foreign arbitral awards

Introduction:

In 2005 Georgia and the Republic of Latvia signed *Agreement on Cooperation in the Spheres of Economy, Industry, and Science and Technology* providing that the contracting parties shall, within the framework of their respective national laws and taking into account their international obligations, develop, strengthen and diversify economic, industrial, scientific and technical cooperation on the mutually beneficial basis and in all spheres of mutual interest (Article 1 part 1).[75] By presenting this article the authors contribute to the implementation of this Treaty in a micro level. But, most importantly, as both countries strive to attract foreign investments, promote international trade in general, and increase economic co-operation in-between themselves in particular,[76] it is natural that the number of commercial disputes is and shall be increasing. Disputes are inevitable part of business transactions and most of them, with international dimension, are subject of resolution by international commercial arbitration. When this is the case, the creditor usually enforces the arbitral award in the state where the opposing party has its assets, using the mechanism of the *New York*

[75] *Agreement between the Government of the Republic of Latvia and the Government of Georgia On Economic, Industrial, Scientific and Technical Cooperation* : International Treaty, adopted 05 October 2005, in force as from 24 November 2005. Published in Latvia : *Latvian Herald* [*Latvijas Vēstnesis*] No. 140, 03 September 2009; in Georgia : website of *Georgian Legislative Herald* 21 March 2011 <www.matsne.gov.ge> [25.09.2013]. In addition, Georgia is Latvia's development co-operation priority country. See: *Latvian Development Cooperation Policy Strategy 2011-2015* : Order No. 299 of the Cabinet of Ministers of the Republic of Latvia, adopted and in force as from 06 July 2011. Published in *Latvian Herald* [*Latvijas Vēstnesis*] No. 105, 08 July 2011, p. 6.

[76] In 2011 Latvian export to Georgia increased for 28 % more than in 2010 but import for 17%. See *: Georgia: State Profile*. Investment and Development Agency of Latvia (*In Latvian*). Available at <http://www.liaa.gov.lv/lv/eksportetajiem/eksporta-tirgi/azija/gruzija> [08/09/2013].

Convention on Recognition and Enforcement of Arbitral Awards (further in text: *New York Convention*).[77]

The *New York Convention*, with 149 contracting parties,[78] is the foundation on which international commercial arbitration stands. The Convention ensures the single most important advantage arbitration has over litigation - the degree of certainty a party can have that an award will be recognized and enforced almost anywhere in the world.[79] However, uniformity in application and harmonized interpretation of the convention is the key for the Convention mechanism to work. Promotion of uniformity requires detailed knowledge of what the courts in foreign countries are doing and how judges are reasoning in reaching their decisions.[80]

The authors of the present article hope that with the modest overview of their respective national case law related to certain aspects of interpretation and application of the Convention, although far from being best practices, they will make a small contribution to this important goal. Awareness of the international business and legal community on how the Convention is being applied by the courts of Latvia and Georgia will ensure their proactivity and better preparation, and may as well contribute to the improvement of the respective judicial practices. However, analysis of the case law related to the Convention as a whole is beyond the scope of the present article. Presently, the authors **aim** to compare application of Article IV of *New York Convention*[81] in both countries and to give practical guidelines regarding the procedure and the documents to be submitted for the recognition and enforcement of foreign arbitral awards in the respective national courts. Interpretation and application of this article is very contemporary as the practice shows that the parties and the courts do not always pay careful attention to this stage of procedure. **First part** of the article will describe the scope and application of Article IV of *New York Convention* in the respective jurisdictions of Latvia and Georgia; **Second part** will address whether and to what extent documents other than those described in Article IV are being required by the courts of Latvia and Georgia; **Third part** will describe procedural details under the two national legislations related to submission of request for recognition and enforcement of foreign arbitral awards. At the end of the article the authors will give their conclusions.

Scope and application of Article IV of *New York Convention*

In general, a foreign arbitral award can be enforced anywhere and the national courts of the contracting states are under obligation to recognize arbitral awards "in accordance with the rules of procedure of the territory where the award is relied upon", and "under the conditions laid down in the [Convention]" (Article III of *New York Convention*). The *rules of procedure* referred to in the Convention are limited to questions such as the form of the request and the competent authority for which the Convention defers to national law. The

[77] *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. *330 UNTS 38,* 1968. Convention is in force as from 13 July 1992 in Latvia and as from 31 August 1994 in Georgia.

[78] For the most updated status of the Convention please visit <http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html> [20.08.2013].

[79] Kronke H., Nacimiento P., et al. (eds), Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention. Kluwer Law International 2010, p. 2.

[80] Ibid, p. 3.

[81] Article IV of *New York Convention*:

> *1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:*
> *(a) The duly authenticated original award or a duly certified copy thereof;*
> *(b) The original agreement referred to in article II or a duly certified copy thereof.*
> *2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.*

conditions for the enforcement, however, are set out in the Convention itself and are exclusively governed by the Convention: in particular by Article IV – with respect to the documents that need to be submitted by the party seeking recognition and enforcement, and Article V – exhaustive grounds for refusal of recognition and enforcement.[82] As already noted above, the present article will analyze the "rules of national procedure" (in part III below) and the "conditions laid down in the [Convention]" (in the present part I) with respect to Article IV only, i.e. from the perspective of the documents that need to be submitted to the national courts of Latvia and Georgia in order to request recognition and enforcement of foreign arbitral awards. Grounds for refusal of recognition and enforcement under Article V, though undoubtedly important, are beyond the scope and dimension of the present article. The authors do hope to address those grounds separately in future.

Article IV of *New York Convention* sets forth formal requirements that must be satisfied when applying for recognition and enforcement of foreign awards. It requires the party seeking recognition and enforcement to provide:

(a) A duly authenticated original award or a duly certified copy;

(b) The original arbitration agreement or a duly certified copy.

(c) Additionally, if the award or the agreement is not in the official language of the country where enforcement is sought, Article IV requires that a certified translation be provided.

These provisions are designed to provide internationally-uniform and transparent standards of proof, and to prevent parochial resistance to the recognition of foreign awards in the guise of formal requirements of proof.[83] Each of them will be addressed separately below.

The duly authenticated original award or duly certified copy

The authentication of a document is the formality by which the signature thereon is attested to be genuine and the certification of a copy is formality by which the copy is attested to be a true copy of the original.[84] Unlike the *Geneva Convention*,[85] which required that authentication be made according to the laws of the country where the award was made, *New York Convention* does not specify which law governs authentication. The drafting history of the *New York Convention* suggests that the drafters decided not to include a choice of law clause regarding authentication in order to allow for greater flexibility.[86] The approach of scholars, legislators and courts vary on this issue with some suggesting that it is the law of the place of enforcement which stipulates how the award should be effected, in terms of form or legal requirements"[87] and others, that the award should be authenticated in the manner required by the law of the country in which it was made.[88] Yet some courts, comporting with the intentions of the drafters of the *New York Convention*, take a more liberal approach and

[82] *ICCA Guide to the Interpretation of the 1958 New York Convention*. International Council for Commercial Arbitration, 2011, p. 70.

[83] Born, G. B., International Arbitration: Law and Practice. Kluwer Law International, 2012, p. 374.

[84] **Van den Berg, A**. **J.** *The New York Arbitration Convention of 1958*. T.M.C. Asser Institute, The Hague, 1981, p. 251

[85] *Convention on the Execution of Foreign Arbitral Awards* signed in Geneva on 26 September 1927, entered into force on 25 July 1929. 52 L.N.T.S. 302 (1929), No. 2096.

[86] **Dirk, O.**, *Article IV*. In : **Kronke H., Nacimiento P., et al.** (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention.* Kluwer Law International, 2010, p. 177.

[87] **Lew J.D.M., Mistelis L.A., Kroll S.M**. *Comparative International Commercial Arbitration*. Kluwer, 2003; p.705; Supreme Court of Italy case: *Societa Distillerie Meridionali (SODIME) v. Schuurmans & Van Ginnek en BV*, dated 14 March 1995 . Yearbook Commercial Arbitration XXI, 1996, p. 608.

[88] *The Arbitration and Conciliation Act of India* 1996, Article 47 part 1 (a), available at < http://www.arbitrations.ru/userfiles/file/Law/Arbitration%20acts/india%20arbitration%20act.pdf> [08/09/2013].

grant the applicant a choice to comply either with the legal requirements of the country where an award was rendered or with the laws of the country where enforcement is sought.[89]

In **Latvia** the civil procedure law rules on recognition and enforcement of foreign arbitral awards do not specify requirements for the authentication and certification of foreign arbitral awards. Thus, as there shall not be imposed substantially more onerous conditions than are imposed on the recognition or enforcement of domestic arbitral awards (Article III of *New York Convention*), Article 531 of *Civil Procedure Law*[90] can be applied by analogy. Namely, the authentication of a permanent arbitration institution's award shall be as provided by the rules of the arbitration. Thus the party seeking recognition of the award shall assure that the authentication is in conformity with applicable arbitration rules. As concerns an award made by *ad hoc* arbitration the signatures of the arbitrators shall be notarially certified.[91]

Nevertheless, the copy of the award shall be certified in accordance with the *Law on Legal Force of Documents* providing that if normative acts do not require mandatory certification of the document by the notary, the document can be certified by organization or physical person if this person is author of the document (Article 6, part 2).[92] As the law does not require certifying the copy of foreign permanent arbitral institution's arbitral award by notary, the certification of a copy can be done by the arbitration institution itself. At the top of the first page of the document's copy it shall be stated "COPY" and the document shall be certified by the following text: "Copy is accurate" and it shall be signed by the official identifying the position of the official, organization represented, date and place. The copy then shall be signed by the official and the seal shall be attached.[93]

As evident by the case law frequently the parties do not fulfill these requirements. For example, in one case Latvian court accepted the application and initiated the procedure even though the petitioner submitted mere copy of the foreign award.[94] Even though both Article IV of *New York Convention* and Article 648 of the *Civil Procedure Law* of Latvia require compliance of the documents "at the time of application", it is suggested that these provisions do not be interpreted very strictly and petitioner should be able to cure non-fulfillment of the conditions without dismissing the application.[95] Thus, when the court of Latvia receives only mere copy of the foreign award, the judge shall make a reasoned decision leaving the application to enforce the foreign arbitral award without motion and setting a time limit not less than 20 days for rectifying the deficiencies (Article 133 of Civil Procedure Law).

Neither in **Georgia** does the Law on Arbitration or the Civil Procedure Code specify requirements for the authentication and certification of foreign arbitral awards. The *Law on Arbitration* only requires that the award be signed by the majority of arbitrators;[96] that means that the award must bear original signatures of the signing arbitrators. If copy of the award is to be presented, such copy must be certified as true copy of the original. If certification of the

[89] Supreme Court of Austria decision in case No. 30b2097/96w dated 29 May 1996, noted in **Dirk, O**., *Article IV* in **Kronke H., Nacimiento P., et al.** (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*, Kluwer Law International 2010, p. 177.

[90] *Civil Procedure Law* [*Civilprocesa likums*] : Law of the Republic of Latvia, adopted 14 October 1998, in force as from 01 March 1999. Published in Latvian Herald [*Latvijas Vēstnesis*] No. 326, 03 November 1998.

[91] Article 531 of *Civil Procedure Law*.

[92] *Law on Legal Force of Documents* [*Dokumentu juridiskā spēka likums*] : Law of the Republic of Latvia adopted 06 May 2010, in force as from 01 July 2010. Published in Latvian Herald [*Latvijas Vēstnesis*], No. 78, 19 May 2010.

[93] *Rules on Drafting and Draw Up of the Documents* [*Dokumentu izstrādāšanas un noformēšanas kārtība*] : Regulations of the Cabinet of Ministers No. 78, adopted 28 September 2010, in force as from 15 October 2010. Published in Latvian Herald [*Latvijas Vēstnesis*] No. 163 14 October 2010.

[94] Riga City Latgales municipality court decision in case No. C29538113, 2013, unpublished.

[95] **van den Berg, A. J.**, *The New York Arbitration Convention of 1958*. T.M.C.Asser Institute- The Hague, 1941, p. 249.

[96] Article 39 section 2 of the *Law on Arbitration*.

copy of the award is made by a notary, than the document submitted to the Georgian courts must bear an apostille in accordance with the *Hague Convention.*[97] In Georgian court decisions on the recognition and enforcement of foreign arbitral awards authentication and/or certification is rarely an issue and thus have not been addressed in case law.

The original arbitration agreement or duly certified copy

The purpose of this requirement is to establish that the party seeking enforcement supply a document that is *prima facie* a valid arbitration agreement.[98] It sets only procedural pre-requisites to application for enforcement and does not include verification of material validity and existence of an arbitration agreement. It is only at next phase, i.e. under Article V part 1 (a) of *New York Convention* that substantive examination of the validity of the arbitration agreement and its compliance with Article II part 2 of *New York Convention* takes place.[99] Consequently, while the petitioner bears the duty to supply a *prima facie* valid arbitration agreement, the burden to prove a ground for non-enforcement under Article V lies with the respondent.[100]

However, requirements under Article IV and defenses under Article V part 1 (a) have sometimes been confused in the Latvian case law. Namely, in one case Latvian petitioner attached the notarial deed – third persons (broker's) oath to the application for the recognition and enforcement. The deed had appendix – the document stating that all terms and conditions are set by specific standard industry rules and particular arbitration rules. In petitioner's view this was evidence of arbitration clause agreed by parties via the broker. The arbitration institution found that it had jurisdiction and that the arbitration clause was valid despite the respondent's objections. The award was made in favor of the petitioner who came to recognize and enforce the award in Latvia. The court of first instance decided to enforce and execute this foreign arbitral award, however, the second instance court *inter alia* stated that the arbitration clause was not signed by either party as required by Article II part 2 of *New York Convention* thus it could not be established that petitioner had submitted arbitration agreement in accordance with Article IV of Convention. The court agreed with the respondent that burden of proof that the arbitration agreement is validly concluded under Article II of Convention lied on the Claimant. The court also noted that it was not relevant that the arbitration institution had already decided on the validity of arbitration clause. Thus, the award was not recognized and enforced in Latvia.[101] As we see, instead of separating the grounds under article V section 1 (a) and procedural requirement of Article IV and applying different criteria in each case, the Court has simultaneously applied the two and measured their requirements against the same standard. Moreover, the court mixed the burden of proof, finding that it was Claimant's duty at the enforcement stage to prove validity of arbitration agreement under Article II.

Translations

Article IV part 2 of *New York Convention* provides that if the award or arbitration agreement is not made in enforcing state's official language the translation shall be provided.

[97] *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* concluded 5 October 1961, entered into force 24 January 1965, available at < http://www.hcch.net/index_en.php?act=conventions.text&cid=41 > [30.09.2013]. The Convention entered into force in Georgia on 14 May 2007.

[98] *ICCA Guide to the Interpretation of the 1958 New York Convention*. International Council for Commercial Arbitration, 2011, p. 75.

[99] **Dirk, O**. *Article IV*. *In* : *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary* Ed. by H. Kronke. Kluwer Law International. 2010, p. 163; *ICCA Guide to the Interpretation of the 1958 New York Convention*. International Council for Commercial Arbitration, 2011, p. 75.

[100] Ibid.

[101] Riga District Court decision in case No. C-33510411 dated 13 May 2013, unpublished.

Such translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Reviewing the case law on application of *New York Convention* in **Latvia** it can be concluded that translation of the awards and agreements are very time and cost consuming as the courts require to submit fully translated documents. In one case, only in the second instance the Riga Regional Court *inter alia* established that the translation of the foreign arbitral award was not properly certified and signed by the translator. Although the respondent did not object to the translation, the court annulled the decision of the first instance granting enforcement and sent the case back for second review.[102] Firstly, since *New York Convention* and *Civil Procedure Law* state that the documents and their translation shall be submitted "*at the time of application*", the petitioner could and should have been given the opportunity to cure deficiencies during the procedure in the first instance. It is doubtful whether the court itself may raise this issue *ex officio* only at the second instance and whether it is sufficient ground for non-recognition of the award. Secondly, the second instance court had to itself decide on the recognition and enforcement of foreign arbitral award instead of sending the case back for re-review to the first instance. Article 649 part 3 of *Civil Procedure Law* explicitly states that a court shall render a decision to recognize and execute the arbitral award or to reject the application if there are grounds provided by the Article V of *New York Convention*. No procedure of remand is available under the applicable procedural law in such cases.

Georgian law mirrors the language of Article IV of the *New York Convention* and requires submission of properly certified Georgian language translations.[103] Certification of translations in Georgia is being done by notaries.[104] Therefore, a petitioner applying for recognition and enforcement of a foreign arbitral award in Georgia should ensure that the documents submitted to the Supreme Court of Georgia are not only translated into Georgian language, but that the properness of such translations are certified by notary.

Additional documents - troubling case law

Article IV part 1 of *New York Convention* is an exhaustive set of formal requirements. Under the Convention a party seeking recognition and enforcement should not be subject to any other conditions.[105] Unfortunately, this is not always shared by Latvian or Georgian courts.

In one case the **Latvian** court questioned the finality of the award and for this reason used the rights provided in the *Civil Procedure Law* (Article 649 part 2) to ask additional information from the foreign arbitration institution.[106] This norm of the law is unreasonable as the arbitration court in another state is not bound by the order of a foreign court. Furthermore, while in the *ad hoc* cases there is no institution to ask such additional information at all. Moreover, award is a final decision of the tribunal resolving a specific issue, which has a *res judicata* effect.[107] Thus, in general it should not be difficult for the national court to establish whether the award is final or not. In another case[108] the court requested the petitioner to prove that the award had entered into force in accordance with Article 52 of *Treaty between Republic of Latvia and Russian Federation on Legal Assistance and Legal Relationships in*

[102] Riga Regional Court decision in case No. 27156704 dated 24 January 2005, unpublished.
[103] Article 44 part 2 of the Georgian *Law on Arbitration*.
[104] *Notary Law* of Georgia*:* Law of Georgia №2283, adopted 04 December 2009, Published in Parliament Herald No. 46 on 22 December 2009, Article 38 part 1 (h).
[105] **Dirk, O**, *Article IV* in **Kronke H., Nacimiento P., et al.** (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*. Kluwer Law International 2010, p. 148.
[106] Riga City Latgales municipality court case No. C29538113, 2013, unpublished.
[107] **Lew, J. D.M.; Mistelis, L. A.; Kroll S. M**. *Comparative International Commercial Arbitration*. Kluwer, 2003, p. 699.
[108] Liepaja City court decision in case No. 3-11/06808 dated 12 March 2008, unpublished.

Civil, Family and Criminal Cases.[109] First, the Treaty does not apply to recognition and enforcement of foreign arbitral awards. Secondly, the conditions mentioned in Article IV of *New York Convention* are the only conditions with which the party seeking enforcement of a Convention award has to comply,[110] thus the court may not request any additional document, for instance, certification acknowledging the force of the award. Moreover, validity of the award or other grounds for challenge is a second stage, regulated under a separate mechanism of Article V part 1.

In the **Georgian** practice, the Supreme Court tends to request submission of a yet different document – proof that the award had not yet been enforced in the country where it had been rendered. By the decision of 17 May 2011 Supreme Court of Georgia[111] granted enforcement to an award of the International Commercial Arbitration Court by the Ukrainian Chamber of Commerce and Industry. The descriptive part of the decision notes, that initially party's application was not admitted by the Court and the petitioner was granted additional time to present a proof that the award had not been enforced in Ukraine. Only after the petitioner submitted a certification issued by the state enforcement bureau of the Ukraine Komsomolsk Region service center did the Court find party's application admissible and eventually enforced the award. However, less fortunate appeared to be the fate of the arbitral award made in London under the *UNCITRAL Arbitration Rules*.[112] With its order of 28 September 2012 Supreme Court of Georgia requested the petitioner within the set additional period of time to present a certification that the UNCITRAL award dated 25 October 2010 had not been enforced. The petitioner sought extension of the allocated time frame since it was unable to obtain such certification under English law. The extension had been granted, however petitioner decided to withdraw its application for recognition and enforcement altogether, since it found impossible to present such document to the Supreme Court of Georgia. By the decision of the Supreme Court of Georgia dated 26 November 2012[113] the motion of the petitioner requesting recognition and enforcement of the said was left without consideration.

This trend is troublesome for several reasons: Firstly, it is unclear what is the rationale of the Supreme Court when it requests proof that the award has not been enforced in the country where it was made. It may be argued that the Court's aim is to safeguard from double recovery of the petitioner. However, how can that interest be protected in the context of international commercial arbitration where the award is open for enforcement in any country of the world where award debtor may appear to have assets? Would any certification from London or Komsomolsk guarantee that the award has not already been enforced in any other country? And should the Supreme Court be safeguarding that interest at all? It is obvious that any such rationale lacks merit and comes in conflict with the spirit of the *New York Convention*. Secondly, as already noted above, Supreme Court is not authorized to request presentation of any document other than the ones noted in Article IV of *New York*

[109] *Treaty Between Republic of Latvia and Russian Federation on Legal Assistance and Legal Relationships in Civil, Family and Criminal Cases* : International Agreement, adopted 03 February 1993, in force as from 28 March 1995. Published in Latvian Herald [*Latvijas Vēstnesis*] No. 394/396 30 November 1999. Article 52 provides:

> *An application for enforcement of a judgment shall attach 1) the court's certified copy of judgment, official document attesting that the judgment's has come into force* [..].

[110] **van den Berg, A. J.** *The New York Arbitration Convention of 1958*. T.M.C.Asser Institute- The Hague, 1941, p. 248.

[111] Supreme Court of Georgia decision in case No. a-548-sh-10-11, available at <www.supremecourt.ge> (in Georgian) [25/09/2013].

[112] United Nations Commission on International Trade Law Arbitration Rules, UN Doc A/31/17, 1976.

[113] Supreme Court of Georgia decision in case No. a-3573-sh-73-2012, available at <www.supremecourt.ge> (in Georgian) [25/09/2013].

Convention. Documents like the one requested or the proof that the award is final come in conflict with the purpose and spirit of the Convention.

The courts of Latvia and Georgia should be aware of the drafting history of the *New York Convention*, and its explicit abolishment of double *exequator* allowed under its predecessor *Geneva Convention*.[114] By requesting additional documents, the courts of Latvia and Georgia make the respective countries default under their international obligation[115] and risk earning reputation of arbitration hostile countries.

National Rules related to procedure, possibility of appeal, limitation period, and costs

The "rules of procedure" are "limited to questions such as the form of the request and the competent authority for which *New York Convention* defers to national law."[116] In case of Latvia such rules of procedure are provided in part F of the *Civil Procedure Law* consisting of seven articles only. In Georgia such rules are laid down in the Civil Procedure Code of Georgia.[117]

In accordance with the *Civil Procedure Law* of **Latvia** the application for recognition and enforcement shall contain certain information, including, information on parties, bases and circumstances of the claim and the relief (Article 648). If this information is not provided the court does not proceed with case and gives time to the petitioner to eliminate drawbacks. If the petitioner does not cure the mistakes in the certain period of time the application is returned. The practice shows that the petitioners usually are very brief in their applications and fulfill the requirements of the national rules. The time frame for courts to consider and decide on applications for recognition and enforcement of foreign arbitral awards is not set by the law thus it may vary from case to case.

Georgian law does not prescribe specific requirements for application for recognition and enforcement, other than those mirroring provisions of Article IV of the *New York Convention*. However, Article IV implies some other requirements, which are valid for general applications of claim in the Georgian courts. In order to enable a court to decide on an enforcement application, an award should, apart from the names of the parties, contain at least the issues decided and the relief granted by the tribunal. Furthermore, the award should contain a date on which it was rendered to verify that applicable statutes of limitation are not violated. If the award does not describe the relief granted, there would be nothing to enforce, thereby rendering the award ineffective.[118] In practice, these requirements are rarely violated and applications for recognition and enforcement of foreign awards come in compliance with them. As regards the time frames, they are extremely short under Georgian legislation. The court only has 10 days to consider petitioner's application and make a decision regarding recognition and enforcement of the award.[119] It is probably due to these tight time frames that the default position is that applications for recognition and enforcement are considered by the court without oral hearing. The court sets oral hearing in certain circumstances when it considers the hearing appropriate and notifies the parties of the date and time of the hearing,

[114] Article 4 part 2 of the *Geneva Convention* expressly required submission of "documentary or other evidence to prove that the award has become final". This requirement was explicitly abolished by the drafters of the *New York Convention*.

[115] *ICCA Guide to the Interpretation of the 1958 New York Convention*. International Council for Commercial Arbitration, 2011, p. 30.

[116] *ICCA Guide to the Interpretation of the 1958 New York Convention*. International Council for Commercial Arbitration, 2011, p. 70.

[117] *Civil Procedure Code of Georgia*: Law of Georgia №1106, adopted on 14 November 1997, Published in Parliament Herald No. 47-48, 31 December 1997.

[118] **Dirk, O**. *Article IV*. *In* : **Kronke H., Nacimiento P., et al.** (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*, Kluwer Law International 2010, p. 154.

[119] Article 356^{21} part 3 of the *Civil Procedure Code* of Georgia.

though their non-appearance would not hinder the process.[120] The 10 day period may only be extended if court considers extension for no more than 30 days appropriate in circumstances when the application for setting aside or suspension of an award has been made,[121] or when the court considers adjournment of recognition and enforcement proceedings appropriate upon the application of the party against whom the award is made.[122]

Article 649 part 5 of *Civil Procedure Law* of **Latvia** simply provides that the court decision on recognition may be appealed. As this legal norm does not explicitly identify weather the decision can be appealed to second and/or also to third instance (Supreme Court) the case law is not unified. For example, in one case the Supreme Court allowed appeal in all three instances[123] but in another case denied to initiate the proceedings in the Supreme Court.[124] The legislator shall make this norm clearer. Contrary to Latvia, in **Georgia**, exclusive authority for recognition and enforcement of foreign arbitral awards lies with the Supreme Court of Georgia, whose decision is final and may not be appealed.[125]

In **Latvia** the state duty for recognition and enforcement of national or foreign awards is 1 % from total sum of the claim but not more than 200 LVL (~ 284 EUR),[126] thus Latvian legislator has satisfied Article II of *New York Convention* providing that there shall not be imposed substantially higher fees or charges on the recognition or enforcement of arbitral awards than in are imposed for the domestic arbitral awards. **Georgian** law[127] likewise prescribes uniform state duty for applications for recognition and enforcement of domestic and international awards; however the amount of the fee is significantly higher than in Latvia or in majority of other states – 3% of the value of the award. Moreover, Georgian law only prescribes the lower limit, i.e. that the fee may not be less than 300 GEL (~EUR 130), no upper cap is set. This makes recognition and enforcement of awards in Georgia extremely expensive and it is anticipated that the legislator will be reducing the fee to a lower fixed amount of sum.[128]

New York Convention does not prescribe limitation period for filing applications for enforcement of arbitral awards. Article III leaves the issue to the domestic law of the enforcing court.[129] *Law on Arbitration* of **Georgia** does not prescribe a specific limitation period for applications for recognition and enforcement of awards. General limitation periods are regulated in the *Civil Code of Georgia*, which prescribe 10 years for the enforcement of final court decisions.[130] It is presumed that the same time frame will be applied by analogy to the recognition and enforcement of arbitral awards. Though, it is questionable, whether Georgian courts will apply Georgian regulation in all cases, or will rather take into consideration the limitation period prescribed by law applicable to the

[120] Article 356^{21} part 2 of the *Civil Procedure Code* of Georgia.
[121] Pursuant to Article 45 part 2 of the *Law on Arbitration* of Georgia.
[122] Pursuant to Article 44 part 3 of the *Law on Arbitration* of Georgia.
[123] Supreme Court of Latvia decision in case No. SKC-395/2010 dated 13 January 2010, available at <http://www.at.gov.lv/files/archive/department1/2010/395-la.doc> (in Latvian) [08/09/2013].
[124] Supreme Court of Latvia decision in case No. SKC-9535/2012 dated 01 January 2012, available at <http://www.at.gov.lv/files/archive/department1/2012/953-skc-2012.doc> (in Latvian) [08/09/2013].
[125] Article 44 part 1 and Article 6 of the Law on Arbitration of Georgia; Article 356^{21} part 6 of the *Civil Procedure Code* of Georgia.
[126] Article 34 part 1, point 8 of *Civil Procedure Law*.
[127] *Law of Georgia on State Fees:* Law of Georgia №1363, adopted 29 April 1998, Published in Parliament Herald No. 19-20, 30 May 1998, Article 4 (1) (a^2).
[128] The author of the present article is member of the working group by the Ministry of Justice of Georgia drafting propositions for the amendments in the legislative framework related to arbitration. One of the amendments strongly advocated by the working group members is reduction of the state fee for the recognition and enforcement of arbitral awards. It is yet to be seen whether the proposition will be shared by the Ministry of Justice and later passed in the Parliament.
[129] **Börner**, **A.** *Article III* in **Kronke H., Nacimiento P., et al.** (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*. Kluwer Law International, 2010, p. 126.
[130] Art. 142.

substance of the dispute. This latter approach has been adopted by certain civil law countries, which consider limitation periods to be the matters of substantive, rather than procedural law.[131] In **Latvia** the general rule of the limitation is provided in Article 1895 of *Civil Law* stating that the limitation period arising out of rights of obligation is 10 years.[132] Most likely this provision will be applied also for procedural matters, including applications for recognition and enforcement of arbitral awards.

Conclusion:

While both Latvia and Georgia are parties to the *New York Convention*, their legal and judicial frameworks in parts depart from the spirit of the Convention and express provisions under Article IV prescribing exhaustive list of documents needed for applications for recognition and enforcement of foreign arbitral awards. These issues should be kept in mind by foreign lawyers when dealing with or anticipating recognition and enforcement of arbitral awards in Georgia and Latvia respectively. The same points should also be taken into account and reconsidered by the national legislators and/or judges, as the case may be, in order to ensure compliance with the Convention and establishment of arbitration friendly frameworks in the countries of Latvia and Georgia.

The biggest hurdle in Latvia seems to be that the courts do not have a grasp of the allocation of burden of proof set by the Convention. They also tend to mix the tests under article V and article IV of the Convention. Furthermore, the court's authority to require proof of finality of arbitral awards from arbitral institutions are at odds with the history and purpose of the *New York Convention* setting limited and exclusive list of documents under Article IV. In Georgia, where provisions of the *Law on Arbitration* mirror the language of Article IV of the Convention, the problem lies with interpretation of its letter by the Supreme Court and the tendency to require from applicants proof that the arbitral award has not yet been enforced in the country where it was made. This requirement puts additional onus on petitioners seeking recognition and enforcement of awards under the Convention regime. It is suggested that both Latvian and Georgian judges consider the Convention as a superior source of law and apply it in line with its express language and purpose.[133]

Both Latvian and Georgian courts give the petitioners opportunity to cure deficiencies in application and in both countries it is likely that general 10 year limitation period will apply for applications for recognition and enforcement of foreign arbitral awards.

Foreign lawyers should keep in mind that while the time frames for consideration of applications for recognition and enforcement are extremely short in Georgia (10 days), the state duty that the petition is required to pay are extremely high, equaling to 3% of the value of the award. In Latvia, the state duties are more reasonable, equaling to 1 % from the total sum of the claim with 200 LVL (~ 284 EUR) as an upper limit, while the time frame for the court to consider the application and decide on recognition and enforcement may last even a few years. The expansive time range in Latvia is due to the fact that the courts authorized to consider applications for recognition and enforcement of foreign awards are first instance courts, with no certainty in law or case law whether these decisions can be further appealed in

[131] **Börner, A**., *Article III* in **Kronke H., Nacimiento P., et al.** (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*. Kluwer Law International, 2010, p. 126-127.

[132] *Civil Law of the Republic of Latvia [Civillikums]* : Law of the Republic of Latvia, adopted 28 January 1937, re-in-force as from 01 September 1992. Published in Government Herald [*Valdības Vēstnesis*] No. 41, 20 February 1937.

[133] Pursuant to the *Law on Normative Acts* of Georgia *:* Law of Georgia №1876, adopted 22 October, 2009, Published in Parliament Herald No. 33, 09 November 2009, Article 7 section 3 international conventions stand higher in the hierarchy of norms in comparison with ordinary laws of Georgia. In Latvia Article 5 of Civil Procedure Law provides the same.

one or two instances. Contrary, in Georgia, the authorized court is the Supreme Court of Georgia, whose decision is final and subject to no appeal.

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