UDC 341.942:341.24
JEL Classification K33
DOI: https://doi.org/10.31617/zt.knute.2021(117)06

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CONTRADICTIONS IN INTERPRETATION OF INTERNATIONAL ARBITRATION AGREEMENTS

This article explores a divergence of approaches applicable to interpretation of arbitration agreement due to the very nature of international commercial arbitration as transnational and multicultural forum. The author also considers globalization of international commerce as a key factor in promoting predictability and certainty of contractual interpretation and thereby promoting uniformity in its approaches. The interaction between the diversity of legal cultures, on the one hand, and demand for uniformity, on the other hand, are at stake in this discussion.

Keywords: diversity, uniformity, arbitration agreement, interpretation, international commercial arbitration, intention of the parties, validity, scope of arbitration agreement, national courts.

Background. The ever-increasing popularity of international arbitration as an effective mechanism of dispute resolution is contingent upon the legitimacy of arbitration proceedings and enforceability of the arbitral awards. Within this scope, the value of interpretation of arbitration agreements cannot be overestimated. The correct and predictable interpretation of the arbitration agreement is crucial for the parties being a necessary precondition for determination of jurisdiction of the dispute or recognition and enforcement of the arbitral award.

At the same time and bearing in mind the importance of interpretation of arbitration agreements, it often plays a trick on the parties drawing them to the world of uncertainty. Depending on the specificities of each particular legal system and its pro-arbitration climate, the views on interpretation may sufficiently differ. Even within the country, the approaches may not be the same. Altogether results in unresolved complexities when interpreting the arbitration agreements and calls for further uniformity of approaches. However, the limits of such uniformity are still in doubt.

The correlation between diversity and uniformity in international commercial arbitration always stands as an issue for a wide spectrum of debate. And while pursuing the aim of uniform interpretation of international treaties governing international commercial arbitration as well as the UNCITRAL Model Law on International Commercial Arbitration seems

absolutely clear, the need for uniform interpretation of arbitration agreements has not been sufficiently discussed.

Analyses of recent research and publications. The process of interpretation is immanent to the very nature of international arbitration agreements and, therefore, is commonly discussed within the study of the arbitration agreements themselves. However, a doctrine of interpretation of international arbitration agreements was substantially developed by E. Gaillard and J. Savage [1] and G. Born [2]. At the national level, interpretation of arbitration agreements was not separately analysed, although specific points of interpretation were addressed in the works of K. Voronov [3], Yu. Navrotska [4], M. Malsky [5].

The **aim** of this article is to analyze the difficulties associated with the divergence of approaches applicable to interpretation of arbitration agreements as well as to determine the possibility to develop and promote the uniformity of interpretation throughout the world.

Materials and methods. The basis of this article serves regulatory and scientific sources in combination with the up-to-date case law. The methods used in this article include general scientific (dialectical, analytical, hermeneutics, historical) and special methods (analyses and synthesis, comparative, formal-logical).

Results. The discussion on uniformity and diversity is inevitable in international commercial arbitration. Having originated in a response to the increase of transnational commerce, international commercial arbitration inherently implies its immanent characteristics. International character of arbitration is expressed in a diversity of forms, cultures, legal systems, laws, arbitrators, and parties presented in international arbitration. From the commercial point of view, international arbitration stands as an effective and predictable method of dispute resolution. And when the differences are generally appreciated, another stance has been taken to application of legal rules: a search for uniformity is proclaimed as a favored goal [6; p. 394]. The parties primarily seek a process based on uniform principles that can easily be incorporated into their business activities without misunderstandings or surprises [7; p. 324]. If the arbitration proceedings do not meet the expectations of the parties, confidence in international arbitration would not be otherwise achieved.

The standpoint for almost every international arbitration is the existence of a valid arbitration agreement. Along with the parties' consent, validity and scope of arbitration agreements often remain the question of contractual interpretation. The correct and progressive interpretation should effectuate the true intention of the parties despite the minor deficiencies that may arise. However, the way in which the arbitration agreements are interpreted and the laws applicable to interpretation are not uniformly defined. Be it a question of domestic law or general principles of interpretation, it requires a deep dive into the substance of parties' agreements, before and after the arbitration.

Complexities of Interpretation. Interpretation, by its very nature, is a complicated and multifaceted concept. In legal doctrine, especially of national scholars, it is widely recognized that it may stand both as a process of interpreting the law and the result thereof [8; p. 180]. The meaning of the term «interpretation» is also often classified into finding a sense of the law and explaining its sense to the others [9; p. 434], [10; p. 153]. For purposes of this analysis, the term «interpretation» will be referred to as an integrated concept combining both the internal and external expressions.

Given the transnational character of international commercial arbitration, difficulties arise out of the inconsistent approaches to interpretation in common law and civil law countries. Originating from the Roman law («*interpretatio*»), interpretation serves as an intrinsic process of application of the law. That said, not only the ambiguous and uncertain words are to be interpreted but all the words referred to. On the contrary, the Anglo-American system adopts a rather different approach diversifying between interpretation as finding out a true sense of the words and construction as drawing of conclusions that lie beyond the direct expression of the text from elements known and given in the text [11; p. 745].

Besides its terminological inconsistencies, in both legal systems the process of interpretation has undergone different stages of development. At the core of civil law countries lies a subjective approach, the pivotal role of which relates to determination of a common intention of the parties when concluding the agreement. The same approach is still prevailing.

By contrast, in common law system subjective theory of interpretation, being in effect in the early part of the 19th century, was further evolved to accommodate the needs of national market and commercial classes [12; p. 427]. Having been replaced with an objective approach, interpretation prioritize ascertaining the intent of a reasonable person [13; p. 764]. According to the latter, the courts are not interested in what the parties have meant by the words used, but in the meaning which the document could convey to the reasonable person having all the background information available to the parties when the contract was concluded [14; p. 454]. It is fair to acknowledge that common law is almost like a laboratory environment, where approaches to contractual interpretation were developing much faster than they did in continental legal systems [15; p. 25]. The latter transformation and predominance of a pro-business approach in common law countries have direct implications on the interpretation of arbitration agreements that would be further discussed.

The purpose of interpretation is crucial from the practical point of view. The person engaged in interpretation may doubt a direct object of interpretation. Should the preference be given to the intention of the parties or the words containing in arbitration agreement? The question is particularly relevant when interpreting the defective arbitration clauses.

Going to its core, the problem is similar to a controversy between *verba* and *voluntas*, *the letter* and *the spirit*, or whatever form expressed, that first takes a prominent place in legal thought in the classical age of

Roman law [13; p. 748]. The conflict was further developed by the adherents of Humanist and Naturalist Schools. The parties' intent was relevant in the approach of the Humanist School, and therefore the dominance of the subjective interpretation was strongly felt [15; p. 21]. In contrast, the proponents of the Naturalist school contended that the intent of the parties could only be determined by the words used for expressing it or other indications of this intent [15; p. 21].

For one thing, giving preference to the words rather than the intention may lead to a strict adherence to the text where the essence might be lost. At the same time, the choice in favor of the parties' intent is uncertain. Being amorphous by its nature, the intention could not be interpreted as such. It constitutes an internal process in the minds of the parties, and it would be practically impossible to identify given their opposing interests in the dispute. In our opinion, the answer lies somewhere in between. The one should not go to its extremes taking one side or another. The parties' intention should be directly implied in the words which stand as a materialized object thereof.

Today the demarcation line between the Humanists and Naturalists, subjectivism and objectivism in interpretation is not clearly seen. A principal purpose stands the effective interpretation that benefits from the conjunctive application of both approaches. In this regard, the primary focus is drawn to the common intent of the parties that prevails over strict adherence to the words and literal meaning of the terms. And only in those cases where the intention cannot be established, the contract is to be interpreted according to the meaning of a reasonable person. This is exactly what has been enshrined in the Principles of European Contract Law and the UNIDROIT Principles of International Commercial Contracts as well as in France, German, Spain, Portuguese etc.

Explicit Divergence in Interpretation. Peculiarities of interpretation of international arbitration agreement are caused by its consensual nature. Consent of the parties constitutes an expression of the will (intent) of the parties to refer the dispute to arbitration. In cases where the parties' will is not clearly construed, the arbitral tribunal or national court should resort to interpretation.

International arbitration does not prescribe a uniform approach to interpretation of the parties' consent across multiple jurisdictions. The degree of certainty that is required to establish the consent may sufficiently differ across the jurisdictions.

In Switzerland, the national courts favor a restrictive approach when ascertaining the parties' intent to arbitrate strengthening that the waiver of recourse to a state court would severely restrict the parties' legal remedies. But when the parties' intent is established, the court applies the principle of utility seeking interpretation of the contract that favors the arbitration agreement [16].

In Ukraine, the approach of national courts to ascertaining the parties' consent has dramatically evolved. In fact, a radical literalism inherited from

the Soviet jurisprudence was transferred into a more pro-arbitration regime under which the minor errors in the name of the arbitral institution were interpreted in favor of arbitration [17]. In dispute initiated by *Expobank CZ v Vilnogirske Sklo LLC* the Supreme Court concluded that inconsistencies in the name of the arbitral institution do not neglect a clear intent of the parties to refer the dispute to arbitration under the rules of the defined arbitral institution [18].

At the same time, the national courts continue to apply a restrictive approach to interpretation of the defective arbitration agreements as compared to more arbitration-friendly jurisdictions. In case *Velgevos Enterprises Limited v KMT LLC, Integrated Trade Network LLC* the parties entered into the arbitration agreement stating that the dispute «shall be referred to and finally resolved by arbitration to be conducted in Limassol, Cyprus». The court concluded that the wording of the arbitration clause does not allow to determine the arbitral institution that is competent to consider the dispute, formation of arbitral tribunal including ad hoc arbitration, or the procedure for consideration of the dispute and denied the cassation claim [19]. As seen from the court practice, a clear and accurate indication of the name of arbitral tribunal or rules stands as *essentiale negotii* when concluding the arbitration agreement. Although this approach directly corresponds to the one laid down in the UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards [20], it is not completely uniform.

In the United States incorrect reference to an arbitral institution or even the absence thereof (so-called «blank clauses») would not impede the arbitration. The courts draw their conclusion mainly based on the premise of the «dominant purpose» of the parties [21, p. 311]. In this regard, it is widely acknowledged in case law[1] that if the dominant intent of the parties was to resolve the dispute by arbitration and the parties incorrectly designate the instrumentality through which arbitration should be affected, the court will enforce the contract by making an appropriate designation [21, p. 311]. In other words, establishing only the intent of the parties to refer the dispute to arbitration is sufficient to conclude in favor of arbitration.

Enforceability of blank clauses has been also approved in France. The courts interpret such clauses as providing for *ad hoc* arbitration in which any difficulties with the composition of the arbitral tribunal will be resolved by the President of the Paris *Tribunal de grande instance* [1, p. 267].

As directly stems from the analyses, the threshold for ascertaining the consent of the parties depends on the pro-arbitration policies of a particular country. The more arbitration-friendly climate exists, the more extensively the

[1] Citing Astra Footwear Indus. v. Harwyn Int'l Inc., 442 F. Supp. 907 (S.D.N.Y. Jan. 11, 1978)). See generally Laboratorios Grossman, S.A. v. Forest Labs., Inc., 295 N.Y.S.2d 756, 757 (N.Y. App. Div. 1968); Delma Eng'g Corp. v. K & L Constr. Co., 174 N.Y.S.2d 620, 621 (N.Y. 1958); Lucky-Goldstar Int'l (H.K.) Ltd. v. Ng Moo Kee Eng'g Ltd., [1993] 1 H.K.C. 404, 404 (H.K.)

arbitration agreements are to be interpreted. In such correlation, the law applicable to the interpretation of arbitration agreements may seem to be of primary importance.

However, diversity in interpretation may follow not only from application of different laws but also from different approaches of the courts to interpret the language of arbitration agreement as an expression of the parties' intent [22, p. 2017]. While applying *integral-or-ancillary test* to determine the validity of arbitration agreement naming a defective forum, some courts treat the choice of forum as integral for the parties thereby concluding on unenforceability of arbitration agreement. Contrary to the above, some strengthen the ancillary nature of the forum giving preference to the parties' consent to arbitrate as such.

One of the most striking illustration of such inconsistency follows from the interpretation of a single nursing home contract referring to the National Arbitration Forum Code of Procedure after temporal unavailability of the NAF as an operating forum[2]. Some courts are guided by the plain meaning rule (known also as «*literal rule*» or «*four corners of the contract*») while interpreting the use of the word «shall» in the arbitration agreement as indication of integral and exclusive choice in favor of the NAF [23]. This evidently results in unenforceability of such arbitration agreements. The other courts strengthen ancillary nature of the NAF provision to interpret the parties' intent [24]. As a result, the principal role should be paid to the parties' consent to arbitrate rather than to the specific forum.

While agreeing on a crucial role of the court's methodology in ascertaining intent of the parties, it is also important to consider the rules on admissibility of evidence, i.e. extrinsic evidence, used to determine such an intent under the applicable laws. This may partly explain the courts' divergent approaches to interpret the same contractual provision in a quite contrasting manner.

Given the uncertainty emanating from the application of the *integral-or-ancillary test*, a workable option from the practical point of view is to appoint a substitute arbitrator under Section 5 of the Federal Arbitration Act [22; p. 2033]. As to the proposed suggestion, the problem of diverse interpretation is missed through the application of a more certain rule.

Another aspect of determination of the party's consent relates to interpretation of potentially conflicting dispute resolution clauses. Such situation refers to a parallel implementation of arbitration and litigation fora that often triggers vague uncertainties and unpredictability in application.

[2] The Arbitration Agreement provided as follows: «It is understood and agreed by Facility and Resident that any and all claims, disputes, and controversies . . . shall be resolved exclusively by binding arbitration to be conducted at a place agreed upon by the Parties, or in the absence of such an agreement, at the Facility, in accordance with the National Arbitration Forum Code of Procedure, which is hereby incorporated into this Agreement!], and not by a lawsuit or resort to court process. This agreement shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C., Sections 1-16».

While there is an undoubted international trend in support of arbitration, such a policy should remain subordinate to the ultimate will of the parties, even if at times this will is slightly awkwardly expressed [25, p. 362].

The results of interpretation should depend on the precise language of the arbitration agreement with a proper consideration of the surrounding circumstances of a specific case. It may possibly be the case when the priority of arbitration over litigation or vice versa is not directly stipulated in the arbitration agreement itself but stems from the interpretation of other contractual provisions.

In cases of express allocation of subject matter to arbitration or litigation or where the priority of a forum is set by subsequent agreement, the correct interpretation of dispute resolution clause does not cause substantial difficulties. However, a rather contrasting situation takes place where equally weighted arbitration and litigation clauses exist. As follows from the practical review of common law practice conducted by R. Garnett, a variety of approaches is applied [25; p. 369–374], among them:

- Effectuation of a true intent of each of the parties resulting in parallel arbitration and litigation proceedings. The drawbacks of this approach are undisputable and may lead to the overall impossibility of enforcement of the final awards.
- Invalidation of arbitration agreement due to the lack of the parties' consent that contradicts to business common sense in interpreting arbitration agreements.
- Application of a *more appropriate forum test* giving the weight to the arbitral tribunal or the national court which is seized first in time.
- Interpretation both clauses together as providing for disputes to be arbitrated in the country whose courts are the agreed judicial forum having supervisory jurisdiction over the arbitration.

On a separate note, interpretation of the parties' consent is imminent where the terminological inconsistency and poor legal drafting take place. In this regard, there is no universally accepted vocabulary to describe the physical location of an arbitration as opposed to its judicial forum. Determination of a «venue», «place» or «seat» of arbitration varies across the jurisdictions implying a one sense or another be it «uni-directional» or «pluri-directional» clauses [26, p. 2–5].

Another frame of discussion relates to interpretation of the scope of international arbitration agreements. Deciding on the jurisdiction of the dispute, most of the pro-arbitration jurisdictions uphold a liberal approach to interpretation of the scope of arbitration agreements. The one was well-established in the landmark decision in *Fiona Trust v Privalov* where the court ruled on the presumption that the parties are likely to have intended «any dispute arising out of the relationship into which they have entered» to be decided by the same tribunal unless the language makes clear that certain matters were to be excluded from the arbitrator's jurisdiction» [27]. In fact, in its reasoning, the court adhered to the commercial common sense of the

parties affirming a strong pro-arbitration approach of English courts. It has been referred to and applied on numerous occasions in the courts of many common law jurisdictions [28].

However, in Australia Fiona Trust Presumption has been recently reversed by the High Court of Australia in *Rinehart v Hancock Prospecting Pty Ltd*. The court adopted a literal approach to interpretation based on the reasoning that the determinative role would be given to the words under the Deed in their narrower sense [29]. The judgment was highly criticized by the Australian arbitration community for standing in contradiction to the High Court's previous decision [28].

In Ukraine, the national courts deny the application of the Fiona Trust Presumption in multi-party disputes that was recently confirmed by the Grand Chamber of the Supreme Court [30]. The dispute arose out of the failure of Calea Ferata din Moldova («CFM») to comply with its contractual obligations to pay the lease payments to Nistas GmbH. Non-performance of the lease agreement resulted in obligation to return the object of the lease to the lessor and reimbursement of damages caused by the contractual breach. Under the lease agreement the parties concluded that in case of impossibility of negotiations, the dispute shall be resolved by the Economic Court of Chisinau. Despite the existed arbitration clause, Transzaliznychservice LLC as assignee under the lease agreement filed a claim to the Commercial Court of Kyiv city seeking reimbursement of contractual damages.

The Grand Chamber dismissed the judgment of the appellate court and contended that the dispute was subjected to the jurisdiction of the commercial courts of Ukraine since the damages were inflicted in the territory of Ukraine (Article 76.1(3) of the Law of Ukraine «On Private International Law»). The reasoning of the Grand Chamber was also based on the premise that the appellate court did not draw attention to the assignment of contractual obligations to Transzaliznychservice LLC and illegally stay the proceedings. However, the right of the assignee to seek the protection of its violated rights is not in dispute in this case.

As a result, the Grand Chamber made rather disputable conclusions that reimbursement for damages was under the jurisdiction of the commercial courts of Ukraine by virtue of Art. 76.1(3) of the Law of Ukraine «On Private International Law» as damages caused in Ukraine.

In Ukraine, another set of disputes on the scope of the arbitration agreement is related to the claims on invalidity. The national courts have been extremely seized of the question of whether «all disputes and controversies arising under or in relation to this agreement» also cover the disputes relating to invalidity of arbitration agreement. It is a constant practice of the defaulting party to apply to the court seeking invalidation of the arbitration agreement. Such claims are commonly denied since the disputes on invalidity fall under the scope of the arbitration clause (unless it is expressly stated that certain disputes were intended to be excluded) [31; 32].

Otherwise, it would be no more than a bad-faith loophole for a party to avoid a final and binding arbitral award.

Therewith, there is also a somewhat lacking judgment of the Supreme Court where the court ruled that the invalidity claim was beyond the scope of the arbitration clause and should have been considered by the national court [33]. Some aspects of injustice relates to the fact that the German Maritime Arbitration Association has already rendered an arbitral award and the respective leave was granted by the national court.

A Search for Uniformity. The correct interpretation of arbitration agreements plays a paramount role in international arbitration. Despite its crucial importance, international law prescribed no guiding principles applied to interpretation. Neither the New York Convention nor the UNCITRAL Model Law defines any specific set of rules governing the interpretation of arbitration agreements. The only standpoint remains the pro-arbitration bias to recognition and enforcement of the arbitral awards enshrined in the New York Convention.

Given the absence of international regulations, the choice of law method remains dominant for the determination of governing law. Only rare exceptions exist where the courts or arbitral tribunals stand on the general principle of law, trade usage, or principle of good faith defining the validity of arbitration agreements.

In France, the choice of law method is not mandatory applied. As was clearly stated in *Dalico* and confirmed by the judgment of the French Supreme Court in *Soerini v. ASB*, the court did not apply a conflict of law rule to the validity of arbitration agreement but examine the parties' common intent, the requirements of good faith and the belief that the person who signed the clause had the power to bind the company [34]. The above principles were also referred to by Gaillard stating that the principles applicable to interpretation of arbitration agreements are the same as the general principles of contractual interpretation. Such principles include the principle of good faith, the principle of effective interpretation, and the principle of interpretation contra proferentem [1, p. 256]. Application of the general legal principle without strict adherence to the national laws completely corresponds to the nature of arbitration agreements that is essentially different from commercial contracts.

Some attempts to address the general principles of interpretation of arbitration agreements were also seen in the leading case *Insigma Technology Co Ltd v Alstom Technology Ltd* [35] and further developed in *Daesung v. Praxair* [36]. The High Court of the Republic of Singapore observed three principles applied to the construction of arbitration agreement: i) arbitration agreement should be construed like any other commercial agreement, ii) the court should, as far as possible, construe an arbitration agreement so as to give effect to a clear intention evinced by the parties to settle their disputes by arbitration, iii) defect in an arbitration agreement does not render it void *ab initio* unless the defect is so fundamental or irretrievable as to negate the parties' intent or agreement to arbitrate.

Evidently, the above decision strengthens the principle of effective interpretation («*effet utile»*) drawn from the civil law and forming a part of international arbitration law. According to the principle of effective interpretation, where an arbitration clause can be interpreted in two different ways, the interpretation enabling the clause to be effective should be adopted in preference to that which prevents the clause from being effective. However, the principle of *effective interpretation* should be distinguished from the principle *in favorem validitas*. While the latter is applied to the interpretation of the validity of arbitration agreements, the principle of effective interpretation is often referred to as interpretation of the scope of the arbitration agreement [37, p. 31].

At the same time, the legal doctrine and case law have not been sufficiently formed to present a separate set of principles applicable to interpretation of arbitration agreements. As evidently follows from the analyses, the question of interpretation traditionally remains the one that referred to the scope of national law applicable to the arbitration agreement. In practice, there is a multiplicity of approaches applied to the determination of the governing law that is, mainly: i) the law of judicial enforcement forum, ii) the law governing substantive validity of arbitration agreement [2, p. 1504-1508]. The determination of the applicable law is based on a choice of law method that has been increasingly criticized due to its uncertainties. The criteria applied to the law governing the arbitration agreement may differ not only across jurisdictions but within the courts of the same country. Because of such irregularities, Gary Born stressed that the increasing acceptance of »pro-arbitration» interpretative presumption should make the choice of law governing the interpretation of arbitration agreements less important in the future [2, p. 1510].

All in all, being referred to the scope of national law, the principles of interpretation of arbitration agreements are often assimilated with the principles applied to the interpretation of any other commercial agreements. This is exactly the rule applied by national courts in Singapore, Australia, Switzerland, United Kingdom etc.

The identical approach is also applicable in Ukraine. K. Voronov admits that the Ukrainian arbitration law does not prescribe any specific rules of interpretation of international arbitration agreements and thereby results in application of general principles of contractual interpretation [3, p. 74]. On the contrary, Yu. Navrotska refers to a viewpoint in favor of substantial differences of the commercial contracts and arbitration agreements that prohibits a formalistic approach to the interpretation of arbitration agreements [4, p. 53].

Equating international arbitration agreements with the commercial ones and application of the same contractual principle may result and, in fact, results in tremendous risks to arbitration. While being a cornerstone of common law system, the doctrine of interpretation remains at an early development in Ukraine. Prevailing dominance of legal positivism in Soviet

jurisprudence simplified the process and purpose of interpretation limiting it to a strict adherence to the legal rules [38, p. 248]. Such radical literalism along with the overall resistance to arbitration resulted in the unfavorable practice of national courts to interpret the arbitration agreements. The situation dramatically changed when the state policy took a shift in favor of arbitration. The principle *in favorem validitas* was directly indicated in the text of the Civil Procedural Code of Ukraine and is used by the courts as a specific principle of interpretation of arbitration agreements.

Conclusion. Interpretation of international arbitration agreements remains at the core in international arbitration determining the parties' consent to arbitration, validity and scope of arbitration agreements or even the legal framework of arbitration. However, international commercial arbitration implies rather distinct approaches to interpretation in each particular legal system setting the threshold at different levels. In this regard, crucial role relates to implementation of the pro-arbitration policies in national legislation with the aim of promoting a more uniform approach to interpretation of arbitration agreements and providing thereby a minimum threshold for a pro-arbitration stance. Although the degree of uniformity is not clear, we do not strive for all-embracing uniformity of the rules governing international arbitration, but for rational uniformity providing fair and predictable arbitral procedure and the outcome thereof.

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Стаття надійшла до редакції 01.06.2021.

Погорецька Х. Протиріччя тлумачення міжнародних арбітражних угод.

Постановка проблеми. *Тлумачення арбітражної угоди є визначальним етапом у процесі вирішення справи в міжнародному комерційному арбітражі, що обумовлює та визначає згоду сторін на арбітраж, а також чинність арбітражних угод і обсяг спорів, які передають на розгляд міжнародного комерційного арбітражу. Однак підходи до тлумачення арбітражних угод не є однаковими та відрізняються залежно від правових традицій конкретної правової системи.*

Метою *цієї статті є аналіз процесу тлумачення арбітражних угод і підходів, що застосовуються до тлумачення; дослідження причин, які обумовлюють відмінність у підходах до тлумачення арбітражних угод, а також визначення можливості вироблення уніфікованих принципів тлумачення, використанних у різних юрисдикціях.*

Матеріали та методи. *Основу статті становлять нормативні та доктринальні джерела, а також судова практика як їхня практична форма вираження. Методи, що використовуються у цій статті, містять загальнонаукові (діалектичний, аналітичний, герменевтичний, історичний) і спеціальні (аналіз і синтез, порівняльний, формально-логічний) методи.*

Результати дослідження. *Проаналізовано відмінність підходів, які застосовуються до тлумачення арбітражних угод, що обумовлено віднесенням останніх до групи комерційних договорів. Ототожнення арбітражних угод з комерційними договорами має своїм наслідком використання до їхнього тлумачення принципів, які є аналогічними до тих, що застосовуються у цивільному (господарському) праві в різних юрисдикціях. Проте такий підхід не може бути цілком виправданий з огляду на специфічну правову природу арбітражної угоди та міжнародного комерційного арбітражу.*

Особливу увагу присвячено аналізу загальних принципів тлумачення арбітражних угод і наявної судової практики, що закріплює такі загальні принципи. Зауважено на подальшій тенденції становлення принципу ефективного тлумачення як результату імплементації проарбітражної політики у законодавстві різних країн.

Висновки. *Відмінності у підходах до тлумачення арбітражних угод у різних юрисдикціях зумовлюють невизначеність і непередбачуваність подальшого розгляду справи, що до того ж зменшує привабливість міжнародного комерційного арбітражу як транснаціонального способу вирішення спорів. Для подолання цієї невизначеності важливою є імплементація проарбітражної політики у законодавстві різних держав, що насамперед забезпечує мінімально необхідний рівень вимог для подальшого розгляду справи арбітражем та підвищує ефективність міжнародного комерційного арбітражу загалом.*

Ключові слова: уніфікація, розмаїття, арбітражна угода, тлумачення, міжнародний комерційний арбітраж, намір сторін, чинність, обсяг арбітражної угоди, національні суди.