

# Recognition and Enforcement of Arbitral Awards in Russia

Dr. Patricia Nacimiento, Patricia Nacimiento is partner at White & Case L.L.P., Frankfurt. ; Alexey Barnashov, Alexey Barnashov, LL.M. is counsel at White & Case L.L.P., Moscow.

*Recognition and enforcement are crucial elements of arbitration. Without the possibility for the winning party to enforce the arbitral award in its desired country, the whole arbitration was pointless. However, the enforcement proceedings are the only way for state courts to take influence on the outcome of the arbitral trial. Thus, even though uniform recognition and enforcement of foreign arbitral awards is the main goal of the almost worldwide applicable New York Convention of 1958, the interpretation of the provisions of this Convention is still up to national courts. While for example judges in Germany strictly stick to the rules set up by the Convention, courts in Russia tend to stress the meaning of these provisions. The following article is meant to point out difficulties in enforcing arbitral awards in Russia, as there is no predictable jurisdiction yet, when it comes to the enforcement of foreign arbitral awards. The article specifically will focus on the broad application of the public policy rule by Russian state courts.*

Recognition and Enforcement of Arbitral Awards in Russia <sup>(1)</sup>

## I. Introduction

The recognition and enforcement of arbitral awards is a central element for successful arbitration. Parties will only perceive arbitration as a viable alternative to state court proceedings if the resulting arbitral award will be enforced with the same or at least equivalent effects as a state court's judgment. The most important instrument to ensure this is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"). <sup>(1)</sup> Additional laws or conventions exist apart from the New York Convention, both on a domestic as well as international basis. <sup>(2)</sup>

Russia is not only a major player in international commerce with growing importance, but is also one of the main commercial partners for Germany. Consequently, arbitration is gaining in significance in Russia and within the Russian judicial system. This article deals with the legal basis for recognition and enforcement of arbitral awards, as well as the application of these principles by Russian courts. The article addresses in particular the denial of recognition and enforcement of foreign arbitral awards, as well as the annulment of arbitral awards by Russian courts.

## II. Legal Basis for the Recognition and Enforcement of Arbitral Awards

The nationality of an arbitral award—domestic or foreign—is of significant importance as to the applicable enforcement provision. <sup>(3)</sup> In Russia and Germany, domestic

### Author

Dr. Patricia Nacimiento  
Alexey Barnashov

### Publication date

2010

### Source

Dr. Patricia Nacimiento and Alexey Barnashov , **Recognition and Enforcement of Arbitral Awards in Russia** in Micha Moser and Dominique Hasc (eds) , Journal of Internationior Arbitration , (Kluwer Law International 2010 Volume 2 Issue 3 ) pp. 295 - 306

arbitral awards are governed by domestic law.<sup>(4)</sup> Arbitration provisions within the respective domestic procedural rules are often based on the UNCITRAL Model Law in order to grant internationally harmonized enforcement proceedings.<sup>(5)</sup>

Regarding enforcement of foreign awards, the New York Convention, with its 144 contracting states, applies almost worldwide. Under Article I(1) of the Convention, it is directly applied to the enforcement of foreign awards without further requirements or party agreements.<sup>(6)</sup> It also has a strong influence on the enforcement of domestic arbitral awards as many national arbitration laws follow the same principles.<sup>(7)</sup>

As the enumerative list of grounds for refusal under Article V of the New York Convention shows, recognition and enforcement of awards is the rule and denial rather an exception.<sup>(8)</sup> The burden of proof for these various defenses is generally borne by the party resisting enforcement.<sup>(9)</sup> In determining the existence of one of the defenses set forth, the enforcement courts are neither bound by the facts established by the arbitral tribunal, nor by its legal reasoning.<sup>(10)</sup> However, the enforcement courts are not allowed to review the award on its merits (prohibition of *révision au fond*).<sup>(11)</sup> As the New York Convention also influences national arbitration laws, the defects underlying the various defenses of Article V of the Convention would also justify annulment proceedings at the place of arbitration.<sup>(12)</sup>

### **III. Arbitration in Russia**

Although its institutional arbitration dates back to 1932, Russia's importance grew only recently in accordance with its economic significance.

The major arbitration institution in Russia is the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC). The ICAC deals with international arbitrations and administers around 200 proceedings annually.<sup>(13)</sup> Another well-known institution that is part of the Russian Federation Chamber of Commerce and Industry is the Maritime Arbitration Commission (MAC). Both institutions have their own set of rules.<sup>(14)</sup> The Chamber of Commerce and Industry of the Russian Federation also hosts other arbitration institutions, e.g., the Arbitration Court for Resolution of Economic Disputes that deals with domestic arbitration or sports arbitration.

Recognition and enforcement in Russia is governed by the International Commercial Arbitration Act of 1993 (ICAA).<sup>(15)</sup> The ICAA is mainly based on the UNCITRAL Model Law.<sup>(16)</sup> However, there are some noteworthy differences. First, the possibility of deciding cases *ex aequo et bono* (a decision based on the arbitral tribunal's equitable discretion) has not been pursued and therefore is omitted under the ICAA.<sup>(17)</sup> Secondly, in determining whether or not an arbitration is international, the ICAA does not take into account the place of arbitration or the place where the substantial part of an obligation is to be performed. Nor does it take into consideration the place with which the subject matter of the dispute is most closely connected. Rather, the ICAA states that disputes between Russian entities, in which at least one of them is a company with foreign investment, may be resolved by way of international arbitration.<sup>(18)</sup> Thirdly, the ICAA prescribes that the functions of appointing and challenging arbitrators are to be performed by the President of the Russian Federation Chamber of Commerce, whereas the UNCITRAL Model Law stipulates that they are to be

performed by a competent court.<sup>(19)</sup>

General ICAA provisions regarding the enforcement of arbitral awards can be found in section 35 et seq. The Arbitrazh Procedure Code (Code for the Commercial State Courts) contains additional enforcement provisions. Enforcement regulation for domestic arbitration can be found in the Law on Arbitration Courts (Treteyskiy Sud) and the Arbitrazh Procedure Code. However, in case of contradiction, the New York Convention prevails over any Russian law provision.

As to the enforcement of foreign awards, Russia has been a party to the New York Convention since 1960. Based on Article I(3) of the Convention, Russia has made a reservation with regard to awards made in the territory of a non-contracting state. According to the reservation, Russia will apply the Convention only to the extent to which the non-contracting state grants reciprocal treatment.<sup>(20)</sup> Apart from the New York Convention, Russia has also signed and ratified the European Convention on International Commercial Arbitration (1961), the Moscow Convention on the Settlement by Arbitration of Civil Law Disputes Arising from Relations of Economic, Scientific and Technical Cooperation (1972), the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk Convention, 1993), as well as the Agreement on Procedure of Settlement of Disputes Related to Economic Activity (Kyiv Convention, 1992). Finally, Russia is a party to the Washington Convention on the Settlement of Investment Disputes (ICSID Convention, 1965), though this Convention is not in force for Russia as it was never ratified.

#### ***IV. Recognition and Enforcement of Arbitral Awards***

##### ***A. Enforcement procedure***

In order to commence the enforcement proceedings, the party seeking enforcement has to file an application at a state commercial court (arbitrazh court) at the place of the debtor's domicile or, if such place is unknown, at the location of the assets.<sup>(21)</sup> The time to initiate such proceedings is limited to three years after the date the arbitral award has been rendered (though under certain circumstances this term may be extended).<sup>(22)</sup> The application must contain an original or duly certified copy of the arbitral award and the arbitration agreement. All documents must be translated into Russian, they should be notarized and apostilled or otherwise legalized if originating from abroad.<sup>(23)</sup>

The average overall enforcement proceeding takes from six to twenty months. The decision on enforcement of the commercial state court may be appealed to the court of cassation.

##### ***B. Refusal of recognition and enforcement***

As already mentioned, recognition and enforcement is a vital part of international arbitration. Without the possibility of enforcement in a foreign state, the arbitral award is worthless. The New York Convention was established in order to grant the parties to an arbitration the security to enforce their award in a foreign state and also to harmonize enforcement proceedings.<sup>(24)</sup> However, Article V of the Convention provides an enumerative list of grounds for refusal of enforcement that have been

used extensively by the Russian state courts. The ground of contravention of public policy (Article V(2)(b) of the Convention) has often served as the rationale for Russian courts to refuse enforcement.

### **1. Reasons for Refusal**

The reasons for refusal of recognition and enforcement of awards vary from an invalid arbitration agreement and an insufficient notification of a party, to non-arbitrable disputes (e.g., registration/liquidation of Russian entities; registration of intellectual property rights and patents; sea vessels, aircraft, passenger and cargo transportation), procedural defects and violation of public policy. As the case law covers a wide area, this article only deals with the most significant and obvious examples of Russian jurisprudence.

One prominent decision based on the invalidity of the arbitration agreement (a ground for refusal under Article V(1)(a) of the New York Convention) can be seen in the case of *Sokofl Star Shipping Co. Inc. v. Technopromexport*.<sup>(25)</sup> Here, the Moscow District Court refused enforcement as the claimant had been named incorrectly in the award and in the time-charter contract, which contained the arbitration clause. In the arbitration agreement, the claimant was named "Sokofl Star Shipping Co. Ltd." The request for enforcement, however, was brought by "Sokofl Star Shipping Co. Inc." which clearly was not a party to the arbitration agreement. Therefore, the court denied enforcement, as Sokofl Star Shipping Co. Ltd. did not exist and Sokofl Star Shipping Co. Inc. was not entitled to enforce the award as it was not a party to the agreement. While this decision was upheld by the Moscow Court of Cassation, the Supreme Court did not follow this argumentation, holding that the question of the agreement's validity was beyond the scope of consideration during enforcement proceedings under the New York Convention.<sup>(26)</sup>

An example of denial of enforcement under Article V(1)(b) of the New York Convention (failure to duly notify a party to the arbitration) can be found in *Forever Maritime Ltd. v. State Unitary Enterprise Foreign Trade Enterprise Mashinoimport* ("Mashinoimport"). In this case, an ad hoc arbitral tribunal in London decided the case based on documents only and issued an award in favor of Forever Maritime, who then sought enforcement of that award in Russia. The Arbitrazh Court of Moscow denied enforcement on the grounds that Forever Maritime had not proven that Mashinoimport had been properly notified of the arbitral proceedings.<sup>(27)</sup> Copies of correspondence between the parties proving proper notification were rejected by the courts, as the translation of these notifications into Russian had not been notarized. This decision was upheld by the both Federal Arbitrazh Court of the Moscow Region<sup>(28)</sup> and the Supreme Arbitrazh Court of the Russian Federation,<sup>(29)</sup> on the ground that no evidence was supplied proving that the arbitral tribunal had duly informed Mashinoimport that the dispute would be decided on documents only.

Russian courts are very particular about formalities. It is vital that the arbitration institution be named correctly in the arbitration agreement. Russian courts have often refused to enforce an award on the ground that the institution was not named precisely. For example, the Federal Arbitrazh Court of the Moscow Region denied enforcement in a case in which the arbitration institution was referred to as the "Arbitration Court of the Chamber of Commerce and Industry of the Russian

Federation" instead of "International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation" although it was clear that the party intended to refer to this specific institution.<sup>(30)</sup> However in a recent case where a German company sought to enforce an arbitral award rendered in Austria, the Supreme Arbitrazh Court suggested that a mere formal discrepancy in the arbitration clause should not be sufficient to deny enforcement if the arbitration agreement is clear enough to identify the arbitration body.<sup>(31)</sup>

In another example of a weird reason for denial of enforcement, the Federal Arbitrazh Court of the Western Siberian Region found that the party seeking enforcement had failed to prove the actual existence of the ICC Rules of Arbitration, even though the court made references to these Rules.<sup>(32)</sup> In so holding, the Federal Arbitrazh Court of the Western Siberian Region ruled that the arbitration clause, which referred to the ICC Rules of Arbitration, was not clear enough to identify the relevant arbitration institution. In another recent case, the Federal Arbitrazh Court of the Central Region denied enforcement of an arbitral award rendered by the German Institution of Arbitration (Berlin) in favor of a German company, ruling to the effect that even a party's participation in the arbitration proceedings and failure to object to the tribunal's jurisdiction could not cure the absence of a written arbitration clause.<sup>(33)</sup> In this case, the original arbitration clause provided for Swedish arbitration, however a local German counsel of the Russian company purported to change it to German arbitration, and the same counsel submitted the statement of defense in the arbitration. Although it is not entirely clear how the arbitration developed, the Russian Court of Cassation appears mainly to have relied on the allegation that the local German counsel was not authorized so to act. But finally the Supreme Arbitrazh Court of the Russian Federation ruled to enforce the German award, finding that the exchange of correspondence amending the arbitration clause was sufficient enough to validly change it to the German arbitration.<sup>(34)</sup>

## **2. Public Policy**

The major issue in recognition and enforcement of arbitral awards in Russia is the application of the public policy rule by Russian state courts. Due to the great variety of judgments it is almost impossible to identify a uniform interpretation of the question of public policy. It is therefore vital to understand the application of the public policy rule in Russia.

If no other ground for refusal of enforcement is sufficient, the debtor may always rely on public policy as a last resort.<sup>(35)</sup> Although there is no uniform international interpretation of the public policy rule,<sup>(36)</sup> the majority of international treaties (such as Article V(2)(b) of the New York Convention) as well as national provisions allow this defense.<sup>(37)</sup> Yet, even though Russia has been a party to international conventions for more than forty years, Russian legislation has failed to remove the uncertainty arising from attempts to define public policy.<sup>(38)</sup>

Each case dealing with the contradiction of Russian public policy should be given a detailed examination, as the defense does not cover a violation of a single provision of Russian law, but a violation of legal doctrine, which should accordingly receive a doctrinal interpretation.<sup>(39)</sup> Generally, the violation of the public policy rule is understood as a contradiction to fundamental constitutional principles of the Russian

state and international treaties, ratified by the Russian Federation.<sup>(40)</sup>

Probably the most illustrative case concerning violation of Russian public policy is *United World v. Krasny Yakor*. Here, United World was awarded a sum of U.S.\$37,600 against Krasny Yakor<sup>(41)</sup> and enforcement was granted by the Russian court of first instance. However, the enforcement decision was set aside by the Federal Arbitrazh Court of the Volgo-Vyatsky Region.<sup>(42)</sup> The cassation court held that enforcement of the arbitral award would lead to the bankruptcy of Krasny Yakor (a state-owned company), which would consequently have a negative influence on the social and economic stability of the city of Nizhi Novgorod, and consequently on the Russian Federation as a whole, as Krasny Yakor manufactured products of strategic value for the security and national safety of the state. Therefore, such damages were declared to be in contravention of public policy.

A similar case, in which the arbitral award concerned federal property of the Russian Federation, is *Moscow National Bank Ltd. v. MNTK Microhirurgia glaza*.<sup>(43)</sup> As it was unclear whether the trading firm MNTK Microhirurgia glaza used the monetary funds of its parent organization (the state establishment, MNTK Microhirurgia glaza), Moscow National Bank was not entitled to enforce the award, because the monetary funds of the state establishment belonged to the Russian state and if Moscow National Bank was allowed to enforce the award, it would indirectly damage national property. This was declared a violation of public policy.

A different approach towards violation of public policy was taken in *O&Y Investments Ltd. v. OAO Bummash*. In this case, arbitration proceedings were initiated against Bummash.<sup>(44)</sup> While the arbitration proceeding was pending, Bummash sought a declaration from the Russian courts that the marketing and sale-purchase agreement, which contained the arbitration clause, was invalid. By decision of the Arbitrazh Court of the Udmurtsk Republic, the agreement was deemed invalid because of a violation of Articles 81 and 83 of the Federal Law on Joint-Stock Companies.<sup>(45)</sup> Despite this decision, the arbitral tribunal in the Netherlands decided in favor of O&Y Investments on March 4, 2004,<sup>(46)</sup> after the Russian court's decision on the invalidity of the agreement had entered into legal force. O&Y Investments then sought to enforce the arbitral award in Russia. However, the Arbitrazh Court of the Udmurtsk Republic denied enforcement under Article V(2)(b) of the New York Convention because the enforcement would violate Russian public policy.<sup>(47)</sup> This decision was affirmed by the Federal Arbitrazh Court of the Ural District.<sup>(48)</sup> The court held that the enforcement would lead to the existence of judicial acts of equal force, containing mutually exclusive holdings, within the territory of the Russian Federation. Enforcing an award based on an agreement that Russian courts previously deemed invalid would contradict the principle that judicial acts of the Russian Federation "are mandatory in nature." As this principle is an inalienable part of Russian public policy, enforcement would lead to its violation and could therefore not be granted.

As these examples show, there is in Russia a unique interpretation of the public policy rule. There are numerous other examples dealing with the same issue which cannot be covered in this brief article.

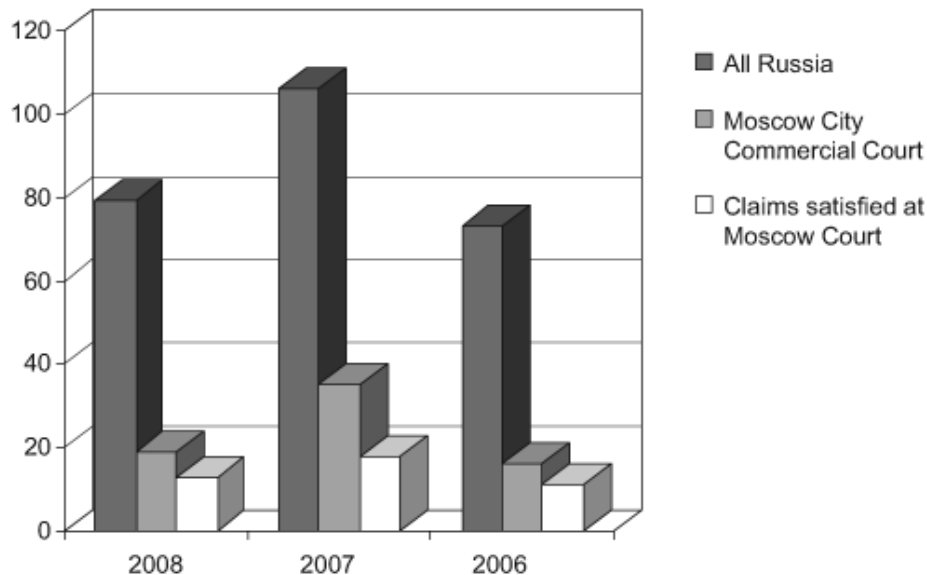


Figure 1: Statistics

Number of Enforcement Applications at Russian Courts

### C. Enforcement applications in Russian courts

As the statistics in Figure 1 show, an average of around ninety enforcement applications have been dealt with in Russia in recent years. However, at the Arbitrazh Court of Moscow, only an average of around 60–65 percent of the applications have been granted.

Out of eleven available decisions regarding the enforcement of foreign judgments (not arbitral awards) during the period 2006–2008, enforcement was granted seven times. Reasons for denial of enforcement in the other proceedings included absence of an international treaty, public policy, and procedural violations.

Out of thirteen available cassation court resolutions regarding the enforcement of foreign arbitral awards in 2008, only five have been accepted. Reasons given for denial in the other proceedings were improper notification of the trial, public policy, and expiry of term of enforcement.

### V. Annulment of Arbitral Awards

As previously discussed, Russian courts have denied enforcement of awards in several cases. However, denial of enforcement is not the only issue arising when Russian state courts have to deal with arbitral awards. Problems may also occur where the arbitration took place in Russia and the losing party files a request with the national courts to annul the arbitral award. A recent example of annulment of an arbitral award is the case of *Yukos Capital v. Rosneft*.<sup>(49)</sup>

In this case, Yukos Capital entered into loan agreements with Yuganskneftegaz,

under which Yukos later initiated arbitration proceedings and was awarded a total of 13 billion rubles. After Yuganskneftegaz merged with Rosneft,<sup>(50)</sup> Yukos Capital requested Rosneft to abide by the arbitral award. However, Rosneft did not comply with the award and initiated annulment proceedings in Russia. The Arbitrazh Court of Moscow set aside the arbitral award.<sup>(51)</sup> The annulment of the ICAC award was primarily based on three grounds.

***A. Denial of Right to Properly Present the Case, Leading to Violation of Equality and Fair Treatment***

During the ICAC proceedings, the defendant Yuganskneftegaz submitted a motion requesting additional time to prove that the monies provided pursuant to the loan agreement constituted the proceeds from selling the oil produced by the defendant. However, the ICAC tribunal refused to grant this motion, arguing that the defendant was not denied the right to collect any evidence and rather would be able to present it in a separate lawsuit claiming an abuse of rights. The enforcing court disagreed with the ICAC, pointing out that the defendant had the right to present this argument in the same arbitration. In doing so, the court referred to Article 18 of the ICAA which provides that “the parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.”<sup>(52)</sup> The Arbitrazh Court of Moscow therefore opined that the ICAC’s refusal deprived the defendant of his right to properly collect evidence that was relevant to the case.

***B. Submission of New Claims is Not in Compliance with the ICAC’s Rules***

The Arbitrazh Court invoked section 32 of the ICAC Rules which was applicable to the proceedings. According to this provision, either party may alter or add to his claim or defense, before the hearing is completed, without undue delay.<sup>(53)</sup> According to the court, this provision does not permit a party to submit a completely new claim. Originally, Yukos only claimed (i) interest accrued under the loan agreement; and (ii) interest accrued due to failure to pay. However, later Yukos Capital claimed (i) an early recovery of the loan; and (ii) early termination of the loan agreement. Since these additional claims have a different cause of action and a different matter in controversy, i.e., these two factors are different from the original ones, these claims can be considered as new. As a new claim could not be submitted under the applicable ICAC Rules, the arbitration procedure was not in accordance with the agreement of the parties, which incorporated the ICAC Rules. As the submission of new claims was not allowed according to the court, this was considered a ground for setting aside the award under Article 34, paragraph 2 of the ICAA.

***C. Arbitral Tribunal has Not been Formed in Accordance with the Parties’ Agreement***

The legal representative of Yukos in the arbitral trial was Ms. Titievskaya, the managing partner of Nomos law firm. Nomos had co-sponsored a conference in Moscow where the nominated arbitrators were speakers. Additionally, Nomos co-sponsored a seminar in Vienna where the nominated arbitrators again were speakers. According to Article 12 of the ICAA, a person “shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence,” if he “is approached in connection with his possible appointment as an arbitrator.”

Additionally, “an arbitrator, from the time of his appointment and through the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.” According to the set-aside court, the disclosure of these facts (i.e., that Nomos co-sponsored the conference/seminar and that arbitrators attended them, etc.) did not necessarily mean that this would be an obstacle to arbitration. The idea behind the statutory provision is to give a party an opportunity to decide whether or not to challenge a particular arbitrator. Since the defendant learned about these facts only after the arbitration proceedings were closed, the defendant was denied his right to challenge the arbitrator. Therefore, the court ruled that the composition of the arbitral tribunal was not in accordance with the parties’ agreement.

The court of first instance further held that the first two grounds mentioned amounted to a violation of public policy. The wide application of this rule by Russian state courts can again be seen. However, the higher courts disagreed as to the violation of public policy, while upholding the annulment decision.<sup>(54)</sup> According to the higher courts, these grounds constituted a violation of arbitral procedure.

It should be mentioned that Yukos Capital nevertheless requested enforcement of the arbitral award against Rosneft in the Netherlands, although the award had been set aside. The first instance court in the Netherlands rejected the enforcement.<sup>(55)</sup> However, on the appeal of Yukos, the Amsterdam Court of Appeal granted Yukos leave to enforce the arbitral award, disregarding the annulment decision, as according to the court’s opinion, the Russian courts were not impartial and independent.<sup>(56)</sup> The actual consequences of this enforcement decision have yet to be seen.

#### **VI. Conclusion and Practical Recommendations**

This article has shown that arbitration in Russia still faces practical problems, especially when it comes to enforcement of foreign awards. The most illustrative case for refusal of enforcement in this context is probably *United World v. Krasny Yakor*. However, not all Russian courts understand public policy in such a strange way. But some courts still tend to consider violation of mandatory Russian law as a contravention of public policy. It is therefore advisable always to review contractual provisions for compliance with mandatory Russian rules. Special attention should also be given to contracts with the state or state subsidiary organizations, as Russian courts tend in particular to consider public policy in such cases. Additionally, considerable attention should also be focused on formalities when entering into an arbitration agreement, as well as during the course of arbitration.

As for the place of arbitration, it might be advisable to specify it as outside Russia. International arbitration with its seat in Russia faces the risk of the award being annulled by a Russian state court, as seen in the *Yukos* case. However, in practical terms (e.g., travelling arrangements and visa requirements, location of evidence and witnesses, applicable Russian law, etc.), arbitration with its seat in Russia may be more workable.

The most reputable Russia-based arbitration institution is the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation. The place of arbitration under the rules of the ICAC has to be in

Russia. However, hearings under its rules may be held outside Russia, if the parties so agree. In terms of costs, the ICAC compares favorably with major international arbitration institutions.

---

\* The authors would like to thank Steffen Strassburger (legal assistant at White & Case L.L.P., Frankfurt) for his support in respect of this article.

<sup>1</sup> June 10, 1958, 330 U.N.T.S. 3; 21 U.S.T. 2517; T.I.A.S. No. 6997. See also Albert Jan van den Berg, *The New York Arbitration Convention of 1958*, 1 (1994).

<sup>2</sup> The German Code of Civil Procedure regulates recognition and enforcement in s.1059 et seq.; on an international basis, among others, the European Convention on International Arbitration of 1961 includes an enforcement provision in art. IX, a provision that is relevant especially in Eastern European countries.

<sup>3</sup> For details on the differentiation, see Albert Jan van den Berg, *The New York Convention of 1958: An Overview*, in *Enforcement of Arbitration Agreements and International Arbitral Awards: The New York Convention in Practice* 39, 40 et seq. (Emmanuel Gaillard & Domenico DiPietro eds., 2008).

<sup>4</sup> See, e.g., German Code of Civil Procedure, s. 1060; in Russia, the Law on Arbitration Courts (Treteyskiy Sud) and the Arbitrazh Procedure Code provide rules for enforcement of domestic awards.

<sup>5</sup> Karl-Heinz Böckstiegel, Stefan Michael Kröll, & Patricia Nacimiento, *Arbitration in Germany: The Model Law in Practice* 5 et seq. (2007) (regarding German law); the Russian International Commercial Arbitration Act of 1993 is almost an exact copy of the UNCITRAL Model Law with only minor differences.

<sup>6</sup> Van den Berg, *supra* note 3, at 40.

<sup>7</sup> Regarding the strong influence of the New York Convention, see also Robert Briner & Virginia Hamilton, *The History and General Purpose of the Convention: The Creation of an International Standard to Ensure Effectiveness of Arbitration Agreements and Foreign Arbitral Awards*, in *Enforcement of Arbitration Agreements and International Arbitral Awards: The New York Convention in Practice* 3, 20 (Emmanuel Gaillard & Domenico DiPietro eds., 2008); arts. 34–36 of the UNCITRAL Model Law of 1985 are almost identical to arts. IV–VI of the New York Convention.

<sup>8</sup> Böckstiegel, Kröll, & Nacimiento, *supra* note 5, at 520; Julian D.M. Lew, Loukas A. Mistelis, & Stefan M. Kröll, *Comparative International Commercial Arbitration* paras. 26–65 (2003); Van den Berg, *supra* note 1, at 265.

<sup>9</sup> Van den Berg, *supra* note 1, at 264.

<sup>10</sup> Böckstiegel, Kröll, & Nacimiento, *supra* note 5, at 524; Friedrich Stein & Martin Jonas-Schlosser, *Kommentar zur Zivilprozessordnung [Commentary on the German Code of Civil Procedure]* s. 1063, para. 8a (Peter Schlosser ed., 22d ed. 2002).

<sup>11</sup> Van den Berg, *supra* note 3, at 56; Jens-Peter Lachmann, *Handbuch für die Schiedsgerichtsbarkeit* para. 2147 (2008).

<sup>12</sup> See, e.g., German Code of Civil Procedure, s. 1059, which lists the exact same grounds for annulment of an award as art. V of the Convention sets out for refusal of enforcement.

<sup>13</sup> More statistics are available at <[www.tpprf-mkac.ru/statisticeng.php](http://www.tpprf-mkac.ru/statisticeng.php)>.

<sup>14</sup> Rules of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, available at <<http://eng.tpprf.ru/img/uploaded/2003061914294091.doc>>; Rules of the Maritime

Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation, *available at* <[www.tpprf-arb.ru/eng/mak\\_reg.php](http://www.tpprf-arb.ru/eng/mak_reg.php)>.

<sup>15</sup> The Law of the Russian Federation on International Commercial Arbitration of Aug. 14, 1993, *available at* <<http://www.jus.uio.no/Im/russia.international.commercial.arbitration.1993/>>.

<sup>16</sup> Christer Söderlund, *Vergleichender Überblick zur Schiedsgerichtsbarkeit in Deutschland, England, Russland und Schweden*, 31 German Arb. J. 130 (2004).

<sup>17</sup> The possibility to decide *ex aequo et bono* is allowed under art. 28, para. 3 of the UNCITRAL Model Law; this possibility is, *e.g.*, also included in art. 17, para. 3 of the ICC Rules of Arbitration.

<sup>18</sup> See Statute on the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, para. 2, at 25, *available at* <<http://eng.tpprf.ru/img/uploaded/2003061914294091.doc>>.

<sup>19</sup> See ICAA, ss. 21, 24.

<sup>20</sup> Compare UNCITRAL reservation (e), *available at* <[www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html)>.

<sup>21</sup> Arbitrazh Procedure Code, art. 242(1).

<sup>22</sup> *Id.* art. 246(2).

<sup>23</sup> *Id.* art. 242(4).

<sup>24</sup> See further Van den Berg, *supra* note 1, at 1 et seq.

<sup>25</sup> Moscow District Court, decision of April 11, 1997, Sokofl Star Shipping Co. Inc. v. GPVO Technopromexport, XXIII Y.B. Comm. Arb. 742 (1998).

<sup>26</sup> Supreme Court of the Russian Federation, resolution of Apr. 13, 2001, Case No. 5-G01-35.

<sup>27</sup> Arbitrazh Court of Moscow, decision of September 12, 2003, Case No. A40-15797/03-25-48.

<sup>28</sup> Federal Arbitrazh Court of the Moscow Region, resolution of December 15, 2003.

<sup>29</sup> Supreme Arbitrazh Court of the Russian Federation, decision of June 22, 2004, Case No. 3253/04, XXXIII Y.B. Comm. Arb. 650 (2008).

<sup>30</sup> Federal Arbitrazh Court of the Moscow Region, Nov. 6, 2003, Decree No. KG-A40/7725-03.

<sup>31</sup> Supreme Arbitrazh Court of the Russian Federation, decision of Sept. 22, 2009, Case No. 5604/09.

<sup>32</sup> Federal Arbitrazh Court of the Western Siberian Region, resolution of Jan. 26, 2006, Case No. F04-9972/2005(19029-A81-28).

<sup>33</sup> Federal Arbitrazh Court of the Central Region, resolution of Sept. 7, 2009, Case No. F10-915/09(2).

<sup>34</sup> *Available at* <<http://www.pravo.ru/news/view/23950/>>.

<sup>35</sup> Diana V. Tapola, *Enforcement of Foreign Arbitral Awards: Application of the Public Policy Rule in Russia*, 22 Arb. J. 151 (No. 1, 2006).

<sup>36</sup> For example, in Canada public policy is considered as “the incompatibility of an arbitral award with the basic principles of public morals,” whereas in the United States it is “the most basic understanding by courts of morals and justice.”

<sup>37</sup> See, *e.g.*, for Russian provisions, Arbitrazh Procedure Code, art. 244; Civil Procedure Code, art. 412, para. 5; and ICAA, arts. 34, 36.

<sup>38</sup> Tapola, *supra* note 35, at 151, 152.

<sup>39</sup> *Id.* at 151, 160.

<sup>40</sup> *Id.* at 151, 160 et seq.

<sup>41</sup> ICC Paris, Judgment, Oct. 20, 2000.

<sup>42</sup> Federal Arbitrazh Court of the Volgo-Vyatsky Region, decision of Feb. 17, 2003, Case No. A43-10716/02-27-10.

- <sup>43</sup> Federal Arbitrazh Court of the Moscow Region, decision of June 19, 2003, Case No. KG-A40/2448-03-P.
- <sup>44</sup> There was a consolidated proceeding against Bummash and Quality Steel Inc., but the enforcement was only sought against Bummash. Therefore, only this decision will be discussed.
- <sup>45</sup> Arbitrazh Court of the Udmurtsk Republic, decision of July 4, 2003, Case No. A71-288/2002-G10.
- <sup>46</sup> Netherlands Arbitration Institute, Case No. 2726.
- <sup>47</sup> Arbitrazh Court of the Udmurtsk Republic, decision of May 14, 2005, Case No. A71-8/05.
- <sup>48</sup> Federal Arbitrazh Court of the Ural District, decision of October 12, 2005, Case No. F09-2110/05-S6, XXXIII Y.B. Comm. Arb. 687 (2008).
- <sup>49</sup> International Commercial Arbitration Court (ICAC), Awards nos. 143/2005 and 145/2005, both Sept. 19, 2006.
- <sup>50</sup> Rosneft had acquired Yuganskneftegaz through an enforced auction in connection with the tax assessments imposed on Yukos Oil Co.
- <sup>51</sup> Arbitrazh Court of Moscow, decision of May 18, 2007 (full text of the resolution is dated May 23, 2007), Cases nos. A40-4577/07-8-46 and A40-4582/07-8-47.
- <sup>52</sup> This complies with UNCITRAL Model Law, art. 18.
- <sup>53</sup> See ICAC Rules, s.32, *available at* <<http://eng.tpprf.ru/img/uploaded/2003061914294091.doc>>.
- <sup>54</sup> See Federal Arbitrazh Court of the Moscow Region, decision of July 26, 2007, Case No. RU-A40/6775-07, and Supreme Arbitrazh Court of the Russian Federation, decision of Dec. 10, 2007, Case No. 14955/07.
- <sup>55</sup> Preliminary Relief Subdivision of the District Courts of Amsterdam, decision of Feb. 28, 2008, Case No. 365094/KG RK 07-750.
- <sup>56</sup> Amsterdam Court of Appeal, Judgment, Apr. 28, 2009, Case No. 200.005.269/01.

© 2010 Kluwer Law International BV (All rights reserved).

KluwerArbitration is made available for personal use only. All content is protected by copyright and other intellectual property laws. No part of this service or the information contained herein may be reproduced or transmitted in any form or by any means, or used for advertising or promotional purposes, general distribution, creating new collective works, or for resale, without prior written permission of the publisher.

If you would like to know more about this service, visit [www.kluwerarbitration.com](http://www.kluwerarbitration.com) or contact our Sales staff at [sales@kluwerlaw.com](mailto:sales@kluwerlaw.com) or call +31 (0)172 64 1562.