

**Inga Kacevska**, Dr. iur., Associate Professor  
Faculty of Law, University of Latvia, Latvia

## REVISITING THE ARBITRATION LAW OF LATVIA: AN END OF THE BLACK SHEEP ERA IN ARBITRATION WORLD?

**Key words:** no set aside procedure, court's assistance in arbitration proceedings, fair arbitration procedure

### Summary

A state can learn from internationally unified or other countries' best practices in a particular area of law, or it can go its own way – follow the so-called Westphalian model. Historically, Latvia has departed from internationally recognized principles of arbitration, it is the only Member State in the Council of Europe that does not have full access to court's support during arbitration process and has not introduced a procedure for setting-aside arbitral awards. This has not only had a negative impact on Latvia's reputation in the field of arbitration but has also been the basis for proceedings before the Constitutional Court. However, it is hoped that on 2024 much will be changed, new amendments to law introduced and Latvia will no longer be the black sheep in the arbitration world.

### Introduction: Why is Latvia the black sheep of arbitration family?

Since 1998, when Latvia introduced the provisions on arbitration in the Civil Procedure Law<sup>1</sup> for the first time, and later, when adopted Arbitration Law,<sup>2</sup> it has not followed the international arbitration standard – the UNCITRAL Model Law on International Commercial Arbitration<sup>3</sup> as it is done by 88 States in 121 jurisdictions in the world. The aim of the Model Law is to assist states in reforming

---

<sup>1</sup> 1998 version of the Civil Procedure Law. Available: <https://likumi.lv/ta/id/50500-civilprocesa-likums> [viewed 03.01.2024.].

<sup>2</sup> New Arbitration Law of Latvia was adopted on 11 September 2014, and entered into force on 1 January 2015. Available: <https://likumi.lv/ta/id/269189-skirejtiesu-likums> [viewed 03.01.2024.].

<sup>3</sup> UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. See: [https://uncitral.un.org/en/texts/arbitration/modellaw/commercial\\_arbitration/status](https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status) [viewed 03.01.2024.].

and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration.<sup>4</sup>

Theoretically, the so-called Westphalian model allows each state to have its own views prevail, without regard to what other state will do.<sup>5</sup> A state can, for example, consider that a domestic *ad hoc* arbitral awards are not enforceable, as did Latvia, even though most other states readily accept the idea of arbitration taking place outside of an institutional framework.<sup>6</sup> Or state, like Latvia, can introduce mandatory lists of arbitrators and provide no court assistance in arbitration proceedings, including no setting-aside procedure for arbitral awards. Latvia can still tolerate existence of 63 permanent arbitral institutions. However, all those specifics accepted by Latvia is far from the widely recognized principles and practices.<sup>7</sup>

The aim of this article, specifically focusing on the total lack of setting-aside procedure in Latvia, is to show that in case of arbitration the Westphalian model is unsatisfactory, and by not following the UNCITRAL Model Law, the arbitration process becomes unpredictable and departs from the international legal standards.

## 1. Absence of setting-aside procedure

Provisions on the court's role, including the setting-aside procedure, were not incorporated either into the Civil Procedure Law, or Arbitration Law of Latvia.

At least in theory, the setting-aside procedure must be available in Latvia for arbitration awards that fall within the scope of the European Convention on International Commercial Arbitration (Article IX), as Latvia is part of this convention, which provides for setting-aside procedure.<sup>8</sup> However, the law does not contain a procedure for that. This is an obstacle to an actual exercise of the setting-aside procedure even in those few cases when it is mandated by international law.

Scholars have insisted for years that “[regarding] total exclusion of setting-aside proceedings, the hypothesis is rather straightforward – a legislative approach failing to provide for the annulment mechanism arguably violates arbitrating parties’ right of access to a court under Article 6(1) of the European Convention on Human Rights.”<sup>9,10</sup>

<sup>4</sup> Binder P. *International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions*, Kluwer Law International, 2019, p. 13.

<sup>5</sup> Gaillard E. *Legal Theory of International Arbitration*. Martins Nijhoff Publishers, 2010, p. 29.

<sup>6</sup> *Ibid.*, p. 68.

<sup>7</sup> See more on those particularities: Kacevska I., Fillers A. *There Is Ordinary Situation and There is Latvia's Situation*. Stockholm Arbitration Yearbook, Wolters Kluwer, 2023.

<sup>8</sup> European Convention on International Commercial Arbitration. Signed in Geneva on 21 April 1961.

<sup>9</sup> European Convention on Human Rights. Signed in Rome on 04.11.1950.

<sup>10</sup> Krumins T. *Arbitration and Human Rights. Approaches to Excluding the Annulment of Arbitral Awards and Their Compatibility with the ECHR*. Springer, 2020, p. 316. See also: Kacevska I., Fillers A. 2023, p. 323.

Likewise, the Constitutional Court has repeatedly indicated that Latvia should follow the UNCITRAL Model Law and introduce the institution of annulment of an arbitral award. Already in 2005, the Court pointed out:

*Taking into consideration the frequently expressed criticism on the performance of the arbitration courts and prima facie noticeable faults in the regulation of the issuance of a writ of execution, the accepted in the world institute for challenging the arbitration award in Latvia, would be of especially great importance.*<sup>11</sup>

However, the legislator felt that the court could sufficiently exercise its supervisory function over arbitrations only at the stage of issuing the writ of enforcement. However, a refusal to issue the writ for the compulsory execution of arbitral award and challenging an arbitral award are two different legal instruments. A refusal to issue the writ of execution does not affect the validity of the arbitral award. The writ of execution is not required if the arbitral award needs no enforcement at all (e.g. in cases when arbitral tribunal made a declaratory award or an award dismissing all claims), or if it is to be recognized and enforced in another country. Moreover, in Latvia, only arbitral awards made by a permanent arbitral institution can be enforced, not *ad hoc* awards. So, if an arbitral tribunal has not respected, for example, due process, there is no legal remedy for an interested party to set aside such an unlawful award.

In 2014, the Constitutional Court again drew the attention of legislator to the need to define the grounds and procedure for setting-aside an award:

*Taking into consideration, inter alia, the problems in the functioning of arbitration courts, [...] an internationally accepted institute for challenging an award by an arbitration court would be of particular importance in Latvia.*<sup>12</sup>

No action followed, so it is not surprising that this issue once more ended up on the table of the Constitutional Court. This time, in 2022, the Constitutional Court had to decide specifically and directly on the question of the constitutionality of the non-existence of the institute of setting-aside.<sup>13</sup> Although the wording of

<sup>11</sup> Judgment of the Constitutional Court of the Republic of Latvia of 17 January 2005 in Case No. 2004-10-01. Available in English: <https://www.satv.tiesa.gov.lv/en/cases/?case-filter-years=&case-filter-status=&case-filter-types=&case-filter-result=&searchtext=2004-10-01> [viewed 03.01.2024.].

<sup>12</sup> Judgment of the Constitutional Court of the Republic of Latvia of 28 November 2014 in Case No. 2014-09-01. Available in English: <https://www.satv.tiesa.gov.lv/en/cases/?case-filter-years=&case-filter-status=&case-filter-types=&case-filter-result=&searchtext=2014-09-01> [viewed 03.01.2024.].

<sup>13</sup> Judgment of the Constitutional Court of the Republic of Latvia of 23 February 2023 in Case No. 2022-03-01. Available in English: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01\\_Judgement.pdf#search=2022-03-01](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01_Judgement.pdf#search=2022-03-01) [viewed 03.01.2024.].

the substantive part is peculiar,<sup>14</sup> the Constitutional Court has recognized that the setting-aside procedure should have a place in the Latvian system.

However, not all judges of the Constitutional Court have considered this outcome to be justified, as there are two dissenting opinions.<sup>15</sup> It is surprising that these judges did not doubt why at least among the Member States of the Council of Europe, Latvia remains the only state where it is simply impossible to challenge arbitral awards before the state courts and that Latvia is a Member State of the European Convention on International Commercial Arbitration providing for such procedure.<sup>16</sup>

Most importantly, however, these separate opinions essentially stated that an action for annulment of an arbitration agreement is an effective remedy. Thus, there is no need for a mechanism to challenge the arbitral award.

Firstly, challenging the validity of an arbitration agreement is not an adequate substitute for a setting-aside procedure. The challenge concerns only the legal basis of arbitration – the validity of the arbitration agreement – and cannot be aimed at irregularities of the arbitration procedure that have affected the arbitration award. For example, currently, if during arbitral proceedings the arbitrator was biased, or due process was not foreseen, arbitral award rendered by the tribunal cannot be invalidated.

Secondly, in 2014 judgment the Constitutional Court ruled that an arbitration agreement can also be challenged before a court of general jurisdiction (previously, the courts did not accept such claims, only arbitral tribunals were competent to decide on the validity of the arbitration agreement), but no amendments were

---

<sup>14</sup> The Constitutional Court decided:

To declare Sections 534, 5341, 535, 536 and 537 of the Civil Procedure Law, insofar as they do not provide for supervision of arbitral proceedings in cases where the interested party does not apply to a court of general jurisdiction for enforcement of the arbitral award for a prolonged period of time, where the arbitral award is to be recognized and enforceable abroad or where it is not necessary to apply to a court of general jurisdiction for the issue of a writ of execution for the enforcement of the arbitral award, incompatible with Article 92 of the Constitution of the Republic of Latvia as of 1 March 2024.

The scholars have questioned this part:

For instance, when is it possible to say that the award creditor has not requested the writ of execution for a long time? How long is too long? And what is the point of postponing the setting aside procedure? Likewise, it is hard to codify the difference between awards that are to be enforced abroad and those to be enforced domestically. When the award is rendered, it might be unknown whether the award debtor has any foreign assets.

See: Kacevska I., Fillers A. 2023, p. 323.

<sup>15</sup> Judge of Constitutional Court Janis Neimanis Separate Opinion in Case No. 2022-03-01, 06.03.2023. Available in English: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01\\_Separate-opinion\\_Neimanis.pdf#search=2022-03-01](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01_Separate-opinion_Neimanis.pdf#search=2022-03-01) [viewed 03.01.2024.]. Judge of Constitutional Court Gunars Kusins Separate Opinion in Case No. 2022-03-01, 09.03.2023. Available in English: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01\\_Separate-opinion\\_Kusins.pdf#search=2022-03-01](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01_Separate-opinion_Kusins.pdf#search=2022-03-01) [viewed 03.01.2024.].

<sup>16</sup> Krumins T. 2020, p. 235.

made in addition, such as those in the UNCITRAL Model Law.<sup>17</sup> As a result, the arbitration agreement can be challenged without time limit, including once an arbitral award has been made, or even once a writ of execution has been issued. As stated in the separate opinion of Judge Kusins, on 6 April 2021 the applicant brought an action for annulment of the arbitration agreement before the District Court, but as at the date of the separate opinions, the court still has not reviewed the claim. It is scheduled on 25 January 2024. If we imagine that, in the best-case scenario, the first instance's judgement is handed down in 2024, the question is still open – what will happen with the arbitral award of 26 November 2019?

## 2. End of black sheep era?

The Constitutional Court ruled that the setting-aside procedure shall be introduced until 1 March 2024, otherwise all provisions of part 66 “Enforcement of Arbitral Awards” of the Civil Procedure Law will cease to exist. Thus, on 24 April 2023, the Working Group for the implementation of the Constitutional Court's judgment in the Case No. 2022-03-01 was established under the Ministry of Justice. It has worked diligently and proposed more than the changes in the Civil Procedure Law concerning the setting-aside procedure and grounds for challenging the arbitral award.

Currently, as concerns the setting-aside procedure, the draft amendments in Article 533<sup>4</sup> of the Civil Procedure Law provide identical grounds for the setting-aside of arbitral award as the UNCITRAL Model Law. Draft Article 533<sup>1</sup> determines that if the arbitral award has been rendered in Latvia, a party may, within one month from the date of the arbitral award or supplementary award, file an application for challenging the arbitral award, if any of the grounds for setting-aside the arbitral award set forth in Article 533<sup>4</sup> of this Law exists and the writ of execution has not been issued [...]. The court shall decide on application in the written process within 20 days of the date on which the notices were sent to the parties and the court is entitled to request from the arbitral institution or from a party the arbitration file or other information, if it is necessary to decide on the case. However, this draft Article 533<sup>3</sup> also stipulates that no appeal shall be allowed if the court makes a decision on setting-aside an arbitral award, but an ancillary appeal may be lodged against the decision rejecting the application for setting-aside of the arbitral award within 10 days from the date of receipt of the decision. Hopefully, the legislator will allow equal appeal for both decisions.

---

<sup>17</sup> Article 16(3) of UNCITRAL Model Law:

The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in Article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Members of the Working Group following the modern trends of arbitration urged the Ministry to make also other amendments to the law complying with UNCITRAL Model law by introducing other ways of the state court assistance in the arbitral proceedings (appointment and challenge of arbitrators, etc.) and compulsory execution of *ad hoc* awards. Furthermore, it was suggested that mandatory lists of arbitrators should be waived and stricter rules for disclosing the facts that may influence the impartiality of arbitrators introduced.

The new amendments are submitted to the Cabinet of Ministers for review and further approval of the Parliament.<sup>18</sup> It can only be wished that these amendments are adopted as proposed and hopefully in 2024 Latvia will cease to follow the Westphalian model and will integrate in the modern world of arbitration.

And there will be an end of black sheep era...

## Conclusions

1. Latvia should not continue to follow its own particular approach to arbitration (the Westphalia model) but adopt and follow the best practice – the UNCITRAL Model Law, as it reflects the international efforts towards harmonization of arbitration laws, thus making arbitration more predictable, in line with the modern human rights and due process.
2. Some members of the legislator and judiciary consider that the setting-aside process of the arbitral awards can be replaced either by the possibility of challenging the validity of the arbitration agreement or by judicial review in the process of issuing a writ of execution. However, those are separate legal procedures and all of them are necessary for fair arbitral proceedings.
3. The Constitutional Court of the Republic of Latvia repeatedly has pointed out that the arbitration legal framework is incomplete, raising concerns about the quality of arbitration proceedings and awards. Following the 2023 Constitutional Court judgment in Case No. 2022-03-01, the Ministry of Justice has prepared an amendment to the Arbitration Law and the Civil Procedure Law, which will introduce the institute of setting-aside of arbitral awards in Latvia and other court assistance during the arbitral procedure.

---

<sup>18</sup> Amendments to the Civil Procedure Law. Available: [https://tapportals.mk.gov.lv/legal\\_acts/36caf92f-aec4-4041-a7b7-5f3580a16545](https://tapportals.mk.gov.lv/legal_acts/36caf92f-aec4-4041-a7b7-5f3580a16545) [viewed 03.01.2023.]. Amendments to Arbitration Law. Available: [https://tapportals.mk.gov.lv/legal\\_acts/8cde4ee8-17a0-43e8-b2b1-d8315f7d1b05](https://tapportals.mk.gov.lv/legal_acts/8cde4ee8-17a0-43e8-b2b1-d8315f7d1b05) [viewed 03.01.2024.].

## BIBLIOGRAPHY

### Literature

1. Binder P. *International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions*, Kluwer Law International, 2019.
2. Gaillard E. *Legal Theory of International Arbitration*. Martins Nijhoff Publishers, 2010.
3. Kacevska I., Fillers A. *There is Ordinary Situation and There is Latvia's Situation*. *Stockholm Arbitration Yearbook*, Wolters Kluwer, 2023
4. Krumins T. *Arbitration and Human Rights. Approaches to Excluding the Annulment of Arbitral Awards and Their Compatibility with the ECHR*. Springer, 2020

### Normative acts

5. *European Convention on International Commercial Arbitration*. Signed in Geneva on 21 April 1961.
6. *European Convention on Human Rights*. Signed in Rome on 04.11.1950.
7. *Civil Procedure Law*. Available: <https://likumi.lv/ta/id/50500-civilprocesa-likums> [viewed 03.01.2024.].
8. *Arbitration Law of Latvia* was adopted on 11 September 2014, and entered into force on 1 January 2015. Available: <https://likumi.lv/ta/id/269189-skirejtiesu-likums> [viewed 03.01.2024.].
9. *UNCITRAL Model Law on International Commercial Arbitration (1985)*, with amendments as adopted in 2006. Available: [https://uncitral.un.org/en/texts/arbitration/modellaw/commercial\\_arbitration/status](https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status) [viewed 03.01.2024.].

### Court practice

10. Judgment of the Constitutional Court of the Republic of Latvia of 17 January 2005 in Case No. 2004–10–01. Available in English: <https://www.satv.tiesa.gov.lv/en/cases/?case-filter-years=&case-filter-status=&case-filter-types=&case-filter-result=&searchtext=2004-10-01> [viewed 03.01.2024.].
11. Judgment of the Constitutional Court of the Republic of Latvia of 28 November 2014 in Case No. 2014–09–01. Available in English: <https://www.satv.tiesa.gov.lv/en/cases/?case-filter-years=&case-filter-status=&case-filter-types=&case-filter-result=&searchtext=2014-09-01> [viewed 03.01.2024.].
12. Judgment of the Constitutional Court of the Republic of Latvia of 23 February 2023 in Case No. 2022–03–01. Available in English: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01\\_Judgement.pdf#search=2022-03-01](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01_Judgement.pdf#search=2022-03-01) [viewed 03.01.2024.].
13. Judge of Constitutional Court Janis Neimanis Separate Opinion in Case No. 2022-03-01, 06.03.2023. Available in English: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01\\_Separate-opinion\\_Neimanis.pdf#search=2022-03-01](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01_Separate-opinion_Neimanis.pdf#search=2022-03-01) [viewed 03.01.2024.].
14. Judge of Constitutional Court Gunars Kusins Separate Opinion in Case No. 2022-03-01, 09.03.2023. Available in English: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01\\_Separate-opinion\\_Kusins.pdf#search=2022-03-01](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/01/2022-03-01_Separate-opinion_Kusins.pdf#search=2022-03-01) [viewed 03.01.2024.].