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INTERNATIONAL COMMERCIAL ARBITRATION DURING MARTIAL LAW IN UKRAINE

Abstract. The ***purpose*** of the article is to determine changes in the activities of international commercial arbitration on the territory of Ukraine and analyze the problems that the parties may face in national courts due to the declaration of martial law in Ukraine.

Research methods. The methodological research comprises general scientific (analysis, generalization, induction, deduction, and classification) and special methods of cognition of the scope of international commercial arbitration (collection and processing of information, comparison, and forecasting). Thus, the following methods were used in the work: deduction – to specify the particularities of arbitration at different stages during martial law in Ukraine; forecasting – to indicate the central problems prevailing in the recognition and enforcement of arbitral awards during martial law in Ukraine and study the main trends in the development of international commercial arbitration.

The ***research database*** consists of international acts; regulations of arbitration institutions; legislation of Ukraine; judicial generalizations; state register of court decisions; official statistical data; the practice of international commercial arbitration courts; notices of institutions posted on their official websites; scientific doctrine's provisions.

Results. The basic alterations that occurred in the activities of the International Commercial Arbitration Court during the declaration of martial law due to the military aggression of the Russian Federation are analyzed; ensuing problems in the activities of international commercial arbitration under martial law are clarified, and possible options for their solution are proposed.

Conclusions. The military aggression of the Russian Federation and the declaration of martial law on the territory of Ukraine elucidated a range of problems faced by both judicial authorities and international commercial arbitration, including filing documents with the arbitration institution and enforcement of arbitration awards. The solution to the above problems is a prerequisite for the proper performance of international commercial arbitration in Ukraine as an efficient institution.

Key words: international commercial arbitration, martial law in Ukraine, military aggression of the Russian Federation, ICAC activities during martial law in Ukraine, recognition and execution of arbitration award, force majeure, Ukrainian Chamber of Commerce and Industry.

1. Introduction

Due to the military aggression of the Russian Federation against Ukraine, martial law was declared in Ukraine following the Decree of the President of Ukraine dated 24.02.2022 № 64/2022 and the Law of Ukraine "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" dated 24.02.2022 № 2102-IX. It influenced all economic and legal ties, both inside the country and outside. International commercial arbitration has also been significantly affected. Therefore, the purpose of this article is to analyze amendments considering disputes in international commercial arbitration during martial law in Ukraine and study the problems of recognition and enforcement of an arbitration award in Ukraine in the current conditions.

Main body. The military aggression of the Russian Federation against Ukraine has influenced all the processes taking place on the territory of our state. The institution of international commercial arbitration was not an exception. Today, there are two permanent arbitration institutions in Ukraine – the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (hereinafter referred to as "the arbitration institutions"). In order to better understand the changes that occurred in the activities of international commercial arbi-

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tration due to the declaration of martial law on the territory of Ukraine, it is proposed to classify such changes under the arbitration stages. At the same time, the following should be noted among the stages of arbitration:

– pre-trial;
– arbitration proceedings;
– enforcement of an arbitral award.

It should be emphasized that the last two stages were the most affected, so they are analyzed in the present work.

2. Changes in arbitration proceedings

The first change in arbitration proceedings that must be noted is that arbitration institutions fulfil the vast majority of their functions online for the period of martial law. The conclusion follows from the decision of the Presidium of the ICAC and MAC at the UCCI dated March 21, 2022 (International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, 2022a). According to the mentioned decision: "Communication with the arbitral tribunals in specific cases, parties to disputes and other users of services, and sending procedural documents, except for final arbitral awards, are carried out by the ICAC and IAC secretariats via electronic means". Moreover, the parties should submit procedural documents via electronic means. The relevant provision does not apply to procedural documents of fundamental importance, namely, a statement of claim. It may be submitted in electronic form to international commercial arbitration only by agreement of the parties to the dispute. It is worth mentioning that the Rules of the ICAC at the UCCI were amended on July 1, 2022, in particular, regarding the option of submitting documents to international commercial arbitration in digital form (International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, 2022c).

In addition, it is essential to pay attention to the appeal of the Chairman of the ICAC and IAC at the UCCI to the arbitrators of the institutions dated 18.03.2022 (International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, 2022b) and the information posted on the official websites of the arbitration institutions dated 18.03.2022 regarding the operation of the ICAC and IAC at the UCCI during martial law (International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, 2022d). The official information states that during martial law, all oral hearings shall be held online or in writing by agreement of the parties. That kind of trend is not new. It has come into existence because of the progress of information technologies. But a special need for such a procedure arose during the COVID-19 pandemic. However, despite the advantages of online hearings, there may be some difficulties that should be resolved. For example, it raises the question: does the arbitrator have the right to decide on the form of meetings if there is no agreement between the parties? Can the arbitrator's decision on the form of arbitration be further interpreted as a reason for appealing and reversing the arbitral award?

At the same time, it makes one wonder about the platform's security where such meetings and data exchange will be held. It is worth noting that the above concerns are not original, and the scientific community is already looking for their solutions. For example, in 2019, the International Council for Commercial Arbitration (ICCA), the New York State Bar Association, the International Institute for Conflict Prevention and Resolution, and the International Bar Association drafted and promulgated the Protocol on Cybersecurity in International Arbitration (2020 edition) (CPR, 2019). Following the specified goal, the Protocol fulfils the following task: 1) to provide a basis for determining information security measures for individual arbitration issues; 2) to increase awareness of information security in international arbitration. The Protocol gives cybersecurity recommendations relevant to all stages of arbitral proceedings. For example, the Protocol's Schedule B establishes information security risk factors and their classification, which should serve to enable the parties, after analyzing it, to define reasonable measures to be applied in arbitration. Schedule D provides recommendations on security measures decided by the parties at the time of the conclusion of the contract. Hence, the parties are not recommended to provide for specific measures, since they may be outdated or no longer relevant at the time of consideration. Instead, the parties may provide that, during arbitral proceedings, they may apply reasonable security measures. Thus, the appendix specifies an algorithm of actions to coordinate the measures: 1) the Parties shall take reasonable measures regarding the security of information for arbitration; 2) tribunal prescribes reasonable information security measures for the arbitration; 3) the Parties agree reasonable information security measures for the arbitration.

The following particularity of arbitration proceedings, which should be brought to notice upon the topic under study, is the problem of certifying force majeure. As a rule, force majeure is a prerequisite for foreign economic contracts, disputes of which most often become the subject matter in international commercial arbitration. Thus, according to the Law of Ukraine "On Chambers of Commerce and Industry of Ukraine", the authentication and issuance

of certificates of force majeure are carried out exclusively by the Chamber of Commerce and Industry of Ukraine and its authorized regional chambers of commerce and industry. The period for issuing the certificate issuance took about 7 days. However, the UCCI decision as of 24.04.2022 (Ukrainian Chamber of Commerce and Industry, 2022) simplified the relevant procedure. Thus, on the official website it was reported that the CCI of Ukraine confirms that "the specific circumstances (the imposition of martial law on the territory of Ukraine in connection with the military aggression of the Russian Federation) from February 24, 2022 until their official termination, are extraordinary and irreversible". Interested persons do not need to contact the CCI to obtain a certificate confirming such circumstances as force majeure hence they can print the specific confirmation.

It should be separately emphasized that the arbitral tribunal shall provide a legal qualification of force majeure compared with other evidence of the parties. Since the certificate is issued by the chamber of commerce and industry at the request of one of the parties to the disputed legal relations, the other party to the disputed legal relations is deprived of the opportunity to provide its arguments and influence the conclusions of the chamber of commerce and industry. That sort of authentication of force majeure can be considered sufficient proof of availability of such circumstances for the parties to the contract if they have agreed. In addition, it is interesting to mark that the above does not bind the arbitral tribunal in terms of the legal qualification of particular circumstances as force majeure in the case of a dispute between the parties. In other words, the certificate issued by the Ukrainian CCI should be analyzed, taking into account other evidence available in the case file. Otherwise, it violates the principle of competition between the parties. For a better understanding, it is necessary to introduce an example. If the parties have concluded a supply agreement whereby one company (registered outside Ukraine) shall accept and pay for the goods, and the other company (registered in Ukraine) shall transport it to a specific location (outside Ukraine), then qualification of the military aggression of the Russian Federation as force majeure is not a basis for releasing liability for non-fulfillment of an obligation or its improper fulfillment. However, if the contract stipulated that the cargo would be transported by sea and the seaports of Ukraine were closed due to the military aggression of the Russian Federation, then the shipment was impossible. For this reason, the certification of the fact of military aggression in Ukraine by the Ukrainian CCI, together with other evidence (lack of ports' operation), is a sufficient basis for a temporary non-fulfillment of the obligation. The recommendations originate from national practice. Thus, in the decision as of August 19, 2022, in case № 908/2287/17, the Supreme Court noted "<...> the certificate is issued by the chamber of commerce and industry at the request of one of the parties to the disputed legal relations (parties to the contract), which the party pays (except for small business entities) for the services of the chamber of commerce and industry. At the same time, the other party to the disputed legal relationship (contract) is deprived of the opportunity to provide its arguments and influence the conclusions of the chamber of commerce and industry. Such authentication of force majeure (acts of God) may be considered sufficient proof of force majeure for the parties to the contract if so agreed, but it does not bind the court in the case of a dispute between the parties regarding the legal qualification of particular circumstances as force majeure. Hence, the Supreme Court, composed of judges of the joint chamber of the Commercial Cassation Court states that the certificate of the chamber of commerce and industry confirming force majeure cannot be considered irrefutable proof of its existence but shall be critically evaluated by the court, taking into account the established circumstances of the case and in the aggregate with other evidence. Therefore, the recognition of a certificate of the chamber of commerce and industry as indisputable and sufficient proof of force majeure (acts of God) without the court's assessment of other evidence contradicts the principle of the competitiveness of the trial participants" (Supreme Court, 2022a).

In addition, in the decision as of 27.01.2022 in case № 904/3886/21, the Supreme Court stated that "Force majeure circumstances are not of a pre-judicial (predetermined) nature. If they occur, the party referring to the force majeure circumstances shall prove them. The party referring to specific circumstances shall prove that they are force majeure, including for a particular case. Based on the features of force majeure, it is also necessary to prove its extraordinariness and inevitability. The fact that force majeure shall be proved does not exclude that the existence of force majeure can be certified by the relevant competent authority" (Supreme Court, 2022b). However, it is important to keep in mind that force majeure does not exempt from the fulfilment of the obligation, but only from sanctions for non-fulfilment, taking into account that the court (national or international) will establish that they have been the cause of non-compliance or improper compliance with the contract.

3. Changes during the execution of an arbitral award

The final stage of arbitration is the execution of an arbitral award; in case of refusal of voluntary execution – the application of the procedure for recognition and execution of the arbitral award within the territory of Ukraine. This stage is sometimes cumbersome enough if a party is unwilling to comply with the arbitral award. It can be assumed that the problem of enforcement of arbitral awards may become more complicated in wartime.

According to the current legislation, an application for recognition and enforcement is submitted to the court of appeal, the jurisdiction of which extends to Kyiv (Kyiv Court of Appeal). In the first months of the war, organizational changes were introduced in the Kyiv Court of Appeal. Thus, following the notice posted on the court's official website (Kyiv Court of Appeal, 2022b) as of February 28, 2022, court proceedings of some categories, including civil cases, will be withdrawn. And in the notice as of March 29, 2022 (Kyiv Court of Appeal, 2022c), it is indicated that one of the organizational changes is the stay of action in open court hearings involving the trial participants. At the same time, it is marked that "the procedural activity of the court of appeal is not terminated – the Kyiv Court of Appeal considers the following court cases: civil cases subject to consideration in writing on the materials available in the case if the parties to the case have exercised their procedural rights (filed a recall, objection); other civil cases and cases of administrative offenses, in the presence of petitions of the parties to the case to consider it in their absence". According to the announcement dated May 18, 2022 (Kyiv Court of Appeal, 2022a), the Kyiv Court of Appeal has been operating as usual since May 2, 2022. However, it makes one wonder if one party initiated recognition and enforcement of the arbitral award from 28.02.2022 to 02.05.2022, then the case did not progress; the maximum done was the case's registrationand the determination of the bench. In other words, instead of the term envisaged in the Civil Procedure Code of Ukraine (two months), the case will actually be considered for longer.

In addition, it is worth mentioning existing cases that are being considered in national courts in terms of the recognition and enforcement of an arbitral award or the cancellation of an arbitral award upon which the procedural period was defaulted due to martial law in Ukraine. In this regard, we should analyze the case № 824/259/21, which is being considered by the Supreme Court. The appeal was filed after the expiration of the relevant deadline under the norms of the current legislation, but the parties asked in the appeal for the renewal of the specific period. The Supreme Court renewed the deadline, noting that "Given the imposition of martial law throughout Ukraine on February 24, 2022 by the Decree of the President of Ukraine № 64/2022 "On the Introduction of Martial Law in Ukraine" and the related restrictions, as well as the human right to access to court, the bench concluded that the reasons for missing the deadline for appeal are valid and the missed deadline shall be renewed" (Supreme Court, 2022 c).

The very legal proceeding may also be a problem faced by the party that initiated the litigation on the recognition and enforcement of the arbitral award or the annulment of the arbitral award. It lies in the inability to appear before the court due to martial law in Ukraine. The issues can be settled in various ways, namely: holding a court session via video conference at the premises of another court or outside the premises of the court. Depending on the conference type, different participants are responsible for the consequences of interrupting the videoconference. Accordingly, if a party will make a videoconference outside the court, the interruption of communication or other problems associated with the video conference shall be borne by the party to the case who filed the relevant application.

Another potential problem for the party that initiated the recognition and enforcement of the arbitral award after receiving an affirmative court decision is enforcement proceedings. Thus, it is essential to specify the alterations which were made to the Law of Ukraine № 2129-IX "On Amendments to Section XIII "Final and Transitional Provisions" of the Law of Ukraine "On Enforcement Proceedings" dated 15.03.2022 (Verkhovna Rada of Ukraine, 2022b). According to the amendments, the initiation of enforcement proceedings is prohibited in temporarily occupied territories. The Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine keeps them recorded. The Instruction on the organization of enforcement of decisions dated 02.04.2012 № 512/5 (Ministry of Justice of Ukraine, 2012) states that "during martial law, enforcement of decisions, the place of execution of which under part one of Article 24 of the Law is the territory which, in accordance with the Law of Ukraine "On Ensuring Civil Rights and Freedoms and the Legal Regime on the Temporarily Occupied Territory of Ukraine" is the temporarily occupied territory of Ukraine, is carried out by an executive body whose competence extends to such territory, provided that such a body has been relocated in another territory of Ukraine, or an executive

body determined by the Ministry of Justice of Ukraine upon recommendation/proposals of the Department of the State Executive Service of the Ministry of Justice of Ukraine". Therefore, from a legal standpoint, in the occupied territories or the territory which is located in the area of military (combat) operations or is surrounded (blocked), no enforcement proceedings are initiated, but enforcement proceedings are taken by another body of the state executive service vested to enforce decisions, the place of execution of which is the temporarily occupied territory of Ukraine or the territory that is located in the area of military (combat) operations or is surrounded (blocked).

The Resolution of the Cabinet of Ministers of Ukraine as of March 03.03.2022 № 187 "On protection of national interests in future lawsuits of the state of Ukraine due to the military aggression of the Russian Federation" (Cabinet of Ministers of Ukraine, 2022) also deserves attention. It imposes a moratorium on the fulfillment of obligations by creditors (claimants) who are supported by the Russian Federation or persons associated with the aggressor state. Moreover, in accordance with the Law of Ukraine № 2129-IX "On Amendments to Section XIII "Final and Transitional Provisions" of the Law of Ukraine "On Enforcement Proceedings" dated March 15, 2022, the commission of executive actions is suspended, the replacement of claimants, which are the Russian Federation, in executive actions is prohibited.

4. Conclusions

To summarize the above, the following should be highlighted. The introduction of martial law in the territory of Ukraine elucidated new problems related to the effective functioning of arbitration, namely:

1. *The problem of the functioning of arbitration (acceptance of statements of claim in arbitration, arbitration proceedings, etc.) during martial law.* The solution to the relevant problem is the widespread use of information and telecommunication technologies. The use of cyber technologies is possible only by the standards of arbitration institutions or by the standards provided for in the contract.

2. *The problem of a simplified procedure for certifying the military aggression of the Russian Federation by the Ukrainian CCI.* The best solution is to amend the legislation on the Ukrainian CCI, which enshrines an option of simplifying the certification of force majeure, but under specific conditions (for example, if force majeure applies to the whole country).

3. *Certification of the Russian Federation's military aggression as a ground for untimely, improper,* or *non-observance of a contract.* Thus, when analyzing, the arbitration tribunal should consider the military aggression of the Russian Federation together with other actions and events. At the same time, force majeure shall be analyzed given other evidence available in the case materials. The same opinion is held by the Supreme Court, which in its decision as of 19.08.2022 in case № 908/2287/17 noted that "the certificate of the chamber of commerce and industry confirming the existence of force majeure cannot be considered irrefutable evidence of its existence but must be critically assessed by the court taking into account the established circumstances of the case and in conjunction with other evidence".

4. *The problem of recognition and enforcement of an arbitral award in Ukraine.* The first aspect of the problem is the need for elaborating a unified approach to renewing missed procedural deadlines, which occurred at the beginning of a full-scale war when the operation of courts was limited (quite logically and forcedly). The primary necessary steps have already been taken. For example, national courts generally interpret the military aggression of the Russian Federation as a valid reason for the renewal of missed deadlines, but they compare it in conjunction with other facts. National courts also increasingly agree to hold a court session via videoconference to improve and speed up effective justice.

Summing up, it should be noted that the settlement of numerous problems of the operation of both judicial bodies and international commercial arbitration, which were caused by the military aggression of the Russian Federation in the territory of Ukraine, is required for the proper functioning of international commercial arbitration in Ukraine as an efficient institution.

References:

Cabinet of Ministers of Ukraine (2022). Pro zabezpechennia zakhystu natsionalnykh interesiv za maibutnimy pozovamy derzhavy Ukraina u zviazku z viiskovoiu ahresiieiu Rosiiskoi Federatsii: Postanova Kabinetu Ministriv Ukrainy vid 3 bereznia 2022 r. № 187 [On ensuring the protection of national interests in future lawsuits by the state of Ukraine in connection with the military aggression of the Russian Federation: Resolution of the Cabinet of Ministers of Ukraine dated March 3, 2022 № 187]. Retrieved from: https://zakon.rada.gov.ua/laws/show/187-2022-п#Text [in Ukrainian].

CPR (2019). Website of International Institute for Conflict Prevention & Resolution. Retrieved from: https://www.cpradr.org/resource-center/protocols-guidelines/icca-nyc-bar-cybersecurities [in English].

International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine (2022a). Orhanizatsiia komunikatsii ICAC ta UMAC zi storonamy ta inshymy korystuvachamy na period

voiennoho chasu [Organization of ICAC and UMAC communication with parties and other users during wartime]. *Sait Mizhnarodnoho komertsiinoho arbitrazhnoho sudu pry Torhovo-promyslovii palati Ukrainy – Website of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine*. Retrieved from: https://icac.org.ua/novyny-ta-publikatsiyi/communications-with-the-icac-and-the-umac-with-the-parties-and-other-users-during-the-martial-law/ [in Ukrainian].

International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine (2022b). Zvernennia Holovy ICAC ta UMAC do arbitriv instytutsii (shchodo roboty v umovakh rezhymu voiennoho stanu) [ICAC and UMAC Chairman's address to institutional arbitrators (regarding work under martial law)]. *Sait Mizhnarodnoho komertsiinoho arbitrazhnoho sudu pry Torhovo-promyslovii palati Ukrainy – Website of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine*. Retrieved from: https://icac.org.ua/novyny-ta-publikatsiyi/zvernennya-golovy-icac-ta-umac-do-arbitriv-instytutsij/ [in Ukrainian].

International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine (2022c). Rehlament ICAC zi zminamy vid 01 lypnia 2022 roku vzhe na saiti [ICAC regulations with changes from July 1, 2022 are already on the website]. *Sait Mizhnarodnoho komertsiinoho arbitrazhnoho sudu pry Torhovo-promyslovii palati Ukrainy – Website of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine*. Retrieved from: https://icac.org.ua/novyny-ta-publikatsiyi/reglament-icac-zi-zminamy-vid-01-lypnya-2022-roku-vzhe-na-sajti/ [in Ukrainian].

International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine (2022d). Vazhlyva informatsiia shchodo roboty ICAC ta UMAC Ukrainy protiahom rezhymu voiennoho stanu [Important information regarding the work of ICAC and UMAC of Ukraine during the martial law regime]. *Sait Mizhnarodnoho komertsiinoho arbitrazhnoho sudu pry Torhovo-promyslovii palati Ukrainy – Website of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine*. Retrieved from: https://icac.org.ua/novyny-ta-publikatsiyi/vazhlyva-informatsiya-shhodo-roboty-mkas-ta-mak-pry-tpp-ukrayiny-protyagom-rezhymu-voyennogo-stanu/ [in Ukrainian].

Kyiv Court of Appeal (2022a). Do vidoma hromadian! Kyivskyi apeliatsiinyi sud pratsiuie v zvychnomu rezhymi [For the information of citizens! The Kyiv Court of Appeal is working as usual]. *Sait Kyivskoho apeliatsiinoho sudu – Website of the Kyiv Court of Appeal*, May, 18. Retrieved from: https://www.kas.gov.ua/?p=29315 [in Ukrainian].

Kyiv Court of Appeal (2022b). Do vidoma uchasnykiv sudovykh protsesiv! [For the information of the participants in the court proceedings!]. *Sait Kyivskoho apeliatsiinoho sudu – Website of the Kyiv Court of Appeal*, February, 28. Retrieved from: https://www.kas.gov.ua/?p=29066 [in Ukrainian].

Kyiv Court of Appeal (2022c). Do vidoma uchasnykiv sudovykh protsesiv! [For the information of the participants in the court proceedings!]. *Sait Kyivskoho apeliatsiinoho sudu – Website of the Kyiv Court of Appeal*, March, 29. Retrieved from: https://www.kas.gov.ua/?p=29078 [in Ukrainian].

Ministry of Justice of Ukraine (2012). Pro zatverdzhennia Instruktsii z orhanizatsii prymusovoho vykonannia rishen: Nakaz Ministerstva yustytsii Ukrainy vid 2 kvitnia 2012 r. № 512/5 [On approval of the Instructions on the organization of enforcement of decisions: Order of the Ministry of Justice of Ukraine dated April 2, 2012 № 512/5]. Retrieved from: https://zakon.rada.gov.ua/laws/show/z0489-12#Text [in Ukrainian].

Supreme Court (2022a). Postanova Verkhovnoho Sudu vid 19 serpnia 2022 r. u spravi № 908/2287/17 [Resolution of the Supreme Court dated August 19, 2022 in case 908/2287/17]. Retrieved from: https://reyestr.court.gov.ua/Review/105837295 [in Ukrainian].

Supreme Court (2022b). Postanova Verkhovnoho Sudu vid 27 sichnia 2022 r. u spravi № 904/3886/21 [Resolution of the Supreme Court dated January 27, 2022 in case № 904/3886/21]. Retrieved from: https://reyestr.court.gov.ua/Review/102797678 [in Ukrainian].

Supreme Court (2022c). Postanova Verkhovnoho Sudu vid 6 lypnia 2022 r. u spravi № 824/259/21 [Resolution of the Supreme Court dated July 6, 2022 in case № 824/259/21]. Retrieved from: https://reyestr.court.gov.ua/Review/105139686 [in Ukrainian].

Ukrainian Chamber of Commerce and Industry (2022). Protsedura zasvidchennia fors-mazhornykh obstavyn z 28 liutoho 2022 r. [The procedure for certifying force majeure circumstances from February 28, 2022]. *Sait Torhovoi-promyslovoi palaty Ukrainy – Website of the Ukrainian Chamber of Commerce and Industry*. Retrieved from: https://ucci.org.ua/press-center/ucci-news/protsedura-zasvidchennia-fors-mazhornikh-obstavin-z-28-02-2022 [in Ukrainian].

Verkhovna Rada of Ukraine (2022a). Pro vnesennia zmin do deiakykh zakoniv Ukrainy shchodo diialnosti pryvatnykh vykonavtsiv ta prymusovoho vykonannia sudovykh rishen, rishen inshykh orhaniv (posadovykh osib) u period dii voiennoho stanu: Zakon Ukrainy vid 27 lypnia 2022 r. № 2455-IX [On amendments to some laws of Ukraine regarding the activities of private executors and enforcement of court decisions, decisions of other bodies (officials) during the period of martial law: Law of Ukraine dated July 27, 2022 № 2455-IX]. Retrieved from: https://zakon.rada.gov.ua/laws/show/2455-IX#Text [in Ukrainian].

Verkhovna Rada of Ukraine (2022b). Pro vnesennia zminy do rozdilu XIII "Prykintsevi ta perekhidni polozhennia" Zakonu Ukrainy "Pro vykonavche provadzhennia": Zakon Ukrainy vid 15 bereznia 2022 r. № 2129-IX [On Amendments to Chapter XIII "Final and Transitional Provisions" of the Law of Ukraine "On Executive Proceedings": Law of Ukraine of March 15, 2022 № 2129-IX]. Retrieved from: https://zakon.rada.gov.ua/laws/show/2129-20#Text [in Ukrainian].

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МІЖНАРОДНИЙ КОМЕРЦІЙНИЙ АРБІТРАЖ ПІД ЧАС ВОЄННОГО СТАНУ В УКРАЇНІ

Анотація. ***Метою*** статті є визначення змін у діяльності міжнародного комерційного арбітражу, який перебуває на території України, а також аналіз проблем, з якими можуть зіткнутися сторони в національних судах у зв'язку із запровадженням воєнного стану в Україні.

Методи дослідження. Методологічною основою дослідження є загальнонаукові (аналіз, узагальнення, індукція, дедукція, класифікація) та спеціальні (методи збору й обробки інформації, порівняння та прогнозування) методи пізнання діяльності міжнародних комерційних арбітражів. Зокрема, у роботі використані такі методи: дедуктивний метод – для виокремлення особливостей арбітражного розгляду на різних стадіях під час воєнного стану в Україні; метод прогнозування – для окреслення основних проблем, які виникають у процесі визнання та виконання арбітражних рішень протягом воєнного стану в Україні, для дослідження основних тенденцій розвитку міжнародного комерційного арбітражу.

Інформаційну базу дослідження становили міжнародні акти, регламенти арбітражних установ, законодавство України, судові узагальнення, державний реєстр судових рішень, офіційні статистичні матеріали, практика міжнародних комерційних арбітражів, розміщені на офіційних сайтах повідомлення установ, а також положення наукової доктрини.

Результати. Проаналізовано основні зміни, які відбулися в діяльності Міжнародного комерційного арбітражного суду під час запровадження військового стану у зв'язку з військовою агресією Російської Федерації. Визначено проблеми, які виникли в діяльності міжнародного комерційного арбітражу в умовах воєнного стану, та запропоновано можливі варіанти їх вирішення.

Висновки. Військова агресія Російської Федерації та запровадження воєнного стану на території України зумовили появу низки проблем, з якими зіткнулися як судові органи, так і міжнародний комерційний арбітраж; серед них – проблема щодо подачі документів до самої арбітражної установи, проблема щодо виконання арбітражного рішення. Їх вирішення є необхідною умовою для належного функціонування міжнародного комерційного арбітражу на території України як ефективного інституту.

Ключові слова: міжнародний комерційний арбітраж, воєнний стан в Україні, військова агресія Російської Федерації, діяльність Міжнародного комерційного арбітражного суду під час воєнного стану в Україні, визнання та виконання арбітражного рішення, форс-мажорна ситуація, Торгова промислова палата України.

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