



# TIESĪBU HARMONIZĀCIJA BALTIJAS JŪRAS REĢIONĀ PĒC ES PAPLAŠINĀŠANĀS

**2007. gada starptautiskās zinātniskās konferences rakstu krājums**

LU Akadēmiskais apgāds

UDK 34(4)(063)
Ti213

**Tiesību harmonizācija Baltijas jūras reģionā pēc ES paplašināšanās.**
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Latviešu valodas tekstu literārā redaktore **Ruta Puriņa**

Angļu valodas tekstu literārais redaktors **Imants Mežaraups**

Maketu un vāku veidojusi **Ieva Tiltiņa**



ISBN 978-9984-45-531-0

*Dr. iur.* **Inga Kačevska**

# APPLICABLE LEGAL NORMS IN INTERNATIONAL ARBITRATION PROCEDURE

Procedural norms are important *inter alia* in determining the jurisdiction of the arbitral tribunal, conduct of the procedure, composition of the tribunal and making of award etc. Accordingly, such norms are an important element in arbitration process,, thus the parties and the arbitrators shall pay careful attention in choosing them. This can be described with a hypothetical case (Case X).

A foreign offshore company sues a Lithuanian-registered company, seeking compensation forof damages. The main agreement between the parties is written in English, and it contains an arbitration clause. The parties have agreed only that disputes would be heard by an arbitration tribunal consisting of three arbitrators in Riga, Latvia. This arbitration case is international, as the parties are domiciled in different countries, and the process occurs in a third country.[1] It is not difficult to imagine that each arbitrator may take a different position vis-à-vis the legal norms that ought to be applied. This position can be based on the legal traditions that are represented by the arbitrators and on international practice or theory, discussed below.

## *Lex loci arbitri*

In any arbitration process of this type, it is clear that one of the arbitrators will believe that if the parties in the arbitration agreement have not agreed on the procedural norms that are to be applied, then the national laws of the place of arbitration must be automatically applied. In Case X, the process is occurring in Latvia, thus Latvia's Civil Procedure Law should be applied.

The doctrine that if parties have not determined which law is to apply to the arbitration process, then the principle that the law of the location of of the arbitration place shall be applied is known as *lex loci arbitri*, and it has been enshrined both in practice and in theory.[2] The doctrine is also supported by the fact that it is incorporated into Article 5.1(d) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which says that recognition and enforcement of an award may be refused if the party against whom it is invoked can show that the arbitration procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law inf the country where the arbitration took place. This means that if the parties decide on resolution of disputes in a neutral forum, they will also decide on the legal regime that could be applied to their procedure. By applying the national law of the place where the arbitration process takes place, the arbitration tribunal gives the nationality to the award.

Application of the national procedural law of the place of arbitration is convenient, but it is not always the correct solution to apply laws that are completely unrelated to the case. An arbitrator, for instance, might not live in the place where the arbitration process is occurring, and that arbitrator may, therefore, be unfamiliar with local procedural laws. It is also possible that the parties have unintentionally has selected the place of arbitration. Therefore there has been much criticism of this approach,[3] with authors arguing that it is an out-of-date notion and that is inappropriate for

international arbitration processes. Despite this, however, there are quite a few countries which say that the national procedural laws of the country in which the arbitration process takes place must be applied. In Guatemala, for instance, the law states that arbitration processes must be based on the Code of Civil and Commercial Procedure, and any agreement between the parties in the case cannot nullify this requirement.[4] Of course, this begs the question of whether this strict approach does not violate fundamental legal principles of parties' authonomy.

As noted, the parties in Case X did not agree in their arbitration agreement on the language in which the process would occur. According to *lex loci arbitri* doctrine, as the Latvian Civil Procedure Law shall be applied, the Latvian language will be used in the handling of Case X.[5] This approach, however, is not really in line with internationally accepted theory and practice. Usually the language in which the arbitration agreement has been prepared is chosen.[6] In this case, then, it would be the English language.

## Procedural norms determined by the arbitration tribunal

Taking into consideration that there can be contradictions between the *lex loci arbitri* principle and the intent of parties, in recent years there have been efforts to avoid any automatic selection of procedural norms, and the parties entrust the arbitrators to determine the applicable procedural norms. There are international documents in which this principle is enshrined. For instance, the 1961 European Convention on International Commercial Arbitration states in Article 4.1 that parties are free to select arbitrators, determine the place of arbitration, and lay down the procedure to be followed by the arbitrators. If parties are unable to agree on this, then the arbitrators determine those issues. If agreement still cannot be reached, then a special commission shall be entitled to establish those issues.[7]

It is not easy to amend the New York Convention, so the aforementioned UNICTRAL Model Law on International Commercial Arbitration was amended with references to this «new school of thought»: Article 19 was changed to state that if parties could not agree on the applicable rules of procedure, the arbitral tribunal conducts the arbitration in such manner as it considers appropriate. This approach has been adopted by several European countries which have used the UNICTRAL Model Law as a cornerstone for their own legal instruments.[8] Arbitrators, in determining which procedural norms are to be used, evaluate the intent of the parties to the case and the extent to which the selected norms are in line with the relevant process. Arbitrators have the following options in this regard.

### A. *Lex loci arbitri*

The abitral tribunal is free to apply the *lex loci arbitri* principle. In the *Sapphire* case, for instance, parties could not agree on where the process should take place and which procedural norms should be taken into account. Accordingly, the decision was left up to the arbitrator.[9] The arbitrator ruled that the best place to hear the case would be Switzerland, even if that was not in line with the interpretation of the intention of the parties, thus the procedural norms of the relevant canton had to be applied. Part of the reason for this was that the arbitrator was domiciled in Lausanne.

### B. International law

In those cases in which one of the parties is a state or one of its agencies, it is easiest to identify legal norms that are not of a national nature. It has been argued that

if arbitration awards in such cases are assigned nationality, that is in violation of the principle of the state's jurisdictional immunity, as one country's national laws cannot be applied to another country.[10]

A well known case in international law is the Aramco case,[11] where arbitrators in Geneva determined that as one of the parties was a state (Saudi Arabia), theehrefore the arbitration process would be governed by international law, not by the local laws of the Geneva canton. The tribunal ruled that such arbitration can be regulated only by international law, which meant that by analogy, the draft convention «On Arbitration Procedure» shall be applied.[12]

The aforementioned draft convention developed into the Model Rules on Arbitral Procedures which were approved by the General Assembly of the United Nations on 14 November 1958.[13] The document sets out the procedural principles for regulating arbitration between two countries. Article 12 of the Model Rules states that if parties cannot agree on the procedural norms that are to be applied, or if the rules laid down by them are insufficient, the tribunal shall be competent to formulate or complete the rules of procedure. These rules and principles may be derived from different legal systems as well as from non-national sources such as principles of international law, general principles of law, and the usages of international commerce.[14]

There was another case in which one party was a country (Libya), and in that one the arbitrator did not accept the argumentation of Aramco's arbitrators, arguing that the application of national procedural law in an international arbitration does not impinge upon the privileges of the state.[15] Also, an arbitration award which does not have a nationality (which happens when international law is applied) is comparatively less effective than an award which is based on the procedural law of a specific legal system, thus obtaining a nationality.[16] Because the arbitration hearing was held in Copenhagen, the tribunal ruled that the finding must be «Danish». In other words, the case was considered in accordance with Denmark's procedural law.

However, when it comes to disputes between private parties, this alternative application of international law is not available, e.Even thought the practitioners argue whether there are any supranational legal norms.[17]

### C. A foreign country's procedural law

If it is believed that the laws of the country in which the arbitration is held are inappropriate, parties to the case can agree on the application of another country's procedural laws. That, however, creates a very complicated situation. In practice, courts have found that the law does not ban parties from agreeing on the place of an arbitration tribunal and the application of other countries' procedural laws, but this does not happen often. That is quite logical, because such decisions make the procedure complicated and impractical.[18] It is also true that in any event, the mandatory rules that are enshrined in the national procedural law of the country in which the arbitration process takes place cannot be ignored, and that means that two different procedural laws are to be taken into account. Therefore arbitrators may refuse to rule on the procedural laws of a third country.[19]

### D. Norms which applyied to the merits of the case and *lex mercatoria*

In some cases, arbitrators have decided that the most appropriate laws are those which apply to the essence of the matter at hand.[20] Increasingly, however, arbitrators are recognising that the process must not necessarily be regulated by the same legal norms which apply to the dispute as such. Firstly, this, firstly, guarantees that the principle of an arbitration agreement's autonomy is fully observed. Secondly, there

are international instruments specially designed for the international transactions but consisting only of material norms. For example, the UN Convention on Contracts for the International Sale of Goods does not contain the procedural norms.

*Lex mercatoria* is considered as the most suitable set of rules in arbitration processes[21] as this particularly emphasises the anational nature of an arbitral award (meaning that it is of no nationality). However, the boundaries of *lex mercatoria* are so wide and so varied in terms of understandings about the content and scope, thatthus it is also not really clear whether *lex mercatoria* has been enshrined in procedural law and, if so, in which ones specifically. The Latvian Constitutional Court, for instance, has theoretically upheld the idea that there are *lex mercatoria* procedural norms:

> «The Constitutional Court rejects the argument of the Applicant which states that the absence of procedural regulations in the arbitration process must be seen as an absence of requirements which state that the award must be based on, according to Applicant's thinking, Latvia's material and procedural laws and norms. On the contrary – one of the advantages of such a process is the ability to agree that the arbitrator will resolve the dispute as a mediator *(compositeur amiable)*, in line with 'the just and the good' *(ex aequo et bono)*, or on the basis of international trade customs *(lex mercatoria)*.[22]

Even more, the Constitutional Court ruled that even in a national process, it is not mandatory to apply national procedural law, this despite the fact that in practice, lawyers are not yet really prepared for such a modern approach.

The aforementioned alternatives, that are available to arbitrators when the parties have not agreed on the procedural law to be applied, have been criticised and are not applied similarly in the practice. The main argument against the idea is that the national procedural law of one party is just as inappropriate as *lex loci arbitri*, because it is not in line with the essence of the international arbitral process. For instance, in Case X if the Latvian procedural law is applied, the language of arbitration will be Latvian, but thisit is not in line with the principles of international arbitration. In the case of a dispute, of course, more than one language can be used, but that can increase the costs of the process. There can also be certain other problems, such as the question of what happens when an arbitration award is rendered in two different languages: If there is a discrepancy, which of the two texts is given the priority?

Is there another option for arbitrators in Case X or similar cases? There is indeed another alternative, and it is the most appropriate one for any arbitration process, Case X included.

## The Rules of arbitration

Specialists have increasingly been arguing that international arbitration procedure must become increasingly independent of national law.[23] Some authors have even suggested that the application of the law of the place of arbitration should be limited in international arbitration.[24] These authors argue that the best solution is to apply the rules of arbitration institution. If the parties have agreed on the rules and regulations of a specific arbitration institution, then they have presumably chosen a private code, and the law of the country in which the arbitration is held should not be at issue.[25]

The *lex loci arbitri* principle has not been used in practice very much since the 1970s, and a new and alternative theory of delocalisation has emerged.[26] It states that if parties have not agreed on the procedural norms that are to be applied, then there is no mandatory need to use the national law of the country. Instead, the most appropriate norms – rules of arbitration institution – shall be applied. Clearly

in support of this theory is the fact that the rules of arbitration institution offer a sufficiently precise set of legal rules that have been developed specifically for the international arbitration.

It is also positive that analysis of this theory shows that it is not in contradiction to the New York Convention, which enshrines the right of the arbitration tribunal to make an award in accordance with its own rules.[27] This is a very broad interpretation, but it is necessary if one of the world's most popular conventions is to be adapted to contemporary needs.

The rules of arbitration institutions almost always state that if parties have agreed to submit their dispute to the relevant arbitral institution but have not defined the rules which will apply to the process, then it can be assumed that they have agreed to the application of the relevant tribunal's rules.[28]

Even stricter in recent times has been the idea that **arbitration rules take precedence over other sources**. This is confirmed in the Geneva Convention, which does not mention national procedural laws and states that parties to an arbitration agreement shall be free to submit their disputes to a permanent arbitral institution. In that case, the arbitration proceedings shall be held in conformity with the rules of the said institution.[29] According to the Geneva Convention, parties to a dispute must not be forced to accept national procedural laws.[30]

In applying the terms of the Geneva Convention, a court in Luxembourg not only chose the chairman of the arbitration panel and the place of arbitration (in Luxembourg), but also determined that ICC Rules of Arbitration would serve as procedural rules for the proceedings.[31]

Not just the Geneva Convention, but also the laws of such countries as Switzerland,[32] France,[33] and the UK give priority to the rules of the permanent arbitral institution.[22] In England, the law states that the mandatory provisions indicated in the law have effect notwithstanding any agreement to the contrary.

In France, this approach has been upheld by a court.[35] It ruled that the rules of an arbitration institution agreed to by the parties in their arbitration agreement are to be seen as their procedural law. Given this, the ICC Arbitration Court has enshrined a similar concept in its own rules – the proceedings before the arbitral tribunal shall be governed by theses Rules and, where these Rules are silent, by any rules which the parties or, failing them, the Arbitral Tribunal may settle on, whwether or not reference is thereby made to the rules of procedure of a national law to be appllied to the arbitration.[36]

Lord Cook ruled in his award that national *curia* laws are not important in arbitration, because the AAA Rules can be considered to be a code which contained answers that were the basis for a well-founded award[37] in a case in which one party was of Turkish nationality, the other party was from the Bahamas, but the place of arbitration was Miami in the United States.[38]

If an international process occurs in Latvia, meanwhile, national law theoretically makes it possible to rely only on the arbitration rules. The Civil Procedure Law states that parties to a dispute may freely agree on procedure,[39] but it also contains norms related to the issues that must be addressed in rules of the arbitral insitution.[40] The law states very clearly that if parties have agreed to settle their dispute in a permanent arbitration institution, but they have not agreed upon the procedures, then the dispute is resolved on the basis of the rules of the permanent arbitration court. When the issue concerns an *ad hoc* arbitration, the arbitrators define the procedure.[41] The law also provides that applicable procedural law necessarily has to be stated in the award.[42]

A writ of execution can be refused to be issued if the relevant arbitration tribunal has not been established or the arbitration process did not occur in accordance

with the arbitration agreement or the rules set out in Section D of the Law on Civil Procedure.[43] These two alternatives suggest that if the arbitration agreement does specify a concrete arbitration institution which has rules that are in line with imperative legal norms, then the case can be reviewed via the use of these rules as a set of private procedural regulations.

In other words, the delocalisation theory has also been enshrined in Latvia, and there would be no reason why the rules of a specific arbitration court could not be applied to Case X.

There are, however, those who oppose the theory which says that proceedings can be regulated via legal systems that are chosen by the parties to the dispute or by the arbitrator[44] because the proceedings must be regulated not just with the rule of law, but also by law.[45] These authors also argue that if regulations do not regulate a certain issue, arbitrators can offer their own solution and listen to what the parties to the dispute have to say about it, but the fact is that such gaps will very often be filled with the help of the national law.

It goes without saying that such rules are applicable only insofar as a national court does not have to be involved in the proceedings. In many countries, courts are involved in arbitral proceedings, for instance, in securing evidences or claims, in the appointment of an arbitrator, etc. If a national court set aside the arbitral award, the national laws cannot, of course, be ignored, particularly if the award set aside has been filed in the same country in which the arbitration took place.[46]

If in the context of Case X, arbitrators had to evaluate the arbitration agreement in the light of parties' intent taking into consideration the latest trends in international arbitration law. Thus they would find that the Law on Civil Procedure should not be applied. Instead, there would be application of the rules of the arbitral institution which has been chosen by the parties to the dispute. First of all, Case X is international and independent of any national law. The parties are not from Latvia, and the subject of the contract is unrelated to Latvia. Recognition and execution of the ruling will most likely take part in another country. Application of another national law or the *lex mercatoria* principle would complicate the issue.

Because the procedural norms have been determined in Case X, the next step can be to decide on the language of the proceedings. This will depend on the rules of the arbitral institution which the parties have chosen. Universal practice in such cases is that if the parties have not agreed on the language in their agreement, the arbitrators ask for the views of the parties and then come to a decision on the matter.[47] The principle that the arbitrators are free to decide on the language of the proceedings is enshrined in Article 22 of the UNICTRAL Model Law, and in the national laws of a number of countries.[48] In Case X, therefore, the arbitration tribunal would ask the parties for their views and then select the most appropriate language on the basis of previous theory and practice. In this case it would be English, because that is the language of the parties to the relevant agreement, all correspondence between the parties has been in English, and the Latvian language has nothing to do with the transaction or the nationality or domicile of the contractual parties.[49]

In summary, it has to be said that the latest trends show that it is no longer absolutely true or mandatory that a country's procedural law is automatically applied to an arbitration process which occurs in that country's territory. That is particularly true if the parties to the case and the transaction in which they have engaged is not related to the relevant national legal system. If there is conceptual acceptance of the theory that main sources can be not just laws, but also rules of law, then the best solution l in those cases in which parties have not agreed on the applicable procedural norms is to apply the specific rules of the arbitration institution which has been selected.

## References and Endnotes

[1] UNCITRAL: Model Law on International Commercial Arbitration states, in Article 1.3, that an arbitration is international if the parties to an arbitration agreement have their places of business in different countries, but also if the place of arbitration, the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place with which the subject matter of the dispute is most closely connected is situated outside the country where the parties have their places of business. It is an international arbitration, too, if the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.
In legal literature the definition of the word «international» is far broader than that which is included in national or international acts of law. For instance, the French professor Emanuel Gaillard has argued that in addition to the stated definitions, there should be other elements in the determination:
(1) The nationality and place of domicile of the arbitration judges;
(2) The nationality of the parties to the dispute;
(3) The location of the arbitration institution;
(4) The place where the award is executed;
(5) The legal norms that are to be applied to the arbitral procedure;
(6) The legal norms that are to be applied to the merits.
See Gaillard, E. and J. Savage. Fouchard, Gaillard and Goldman on International Commercial Arbitration. The Hague, Boston and London: Kluwer Law International (1999), § 86.

[2] See James Miller & Partners vs. Whitworth Street Estates (Manchester), Ltd. (1970), AC 583. Other cases include Alsing Trading Co., Ltd. & Svenska Tandisticks Aktiebolaget vs. The Greet State award (1954), Sapphire International Petroleum, Ltd. vs. National Iranian Oil Co, BP (Exploration CO. Libya), Ltd., Libyan Arab Republic.

[3] Gaillard and Savage, *op. cit.*, § 1183.

[4] The Guatemalan Code of Civil and Commercial Procedure, Article 288. Quoted in Born, G.A. International Commercial Arbitration, 2nd ed. Ardsley, NY: Transnational Publishers (2001), p. 416.

[5] Article 509.1 of the Civil Procedure Law states that the arbitral process shall be conducted in state language (Latvian) , unless the parties to the case have agreed otherwise.

[6] Gaillard and Savage, *op. cit.*, § 1244.

[7] Article 4.4(d) of the Convention states that upon receiving a request, the president of the arbitration court or the special committee is entitled to establish, directly or by reference to the rules and statutes of a permanent arbitral institution, the rules of procedure to be followed by the arbitrator(s), provided that the arbitrators have not established these rules themselves in the absence of any agreement thereupon by the parties.

[8] This applies to France (Article 1494 of the Code of Civil Procedure), Switzerland (Article 182 of the Statutes of International Private Law), and the Netherlands (Article 1036 of the Code of Civil Procedure).

[9] The ad hoc case Sapphire International Petroleum, Ltd. vs. National Iranian Oil Company, 1963, published in *International Law Review*, 1963, p. 169.

[10] See the *ad hoc* case Texaco Overseas Petroleum Company (US) and California Asiatic Oil Company vs. the Government of the Libyan Arab Republic, 19 January 1977, published in Yearbook of Commercial Arbitration (1979), p. 177.

[11] Saudi Arabia vs. Arabian American Oil Company (Aramco), 27 International Law Reports (1963), p. 117. The case is well known for several fundamental notions. In interpreting the concession agreement, for instance, arbitrators established that «although the Concession Agreement is connected with the Hanbali school of Moslem law, as applied in Saudi Arabia---from from which it derives its validity and effectiveness---the Interpretation of this Agreement should not be based an that law alone. The Interpretation of contracts is not governed by rigid rules; it is rather an art, governed by principles of logic and common Sense, which purports to lead to an adaptation, as reasonable as possible, of the provisions of a contract to the facts of a dispute» See p. 172.

[12] Saudi Arabia vs. Arabian American Oil Company (Aramco), 27 International Law Reports (1963), p. 156.

[13] Resolution No. 1262(XIII), see *http://untreaty.un.org/ilc/guide/10_1.htm*.

[14] Article 6 of the Resolution on Arbitration between States, State Enterprises or State Entities, and Foreign Enterprises. Institute of International Law, adopted at Santiago, 12 September 1989.

[15] The ad hoc case British Petroleum Company (Libya) vs. The Government of the Libyan Arab Republic, 53 International Law Reports (1979), pp. 297–388.

[16] *Ibid*., p. 147.

[17] See Sommarajah, M. «Supremacy of the Renegotiation Clause in International Contracts», *Journal of International Arbitration*, Vol. 5, No. 2 (1988), pp. 97–114.

[18] See the House of Lords case Naviera Amazonia Paruana SA vs. Compania Internacional de Seguros de Peru, 1998, 1 Lloyd's Report 116.
[19] Lorniet, C. Florida International Arbitration Act, 26 ILM949, 1987, p. 952.
[20] ICC Case No. 5029, 1986. Yearbook of Commercial Arbitration, Vol. XII, 1987, pp. 113–123.
[21] See Rensmann, T. Anational Arbitral Awards: Legal Phenomenon or Academic Phantom?», *Journal of International Arbitration*, Vol. 15, No. 2, 1998, pp. 37–66.
[22] Constitutional Court Ruling on Case No. 2004-10-01, *Latvijas Vēstnesis*, No. 3167, 1 8 January 2005.
[23] Gaillard and Savage. Fouchard, Gaillard..., *op cit.*, § 82.
[24] Pellonppa, M. and D. D. Caron. The UNICTRAL Arbitration Rules as Interpreted and Applied. Helsinki: Finnish Lawyers' Publishing (1994), p. 63.
[25] Redfern, A. and M. Hunter. Law and Practice of International Commercial Arbitration, 2nd ed. London: Sweet & Maxwell (2003), p. 76.
[26] *Ibid.*, p. 89.
[27] Gaillard and Savage. Fouchard, Gaillard... , *op. cit.*, § 253. The authors note that Article 1.2 of the convention uses the concept of «arbitration awards» not only in terms of decisions that have been taken by arbitrators on specific matters, but also the decisions taken by the arbitral bodies. .
[28] This is stated in the first article of arbitration regulations in Switzerland, as well as in those of the International Chamber of Commerce and the Latvian Chamber of Commerce of Industry.
[29] Article 4.1(a) of the convention.
[30] Hacher, D.T. «The European Convention on International Commercial Arbitration of 1961. In Yearbook of Commercial Arbitration XX (1995), p. 1020.
[31] Case before Tribunal d'arrondissement de Luxembourg, 7 June 1993. In Yearbook of Commercial Arbitration XX (1995), p. 1067.
[32] See *http://www.jus.uio.no/lm/switzerland.international.arbitration.convention.1969/24.html*.
[33] See *http://www.jus.uio.no/lm/france.arbitration.code.of.civil.procedure.1981*.
[34] Section 4 of the English Arbitration Statute.
[35] Cour d'appel de Paris (1reCh. suppl.), 26 avril 1985, Cour d'appel de Paris (1reChambre suppl.), 29 novembre 1985 Kluwerarbitration.com database.
[36] See *http://www.jus.uio.no/lm/switzerland.international.arbitration.convention.1969/24.html*.
[37] The Bay Hotel v. Cavalier Construction Co Ltd. UKPC 34 (2001), appeal No. 32.
[38] The case was appealed further, and the court found that US laws should have been applied in addition to the regulations. See *http://www.privy-council.org.uk/output/Page50.asp*.
[39] In Section 506.
[40] Section 486[1] says that in addition to other information, the regulations of an arbitration tribunal must address the procedure for dispute resolution, as well as other procedural issues that are not in violation of the law.
[41] Section 506.2.
[42] Section 530.
[43] Section 536.
[44] Toope, S. Mixed International Arbitration. Grotius Publications, Ltd. (1990), p. 41.
[45] *Redfern, A.* Et al Law and Practice of International Commercial Arbitration. *Kluwer Law International*, 2004, § 2–13.
[46] Most countries allow for the setting aside of the arbitral awards in the national courts. Moreover, Article 6 of the UNICTRAL Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, for instance, states that a court or other institution can assist an arbitration tribunal in specific instances (appointing an arbitrator, challenging an arbitrator, determining jurisdiction, or set aside an arbitral award).
[47] This is seen in Article 17 of the LCIA, Article 17 Swiss Chambers' Court of Arbitration, and Article 4 of Rules of Latvian Chamber of Commerce and Industry, among others.
[48] Examples include Article 22 of the Russian law on international commercial arbitration (*http://www.jus.uio.no/lm/russia.international.commercial.arbitration.1993/doc.html*), in Section 26 of the Bulgarian law on international arbitration (*http://www.bcci.bg/arbitration/lawofarbitr.htm*) and in Section 21 of the Iranian law on international arbitration. Section 25 of the Lithuanian law in this area says that hearings are to be held in Lithuanian, but in international cases, the arbitrators can decide on the language if the parties to the case have not reached agreement on the language or languages of the proceedings.
[49] It may be that the selection of language often has to do with the fact that arbitrators sometimes do not speak foreign languages. That is particularly true in Latvia. If parties have agreed on a language in their arbitration agreement, then that agreement is obligatory for the arbitrators, and an arbitrator who speaks the language must be found. In practice, however, there has been an indirect differentiation between levels of skills – the arbitrator's language skills may be less fluent in the proceedings

themselves than in the award from the arbitration tribunal. See Castineira, E. and M. Petsche. «The Language of the Arbitration: Reflections on the Selection of Arbitrators and Procedural Efficiency», *ICC International Court of Arbitration Bulletin*, Vol. 17, No. 1, 2006, p. 38. In any event, arbitrators must have sufficient language skills to be able to work in that language. If certain discounts can be given in this regard to arbitrators, then the chairman must have fluent skills in the relevant language. Latvian courts have affirmed that the arbitrator must speak the language agreed to by the parties. In Case No. CA-4208/20 (19 August 2004), the Department of Civil Cases of the Rīga Regional Court ruled that the arbitration panel in the relevant case not only heard a case over which it had no jurisdiction, but also violated the agreement between the parties on the language of the proceedings:

> «From the agreements between the two parties, it is evident that the parties have made use of the rights which are given to them in Article 509.1 of the Civil Procedure Law and have agreed that the arbitration process shall be in English. From the 20 January 2004 award, it is evident that on 25 November 2003, the proceedings were in Latvian, and the assistance of a translator was used. This shows that the proceedings occurred in the state language, and only a few procedural activities occurred in English. The Department of Civil Cases finds that in this specific case it cannot be said that the agreement between the parties on the arbitration language was taken into account, because the proceedings should have taken place in English.»

In other words, the court found that an arbitrator who has insufficient or non-existent skills in the language which has been agreed to by the parties to a case in their arbitration agreement cannot hear the case even if all of the participants in the case understand the state language.