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PROCEEDINGS ON CHALLENGING THE DECISION OF THE ARBITRATION COURT

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ABSTRACT

In the conditions of modernization and reform of our country, the ongoing reforms in the law enforcement and judicial-legal spheres are aimed primarily at the comprehensive protection of human rights, freedoms and legitimate interests. Providing the State with the role of the main reformer, ensuring the rule of law, and conducting a strong social policy represent reforms that are being implemented gradually and gradually. At the same time, it should be noted that at present, in addition to competent courts, arbitration courts face various problems when considering a number of cases on civil and economic disputes. The article analyzes the proceedings in cases of challenging the decision of the arbitration court and develops appropriate proposals.

Keywords: arbitration court, prosecutor, arbitration court, decision, law, code.

INTRODUCTION

In the Republic of Uzbekistan, systematic work is being carried out in the field of ensuring the rule of law, improving the investment environment, effectively regulating foreign trade, developing alternative mechanisms for resolving economic and civil disputes, and guaranteeing the rights of subjects. At the same time, based on the 15th goal of the new Development Strategy put forward by the President of the Republic of Uzbekistan Sh.M. Mirziyoev, creation of the necessary organizational and legal conditions for wide use of alternative methods of conflict resolution, further expansion of the scope of application of the conciliation institution, arbitration courts It is of urgent importance to turn it into an effective alternative dispute resolution institution that will gain the trust of citizens and entrepreneurs, and to further improve the practice of law enforcement in this direction [1, PP.19-25].

MATERIAL AND METHODS

In Uzbekistan, the Law "On Arbitration Courts" (2006), "On Mediation" (2018), "On International Commercial Arbitration" (2021), the President of the Republic of Uzbekistan "Measures to further improve the mechanisms of attracting foreign direct investment to the economy of the Republic on" (2019), "On measures to further improve the mechanisms of alternative dispute resolution" (2020) and Decree "On the new development strategy of Uzbekistan for 2022-2026" (2022) on improving the environment for direct investment in foreign trade It is no exaggeration to say that it is a clear example of systematic work being carried out in the field of effective regulation of activities, development of alternative mechanisms for economic and civil dispute resolution, and guaranteeing the rights of subjects.

RESULTS

Arbitration courts are a form of non-state court that is freely chosen by the parties to hear and resolve legal disputes and disputes.

However, it consists of permanent and temporary arbitration courts, and is a non-governmental body that resolves disputes arising from civil legal relations, including economic disputes between business entities. Unlike state courts, in particular, civil and economic courts, arbitration courts appear in the form of a court established based on the agreement of the parties [1, p.346].

The number of cases considered by the competent courts, related to the decision of the arbitration court, includes cases on applications to cancel the decisions of arbitration courts and to issue writs of execution for the compulsory execution of the decisions of arbitration courts.

In particular, the Law of the Republic of Uzbekistan "On Arbitration Courts" adopted in 2006 (Chapter 7) confirmed that the interested participants in the arbitration have the right to dispute the decision of the arbitration court.

It should be noted that the legislator does not use the term "appeal" in relation to the decision of the arbitration court. The terminological difference also reflects an important difference in the institutions of dispute and complaint. An appeal refers to an appeal by a party to a higher court and, accordingly, a new review of the case (appellate court) or a review of the legality and reasonableness of the decision (cassation court).

However, based on the general concept and principles of the Law "On Arbitration Courts", state courts are not considered superior to arbitration courts, so they do not have the right to review the decisions made by the arbitration court in an appeal or cassation procedure.

State courts perform only the control function in relation to decisions made by arbitration courts, but the performance of this function is strictly limited by law and should not go beyond the scope of checking the procedure of arbitration courts (formation of the arbitration court, compliance with the rights of arbitration participants, etc.). State courts do not have the right to interfere with the substance of the decisions made by the arbitration court, as well as to overestimate the factual circumstances on which the decision of the arbitration court is based [2, p.76].

DISCUSSION

Thus, V. F. Yakovlev stated that "there is a big difference between an appeal and a dispute. Appeal refers to the verification of the correctness of the court decision in terms of its legality and reasonableness. Competent courts do not have this right in relation to arbitration courts. In this case, the competent courts are not considered to be a court of higher instance in relation to the arbitration courts. These are alternative, parallel methods of dispute resolution, in this sense, the competent court and the arbitration court have the same level. The competent court exercises state control only within the scope and limits established by law. In this regard, the competent court examines whether the arbitral tribunal's performance of certain actions is legal or not. In this case, it is necessary to check whether the composition of the arbitration court complies with the requirements of the law, whether the arbitration court deviates from the terms of the contract, which is a component of the contract, whether the procedure of the court hearing is followed, whether the parties are given an equal opportunity to protect their rights,

or not. will be However, in no case shall a court of competent jurisdiction hold proceedings on the merits of this dispute" [3, PP.13-14]. According to I.V. Reshetnikova, "the decision of the arbitration court has nothing to do with re-examination of the dispute to check the legality and reasonableness of the possibility of dispute. This is another, specific form of state control (provided by a competent court) over the decisions of arbitration courts" [4, PP.104-10].

Therefore, the legislator gives the participants of the arbitration proceedings the right to dispute the decision of the arbitration court, not from the point of view of incorrect decision of the case, but from the point of view of non-compliance with the main procedural rules.

At the same time, it should be noted that the annulment of the decision of the arbitration court does not mean that the arbitration agreement is legally terminated (unless this is clearly stated in the decision of the state court). In the case of annulment of the decision of the arbitral tribunal, the proceedings of the dispute may be reconsidered in the relevant arbitral tribunal on the basis of the arbitration agreement.

In the opinion of Professor F.H. Otakhanov, the parties to the arbitration proceedings can only dispute the decision of the arbitration court. Because the economic court does not have the right to review the case. Even if the decision of the arbitration court is annulled by the economic court, the dispute will be reviewed by the arbitration court again (provided that the arbitration agreement or provision has not been subsequently revoked or changed) [3, p.40].

In particular, according to Article 29 of the Economic Procedural Code, it is established that, upon the agreement of the parties, disputes that arise or may arise and are related to the economic court may be referred to the arbitration court for consideration until the economic court issues a decision.

Also, there is an agreement of the parties involved in the case to submit this dispute for consideration to the arbitration court, if the opportunity to appeal to the arbitration court is not missed, and if the respondent who opposes the consideration of the case in the economic court, no later than his first application on the content of the dispute, a motion to transfer the dispute to the arbitration court for resolution if he gives, it is determined that the claim will be left pending.

Disputes arising out of civil legal relations, arising or likely to arise, and related to the economic court, may be referred to the arbitration court for consideration until the economic court issues a decision, according to the agreement of the parties.

The experience of foreign countries provides an opportunity to overcome the problem of "double control" (or in other terminology "double verification"). Thus, German procedural law rejects the possibility of filing an application for annulment of an arbitral award if it is aimed at compulsory enforcement [4, p.178].

In Brazil, the 1999 Arbitration Law abolished the system of "double confirmation" of arbitral awards [5, PP.49-51].

Based on this, it can be noted that in the process of improving the legislation of the Republic of Uzbekistan on arbitration courts, it will be appropriate to consider the issue of using the experience of Germany and Brazil.

In our national legislation, an application to annul the decision of the arbitration court is submitted by the party to the arbitration or its representative. If this application is submitted by a representative of the party, it must be accompanied by a reference letter or other document

confirming the authority of the representative. If the application for annulment of the decision of the arbitration court was submitted in violation of the requirements stipulated in the first and third parts of Article 349 of the Civil Procedure Code, as well as the provisions of this article, the civil court shall accept such an application in accordance with the provisions provided for in Article 194 of the Civil Procedure Code. refuses. In the arbitration, the party or its representative is considered a subject, and third parties can also participate directly as a subject of the arbitration.

Statistics of economic cases considered for annulment of the decision of the arbitration court

№	Areas	Review completed work			from that					
					satisfied rejected			satisfied rejected		
		2020 y.	2021 y.	2022 1st half	2020 й.	2021 y	2022 1st half	2020 y.	2021 y.	2022 1st half
1	Andijan region	0	0	0	0	0	0	0	0	0
2	Bukhara region	1	2	0	1	2	0	0	0	0
3	Jizzakh region	0	1	0	0	1	0	0	0	0
4	Kashkadarya region	0	0	0	0	0	0	0	0	0
5	Karakalpakstan R.	0	2	0	0	1	0	0	0	0
6	Navoi region	0	0	0	0	0	0	0	0	0
7	Namangan region	0	0	0	0	0	0	0	0	0
8	Samarkand region	0	2	1	0	1	1	0	1	0
9	Syrdarya region	0	1	1	0	1	0	0	0	1
10	Surkhandarya region	3	6	3	1	3	0	2	3	2
11	Tashkent region	0	0	0	0	0	0	0	0	0
12	Tashkent city	15	18	13	5	5	4	9	12	7
13	Fergana region	0	0	0	0	0	0	0	0	0
14	Khorezm region	1	3	2	0	2	1	1	1	1
ЖАМИ		**20**	**35**	**20**	**7**	**16**	**6**	**12**	**17**	**11**

Based on these statistical data, it should also be noted that according to the second part of Article 49 of the Law "On Arbitration Courts", if the arbitration court's decision does not specify the execution period, it must be executed immediately [6]. However, in accordance with the first part of Article 46 of this Law, the party to the arbitration may dispute the decision of the arbitration court by applying to the competent court to cancel the decision within thirty days from the date of receipt of the decision of the arbitration court.

Also, in the first parts of Article 349 of the Criminal Code and Article 223 of the Criminal Code of Ukraine, the party to the arbitration proceedings shall submit the decision of the arbitration court to the civil court or the economic court within thirty days from the date of receipt of this

decision regarding the decision of the arbitration court on the dispute related to the civil court or the economic court. it is established that it can be contested by filing an application for annulment of the decision. In practice, the Permanent Arbitration Court under the Tashkent city branch of the Association of Arbitration Courts of Uzbekistan, in most cases, in the conclusion of the decision, states that "this decision comes into force immediately and is not subject to appeal, within 30 days from the date of receipt of the decision, the parties shall be informed of the "On Arbitration Courts" of the Republic of Uzbekistan. "Let it be explained that they can dispute this decision in the relevant court by presenting the evidence proving the circumstances mentioned in the law" [7, p.46].

From this it can be understood that the sentences indicated in the conclusion of the decision are completely contradictory to each other. In addition, the Arbitration Court of the Syrdarya region under the Public Fund for the Development of International Arbitration and Arbitration Courts of Uzbekistan noted in the conclusion of the decisions that "the decision should be immediately enforced, it is not possible to appeal against this decision" [8, p.35].

The conclusion of this arbitral award is sure to prejudice the rights of the parties. So, it is clear that such cases in practice and some norms of the noted normative legal documents contradict each other.

In this regard, in order to eliminate these contradictions, we propose to state the second part of Article 49 of the Law "On Arbitration Courts" in the following wording:

"The decision of the arbitration court shall be enforced thirty days after the date of its receipt by the parties to the arbitration or third parties."

According to the legal scholar F.Kh. Otakhanov:

- for the judge to go beyond the limit specified by the law;
- interfering with the activity of the arbitration court;
- to independently re-evaluate the evidence used in the arbitration;
- it is not allowed to review the arbitral award or the merits of the case itself [9, p.60].

At the same time, the competent court is bound by the instruction of the arbitral tribunal in the application on the grounds of annulment of the decision, as well as by the evidence of the interested party. Unfortunately, at the current stage of the development of judicial practice, state courts do not always follow the above rules, which are mandatory in the implementation of the procedures for reviewing the decisions of arbitration courts, leading to various unfortunate situations.

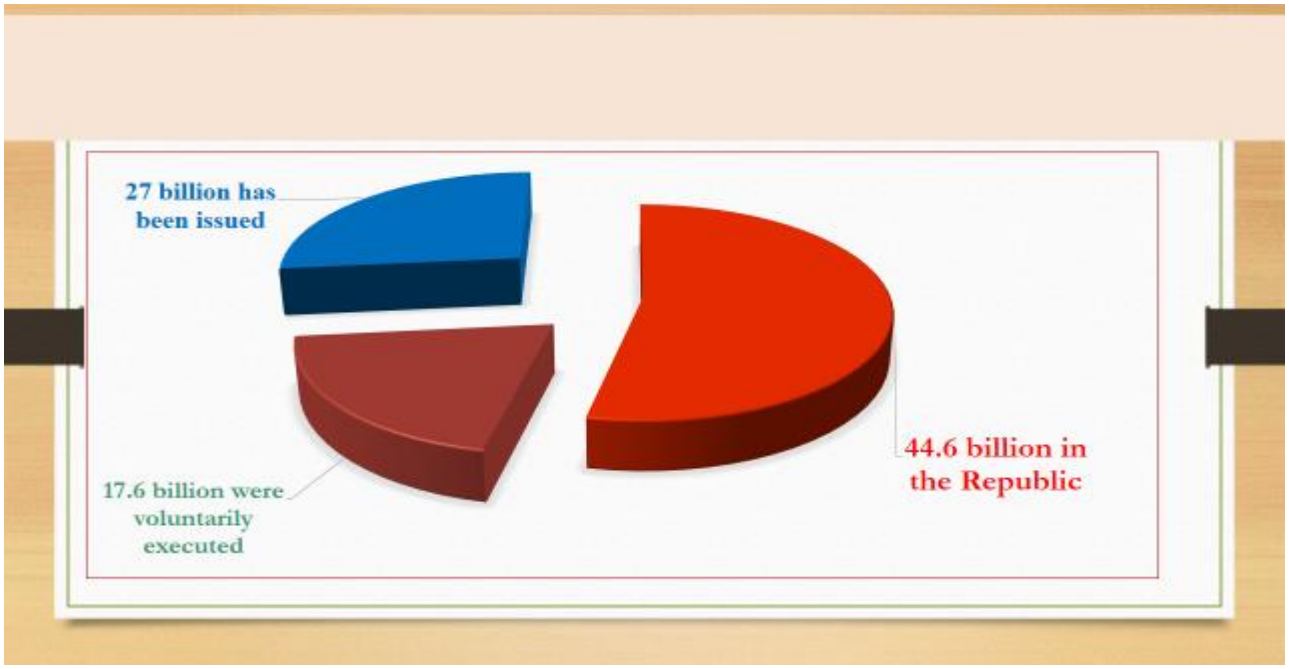
To date, some permanent arbitration courts that exist in practice in Uzbekistan have been making decisions related to dispute resolution contrary to Article 5 of the Law "On Arbitration Courts".

3 thousand 576 cases of this category were considered and resolved by arbitration courts in two years (857 cases in 2020, 2 thousand 719 cases in 2021) and illegal decisions were made to recover a total of 44.6 billion soums. These indicators, that is, the number of cases against the law are increasing year by year and are becoming a systemic problem, which worries us all.

However, Article 5 of the Law "On Arbitration Courts" stipulates that state authorities and management bodies cannot be parties to an arbitration agreement.

Also, in the second part of Article 226 of the EPC, if the dispute considered by the arbitration court is not the subject of arbitration in accordance with the law, or the dispute was considered

by the arbitration court in violation of the requirements of Article 5 of the Law "On Arbitration Courts", the decision of the arbitration court is directly economic can be canceled by the court. However, even by the economic courts, enforcement notices were issued to collect 27 billion soums from the budget for the compulsory execution of the illegal decisions of arbitration courts of this category, and violations of the law were allowed [10].



Article 46 of the Law stipulates that the parties to the arbitration may dispute the decisions of the arbitration court within thirty days from the date of receipt of the decision of the arbitration court by submitting an application to the competent court to cancel the decision.

According to Article 47 of the Law, the decision of the arbitration court should be annulled by the competent court if the party to the arbitration, who applied for the annulment of the decision of the arbitration court, submits evidence proving the invalidity of the arbitration agreement on the grounds provided for in the legislation.

However, due to the mutual interest of the parties, after the conclusion of the voluntary arbitration agreement between them, the issue of enforcement was also performed voluntarily due to the fact that there was no other person to dispute the decision of the arbitration court. As a result, a total of 44.6 billion soums were withdrawn from the state treasury.

Article 230 of the "Arbitration Procedural Code of the Russian Federation" and Article 418 of the "Civil Procedural Code of the Russian Federation" of the Russian Federation stipulate that the prosecutor has the right to apply to the competent court to cancel the decision of the arbitration court if the decision of the arbitration court affects the interests of the Russian Federation [11, p.139]. A similar norm is also noted in Article 50.2 of the Civil Procedure Code of the Republic of Azerbaijan [12].

CONCLUSION

It seems that there is no solution in our national legislation to prevent such illegal situations. However, according to Article 41 of the Law of the Republic of Uzbekistan "On the Prosecutor's Office", the prosecutor has the right to apply to the court to protect the rights and legal interests of citizens, legal entities and the state.

But the prosecutor's office is governed by the Law "On Arbitration Courts".
According to Article 46, he cannot apply to the competent court for annulment of the above illegal decisions.
Based on the above, in order to eliminate these problematic situations and prevent them in the future, we propose to supplement Article 46 of the Law "On Arbitration Courts" with the following new part:
"In order to protect the rights and legal interests of the state, the prosecutor may dispute the decision of the arbitration court by filing an application with the competent court to cancel the decision of the arbitration court."
At the same time, it is appropriate to make appropriate additions and changes to Article 349 of the Criminal Code and Article 223 of the Criminal Code in order to bring them into line with the above new part proposed to be added to Article 46 of the Law on Arbitration Courts.

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