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LAW INSURANCE MEASURES IN ARBITRATION JUDGMENTS

Abstract:

Arbitration is one of the alternative and efficient ways of resolving disputes. The fundamental characteristic of arbitration is the private and out-of-court resolution of disputes. In this paper, I will deal only with the part that has to do with the insurance measures to sue in arbitration. Security measures as a whole are measures that aim to preserve the status quo of a certain situation in order to ensure the implementation of the final decision of the arbitral tribunal
The first part. We will discuss the purpose of the security measures is to prevent the concealment or disappearance of an asset, in order to ensure the final execution
Second part. Innovation of the law "For arbitration in the Republic of Albania and in the spirit of the Jurisprudence of the European Court of Justice.
The third part, the ambiguities and problems brought by the harmonization law with the provisions of the code of civil procedure in terms of its orders in the first paragraph, it is determined that it is the arbitration court that has jurisdiction to take measures to secure the lawsuit defined in the agreements of arbitration.
The fourth part deals with the comparison of several legislations that provide for the possibility to execute decisions on security measures outside the context of the final arbitral award . These laws have provided for the possibility of enforcement of security measures by the court of the country where the arbitration takes place.
The last part will deal with the types of temporary measures of arbitration courts reflected in practice.
Conclusions The new law on arbitration has problems that need to be improved and provisions to be found. The law has not provided for an appeal against the insurance measure, it should only be allowed in the final decision, as the autonomy of the arbitration procedure from the review of the courts must be preserved. Safeguards in arbitration may also be taken ante causam (before the arbitration proceedings begin). As such, they can be taken both by institutional arbitration (through the emergency arbitrator) and by judicial jurisdiction, despite the fact that the basis of dispute resolution belongs to arbitration. The competence of the judicial authority to take security measures has also been confirmed by the Court European Court of Justice, despite the fact that the arbitration law tries to minimize the intervention of the court, if in fact it could only be achieved by harmonizing it with the legislation in order to make it applicable.

Keywords:

arbitration, security measures, status quo, execution of security measures, European Court of Justice.

JEL Classification: K40, K40, K40

INTRODUCTION

Arbitration is one of the alternative and efficient ways of resolving disputes. The fundamental characteristic of arbitration is the private and out-of-court resolution of disputes. Businesses and not only, are interested in the quick and non-bureaucratic resolution of disputes. The arbitration procedure is transparent and provides means of control of the procedure by the parties. As the main advantages of arbitration over the courts, the following are considered: - flexibility; - efficiency in time and expenses; - the finality of the arbitration decision; - confidentiality of the procedure and decisions. The Republic of Albania has acceded to the European Convention on International Commercial Arbitration, Geneva, 21.4.1961, as well as to the law no. 8688, dated 9.11.2000, "On the accession of the Republic of Albania to the Convention "On the recognition and execution of foreign arbitration awards", New York, dated 10.6.1958. Through these acts, Albania has aligned itself with those legally civilized countries, becoming part of international conventions, with the aim of regulating the field of arbitration and the execution of arbitration decisions in accordance with contemporary European and international standards. Arbitration has also been part of the

local legal system through the regulations approved in the content of the Code of Civil Procedure with law no. 8116, dated 29.3.1996. These provisions were repealed by law no. 112/2013, dated 18.4.2013. Under these conditions, it turns out that we are facing a legal omission, since the chapter on arbitration contained in the Code of Civil Procedure has been repealed and, on the other hand, no other specific regulation has been approved for it. Consequently, the existence of a legal vacuum since 2013 has had a negative effect on the development of arbitration processes by domestic arbitration courts. Starting from the above, in the absence of a special law, Albania has prepared the legal framework for the regulation of arbitration, in the direction of consolidating the rule of law, guaranteeing human rights, resolving disputes and conflicts between the state and private parties or private parties with each other and against the obligations assumed internationally by approving the law 52/2023 "On arbitration in the Republic of Albania" In this paper I will deal only with the part that has to do with insurance measures lawsuit in arbitration Security measures as a whole are measures that aim to preserve the status quo of a certain situation in order to ensure the implementation of the final decision.

1. Establishing measures to secure the lawsuit

The purpose of the security measure is to prevent the concealment or disappearance of an asset, in order to ensure the final execution. The European Court of Justice has defined temporary measures within the meaning of Article 24 of the Brussels Convention as; Measures intended to preserve the factual situation or the law whose purpose is to protect those rights whose recognition has been requested through the judgment of the merits. The most important issue when seeking injunctive relief in an arbitration proceeding is which jurisdiction has jurisdiction to grant injunctive relief? Theoretically, there are three possibilities: First, security measures can be taken exclusively by judicial jurisdiction; secondly, the security measures can be granted exclusively by the arbitration court and the execution of the decision be left to the state judicial authorities; thirdly, there is the possibility of resorting to both the court and arbitration for the taking of security measures.

2. Measures to ensure the lawsuit from the European court and the innovation of the law "On arbitration in the Republic of Albania"

In Article 11 of Law No. 52/2023 "On Arbitration in the Republic of Albania."[1] determine the way of taking these measures before the establishment of arbitration courts when not taking the measures would cause serious and irreparable damage to the parties, the first paragraph deals with the development of local arbitration procedures. The law has also left space in cases where the place of arbitration is located outside the territory of the Republic of Albania or when the place of arbitration is not defined in the arbitration agreement, giving competence to the courts to take temporary measures according to the rules defined by the Code of Procedure Civil.

In relation to the second paragraph that are judged in international arbitration, in accordance with Article 81 of Law 10428/2011 "On private international law"[2] the Albanian courts have jurisdiction over measures to secure the lawsuit, when they must be executed in the Republic of Albania. This provision, Article 81, conditions the taking of measures to secure the lawsuit only with the place of its execution and not with the jurisdiction. Also, this provision is not expressed in relation to the time ratio between the moment of

[1] Law no. 52/2023 "On Arbitration in the Republic of Albania."
[2] Law 10428 /2011 "On private international law"

making the request for an insurance measure and the stage in which the process of solving the basis of the case should be in the other jurisdiction. Based on the purpose that the imposition of the security measure seeks to fulfill, based on Article 204 of the Code of Civil Procedure, as well as in the spirit of the Jurisprudence of the European Court of Justice, we say that the request for a security measure can be presented as at the moment when the lawsuit the foundation has not yet been raised, even when it is in the trial process and a final decision has not yet been given.

Safeguards in arbitration may also be taken ante causam (before the arbitration proceedings begin). As such they can be taken both by institutional arbitration (through the emergency arbitrator) and by judicial jurisdiction, regardless of whether the basis of dispute resolution lies with arbitration. The Republic of Albania has ratified the European Convention on International Arbitration[3] Geneva, April 21, 1961 which in article 6 point 4 thereof: "A request for interim measures or security measures addressed to a judicial authority cannot be considered as incompatible with the arbitration agreement nor as a filing of the essence of the

[3] European Convention on International Arbitration, Geneva, April 21, 1961, approved by law no. 8687, dated 09.11.2000

case in court". Which means that, the fact that the parties have entered into an arbitration agreement to resolve the merits of the case, does not deprive them of the right to turn to the judicial authority for taking measures to secure the claim and that the court cannot judge them equally as to the merits of the matter. The competence of the judicial authority to take security measures has also been confirmed by the European Court of Justice, which in the decision on the case Van Uden Maritime BV v. Kommanditgedellschaft in Firma Deco-Line and another[4] in summary, it is stated that: On a proper construction of Article 5, point 1, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, and by the Convention of 25 October 1982 on the accession of the Hellenic Republic, the court which has jurisdiction by virtue of that provision also has jurisdiction to order provisional or protective

[4] Judgment of the Court; 17 November 1998; Van Uden Maritime BV, trading as Van Uden Africa Line v Kommanditgesellschaft in Firma Deco-Line and Another; in Case C-391/95

measures, without that jurisdiction being subject to any further conditions.

2. Where the parties have validly excluded the jurisdiction of the courts in a dispute arising under a contract and have referred that dispute to arbitration, no provisional or protective measures may be ordered on the basis of Article 5, point 1, of the Convention of 27 September 1968.

3. Where the subject-matter of an application for provisional measures relates to a question falling within the scope ratione material of the Convention of 27 September 1968, that Convention is applicable and Article 24 thereof may confer jurisdiction on the court hearing that application even where proceedings have already been, or may be, commenced on the substance of the case and even where those proceedings are to be conducted before arbitrators.

4. On a proper construction, the granting of provisional or protective measures on the basis of Article 24 of the Convention of 27 September 1968 is conditional on, inter alia, the existence of a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of

the Contracting State of the court before which those measures are sought.

5. Interim payment of a contractual consideration does not constitute a provisional measure within the meaning of Article 24 of the Convention of 27 September 1968 unless, first, repayment to the defendant of the sum awarded is guaranteed if the plaintiff is unsuccessful as regards the substance of his claim and, second, the measure sought relates only to specific assets of the defendant located or to be located within the confines of the territorial jurisdiction of the court to which ap.

An important and complex decision was issued in the case of *Marc Rich and Co. AG* v. *Società Italiana Impianti PA*[1] by the European Court (hereinafter referred to as the *Marc Rich* case, and the case on this issue in the English courts is referred to as *The Atlantic Emperor*).[2] One implication was that the exclusion term 'arbitration' included the preliminary issue of the validity or existence of an arbitration agreement, and consequently this issue was not covered by the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1968 (the '1968 Brussels Convention'). Further consideration has been given to this important

issue by the European Court in the recent case of "*Van Uden Maritime BV, Africa Line* v. *Kommanditgesellschaft in Firma Deco-Line and Another*."

The judgment of the European Court in the *Marc Rich* case and the judgments of the English courts in the *Atlantic Emperor* seem to bring inequitable burdens upon persons ironically outside the European Union and competition of international jurisdiction in terms of the existence or validity of an arbitration agreement among the member countries of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the '1958 New York Convention'). There are ways of eliminating inequitable burdens upon such persons and avoiding competition of international jurisdiction. This is achieved by unified rules on international jurisdiction inferred from the 1958 New York Convention in order to determine jurisdiction of a national court in terms of the preliminary issue of existence or validity of an arbitration agreement where an agreement on international jurisdiction is absent[5]

[5] Ikko Yoshida, Lessons from *The Atlantic Emperor*: Some Influence from the *Van Uden* Case, *Arbitration International*, Volume 15, Issue 4, 1 December 1999, Pages 359–380

Article 23 of the law[6] provides that, except when the parties agree, the arbitration court at the request of one party may decide to take temporary measures if the party submits evidence in writing, for an irreparable or serious (fundamental) damage. Most regulations: “irreparable harm” or serious. ICSID CONVENTION, REGULATIONS AND RULES: "irreparable damage" should be understood in the economic and not the literal sense of the word. Unicentral Model Law,[7] The Unicentral Model Law does not necessarily require irreparable harm. N. 17A(1)(a): "The party seeking an injunctive relief under Article 17(2)(a)(b) must prove to the arbitral tribunal that the damage cannot be adequately remedied by granting of the final arbitration decision, if the security measure is not taken and this substantial damage is greater than the damage that can be caused to the party against whom the measure is directed, if the security measure is not imposed". UNCITRAL Model Law and ICSI Regulations. The traditional ICSID standard is to (1) not impose injunctive relief when the damage can be compensated by the final arbitral award and (2) warrant injunctive relief when there is a “serious continuing risk of destruction of

[6] Law no. 52/2023 "On Arbitration in the Republic of Albania
[7] For more: http://www.uncitral.org/

the investment," because the latter causes "irreparable damage". Proportionality or "balance of interests" Unicentral Model Law "The party seeking an injunctive relief under Article 17(2)(a)(b) must prove to the arbitral tribunal that the damage cannot be adequately remedied by granting of the final arbitration decision, if the security measure is not taken and this substantial damage is greater than the damage that can be caused to the party against whom the measure is directed, if the security measure is imposed". In order to consider the irreparable damage, the damage caused to the other party by the imposition of this security measure must also be taken into consideration. The arbitration courts must make an assessment of the damage measures that can be caused to both parties. it can assess prima facie jurisdiction. The arbitration court looks at the jurisdiction for the prima facie claim. If the arbitration court judges prima facie that the claim falls within its jurisdiction, then it can be expressed with a decision on the insurance measure.

If later, after examining the issue of jurisdiction, the arbitration court finds that it does not have jurisdiction over the merits of the case, then the power of the decision on the insurance measure given by it falls. Prima facie success in the merits

The traditional position has been - Prima facie success in the merits of the case at trial was not necessary to be considered when the court decided the temporary measure, because even a preliminary assessment of the merits of the case could risk the prejudice of the case. Unicentral Model Law,[8] n. 17A(1)(b)[9] « ..the party seeking an interim measure under Article 17(2)(a)(b) must prove to the arbitral tribunal that there is a reasonable possibility that the requesting party will win the underlying action. The International Court of Justice (ICJ) has recently accepted the prima facie success of the case as a criterion. Belgium vs. Senegal (2009)[10] :«The Court's right to impose interim measures will be exercised only if the court

[8] UNCITRAL Model Law, Art. 17. See H. Holtzmann & J. Neuhaus, A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary 530-33 (1989); Huntley, The Scope of Article 17: Interim Measures Under the UNCITRAL Model Law, 740 PLI/Lit. 1181, 69 (2005); Ortolani, Article 17: Power of Arbitral Tribunal to Order Interim Measures, in I. Bantekas et al. (eds.), UNCITRAL Model Law on International Commercial Arbitration: A Commentary 314, 326 (2020)

[9] See §17.02[A][5][c]; Ortolani, Article 17: Power of Arbitral Tribunal to Order Interim Measures, in I. Bantekas et al. (eds.), UNCITRAL Model Law on International Commercial Arbitration: A Commentary 314, 315 (2020).

[10] C. Galway Buys, '*Belgium v. Senegal*: The International Court of Justice Affirms the Obligation to Prosecute or Extradite Hissène Habré Under the Convention Against Torture', *American Society of International Law*, 2012, Vol. 16

is convinced that the rights claimed by the party are at least plausible/convincing. The court may decide to grant security measures if the provisions relied on by the requesting party appear, prima facie, to constitute the basis on which the court's jurisdiction will be based. Non-prejudice of the merits of the case. According to Gary B. Born[11] the non-prejudice of the case means that: 1. The imposition of an insurance measure does not prevent the arbitral tribunal from making any kind of decision that seems fair to it in the final arbitral decision, regardless of how it has decided in relation to insurance measure.2. Security measures do not have res judicata effect in relation to the decision on the merits. The arbitral tribunal must be careful, when deciding on security measures, to consider the submissions of both parties and not to deny either party the opportunity to be heard in the subsequent arbitration proceedings.

3. Ambiguities and problems brought by the law

Law no. 52/2023 in article 23/1 also provides that the parties provide guarantees, to the extent and type determined by the arbitration court.

[11] International commercial Awards, GARY. B/Born Volume 3

The second paragraph of Article 23 foresees two situations where the court orders the execution, this conforms to Article 510 letter “c”[12] In this case, the court orders the execution of the temporary measure decided by the arbitration court and the other situation when the request has been submitted to the court for obtaining the temporary measure, this according to the orders of Article 11[13] of this law and article 202 of the Civil Code[14]. According to this legal provision, the court will express itself regarding the need for execution of the measure "The execution of the arbitration decision would become impossible or would be excessively difficult provided that there is a reasonable possibility of a decision in favor of the requesting party", so not for the basis of its decision. The third paragraph of the same article states that the court has subsequent jurisdiction for the annulment and revocation of the order for temporary execution.

This article is not in harmony with the provisions of the code of civil procedure in terms of its orders in the first paragraph, it is determined that it is the arbitration court that has jurisdiction for taking

[12] Code of civil procedure
[13] Law no. 52/2023 "On Arbitration in the Republic of Albania
[14] Code of civil procedure

measures to secure the lawsuit defined in the arbitration agreements. Courts of First Instance of General Jurisdiction at the request of the parties may order the temporary execution decided by the arbitration court. If they were to be interpreted in harmony with the Code of Civil Procedure, article 510 letters c and ç for executive titles defines arbitration decisions of foreign countries and decisions of arbitration courts in the Republic of Albania.

The question arises: Does this provision have to do with final decisions?

The Code of Civil Procedure in Article 510 letter ç does not state the intermediate decisions of the Arbitration Courts. Also, Article 511 of the Civil Code stipulates that: ".... No execution order is issued for the decision to secure the claim .... which are executed directly by the enforcement service "the dilemma that comes forward in interpretation and in practice is the Courts of First Instance of General Jurisdiction on what legal basis will issue the execution order and secondly the law does not leave space and jurisdiction for these courts to express themselves with the foundation of the request.

Even the third paragraph of Article 23 of Law 52/02023 „.....The decision of the court to order the execution of the temporary measure, decided by the arbitration court, as well as the decision to cancel or change the the decision to order the execution of the temporary measure is executed directly by the enforcement service after the announcement of the decision..... If the arbitration decision were to be executed by the enforcement, why should they go to court?

"The decision of the arbitral tribunal that assigns a security measure constitutes an executive title." This provision is in conflict with this provision, Albanian jurisprudence should also be taken into consideration, which at the moment when a decision on claim insurance taken in the USA was presented, the Albanian court did not recognize it as it found it contrary to Article 5/1 /e of the NY Convention as there is no final decision.[15]

In what way would the court annul the orders of non-execution on what legal basis? This would also leave room for interpretation of this provision.

In the third paragraph, at the request of the parties, it can cancel or change the decision related to the execution orders of the temporary measure. If this

[15] Decision no. 34, dt. 01.03.2012 Tirana Court of Appeal

provision will annul an execution order, to which legal basis will the Court refer? If we make an extended interpretation of this order, the court would enter the conditions for the annulment of the measures, that is, it would interfere with what has been decided by the arbitration court of their placement, but will it have jurisdiction to review and change them, this is a solution that will give you practice. Since the non-harmonization of the provisions will leave room for clever interpretation in order to solve them in practice.

4. Comparison with other legislations

Prior to the establishment of the arbitration courts, they are the ones that have jurisdiction for the establishment of measures to secure the claim. Previously - the decision on security measures was not considered as a final decision at all and the state courts did not enable their execution considering them as temporary. Finally - the tendency and willingness to execute the interim measures granted by the arbitration court, considering them as enforceable because of the purpose they have. The leader in this trend is the United States. The American Federation of Arbitration does not contain provisions regarding the execution of arbitration decisions for insurance measures, therefore the American courts in time

have made different interpretations of this issue referring mainly to the purpose of these decisions. Some legislation provides for the possibility to enforce decisions on injunctive measures outside the context of the final arbitral award (award). These laws have provided for the possibility of the execution of security measures by the court of the country where the arbitration takes place, but do not express the possibility of the execution of these measures given by the arbitration court in another country. German law: At the request of a party, the state court allows the enforcement of a measure given by the arbitral tribunal, unless the application for this measure has already been made in the state court.

English Law (1996): Unless the parties provide otherwise, the state court may order the party to comply with final orders made by the arbitral tribunal (42.1)[16] English law foresees the possibility of execution through the state courts of certain types of decisions on insurance measures, which are "Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the

[16] Arbitation Act 1996 section 42 , visit www.practicallaw.com/arbitrationguide.

tribunal". French law[17] is silent about the execution of security measures issued by the arbitral tribunal. The UNCITRAL Model Law expressly provides for the possibility of state courts to enforce decisions on security measures given by arbitral tribunals located in a country other than the one where the state court whose enforcement is sought is located. Albanian law provides for the possibility of issuing an execution order only by the state court[18]

Even in the case where the basis of the settlement of the dispute belongs to the local arbitration, the state court can establish security measures ante causam, despite the fact that the Albanian procedural law does not expressly regulate such a situation. In accordance with Article 1/2 of the KPRC: "The court cannot refuse to examine and give decisions on issues presented to it for consideration on the grounds that the law is missing, incomplete, contradictory or unclear". Under these conditions, pursuant to articles 202 et seq. of the Code of Civil Procedure, it is not prohibited to take security measures when the basis of the settlement must be arbitration. Measures for insurance claim, can be requested

[17] Charles JARROSSON, La notion d'arbitrage, Paris, L.G.D.J., 1987

[18] Law no. 52/2023 "On Arbitration in the Republic of Albania

before filing a claim in court in accordance with article 204/1 of the Civil Procedure Law which states that: "Insurance of the lawsuit may be required even before filing the lawsuit in the court of the country where the plaintiff resides or where the property with which the lawsuit will be secured is located". In other words, regardless of whether or not the court is competent to resolve the merits of the case, due to the very urgent nature of the claim insurance measure, the law allows the state court to take measures for claim insurance when the conditions are met according to Article 202 of the Code of Civil Procedures and following. And in such a case, the right of the requesting party cannot be prejudiced in compliance with the principle of the availability of the lawsuit, but only after the beginning of the process the court must express itself about the jurisdiction.

Article 204/2 of the Criminal Code provides that: "In this case, the court sets a deadline of no more than fifteen days, within which the lawsuit must be filed in court." This second paragraph of the provision is not a condition for granting or not the measure for securing a claim, because despite the fact that the court sets a deadline for the party to submit the claim to the court, the latter for various reasons may not submit it. This paragraph justifies the

temporary nature of the injunction by requiring the requesting party to exercise the right to file a lawsuit in court, which may not be this court to examine the merits of the case, but be another competent court or may belong to a jurisdiction. Even the Albanian judicial practice has supported the position that security measures can be taken ante causam by the judicial jurisdiction, despite the fact that the parties have agreed to settle the case in arbitration. Also in Article 31, first paragraph of Law 52/2023 "......In the event that the claimant, without any reasonable cause, does not submit a claim according to the definition of point 1 of Article 29 of this law, the arbitration court shall decide the dismissal of judgment....."

In this law, I do not find any limitation to take insurance measures from the arbitration court:

1. Parties to arbitration have the right to limit the right of arbitrators to grant injunctive relief.

2. Security measures granted by the arbitration court are not directly enforceable.

3. Impossibility to establish security measures against a third party.

4. Arbitral tribunals cannot order any type of security measures.

5. Types of interim measures of arbitration courts

The will of the parties – whether or not it gives the arbitral tribunal discretion: To impose injunctive relief or not and the type of injunctive relief it may impose. The range of types of security measures that can be taken in arbitration is wide and depends on the goal that the arbitral tribunal seeks to achieve through it.

Here I think that practice will refer to the ICC Regulation: "measures that the arbitration court considers appropriate".. In case no. 10681 (2001), ICC, [19]confirms the principles of

general on which a temporary measure can be taken, aim to:

Maintain the status quo of the case in arbitration, preserve evidence, provide security for costs,

to instruct the parties to refrain from an action or to do a certain action "*Claimant, a US company, and Respondent 1, a Caribbean company, entered into a cooperation agreement governed by the laws of the State of Texas, USA. Respondent 2, also a Caribbean company, to which Respondent 1 had assigned the agreement, commenced litigation against Claimant, alleging that it had breached the*

[19] ICC International Court of Arbitration Bulletin Vol. 15 No. 1

agreement by acquiring an interest in a third company. Claimant initiated arbitration proceedings on the basis of the arbitration clause in the parties' agreement, requesting the arbitrator to find that the parties' agreement had not thereby been breached and that the transfer of the agreement by Respondent 1 to Respondent 2 w*as invalid. Claimant further requested that Respondents be ordered to pay all damages, interest and attorneys' fees laid upon it as a result of the litigation. Finding in favour of Claimant, the sole arbitrator decides as follo*ws w*ith respect to interest.* Two types of interests merit consideration in the case at hand and are hereby awarded: (a) pre-award interest; and (b) post-award interest.

. Law type (n. 17.2)[20] Conditions for granting interim measures (1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that: (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and (b) There is a reasonable possibility that the

[20] The UNCITRAL Model Law on International Commercial Arbitration

requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination. (2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate: "An interim measure is any measure, whether in the form of a final arbitral award or in any other form, by which, at any time before the arbitral award finally resolving the dispute, the arbitral tribunal orders a party to: To maintain or restore the status quo until the final resolution of the dispute; perform actions that prevent or cease to perform actions that may cause actual or imminent future harm or prejudice the arbitration process; provide a means of preserving property from which enforcement of the final award could be guaranteed of arbitration; to preserve evidence that may be relevant and material for the resolution of the dispute." Measures to restore or maintain the status quo until the end of the process. The meaning of the term status quo, the commentary of the Model Law, in the interpretation of Article 17(2)(a) refers to the interpretation of a state court in New Zealand, in the Safe Kids case, which in its decision, among other things, reasoned that: The

term "status quo" means "the final situation for a peaceful settlement between the parties". In accepting or rejecting requests for interim measures to maintain the status quo, arbitral tribunals usually assess the risk of serious and irreparable harm, the urgency and the merits of the prima facie case. Measures aimed at preventing or stopping actions that may cause actual or imminent harm. They usually go hand in hand with measures to maintain the status quo. Such measures:

1. Order of the party to continue fulfilling the contractual obligation;

2. Prohibition of a party to sell shares of the company;

3. Prohibition of the use of a trademark;

4. Maintaining confidentiality. etc.

Measures that are intended to prevent or stop the performance of actions that may

prejudice the arbitration process. In the case of Tokios Tokelés v. Ukraine, (ICSID)[21]: "Parties to a dispute over which ICSID has jurisdiction must not take any measure that may have a prejudicial

[21] Tokios Tokelés V. Ukraine, ICSID Case No. Arb/02/18

effect on the rendering or enforcement of an ICSID award and generally must not take any action of any kind that may aggravate or prolong the dispute or make its resolution more difficult". Anti-suit; "Anti-lawsuit" measure. Through this measure, the arbitral tribunal prohibits the opposing party from starting or continuing the proceedings of the case in another jurisdiction. This measure is not opposed to the other jurisdiction, but is addressed to the party, ordering him to stop the procedural actions undertaken in the judicial jurisdiction.

This Award is made in an arbitration between the above-captioned parties in accordance with the dispute-resolution mechanism of the International Centre for Settlement of Investment Disputes (hereafter "ICSID"). The arbitration is brought to enforce various provisions of a bilateral investment treaty, dated 8 February 1994 and entitled Agreement Between the Government of Ukraine and the Government of the Republic of Lithuania for the Promotion and Reciprocal Protection of Investments (hereafter "the Treaty"), between the Republic of Lithuania and Ukraine.

In case **Allianz SpA and Generali Assicurazioni Generali SpA v West Tankers Inc.**[22], "The anti-suit measure contradicts the general principle that each court determines by itself, based on legal rules, whether or not it has jurisdiction to judge a dispute." have entered into an arbitration agreement for the settlement of the merits of the case, it does not deprive them of the right to turn to the judicial authority for taking measures to secure a lawsuit and that the court cannot judge them in the same way as for the merits of the case. The competence of the judicial authority to take security measures has been confirmed by the European Court of Justice, despite the fact that the arbitration law tries to minimize the intervention of the court, which in fact could only be achieved by harmonizing it with the legislation in order to make it applicable.

CONCLUSION

The new law on arbitration has problems that need to be improved and provisions to be found to

[22] Judgment of the Court of Justice in Case C-185/07. Allianz SpA (formerly Riunione Adriatica di Sicurtà SpA) and Generali Assicurazioni Generali SpA v West Tankers Inc.

match. The law has not provided for an appeal against the security measure and it should only be allowed in the final decision, since the autonomy of the arbitration procedure from the review of the courts should be preserved. Safeguards in arbitration may also be taken *ante causam* (before the arbitration proceedings begin). Asset preservation measures guaranteeing the implementation of the final arbitration decision. Asset preservation measures are considered (but not limited to): Prohibition of the party to sell the asset that is the subject of the judgment, whether movable or immovable, until the end of the process; placing the property in custody of a third party; imposing a conservative sequestration on the property in those countries where this measure is permissible to be given by the arbitration court; Depositing a bank guarantee, in a value considered appropriate by the court, etc. These types should have been provided for in the law on arbitration with the aim that the protection guaranteed by the law for the parties would guarantee them a more effective protection from the court. As such they can be obtained both by institutional arbitration (through the emergency arbitrator) and even from judicial jurisdiction, despite the fact that the basis of dispute resolution belongs to arbitration. The fact that the parties

have entered into an arbitration agreement for the resolution of the merits of the case does not deprive them of the right to turn to the judicial authority for taking measures to secure the claim and that the court cannot judge them in the same way as for the merits of the case. The competence of the judicial authority to take security measures has also been confirmed by the European Court of Justice, despite the fact that the arbitration law tries to minimize the court's intervention, which in fact could only be achieved by harmonizing it with the legislation in order to make it enforceable.

References

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b. Law 10428 /2011 "On private international law"
c. European Convention on International Arbitration, Geneva, April 21, 1961, approved by law no. 8687, dated 09.11.2000
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Uden Case, *Arbitration International*, Volume 15, Issue 4, 1 December 1999, Pages 359–380

f. Law no. 52/2023 "On Arbitration in the Republic of Albania.
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