

International Commercial Arbitration in Croatia 1991-1998

A Log of the Activities of the Permanent Arbitration Court at the Croatian Chamber of Commerce

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Review

While arbitration has been a popular and wide-spread medium of settlement of commercial disputes for a long time, until 1992 there were no international arbitral institutions on the Croatian territory. When Croatia was part of the Yugoslav federation, all international arbitrations were associated with FTAC in Belgrade. However, in every former republic there were arbitral institutions whose activities were limited to internal (national) arbitration. After dissolution of the federal state, some of these institutions became the initiators of changes and gradually assumed jurisdiction for international cases as well. Croatia was a forerunner of such transformations: the Permanent Arbitration Court at the Croatian Chamber of Commerce received cases involving foreign parties even before the formal breakdown of Yugoslavia in late 1991. Already in April 1992, a brand new set of arbitration rules (Zagreb rules) was enacted. In the years that followed, the PAC-CCC evolved into a full-fledged regional arbitration center. In order to substantiate this evaluation, the paper presents an analysis of statistical data on PAC-CCC cases in the 1991-1998 period.

I. Introduction

The second half of the 1990's witnessed a period of intense development of arbitration institutions all over the world, in particular in regions that had previously little or no experience with arbitration. The challenge of new regional centers has not remained unanswered by larger arbitration institutions, that are

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rapidly expanding their activities and reforming their rules. Nowadays, when formation of a new arbitral center may even be a matter of prestige, it is time to raise a question: is there enough space for so many competitors in the market of arbitration services? Although the need for arbitration services may seem to increase every day, it seems that the time has come for setting new standards: only those institutions that can offer high quality services, arbitrators of international reputation, speed of proceedings and low level of costs will have chances to find their place in the busy network of organizations that provide arbitration services.

In this paper, we examine activities of the Permanent Arbitration Court at the Croatian Chamber of Commerce (hereinafter referred to as: PAC-CCC) within this context. This paper will, first, present a standard overview dealing with a short history, statutory background and arbitration rules of this institution. The second, more important part, however, presents a set of data that is still seldom disclosed¹ – precise statistics of the past and pending cases, amounts in dispute and other relevant data that could provide insight into the activities of the PAC-CCC from the date it assumed international jurisdiction.

II. Short history of arbitration in Croatia

PAC-CCC has emerged as an institution for providing international arbitration services only relatively recently, in 1991. But, due to the particular history of arbitration in former Yugoslavia, so different from the history of arbitration in many other East European new democracies, it would be wrong to categorize it as a “young” or “inexperienced” institution. In the former Yugoslav federation, unlike other states of the region, arbitration was (moderately) liberalized since the mid-60’s. In states of the Soviet block, arbitration was principally used as a showcase of neutrality in dealing with foreign investors; therefore, only “international arbitration” was allowed, but limited to the narrow scope of very few national institutions and some reputed foreign arbitral centers. Domestic arbitration was unnatural in the planned economy of Soviet style, and therefore it was largely forbidden. On the other hand, the Yugoslav doctrine of self-management, although it did not develop full freedom of a Western market economy, contributed to the establishment of economic competition – and the development of domestic arbitration. The new opportunity was used locally, at the levels of particular republics of former Yugoslavia. Among the first centers for domestic arbitration established in the early 60’s was the PAC-CCC. Its good reputation in the former state – which contributed to its present status and reputation within the international arbitration community – is due to several fortunate coincidences: since its inception in 1963 it was run by experts of

¹ ICC International Court of Arbitration that publishes periodically statistics on its activities in ICC Bulletin is one of the rare exceptions.

renowned academic excellence; it never fell victim to political influence and was always estimated as a highly neutral and independent organization; and finally, its arbitrators were among the best in the former federation, and often active not only in domestic arbitrations, but also in international cases, under the auspices of Western arbitral institutions.

Certainly, this development was not only accidental. Some historical data provide insight into the deep roots of arbitration in Croatia: the first modern permanent arbitration court was established at the Croatian Chamber of Economy and Manufacture in 1853. In 1930, according to the archives of that institution, at the peak of its career, this Court had a caseload of several thousand, mostly smaller merchant cases, but also with matters of greater economic importance.² Since use of private arbitration mechanisms was wide-spread at that time, the short lifespan of Soviet-type state “arbitration courts” between 1945-60 did not erase the memories of arbitration as an essentially private jurisdiction agreed upon freely by businesspeople. This tradition lives on today, although the profile and type of cases resolved before the PAC-CCC has largely changed.

III. Assuming International Jurisdiction: PAC-CCC goes international

Before 1991, in the former Yugoslav federation only one arbitration institutions that dealt with international arbitration existed – the Foreign Trade Arbitration Court in Belgrade. Until the dissolution of the federation, this court had a legal monopoly on international arbitration.³ The formation of new independent states created an opportunity for new international arbitral centers, that naturally emerged out of the previous centers for domestic arbitration that existed at the local chambers of economy. However, the need for such centers differed: Croatia and Slovenia started with this development very early, whereas Macedonia and embattled Bosnia only gradually followed. At the same time, the once important Belgrade arbitration institution lost many of its cases due to the international embargo, departure of most arbitrators and loss of experienced staff.

² See text of M. Dika published *infra* in this volume of the CROATIAN ARBITRATION YEARBOOK; see also another paper of the same author published in: ARBITRAŽA I PODUZETNIŠTVO, Zagreb, 1991, at 95-108.

³ The legal monopoly of the FTAC Court followed from the provision of Art. 37, para 2 of the former federal Act on Association in General Organisations and Chambers of Commerce [Zakon o udruživanju u opća udruženja i privredne komore], OFF GAZ SFRY, 54/76; see also FTAC Rules, OFF GAZ SFRY, 70/81.

A step urgently needed after assuming jurisdiction in international cases⁴ was the adoption of a new set of rules. Some of the former domestic cases became “international” after dissolution of the federation; new cases were initiated – and the existent domestic rules were inappropriate for a number of situations. The PAC-CCC reacted already in April 1992, when the new Rules of International Arbitration (subsequently known as *Zagreb rules*) were enacted.⁵ These rules, drafted largely after consideration of well-known international rules, such as the UNCITRAL Arbitration Rules, ICC Rules of International Arbitration, UNCITRAL Model law and rules of some other regional arbitral institutions, have set the model to be followed by other post-Yugoslav arbitral institutions. The somewhat eclectic approach produced rules that make a unique whole, unifying some of the best achievements reached in the international arbitral community with a continental procedural style. The Zagreb Rules proved to be operable and popular. The Rules and the respective decision on costs⁶ were soon translated into English, German, French and Italian, and published in the most significant arbitral reviews and other publications.⁷ During six years of their application, they remained unchanged, because their flexible and permissive approach and familiar solutions found widespread acceptance among the users of Zagreb arbitration services.

The Zagreb Rules provided a part of the infrastructure needed for international arbitration; the other part were the arbitrators. Since even the best rules can be spoiled by inexperienced application, it was of utmost importance to find arbitrators that could ensure a high level of arbitration services. For a new arbitral institution, it is even more important, since one mistake can easily ruin its reputation. Fortunately, a relatively small country like Croatia (5 million inhabitants) produced a number of arbitral experts – mostly legal scholars and practitioners that gained their experience in ICC or FTAC arbitrations. Therefore, it was possible to compose a panel of arbitrators in international cases that responded to the current needs. In the first years, the panel consisted only of local

⁴ Assuming international jurisdiction did not happen suddenly, but occurred simultaneously with the process of disassociation from the federal state. In Croatia, the first statutory provision that opened space for international arbitration was Art. 10 of the Decree on the Chamber of Commerce (OFF. GAZ. 42/91) of 16 August 1991; a more or less identical provision was subsequently enacted in the Art. 59 of the By-laws of the Chamber of Commerce (OFF. GAZ. 56/91) and the Art. 19 of the Law on the CCC (OFF. GAZ. 66/91) of December 9, 1991.

⁵ The Rules of International Arbitration of the PAC-CCC (*Zagreb Rules*) were enacted at the session of the Assembly of the CCC on April 15, 1992; they were published in OFF. GAZ. 25/92 of April 29, 1992 and became effective eight days thereafter, i.e. on May 7, 1992.

⁶ The schedule of fees that supplemented the *Zagreb Rules* (Decision on Costs of the Proceedings) was published in OFF. GAZ. 57/92 of September 22, 1992.

⁷ Among other publications, the *Zagreb Rules* were reproduced in YEARBOOK OF COMMERCIAL ARBITRATION, WIRTSCHAFT UND RECHT IM OSTEUROPA, and they are also part of the regular content of the HANDBUCH WIRTSCHAFT UND RECHT IM OSTEUROPA.

experts, and served merely as a recommendation for parties, who were free to choose other appropriate arbitrators, including foreign citizens. The first years of practice in the arena of international arbitration brought about many contacts with international experts, so that another step to the full internationalization was possible – since 1997, the panels of arbitrators in international cases were extended to a number of foreign experts.⁸ Currently, the panel of arbitrators in international disputes consists of 47 arbitrators – distinguished domestic experts, and 45 arbitrators – foreign citizens from 16 different countries. Most of the arbitrators have a reputation that speaks for itself. However, in order to harmonize the practice and contribute to the quality and formal uniformity of arbitral awards, the PAC-CCC has adopted in its rules the system of scrutiny of arbitral awards similar to those of the ICC International Court of Arbitration. Pursuant to Art. 43, paras. 4 and 5 of the Zagreb Rules, “[t]he Court may lay down modifications as to the form of the draft;... [it] may, without affecting the liberty of decision of the arbitral tribunal, draw its attention to points of substance.” In practice, this has proven to be an effective mechanism for preserving the quality of the decision-making. In the last five years of practice, there were only a few arbitral awards that were challenged in setting aside or enforcement procedure, and up to date there is no information on cases in which such challenges were successful.⁹

IV. Statistical data on arbitral jurisprudence of the PAC-CCC

a.) General structure

In the four tables attached to this paper, the more important data on the PAC-CCC jurisprudence in recent cases is published. From it, insight into the number of cases submitted to arbitration, both in national in international disputes may be gained. The tables also present the number of cases that are already resolved (by an award or otherwise); the indications on the length of the proceedings, and value in disputes. Also, the tables are designed so that it is possible to follow trends in the recent years, since the data is presented both year-by-year and cumulatively. The statistics cover the period from 1992 (the year of enactment of the *Zagreb Rules*) to October 1998 – the date of submitting this paper. Therefore, all the data for 1998 have to be taken only as an indication of the complete statistics for this year (whereas one should bear in mind that November-

⁸ New Panels of arbitrators (for national and international disputes) for the period 1997-2001 were elected by the Executive Board of the CCC on November 18, 1997; they were published in OFF. GAZ. 130/95 of December 3, 1997.

⁹ In the 1991-1998 period, there were more than 50 awards made by arbitral tribunals associated with PAC-CCC. According to the available data, in seven cases applications for setting aside were raised. Five of the cases are finally settled, and in all of them applications were either rejected, or the proceedings ended by withdrawal of the application. In two cases, proceedings are still pending.

December period is usually the period when, proportionally, most cases are filed, due to the closing of balances and business accounts in this period).

b.) Interpretation of given data

As presented in *Table 1*, since 1992 the PAC-CCC has acted in over 174 cases – 77 international and 97 national (cases involving only Croatian parties). The number of new cases submitted annually ranges from 20-40, with the slight tendency to increase. Some of the data may, however, need to be reinterpreted.¹⁰ Soon after the enactment of the *Zagreb Rules*, the number of international cases closely approached (and in some years even exceeded) those of national cases. Generally, it could be said that about half of the activities of the PAC-CCC currently relate to international cases.

As shown in *Table 3* and *Table 4*, parties from 19 different countries participated in PAC-CCC arbitration. Most of the cases were arbitrations with the companies from Italy, Austria, Germany, England and Switzerland, but cases with the regional element also make a significant portion. Cases submitted before the Court are of varying type, complexity and amount in dispute, but generally they are not economically insignificant: the aggregate amount in dispute in 92-98 period is over 120 million German Marks (70 million US Dollars); the average amount in dispute in the same period was about DEM 770.000 (US\$ 440.000). With respect to the volume of individual cases, a tendency to increase may also be noted; the highest annual amount is one from the last year with full statistical data - 1997. Also, the small claims of up to DEM 1.000 have completely disappeared after 1995, and the number of cases from DEM 1.000-10.000 has reduced, whereas the amount of larger cases is on the rise.

As visible from *Table 2*, since 1992 the PAC-CCC has issued about 50 awards – a number that may be viewed as a good start for the formation and publication of jurisprudence that would demonstrate the quality and procedural style of the Court. About 36 percent of the finalized cases (47 cases) were terminated by an award, whereas the rest were terminated either by reaching settlement or otherwise (withdrawal of claims, termination caused by non-payment of fees etc.) Finally, when analyzing the speed of the proceedings, it could be noted that the PAC-CCC has settled 75% of cases submitted in the 1992-98 period; almost 70% of pending cases were initiated in 1997 or 1998. At the same time, only an insignificant number of pending cases (7) commenced prior to 1996. This shows that a very large proportion of the proceedings before PAC-CCC have a duration from six months to two years. Compared with other arbitral institutions, and

¹⁰ *E.g.* the data for 1994 (34 disputes, apparent peak number) involve 17 connected cases, whereas statistics in other years reflect independently submitted claims. When we reduce the 1994 number, and add disputes that are likely to be submitted at the end of 1998, a clear tendency of increase can be read from the data.

particularly with the notorious delays in domestic commercial court proceedings, this speed may be regarded as satisfactory.

V. Conclusion

The presented data gives a realistic account of the practice of arbitration of the Permanent Arbitration Court at the Croatian Chamber of Commerce. Compared with the available data of “large, traditional arbitration institutions” such as the ICC Court of International Arbitration, these statistics may seem to reflect low figures. However, some additional facts have to be considered in the final evaluation. First, the PAC-CCC started to deal with international cases only in the past six years – a very short period for any institution, in particular in this field. Second, as a venue for arbitration Croatia was relatively unknown to a broader audience, and the events in Croatia during same uneasy period certainly did not foster arbitration. Third and most important, since arbitration in a particular country by and large follows the overall trends in economy, particularly in international transactions and foreign investments, a higher volume of international cases in the previous years could hardly be expected. Therefore, having in mind the available data of comparable institutions, the presented statistics may rather be interpreted as a pleasant surprise, that could justify statements about the PAC-CCC as the “regional forerunner of international commercial arbitration.” Even if someone may challenge this assessment, we hope that this contributes to a fair discussion, and further promotes a policy of transparency in the community of arbitral institutions that deal with international arbitration.

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ANNEX: STATISTICAL DATA ON PAC-CCC CASSES**TABLE 1**

| YEAR | National | International | Both |
|-------------------------|-----------------|----------------------|-------------|
| <i>1992</i> | 10 | 6 | 16 |
| <i>1993</i> | 14 | 12 | 26 |
| <i>1994</i> | 21 | 13 | 34 |
| <i>1995</i> | 8 | 10 | 18 |
| <i>1996</i> | 15 | 12 | 27 |
| <i>1997</i> | 14 | 16 | 30 |
| <i>1998[†]</i> | 15 | 8 | 23 |
| TOTAL | 97 | 77 | 174 |

*Table 1: Structure of cases (national/international) 1992-98***TABLE 2**

| YEAR | Total number of cases | Terminated | Terminated by award | Terminated in other ways |
|---------------|------------------------------|-------------------|----------------------------|---------------------------------|
| <i>1992</i> | 16 | 16 (100%) | 8 | 8 |
| <i>1993</i> | 26 | 25 (96%) | 10 | 15 |
| <i>1994</i> | 34 | 32 (94%) | 7 | 25 |
| <i>1995</i> | 18 | 14 (78%) | 6 | 8 |
| <i>1996</i> | 27 | 23 (85%) | 12 | 11 |
| <i>1997</i> | 30 | 14 (47%) | 3 | 11 |
| <i>1998</i> | 23 | 5 (22%) | 1 | 4 |
| UKUPNO | 174 | 129 (75%) | 47 | 82 |

Table 2: Number of cases (pending/terminated); number of arbitral awards 1992-98

[†]The presented data covers the period through October 1998.

TABLE 3

| # | Country | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 [†] | 1992-98 [†] |
|----|----------------|----------|-----------|-----------|-----------|-----------|-----------|-------------------|----------------------|
| 1 | Italy | 2 | 5 | 1 | 1 | | 3 | 1 | 13 |
| 2 | Bosnia and | | | | 1 | 6 | 4 | 1 | 12 |
| 3 | Austria | 1 | 3 | 1 | 3 | 1 | 2 | | 11 |
| 4 | Germany | 1 | 1 | 3 | 1 | 1 | 1 | 1 | 9 |
| 5 | Slovenia | 1 | 2 | 4 | | 1 | 1 | | 9 |
| 6 | Great Britain | | | 3 | 1 | | 1 | | 5 |
| 7 | Czech Republic | | | 1 | | 1 | | 2 | 4 |
| 8 | Hungary | | | 1 | | 3 | | | 4 |
| 9 | Switzerland | | 2 | | | | 1 | | 3 |
| 10 | USA | 1 | | | 1 | | | 1 | 3 |
| 11 | Sweden | | | | | | 1 | 1 | 2 |
| 12 | Cyprus | | | | 1 | | | | 1 |
| 13 | Lichtenstein | | | | 1 | | 1 | | 2 |
| 14 | Macedonia | | | | | 1 | | | 1 |
| 15 | Malta | | 1 | | | | | | 1 |
| 16 | Slovakia | | | | | | 1 | | 1 |
| 17 | Syria | | | | | | | 1 | 1 |
| 18 | Turkey | | | | | | 1 | | 1 |
| 19 | Ukraine | | | 1 | | | | | 1 |
| | TOTAL | 6 | 14 | 15 | 10 | 14 | 17 | 8 | 84 |

*Table 3: Nationality of foreign parties in arbitral proceedings 1992-98***TABLE 4**

| Year | <1* | 1-10* | 10-50* | 50-100* | 100-500* | 500-1m | >1m | Total | Total amount** |
|-------------------|----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|-----------------------|
| 1993 | 3 | 0 | 13 | 3 | 5 | 1 | 2 | 27 | 7.517.729,90 |
| 1994 | 1 | 2 | 11 | 4 | 7 | 6 | 5 | 36 | 22.695.103,59 |
| 1995 | 1 | 4 | 2 | 2 | 6 | 2 | 2 | 19 | 8.281.197,85 |
| 1996 | 0 | 2 | 9 | 8 | 7 | 0 | 2 | 28 | 19.523.084,58 |
| 1997 | 0 | 1 | 9 | 4 | 11 | 1 | 4 | 30 | 52.574.944,52 |
| 1998 [†] | 0 | 3 | 3 | 4 | 5 | 4 | 4 | 23 | 14.834.451,77 |
| Total | 5 | 12 | 47 | 25 | 41 | 14 | 19 | 163 | 125.426.512,21 |

Average amount in dispute: 770,000.00 DEM (German Marks)

Table 4: PAC-CCC cases according to amount in dispute 1992-98

* Amount in thousands of DEM (German Marks)

** Exact amount in DEM (German Marks)

† The presented data covers the period through October 1998.