



ILYASHEV  
& PARTNERS

**CHALLENGE OF ARBITRAL AWARDS  
IN NATIONAL COURTS:  
LIMITS OF JUDICIAL CONTROL**

## ■ LIMITS OF CONTROL: GENERAL PRINCIPLE


⬡ Law of Ukraine “On International Commercial Arbitration” (“Arbitration Act”)

⬡ Based on UNCITRAL Model Law on International Commercial Arbitration (1985 version)

⬡ Article 5:

*“In matters governed by this Law, no court shall intervene except where so provided in this Law”.*

## ■ WAYS TO CHALLENGE

 **Awards on merits:** set-aside procedure before a court of appeal (appeal to the Supreme Court **allowed**)

 **Rulings on jurisdiction – preliminary issue:** set-aside procedure before a court of appeal (appeal **not allowed**)

### **Courts can:**

- confirm the award / ruling
- set aside the award / ruling

### **Courts cannot:**

- review the merits
- vary the award / ruling
- remit the award / ruling

## ■ CAN THE RIGHT TO CHALLENGE BE WAIVED?

**Express waiver – No**

**Implied waiver – Yes**  
(to a certain extent)

 Civil Procedure Code, Article 4(3):

*“Waiver of the right to apply to court for protection is void.”*

 Arbitration Act, Article 4:

*“A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.”*

## ■ WAIVER – SUPREME COURT’S POSITION



### **Markent SIA v. KPD LLC [Case No. 824/106/20]**

Decision of the Supreme Court dated 29.07.2021:

*“... Markent SIA took active part in the consideration of the case... a representative of Markent SIA participated in the hearing. At the same time, the award of the ICAC at the UCCI... does not contain any arguments of Markent SIA with regard to the lack of competence on the part of the ICAC at the UCCI. Such actions on the part of the applicant show that it has admitted and confirmed the ICAC’s competence to resolve this dispute. Thus, Markent SIA is deemed to have waived its right to object against non-compliance with any provision of the ICAC Rules during the arbitration proceedings.”*



## ■ WAIVER – SUPREME COURT’S POSITION



### **PJSC “Rise Company” v. Nussed Serbia d.o.o. [Case No. 761/5425/16-ц]**

Decision of the Supreme Court dated 06.02.2019:

*“... the procedural conduct of PJSC “Rise Company”, which exercised its right to appoint an arbitrator, submitted its defence on the merits of the dispute during the arbitration proceedings, but did not allege any defects in the composition of the arbitral tribunal, and which, having received an unfavorable award as a result of the arbitration proceedings, used the withheld grounds in order to challenge the award... in the state court, has the signs of an abuse of right and is against the principle of good faith.”*



## ■ WAIVER – SUPREME COURT’S POSITION



### SE “Ukrkhimtransamiak” v. PJSC “Tolyattiazot” [Case No. 824/73/20]

Decision of the Supreme Court dated 22.10.2020:

*“Having found that the matter was considered by the arbitrators who had been appointed in compliance with the requirements of the ICAC Rules, SE “Ukrkhimtransamiak” did not raise any objections against the composition of the arbitral tribunal during the arbitration proceedings, the arbitral award is not in conflict with the public policy of Ukraine and SE “Ukrkhimtransamiak” has not proved the existence of grounds for setting aside the arbitral award, the court of first instance, whose conclusions are upheld by the appeal court, has reasonably dismissed the application.”*





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 Thank You  
For Attention