THE REBUPLIC OF BELARUS: FIRST STEPS TO ALTERNATIVE DISPUTE RESOLUTION

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Settlement of arising conflict situations by means of alternative (non-government) ways is the important part of legal culture of any state, the original test for a civil society development.

Economic conflict situations resolve not only by consideration of the court, but also by means of one of the alternative ways of settlement disputable– intermediary procedure (arbitrage, mediation, conciliation).

The USA, Great Britain, Australia, Germany, the Netherlands and other countries have already developed various methods of the alternative non judicial resolution of such economic disputes. It means refusal of a reference to the court at all. Believing that alternative dispute resolution can provide effective, less expenses and the fastest non judicial resolution of disputes, the Euro Parliament and European Union Council have accepted on May, 21st, 2008 the Directive 2008/52 concerning some aspects of alternative procedures in civil and commercial affairs.

Now the subjects of the alternative resolution of disputes are widely studied and polemized in scientific and practical circles of Russia and Ukraine.

The Economic Procedural Code of the Republic of Belarus, since August, 2004, keeps norms about dispute settlement in non-judicial intermediary but only in 2008 they started to apply on practice.

Economic justice in Belarus, undoubtedly, begins a new stage of its development with the new adopted changes (The Law of the Republic of Belarus, January,12, 2010. № 241-З) in the

Economic Procedural Code of the Republic of Belarus (ECP). According to the new changes the use of settlement procedures in the litigation is expanded, new definition of settlement procedure appeared.

1. **New definition of the court settlement procedure.**

According to the article 1 of EPC the term "settlement procedure" is changed into the term "conciliatory procedure" and now defines a process of parties' negotiation which conducted with the help of a conciliator to settle the economic dispute arising from civil matters for the purpose of reaching acceptable for the parties' agreement and its enforcement.

2. **The scope of conciliatory procedure**

According to the new changes the sphere of use of conciliatory procedure is expanded. Now it can be scheduled in economic court of the first instance (trial court) before adjudication, in appellate courts and courts of cassation, and also during the execution proceeding. Only the supervising court instance remains without any changed as it is an exclusive stage of the appeal.

The request for the appointment could be contained in a statement of claim (claim of appeal). Also, request for the conciliatory procedure could be expressed in the separate document filing to the court, or in a form of conciliatory clause in the contract.

The claimants offer for the conciliatory procedure appointment could be also stated in a pretrial claim, and if the respondents consent is specified in the answer to such claim, it can be considered by court as the joint parties request for the conciliatory procedure.

The conciliatory procedure for one case could be appointed several times in different court instances. If the conciliatory procedure is scheduled for the second time court should at

first estimate its possibility, real ability of the parties to reach the agreement, without supposing misuse of such procedure for a litigation slowing down.

3. Conciliator appointment

The conciliator could be appointed upon the request of one or both parties or at the initiative of economic court. Conciliator is appointed from the list of court employees, or from among other persons involved on a contractual basis, possessing certain qualification. The list of private conciliators and the requirements for them are approved by Plenum of the Higher Economic Court of the Republic of Belarus.

Thus economic court may offer the conciliator from the court list; however the parties have the right to choose private conciliator (mediator) who is not a court employee.

If the conciliator was appointed by the economic court without parties' consent, they have a right within seven days from the moment of such appointment to present objections. In the presence of objections of one of the parties the economic court cancels the appointment. The further proceedings are carried out in an order established by EPC for court litigation.

Thus the role of the court in appointing conciliatory procedure becomes more active but at the same time the principle of voluntariness is kept.

4. Terms of conciliatory procedure

According to the Article 156-1 of EPC term of conciliatory procedure shouldn't exceed one month and in economic courts of appeal and cassation instances – the terms established according to Article 278 and 295 EPC. Thus, term of conciliatory procedure in the first, in

cassation instances and at a stage of execution is one month, in appeal instance – 15 working days.

Moreover, as the given term is procedural, its prolongation is possible under the joint well-founded request of both parties; in a case if they spend a hard work on achievement of the agreement (concrete actions of both parties are required).

5. Results of conciliatory procedure

Conciliatory procedure can be finished by reaching (or not reaching) settlement agreement. If the agreement is reached, court approved it by an order according to the procedural rules used for the approvance of amicable agreement.

If the agreement cannot be reached the conciliator according to the EPR has a right to stop the procedure. However the conciliatory procedure could be stopped only if the following conditions exist:

- the parties failed to reach an agreement;
- the parties (one of the party) slowing down the procedure on purpose;
- the parties don't attend the conciliatory conference;
- the parties are not acting in a good face, breaking the ground rules;
- the parties abuse the other procedural rights.

6. Guaranties of conciliatory procedure

The communications cannot be used as evidence in a later legal proceeding.

Representatives of the parties who participated in conciliatory procedure and conciliators cannot testify concerning the facts, which are known from participation in conciliatory procedure in any future legal proceedings except for cases, unless agreed otherwise (art. 72 EPC).

7. Court fees and filing a claim

The special order of payment of the court fees and the simplified order of filing a claim exist if there is a joint parties request for the conciliatory procedure.

If the statement of claim files simultaneously with the joint parties request for the conciliatory procedure, court fee is supposed to be at a rate of 50 % from the established rate (p. 7 article 250 of the Tax code of Republic of Belarus).

As in conciliatory procedure the actual and legal substantiation of the declared claims are not evaluated, the documents confirming circumstances and claim demands and any other evidence may not be attached to statement of claim (art. 160 EPC).

Thus, for the claimant the requirements for the substance of the claim are simplified. Since there is no need for the claimant to attach the confirming documents therefore he could submit a claim by himself without any lawyers to be involved. It could save additional amount of money, be an additional economy on right protection in economic court.

If the agreement is not reached the claimant would pay the court fee in the established size, depending on the sum of the declared requirements which are subject to consideration in economic court.

To conclude, I would like to refer to the statistics: the number of claims in economic courts increases in Belarus: in 2009 was more than 72 thousand claims, and in 2010 - already

105 thousand. At the same time the quantity of judges of economic courts remains invariable - 120 persons all over the country. During the crisis economic courts even more overloaded by the claims. It shows that state court system needs outside help to deal with numerous economic disputes.

I believe that in the Republic of Belarus the development and application of alternative ways of economic disputes resolution would benefit all the sides: the state court would have fewer disputes to resolve and have more time for qualitative consideration; the companies would have possibility to resolve disputes faster and cheaper.