

# IACAM

## International Association on Collaboration in Arbitration Matters

Questions and answers about the Procedure for recognition and enforcement of foreign arbitration decisions in Estonia.

### **1. Please name some of the largest arbitration courts in Estonia ?**

- Court of Arbitration at the Estonian Chamber of Commerce and Industry (<https://www.koda.ee/en/services/resolving-disputes-in-the-Court-of-Arbitration>)
- Arbitration Court at the Notary Chamber (link available in Estonian here: <https://www.notar.ee/et/notarite-koda/vahekohus/>)
- Arbitration Court at the Chamber of Executors and Bankruptcy Managers (link available in Estonian here: <https://kpkoda.ee/teenused/vahekohus/>)

### **2. What law in Estonia governs the activities of arbitration courts?**

Code of Civil Procedure of the Republic of Estonia (CPC),  
(<https://www.riigiteataja.ee/en/eli/531122021001/consolide>)

### **3. What law governs the recognition and enforcement of foreign arbitration decisions in your country?**

- Code of Civil Procedure of the Republic of Estonia (CPC),  
(<https://www.riigiteataja.ee/en/eli/531122021001/consolide>)  
Part 14, ARBITRATION:  
Chapter 70, GENERAL PROVISIONS, Art. 712-716;  
Chapter 71, AGREEMENT FOR ARBITRATION, Art. 717-720,  
Chapter 72, FORMATION OF THE ARBITRATION COURT, Art. 721-729;  
Chapter 73, COMPETENCE OF THE COURT OF ARBITRATION, art. 730-731;  
Chapter 74, PRINCIPLES OF CONDUCTING ARBITRATION, art. 732-741;  
Chapter 75, DECISION OF ARBITRATION AND TERMINATION OF PROCEEDINGS, art. 742-750;  
Chapter 76, CANCELING THE DECISION, art. 751-752;  
Chapter 77, PREREQUISITES FOR THE RECOGNITION AND ENFORCEMENT OF THE DECISION OF THE COURT OF ARBITRATION, art. 753-754;  
Chapter 78, LEGAL PROCEEDINGS, art. 755-757;  
Chapter 79, EXTRA-CONTRACTUAL ARBITRATIONS, art. 758;

### **4. In what year did Estonia join the 1958 New York Convention?**

Estonia joined on June 16, 1993 (<https://www.riigiteataja.ee/akt/24471>), and according to other sources - on August 30, 1983 ([https://uncitral.un.org/ru/texts/arbitration/conventions/foreign\\_arbitral\\_awards/status2](https://uncitral.un.org/ru/texts/arbitration/conventions/foreign_arbitral_awards/status2)).

### **5. Which court in Estonia looks at an application for recognition and enforcement of a foreign arbitration decision?**

- Foreign arbitral decisions are recognized and enforced in Estonia only in accordance with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Decisions and other international treaties.
- Provisions concerning the recognition of decisions of foreign courts shall apply to the recognition and enforcement of decisions of foreign arbitral tribunals unless otherwise provided by law or an international agreement.
- In case of cancellation in a foreign state of a decision of a foreign arbitration court, recognized as enforceable, the debtor may file an application for the cancellation of recognition of the decision as enforceable (Article 754 of the Code of Civil Procedure).
- An application for recognition and recognition of enforceable decisions of arbitration courts made in Estonia or arbitration courts of foreign countries, as well as an application for refusal to recognize or enforce, is submitted to the Pärnu County Court.
- An application for the suspension of the execution of a decision of foreign arbitration courts or another application in enforcement proceedings is submitted at the place of residence or location of the debtor or to the court in the area of activity in which they wish to organize enforcement proceedings unless otherwise follows from the law or an international agreement.
- If one of the parties to the agreement on arbitration proceedings is a consumer, then an application for recognition and recognition of the executable decision of the arbitration court, as well as an application for refusal to recognize or enforce it is submitted to the court in the area of activity of which the place of arbitration proceedings is located (CPC Art. 121<sup>2</sup>).
- The Pärnu County Court decides on the recognition and enforcement of arbitration decisions (art. 755 part 12 of the Code of Civil Procedure).

### **6. Does your country's legislation provide a mandatory period for the voluntary execution of an arbitration decision?**

- The decision of the arbitral tribunal enters into force on the day of its issuance (Article 746, part 1 of the Code of Civil Procedure).
- The legislation of the Republic of Estonia does not provide for a voluntary deadline for execution.

### **7. What documents are attached to an application for recognition and enforcement of a foreign arbitration decision?**

- Article 4 of the New York Convention 1958:
  1. In order to obtain the recognition and enforcement referred to in the preceding Article, the party seeking recognition and enforcement shall, at the time of making such a request, submit:
    - a) a duly certified original decision or a duly certified copy thereof;
    - b) the original agreement referred to in Article II or a duly certified copy thereof.
  2. If the decision or agreement is not set out in an official language of the country where recognition and enforcement of the decision are sought, the party that requests recognition and

enforcement of the decision shall provide a translation of those documents into such language. The translation is certified by an official or sworn translator or a diplomatic or consular office.

Article 622 Code of Civil Procedure part 1:

An application for recognizing the enforceability of a decision of a foreign court shall be submitted in writing and shall be accompanied by: 1) a copy of the court decision, certified in accordance with the law of the country where the court that issued the decision is located; 2) a document confirming that the defendant or another debtor who did not participate in the court proceedings, but specified in the decision, was served at least once in a timely manner in accordance with the law of this state with a claim, court summons or other document initiating proceedings; 3) a document confirming that the decision, in accordance with the law of the state that issued it, has entered into legal force, is enforceable and brought to the attention of the defendant or other debtor specified in the decision; 4) documents on the execution of the decision, if it has already been tried to be executed; 5) documents on the execution of the decision, if the decisions have already been executed; 6) translations of the documents referred to in clauses 1–5 of this subsection into Estonian by a sworn translator.

The court may give the applicant time to submit the document referred to in paragraph 1 of this Article. If the circumstances of the case allow, the court may resolve the case without requiring the submission of documents (Article 622, part 2 of the Code of Civil Procedure).

#### **8. In what language are documents submitted? How is the translation of the documents attached to the application carried out?**

The translation is certified by a sworn translator.

#### **9. What fee is payable when applying for the recognition and enforcement of a foreign arbitration tribunal in your country?**

- The state fee for the annulment of an arbitration decision or for the submission of another application related to arbitration proceedings is 70 euros (Article 59, part 13 of the State Fee Act, available here: <https://www.riigiteataja.ee/en/eli/517032022007/consolide>).

- The costs of enforcement proceedings are linked to the number of claims. An executor may require advance payment from a claimant for the conduct of enforcement proceedings (Article 29, part 2 of the Law on an Executor, available here: <https://www.riigiteataja.ee/en/eli/527122021003/consolide>).

#### **10. Are parties invited to the court to consider an application for recognition and enforcement of a foreign arbitration tribunal?**

- The decision of a foreign court is recognized in Estonia without special court proceedings. Nevertheless, it is possible to apply for permission to recognize it in the manner provided for in this chapter for recognizing a decision as enforceable if its recognition is contested or if for other reasons it is necessary for a person to exercise his rights (Article 620 part 3 of the Code of Civil Procedure).

- When resolving an application for recognizing the enforceability of a foreign judgment, the court checks whether there are prerequisites for recognizing the judgment. The correctness of the court decision on the merits is not verified (Article 623 Part 1 of the Code of Civil Procedure).

- The court may, if necessary, hear the debtor and the recoverer and request clarification from the court for the recognition or enforcement of the decision of which a petition has been filed (Article 623, part 3 of the Code of Civil Procedure).

### **11. In what cases and for what reasons can an application for issuing a writ of execution be rejected?**

The legislation of the Republic of Estonia does not provide for the concept of "executive order".

Article 5 of the New York Convention 1958:

1. Recognition and enforcement of a decision may be refused at the request of the party against whom it is directed only if that party furnishes to the competent authority in the place where recognition and enforcement are sought evidence that:

(a) the parties to the agreement referred to in Article II were, under the law applicable to them, incapacitated in any way, or the agreement is invalid under the law to which the parties have subjected the agreement, or, in the absence of such indication, under the law of the country where the decision was rendered, or

b) the party against whom the decision was made was not properly notified of the appointment of an arbitrator or of the arbitration, or was otherwise unable to submit an explanation, or

c) the said decision is made on a dispute that is not covered by or not subject to the terms of the arbitration agreement or arbitration clause in the contract, or contains rulings on matters that go beyond the scope of the arbitration agreement or arbitration clause in the contract, however, that if rulings on matters covered by the arbitration agreement or clause may be separated from those not covered by such agreement or clause, then that part of the decision which contains rulings on matters covered by the arbitration agreement or arbitration clause in the contract may be recognized and enforced, or

d) the composition of the arbitral body or the arbitral process was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place, or

e) the decision has not yet become final for the parties or has been set aside or suspended by the competent authority of the country where it was made or the country whose law applies.

2. Recognition and enforcement of a decision may also be refused if the competent authority of the country in which recognition and enforcement are sought finds that:

a) the subject matter of the dispute is not arbitrable under the laws of that country, or

b) the recognition and enforcement of this decision are contrary to the public policy of this country.

Article 620 of the Code of Civil Procedure states:

Judgments in civil cases rendered in foreign countries are subject to recognition in the Republic of Estonia, unless:

1) the recognition of the decision clearly contradicts the essential principles of Estonian law (public order), primarily the fundamental rights and freedoms of the individual;

2) the defendant or other debtor did not have the opportunity to reasonably protect his rights, primarily in the event of untimely and improper receipt by him of a court summons or other document initiating proceedings, except for the case when he had a reasonable opportunity to challenge the court decision but did not take advantage of this within the prescribed period;

- 3) the decision is contrary to a decision previously made in Estonia in the same case between the same parties or if an action has been brought in an Estonian court between the same parties in the same matter;
- 4) the decision is in conflict with a previously recognized or enforced foreign judgment in the same matter between the same parties in Estonia;
- 5) the decision is inconsistent with a foreign judgment issued earlier in the same case between the same parties, which is not recognized in Estonia, provided that the earlier foreign judgment can be recognized or enforced in Estonia;
- 6) the court that rendered the judgment could not render it in accordance with the provisions of Estonian law on international jurisdiction.

(2) Decisions of a foreign court shall be recognized in Estonia only if the decision has entered into legal force in accordance with the law of the state that issued the decision, except in the case where the decision, according to law or a foreign agreement, must be recognized and enforced from the moment when it can be enforced in the country where the court that issued the decision is located.

(3) The decision of a foreign court is recognized in Estonia without special court proceedings. Nevertheless, it is possible to apply for permission to recognize it in the manner provided for in this Chapter for declaring a decision enforceable if its recognition is contested or if it is necessary for a person for other reasons to exercise his rights.

(4) If the resolution of another court case depends on the recognition of a judgment of a foreign court, the issue of recognition may be decided by the court adjudicating that court case.

## **12. Is it possible to appeal against the decision of the state court to satisfy or refuse to satisfy the application for recognition and enforcement of the decision of a foreign arbitration court?**

A private complaint may be filed by a recoverer and a debtor against a judgment by which a foreign judgment was declared enforceable or the recognition of enforceability was changed. The deadline for filing a private complaint is one month from the date of delivery of the decision, and in the case of delivery in a foreign state - two months from the date of delivery (Article 625, part 2 of the Code of Civil Procedure).

Until the expiration of the term for filing a private complaint against a decision on recognizing the enforceability of a decision of a foreign court or until the entry into force of a decision taken on a private complaint, only measures to secure the claim may be taken to enforce the decision of a foreign court. The debtor has the right to prevent enforcement by giving security in the amount of the amount by which the applicant can apply for enforcement. With the permission of the court, it is still allowed to sell the seized movable property and deposit the proceeds from the sale of the seized property can be destroyed, its value can be significantly reduced, or if its storage requires unreasonable costs (Article 625, part 3 of the Code of Civil Procedure).

The county court decides whether to accept the private complaint about proceedings immediately after receiving it. The court checks the admissibility of filing a private complaint in accordance with the law, as well as compliance with the requirements and deadlines established by law when filing it. When accepting a private complaint about proceedings, the provisions of the acceptance of an appeal for proceedings by a district court shall apply, unless otherwise provided by law.

Acceptance of a private complaint about proceedings does not require separate registration and notification of the participants in the process.

(2) An ancillary complaint may be filed against a decision to refuse to accept an ancillary complaint about proceedings. The decision of the district court, issued on a private complaint, cannot be appealed (Article 663, Parts 1 and 2 of the Code of Civil Procedure).

If the county court considers the private complaint justified, it shall itself satisfy the private complaint by a ruling. If the county court considers that a private complaint can only be partially satisfied, it shall not satisfy it, unless otherwise provided by law.

In case of dissatisfaction with the private complaint by the county court, it immediately sends the private complaint with annexes to it and the procedural documents related to the complaint about consideration and resolution to the district court with jurisdiction. There is no need to issue a separate decision on leaving a private complaint without satisfaction and send it to the participants in the process (Article 663, Parts 4 and 5 of the Code of Civil Procedure).

### **13. Is this appeal final or is there still a procedure for appealing against such a determination?**

- A private complaint may be filed against a decision to refuse to accept a private complaint about proceedings. The decision of the district court, issued on a private complaint, cannot be appealed (Article 663 part 2 of the Code of Civil Procedure).

- A private complaint is resolved by a reasoned decision. If the district court leaves the private complaint without satisfaction, and this decision cannot be appealed to the Supreme Court, then the district court may issue a decision without a descriptive and reasoning part.

- If the regional court considers the private complaint justified, it sets aside the contested ruling and, if possible, issues a new ruling. If necessary, the district court shall refer the case for retrial to the court that issued the annulled judgment.

- A private complaint is resolved in written proceedings if the court does not consider it necessary to hold a court session. The court considering a private complaint may, if necessary, collect new evidence.

- The decision of the district court on a private complaint is delivered to the participants in the proceedings. If a private complaint cannot be filed against the ruling with the Supreme Court, sending the ruling to the participants in the proceedings is sufficient.

- The decision is valid and subject to execution from the date of delivery or sending to the submitter of a private complaint, except for the case when the decision can be appealed, and the law provides that the decision is subject to execution from the entry into force (Article 667 of the Code of Civil Procedure).

### **14. Is there a procedure for preliminary enforcement of a foreign arbitration decision?**

The court may apply measures to secure the claim in the order of initial legal protection to secure the application (Article 622, part 3 of the Code of Civil Procedure).

### **15. How is the enforcement of a decision of a foreign arbitration court carried out after its recognition in a state court?**

A court decision that has entered into force on the recognition of a decision of a foreign arbitral tribunal may be transferred to an executor to initiate enforcement proceedings.