

Arbitration Law in Eastern Europe

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Although arbitration in some form has had a long history in Eastern Europe,¹ international commercial arbitration as a private dispute mechanism, as it is known in the West, is a fairly recent development. Throughout most of the last century, arbitration in Eastern Europe remained a public process organized by states through state institutions.² As trade between the East and West increased during the 1970s, even this form of arbitration was preferable to taking an international dispute to courts in the East, but political and geographical realities soon led to greater acceptance of more neutral locations such as Vienna and Stockholm.³

However, today it is no longer necessary to head west for neutral private arbitration. The drastic economic transformations in the region in a little over a decade have dramatically changed the picture. The system designed primarily for state-based economics has had to give way to marketplace developments better designed for a capitalist system.⁴ Most of the arbitration courts of the old chambers of commerce in Eastern Europe have been overhauled, and most Eastern European states have enacted arbitration laws similar to the UNCITRAL Model Law on International Commercial Arbitration.⁵

Although the situation for arbitration in Eastern Europe has improved dramatically, hazards still exist that either discourage foreign (and local) businesses from opting for arbitration in Eastern Europe, or come as an unwelcome surprise once arbitration is underway. With so

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¹ Eric A Schwartz, *Foreward*, in LITIGATION AND ARBITRATION IN CENTRAL AND EASTERN EUROPE 5 (David W. Rivkin & Charles Platto eds., 1996).

² *See id.*

³ Eugen Salpius, *Arbitration in Eastern Europe*, 72(1) ARBITRATION 45, 45 (Feb. 2006).

⁴ *See* Schwartz, *supra* note 1, at 5.

⁵ Salpius, *supra* note 3, at 45. UNCITRAL Model Law on International Commercial Arbitration (1985) will hereinafter be referred to as the Model Law.

many arbitration laws in the region closely following the Model Law, knowing where these laws differ from the Model Law is key to avoiding such pitfalls. Not all discrepancies from the Model Law are detrimental, and indeed some may be seen as improvements, but awareness of provisions that may be unexpected is necessary for successful arbitration.

While the legal structure for private arbitration is well-developed, the use of arbitration within Eastern Europe is still very limited.⁶ Many factors contribute to this limited use,⁷ but unfamiliarity with local arbitration laws is a major barrier. This paper attempts to address this issue by comparing specific provisions of a sample set of arbitration laws in the region with the Model Law to highlight some similarities and differences that exist. The differences presented are not exhaustive, but are intended to draw attention to important areas that practitioners may overlook, as well as potential improvements on the Model Law and other curious distinctions.

The arbitration laws highlighted in this discussion are those of Croatia, Russia, Ukraine, Slovenia, and Turkey. The Croatian Law on Arbitration,⁸ adopted in 2001, governs both domestic and international arbitration.⁹ Although this law is similar to the Model Law, many provisions are materially different, and additional provisions are present. The Law of the Russian Federation on International Commercial Arbitration,¹⁰ enacted in 1993, and the Law of Ukraine on International Commercial Arbitration,¹¹ enacted in 1994, are almost identical to each other with only a handful of deviations. Furthermore, both explicitly state that they take into account

⁶ See Bruno Schonfelder, *The Puzzling Underuse of Arbitration in Post-Communism: A Law and Economics Analysis* 1-2 (Freiberg Working Paper #7, 2005), http://www.tu-freiberg.de/~wwwfak6/files/paper/schoenfe_7_2005.pdf?PHPSESSID=223aef6531ae831f77ca01e0c889ce26

⁷ See generally Salpius, *supra* note 3, and Schonfelder, *supra* note 6.

⁸ An English translation of the text of the law is available at <http://hgk.biznet.hr/hgk/fileovi/180.pdf>.

⁹ See Croatian Law on Arbitration Arts. 1 & 2. Domestic arbitration is defined as any arbitration that takes place in Croatia. It distinguishes between “dispute[s] with an international element” and “dispute[s] without an international element.” See *id.* Art. 2.

¹⁰ An English translation of the text of the law is available at http://www.globalarbitrationmediation.com/russian_arbitration.shtml.

¹¹ An English translation of the text of the law is available at http://www.ucci.org.ua/arb/arb_law.en.html.

the Model Law¹² and, indeed, follow it very closely. Slovenian arbitration law, however, does not follow the Model Law, although many provisions are similar or effectively the same. Its arbitration law is found in Articles 459-479 of the Code of Civil Procedure of 1999 and Articles 1 and 4 and 94-111 of the Private International Law and Procedure Act of 1999.¹³ Although Turkey straddles Eastern Europe and Asia, its 2001 International Arbitration Law¹⁴ is included in this comparison because its provisions clearly reflect recent efforts to conform to international standards to improve its chance for European Union membership¹⁵ and to encourage greater foreign investment through favorable legal structures.¹⁶ While this article only reviews a sampling of arbitration laws in the region, it should provide some insight into a few of the more divergent areas of the law in Eastern Europe.

Scope of Application

To understand the scope of application of an arbitration law, one must look not only to the stated scope, generally found in the first article of the law, but also to how broadly or narrowly key terms are defined. The Model Law, Russian Law, Ukrainian Law, and Turkish Law each specifically apply to international commercial arbitration,¹⁷ but the Croatian and Slovenian laws apply to domestic arbitration¹⁸ with provisions for international arbitration limited to recognition and enforcement issues.¹⁹ However, despite the differences in title and asserted

¹² Law of the Russian Federation on International Commercial Arbitration, Introduction [hereinafter Russian Law]; The Law of Ukraine on International Commercial Arbitration, Introduction [hereinafter Ukrainian Law].

¹³ These provisions are available in English translation through links at <http://www.sloarbitration.org/english/slo-arb-law/intro-sal.html>.

¹⁴ The author was unable to find a full version of the International Arbitration Law of Turkey (2001) in English translation, so references to this law are made through secondary sources. In sections of this paper where the Turkish provisions are not discussed, the author was unable to determine whether comparable provisions did exist.

¹⁵ See Tugrul Ansay, *International Arbitration in Turkey*, 14 AM. REV. INT'L ARB. 333, 333 (2003).

¹⁶ Mehtap Yildirim-Ozturk, *Ankara's Away*, PROJECT FINANCE MAGAZINE, Oct. 2001, at 47-48.

¹⁷ See Model Law Art. 1(1), Russian Law Art. 1(1), Ukrainian Law Art. 1(1).

¹⁸ See Code of Civil Procedure of Slovenia Art. 459 [hereinafter Slovenian Civil Code]; Croatian Law on Arbitration Art. 1 [hereinafter Croatian Law].

¹⁹ See Private International Law and Procedure Act of Slovenia Arts. 104-111 [hereinafter Slovenian Private International Law]; Croatian Law Art. 1.

scope, the majority of provisions of each of these laws only apply to arbitrations occurring within the state, while provisions for recognition and enforcement are applicable to foreign arbitration awards. The difference lies in how “international” and “domestic” are defined. Under the Model Law, Russian Law, Ukrainian Law, and Turkish Law, arbitration may be international even if held within the state, but the international arbitration law is only applied to those international arbitrations held within the state or whose enforcement is sought within the state (unless parties to foreign arbitration chose that law to be applicable).²⁰ Croatia asserts that its arbitration law applies only to domestic arbitration, but defines as “domestic” any arbitration taking place in Croatia.²¹ Slovenia does not explicitly use the term “international,” but limits the application of the arbitration provisions in the Civil Code to arbitrations “having their seat in the Republic of Slovenia,” unless a law asserts that some tribunal is considered foreign arbitration.²²

Thus, the difference in scope does not depend on whether the law is applicable to international arbitration, but on the definition of what is deemed international or to have a foreign or international “element.” The Croatian Law only makes this distinction to limit the freedom of parties to opt for arbitration outside Croatia to disputes having “an international element.”²³ Therefore, the law applicable to arbitration within Croatia is uniform. Slovenia’s approach similarly applies the same law to any arbitration within the state.²⁴ However, the laws of Russia, Ukraine, and Turkey, in line with the Model Law approach, are specifically designed to apply only to international arbitration, and, consequently, provide specific definitions for what

²⁰ See Model Law Art. 1(3); Russian Law Art. 1(1), Ukrainian Law Art. 1(1); Ali Yesilirmak, *The Turkish International Arbitration Law of 2001*, 19(2) JOURNAL OF INTERNATIONAL ARBITRATION 171, 171.

²¹ Croatian Law Art. 2(1)(2).

²² Slovenian Civil Code Art. 459.

²³ See Croatian Law Art. 3(2).

²⁴ See Slovenian Civil Code Art. 459.

elements must be present to make arbitration within the state international. As a result, the application of the Croatian and Slovenian Laws is actually much broader than the others.

The Model Law provides that arbitration is international if the parties have “their places of business in different states,” if the place of arbitration in the agreement is different from the state of the place of business, if “any place where a substantial part of the obligations” under the contract is to be performed or with which the dispute is “most closely connected” is different from the state of the place of business, or if “the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.”²⁵

The application of the Russian Law appears to have a different focus, providing only that disputes “may be referred to international commercial arbitration” if “the place of business of at least one of the parties is situated abroad,” or if it is a dispute “arising between enterprises with foreign investment, international associations and organizations established in the territory of the Russian Federation” and between participants of these entities or between these entities and “other subjects of the Russian Federation law.”²⁶ The Ukrainian Law is almost identical to the Russian Law.²⁷ The first factor to notice is that these provisions are permissive rather than mandatory, providing that disputes “may be referred” to arbitration under these laws, rather than providing that these laws do apply if certain conditions are met. Furthermore, the parties are not free to apply these laws by agreeing that the subject matter is international, as is the case under the Model Law, and the provision referring to “a substantial part of the obligations” under the contract is also omitted. Thus, the scope of the Russian and Ukrainian Laws seems significantly more limited.

²⁵ Model Law Art. 1(3).

²⁶ Russian Law Art. 1(2).

²⁷ See Ukrainian Law Art. 1(2).

The scope of the Turkish Law, on the other hand, is broader than the Model Law, reflecting the desire to increase commercial arbitration in the state. The Turkish Law enumerates several further factors that suffice to create a foreign “element.” These include a shareholder of a company that is party to the contract bringing foreign capital into Turkey, so it meets the definition of international if one party is a local subsidiary of a foreign company, and capital or goods move from one country to another under the contract.²⁸ Accordingly, a foreign party in Turkey is unlikely in any case to be surprised by the application of some other law.

Given how different the factors can be that trigger application of a state’s international arbitration law, one must be cautious to ensure that selection of arbitration within a particular state does not result in application of unfamiliar, and unfavorable, local arbitration provisions.

Time Limitations for Arbitration

One factor which merits brief mention is a specified time period in which arbitration must occur. The Model Law includes no such provision, and this omission is followed by the Russian, Ukrainian, Croatian, and Slovenian Laws. However, the Turkish Law imposes a one year limitation from the time of the first hearing in which arbitrators must make an award. This time period can be extended by agreement of the parties or by the court on request, but the arbitrators cannot extend it on their own.²⁹ This unique provision has the benefit of ensuring a quick arbitral proceeding, particularly by preventing the arbitrators from controlling any time extension, although the possibility of extension does remain. The effect of an arbitration exceeding the time limit without proper extension, however, remains unclear.

²⁸ See Yesilirmak, *supra* note 20, at 171.

²⁹ *Id.* at 175.

Interim Measures

In the Model Law, two articles refer to interim measures. Article 9 provides that a party may request interim measures of protection from a court, and a court may grant such measures, without violating the arbitration agreement. In Article 17, the Model Law also grants to the tribunal the power to order interim measures, unless the parties have agreed otherwise. The tribunal, however, is limited to ordering only those interim measures it considers necessary “in respect of the subject-matter of the dispute.”³⁰ This additional language appears to limit the reach of the tribunal. The relevant provisions of the Croatian Law are essentially the same as the Model Law,³¹ as are those in the Russian and Ukrainian Laws.³² Interestingly, neither of the Slovenian Laws addresses interim measures at all, either by the court or the tribunal. The only relevant provision is Article 470 of the Slovenian Civil Code which specifically states that “the arbitral tribunal may not use any compulsory measures nor impose punishment” on any participating persons.³³ The lack of interim measures during arbitration is a significant omission, and one likely to have an impact on a decision between arbitration and litigation, or between arbitration within Slovenia and elsewhere.

In contrast to Slovenia, Turkey again reveals its desire to push just a little further than the Model Law in accommodating arbitration. As with the Model Law, parties in Turkey can apply either to an arbitral tribunal or a court for interim measures of protection.³⁴ However, no restriction is placed on the interim measures that can be granted by a tribunal.³⁵ This contrasts with the “subject-matter of the dispute” limitation discussed above. To balance out the liberal

³⁰ Model Law Art. 17.

³¹ See Croatian Law Arts. 16 & 44.

³² See Russian Law Arts. 9 & 17; Ukrainian Law Arts. 9 & 17.

³³ Slovenian Civil Code Art. 470.

³⁴ Yesilirmak, *supra* note 20, at 172.

³⁵ *Id.*

provision of interim measures by tribunals, the Turkish Law also provides more specific guidelines regarding interim measures by a court that protect the party against whom such measures are made. Article 6(5) provides that judicial interim measures or attachments “automatically cease to have effect” when the tribunal either renders an award or dismisses the case.³⁶ Additionally, Article 10(a)(2) provides that a party that has obtained an interim measure or attachment from a court must file a request for arbitration within thirty days of doing so.³⁷ No similar provisions are made in the Model Law or any of the other laws discussed here. Although other domestic laws may address such matters procedurally in other states, it is not clear from the arbitration law. Including such provisions within the arbitration law makes knowledge of the legal effects of interim measures more readily accessible to foreign parties considering arbitration in Turkey. Therefore, the Turkish Law in this area continues to be the friendliest towards international arbitration.

Appointment of Arbitrators

Provisions on appointment of arbitrators are nearly identical in the Model Law, Russian Law, Ukrainian Law, Turkish Law, and Croatian Law. Essentially, the parties are free to agree on appointing procedure, but if none is determined, a proceeding shall have either one or three arbitrators. When three arbitrators are used, each party shall appoint one, and the two arbitrators appointed shall agree on a third. A time period of 30 days is provided for party appointments and for the appointment by the two party-chosen arbitrators. If appointments are not made in such time, a court or other authority specified in each state’s law will make the appointment. If the

³⁶ *Id.* at 173.

³⁷ *Id.*

parties agree that arbitration shall be by one arbitrator, this same authority will appoint the sole arbitrator when the parties are unable to agree on a choice.³⁸

Although the relevant provisions of the Slovenian Civil Code generally follow the provisions described above, a few deviations are notable. Article 463 provides that, if the parties do not specify a number of arbitrators *in their arbitration agreement*, “each party shall appoint one arbitrator, whereupon the two appointed arbitrators shall elect the president.” Thus, if the parties want the option of having only one arbitrator, this must be made clear in the arbitration agreement as no opportunity will exist later for the parties to agree on a number other than three. This is not the case with the Model Law or other laws discussed here which provide only that the parties are free to agree on a number.³⁹ Another notable difference is that the time period given to a party to appoint an arbitrator on request by the opposing party is only fifteen days,⁴⁰ but no time period is specified for the appointment by two party-chosen arbitrators.⁴¹ Similar to the Model Law, a court shall appoint arbitrators if the parties fail to appoint them in time, or if the arbitrators cannot agree on a presiding arbitrator.⁴² However, such appointments are made only on motion of the parties or arbitrators, and the final paragraph of Article 466 provides that a party that does not wish to seek aid of the court in appointment “may bring an action with the court ... asking it to declare that the arbitration agreement is terminated.”⁴³ Additionally, Article 467 provides that a party may ask the court to terminate the agreement if the parties cannot reach consensus within thirty days on an arbitrator they are to appoint jointly or if a person appointed

³⁸ See Model Law Art. 11; Croatian Law Art. 10; Russian Law Art. 11; Ukrainian Law Art. 11; Yesilirmak, *supra* note 20, at 173 (explaining Turkish provisions).

³⁹ Model Law Art. 10(1); Russian Law Art. 10; Ukrainian Law Art. 10; Croatian Law Art. 9; Turkish Law Art. 7. The Turkish Law does require the number to be odd. See Yesilirmak, *supra* note 20, at 173. The Slovenian Civil Code also specifies, in Art. 463, that the number must be odd.

⁴⁰ Slovenian Civil Code Art. 465.

⁴¹ See *id.* Arts. 464 & 465.

⁴² *Id.* Art. 466.

⁴³ *Id.*

as an arbitrator does not wish to or is unable to assume the duty, and the court will decide on such a claim following a hearing.⁴⁴

By providing circumstances wherein a party may initiate court termination of the arbitration agreement, the Slovenian Civil Code departs dramatically from the Model Law which does provide for termination of an arbitrator's mandate, but in such cases another arbitrator is appointed and the proceedings resume.⁴⁵ Provision is also made in the Model Law for termination of the proceedings by the tribunal or by agreement between the parties,⁴⁶ but no provision allows for one party to unilaterally seek termination of the agreement to arbitrate. The effect that these provisions of the Slovenian Civil Code may have on a proceeding is unclear as the grounds under which a court is expected to grant such termination are not given. However, the mere presence of such provisions is indicative of Slovenia's more suspicious approach to arbitration. A party considering arbitration in Slovenia should be aware of this possibility.

Regarding challenge procedures for arbitrators and the failure or impossibility of an arbitrator to act, one divergence in the Croatian Law should be mentioned. Under the Model Law, as well as the laws of Russia, Ukraine, Turkey, and Croatia, a challenge may be referred to a court following a decision by a tribunal rejecting that challenge, as can a controversy over an arbitrator's failure or impossibility to act. Under all of the mentioned laws except for Croatia, a decision by a court on such matters shall be subject to no appeal.⁴⁷ Croatia also excludes this limitation from court review of a tribunal's preliminary decision on its own jurisdiction.⁴⁸ This

⁴⁴ *Id.* Art. 467.

⁴⁵ *See* Model Law Arts. 14 & 15.

⁴⁶ *Id.* Art. 32.

⁴⁷ *See* Model Law Arts. 13 & 14; Russian Law Arts. 13 & 14; Ukrainian law Arts. 13 & 14; Turkish Law Art. 7(c) (*see* Yesilirmak, *supra* note 20, at 174); Croatian Law Arts. 12 & 13.

⁴⁸ *Cmp.* Model Law Art. 16(3) *with* Croatian Law Art. 15(3).

tendency under Croatian Law should be considered as it leaves room for much lengthier court proceedings to further slow down an arbitration proceeding.

Applicable Procedural Law

Under each of the arbitration laws considered here, parties are at liberty to agree on the procedure to be followed in the proceedings. The Slovenian Civil Code does not state this as explicitly as the others, but provides for how arbitrators may conduct proceedings “[u]nless otherwise agreed by the parties,”⁴⁹ suggesting that the parties are free to “otherwise agree[.]” Where the laws diverge is on how proceedings shall be conducted in absence of an agreement. The Model Law approach, also found in the Russian, Ukrainian, Croatian, and Slovenian Laws, is to allow the tribunal to “conduct the arbitration in such manner as it considers appropriate.”⁵⁰ The Turkish Law, however, diverges from this approach by asserting that, if no such agreement is made, arbitration is to be conducted in accordance with the Turkish Law.⁵¹ This could come as a surprise to parties arbitrating in Turkey who would otherwise assume that another law much closer to the dispute would be chosen by the tribunal. Although parties should certainly be aware of this difference, it is unlikely to cause great surprise in reality as this law is only to apply to arbitration conducted within Turkey or outside Turkey where the parties have so chosen.

Applicable Substantive Law

Article 28 of the Model Law provides that a dispute shall be decided “in accordance with such rules of law as are chosen by the parties,” and any designation by the parties of a state’s law “shall be construed, unless otherwise expressed, as directly referring to the substantive law of

⁴⁹ Slovenian Civil Code Art. 469.

⁵⁰ Model Law Art. 19(2). *See also* Russian Law Art. 19(2); Ukrainian Law Art. 19(2); Croatian Law Art. 18(2); Slovenian Civil Code Art. 469.

⁵¹ Yesilirmak, *supra* note 20, at 173.

that State and not to its conflict of laws rules.”⁵² On these points, the Croatian and Turkish Laws follow the Model Law.⁵³ The Russian and Ukrainian Laws are identical to the Model Law except for the omission of “unless otherwise expressed,”⁵⁴ which indicates that the parties cannot choose to refer a tribunal to a state’s conflict of laws rules in order to determine what rule applies. It is unlikely that parties to a contract would opt for incorporating particular conflict of laws rules rather than the substantive law of a state, but this specific omission is curious as identical provisions for ensuring party autonomy have not been omitted from other articles. The Russian and Ukrainian Laws follow the Model Law so closely that any deviations appear intentional, and the purpose of this particular omission is unclear.

Under the Model Law, Russian Law, and Ukrainian Law, in the absence of a choice by the parties, the tribunal will determine the applicable law by using the conflict of laws rules it considers applicable. Croatia and Turkey take a different approach, both asserting that the law most closely connected with the dispute shall be applied. Therefore, for parties that fail to choose the substantive law at the outset, the approach of the applicable arbitration law can be significant.

Article 28(3) of the Model Law asserts that a tribunal cannot decide a dispute *ex aequo et bono* or as *amiable compositeur* unless the parties expressly authorize it. The Croatian, Turkish, and Ukrainian Laws follow this example,⁵⁵ as does the Slovenian Civil Code,⁵⁶ although it includes no other provisions on the rules applicable to the substance of the dispute. Therefore, in Slovenia, determining what law will be applied is very uncertain, but it is clear that decisions will not be based on equity alone unless the parties have authorized that approach. The Russian

⁵² Model Law Art. 28(1).

⁵³ See Croatian Law 27(1); Yesilirmak, *supra* note 20, at 175.

⁵⁴ See Russian Law 28(1); Ukrainian Law 28(1).

⁵⁵ See Croatian Law Art. 27(3); Yesilirmak, *supra* note 20, at 175; Ukrainian Law Art. 28(3).

⁵⁶ See Slovenian Civil Code Art. 471.

Law, however, omits this provision,⁵⁷ thus leaving the tribunal the option of basing decisions on equity rather than law. Parties should be aware of this added element of discretion.

Costs

Although the Model Law does not address the issue of costs of the proceeding, the Croatian, Russian, Ukrainian, and Turkish Laws do so explicitly. Under the Croatian Law, the tribunal is only required to decide on the costs if a party so requests.⁵⁸ The Russian, Ukrainian and Turkish Laws, however, require the tribunal to deal with the arbitration costs in the award.⁵⁹ Indeed, the Croatian and Turkish Laws include further provisions on costs regarding how they should be distributed.⁶⁰ As one obstacle to greater use of arbitration in Eastern Europe is the high cost of both arbitration fees and lawyers' fees,⁶¹ it is not surprising that many arbitration rules in the region address the issue even though the Model Law does not.

Recourse against an Arbitral Award

Under the Model Law, the only recourse that can be made against an arbitral award is an application to a court to have it set aside.⁶² Though some of the laws are not as explicit on this issue, none appear to provide any other basis for canceling an award.⁶³ The grounds on which a court may grant such an application, however, vary significantly. The specifics of each law on this issue will not be discussed in detail, but some differences and trends should be noted.

The Model Law, which is followed exactly by the Russian and Ukrainian Laws in this respect, provides an exhaustive list of six grounds for set aside, two of which a court may raise *sua sponte*, but a court has discretion in whether to set aside an award even if one of the grounds

⁵⁷ See Russian Law Art. 28.

⁵⁸ Croatian Law Art. 35(1).

⁵⁹ See Russian Law Art. 31(2); Ukrainian Law 31(2); Yesilirmak, *supra* note 20, at 177.

⁶⁰ See Croatian Law Art. 35; Yesilirmak, *supra* note 20, at 177.

⁶¹ See Salpius, *supra* note 3, at 46.

⁶² Model Law Art. 34(1).

⁶³ See Russian Law Art. 34(1); Ukrainian Law Art. 34(2); Croatian Law Art. 36; Turkish Law Art. 15(A) (*see* Yesilirmak, *supra* note 20, at 176; Slovenian Civil Code Art. 476.

is met.⁶⁴ The Croatian, Turkish, and Slovenian Laws are similar, but each offers additional grounds.⁶⁵ As each additional basis leaves an arbitral award more vulnerable, parties should carefully review the relevant provisions. Interestingly, the Croatian and Turkish Laws in one instance narrow the grounds for set aside further than the Model Law, providing that an award may only be set aside for failure to conduct proceedings in accordance with party agreement or the applicable law if that fact affected or could have affected the content of the award.⁶⁶

The ability of parties to effectively waive the right to contest an award also changes law to law. The Model Law, Russian Law, and Ukrainian Law do not address this, while the Croatian Law and Slovenian Civil Code expressly prohibit such waivers.⁶⁷ The Turkish Law, in contrast, expressly allows parties to waive this right, but only if both parties have neither their domiciles nor habitual residences in Turkey.⁶⁸ Thus, although Turkey is willing to provide arbitration-friendly laws maximizing party autonomy to attract foreign arbitration, provisions of this sort reveal that Turkey is not yet willing to have the same policies apply to locals at home.

Other issues that should be noted include time limits for applying to have an award set aside, and whether or not appeals of court decisions on arbitration awards are allowed. Most of the laws do not directly address the appeals issue. The Turkish Law, however, explicitly states that such a judgment may be appealed on the limited issue of the set aside. As this clearly precludes any review of the merits on other bases, it likely has the same effect that as the other laws in this regard.

⁶⁴ See Model Law Art. 34(2); Russian Law Art. 34(2); Ukrainian Law Art. 34(2).

⁶⁵ See Croatian Law 36(2); Turkish Law 15(A)(i) (see Yildirim-Ozturk, *supra* note 16, at 48); Slovenian Civil Code Art. 477.

⁶⁶ See Croatian Law Art. 36(2)(1)(e); Turkish Law 15(A)(i)(f) (see Yildirim-Ozturk, *supra* note 16, at 48). The same Article of the Croatian Law also provides this limitation where the ground is based on composition of the tribunal.

⁶⁷ See Croatian Law Art. 36(6); Slovenian Civil Code Art. 479.

⁶⁸ Yesilirmak, *supra* note 20, at 176.

Recognition and Enforcement

As most states, including the five discussed here, have ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”),⁶⁹ the issue of recognition and enforcement is more uniform than other areas of arbitration law. The Convention minimizes the significance of many differences in national laws when applied to foreign awards, and the Model Law essentially incorporates the relevant provisions. Despite this, state rules on recognition and enforcement can be very complex and may deal with issues not addressed by the Convention, so careful review of arbitration rules in this area is necessary. This paper will only address a couple of interesting differences in these provisions.

The Croatian Law and Slovenian Private International Law each provide additional bases for refusing recognition or enforcement,⁷⁰ but as both are signatories to the New York Convention, a court is not at liberty to refuse recognition or enforcement of foreign awards for any reasons not found in the Convention as well. However, these laws do have differences with practical implications. Under the Slovenian Private International Law, denial of recognition and enforcement is not discretionary.⁷¹ Thus, if the court finds that one of the grounds under the Slovenian Law (if also present under the Convention) exists, it *must* refuse recognition and enforcement. This is consistent with Slovenia’s less friendly atmosphere for international arbitration. The Croatian Law provides for mandatory refusal as well, but only on two grounds: if the dispute is not arbitrable under Croatian law, or if the award would be contrary to Croatian

⁶⁹ UNCITRAL, http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html (last visited May 31, 2007).

⁷⁰ Croatian Law Art. 40(1) & 40(2); Private International Law and Procedure Act of Slovenia, Art. 106(1), (1999) [hereinafter Slovenian Private International Law].

⁷¹ Slovenian Private International Law Art. 106(1).

public policy.⁷² The Convention does not make refusal mandatory in any case, but states are not precluded from doing so in their own law for grounds consistent with the Convention.

Conclusion

Because of recent legal changes in Eastern Europe, many countries in the region are well-suited to arbitration for the international business community. Though inhibitions from the legal and economic history of the region have caused slow development in this area, many states are taking active steps to create a favorable legal climate for arbitration. The international community should take advantage of these developments, but should do so with caution as Eastern European states have embraced arbitration to varying degrees, and many subtle but important legal differences remain.

⁷² Croatian Law Art. 40(2).