

Ibragimova Dinara Rinatovna

student

Scientific adviser

Nurova Lilia Rashatovna

candidate of philological sciences, associate professor, head of chair

Kazan branch of FSBEI of HE "Russian State University of Justice"

Kazan, Republic of Tatarstan

WOMEN AS ARBITRATORS IN INTERNATIONAL ARBITRAL DISPUTES: BARRIERS AND STATISTICS

Abstract: *the article considers the barriers for women to become arbitrators in international arbitral disputes and statistics from different arbitration institutions.*

Keywords: *women, diversity, arbitration, international law, statistics.*

Ибрагимова Динара Ринатовна

студентка

Научный руководитель

Нурова Лилия Рашиатовна

канд. филол. наук, доцент, заведующая кафедрой

Казанский филиал ФГБОУ ВО «Российский

государственный университет правосудия»

г. Казань, Республика Татарстан

ЖЕНЩИНЫ В КАЧЕСТВЕ АРБИТРОВ В МЕЖДУНАРОДНЫХ АРБИТРАЖНЫХ СПОРАХ: БАРЬЕРЫ И СТАТИСТИКА

Аннотация: *статья рассматривает некоторые барьеры, не позволяющие женщинам стать судьями арбитражного суда в международной практике, а также статистику различных судебных учреждений.*

Ключевые слова: *женщины, разнообразие, арбитражное разбирательство, международный закон, статистика.*

Achieving gender equality in various fields is the fifth goal of the United Nations Sustainable Development Goals. Gender diversity promotes economic growth and is part of the broader social and cultural context in which international trade, investment, and arbitration function. Arbitration is a tool that can be used to meet the goals of global economic development. Therefore, the problem of gender diversity in arbitration is a relevant topic.

The goal of the research is to analyze the factors which make it complicated for women to become arbitrators and to compare the statistics of the London, Hong Kong and Stockholm institutes of international arbitration.

Arbitration is a private method of dispute resolution that provides a final and binding award. In international arbitration the parties submit a dispute to an appointed decision-maker (arbitrator), or panel of arbitrators (the tribunal) [8, p. 1]. The Arbitral Tribunal is not a national court. Therefore, the important place is given to the party's autonomy and their intent.

One of the reasons for the lack of diversity of arbitrators is the lack of visibility of potential female arbitrators. This is relevant for all the arbitration institutions. As a rule, an arbitrator is a secondary job of a member of the judiciary, a member of the bar association, a lawyer or a scientist. It will take more time for women to reach the point where they can start developing this second career because of the gender stereotypes [15, p. 652, 660]. Unconscious gender bias manifests itself in many ways. Studies by the American Bar Association in 2019 have shown that while nearly half of associates in law firms are women, less than a third are partners and fewer than 20% are equity partners [1]. There is the same situation in other jurisdictions [3, 6]. There is a «glass ceiling» in a woman's career. As a result, even if a woman works as a lawyer, her chance of becoming an arbitrator is negligible.

The next factor is the lack of flexible working mechanisms. Flexible work arrangements are alternate arrangements or schedules from the traditional working day and week. Employees may choose a different work schedule to meet personal or family needs. Alternatively, employers may initiate various schedules to meet their customer needs. The Law Society survey in 2017–2018 found that only 52% of respondents said

that they worked in organizations where a flexible working policy is consistently provided. 37% said the flexible provisions were not consistently applied [12]. It was stated that an unacceptable work-life balance is the second top reason for preventing women progressing and reaching senior levels in the legal profession. A woman has a greater responsibility for children than a man. A woman needs to combine not only office and field work (business trips), but also family life. Since international arbitration requires an arbitrator to travel to the place of arbitration, prepare in a short time and increased pressure due to the complexity and cost of disputes, the inability to change the schedule jeopardizes a woman's ability to agree to be an arbitrator, even if she was given such an opportunity.

Another objection in a woman's way to become an arbitrator is unconscious bias. An example of unconscious bias is the fact that arbitrators or parties to a dispute appoint arbitrators in their own image: men appoint men [2]. Sometimes it can go as far as «avoiding or even disliking people who are different from us» [10]. It should be understood that cases when it is a man who will appoint an arbitrator prevail (previous paragraph, where statistics were discussed, that most of the senior partners in law firms are a man). 2017 study interviewing 9000 respondents around the world stated that «an overwhelming 77% of men but also a majority (55%) of women believe that a man is the best choice to lead a high stakes project» [14]. It is more of a psychological aspect. As the arbitrator V.V. Veeder said: «This is not an indictment. Few in the arbitral community actually intend to practice discrimination on grounds of gender and race. It is more a matter of habit and unconscious or institutionalized discrimination» [15, p. 652, 653]. We can agree with this statement.

In recent years the statistics show the increasing number of women as arbitrators. Thus, gender diversity in arbitral appointments in the London Court of International Arbitration (LCIA) has reached 33%, with parties and arbitrators contributing more than before and the LCIA Court continuing to maintain a high rate of appointments of female arbitrators at 45% of its appointments [7]. Of the 149 appointments by the Hong Kong International Arbitration Centre (HKIAC) 34 (22.8%) were of female arbitrators. Of the 99 designations made by parties and confirmed by HKIAC 11 (11.1%) were of

female arbitrators. Of the 36 designations made by co-arbitrators and confirmed by HKIAC 12 (33.3%) were of female arbitrators [4]. The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) report shows that gender diversity in arbitral tribunals is increasing and has doubled over the past years, mostly as a result of the efforts of arbitral institutions to increase the number of female arbitrators. However, in 2019 women still comprise only just over 23% of all arbitrator appointees in SCC [9]. Therefore, all three arbitral institutions made progress in the field of diversity. Nevertheless, even if there is an increasing number of female arbitrators, the percentage of male arbitrators is higher.

In order to achieve gender equality earlier, arbitration institutions create support groups for women and their careers. For example, on 14 February 2018, the HKIAC launched the HKIAC Women in Arbitration initiative, which is committed to the promotion and success of female practitioners in arbitration and related practice areas in China [5]. There is the Swedish Women in Arbitration Network (the «SWAN»). SWAN is a professional network for women with an interest in arbitration and provides a platform for promoting women in arbitration and knowledge sharing [11]. SCC participates in SWAN too. The Women Way in Arbitration, Latin America has set up a list of Latin American female arbitrators on which parties can draw for potential appointments, including profiles describing areas of expertise [13]. Women in Law Empowerment Forum brings together women from law firms and corporate law departments in the United States, London and Paris.

Summing up the results of the work, it is safe to say that gender equality has not been achieved in the field of international arbitration and law in general. Over the past few years, the number of female arbitrators has increased, but their percentage is still less than the percentage of male arbitrators. There are many reasons for this. Starting from simple bias, ending with institutional discrimination.

Taking into account the fact that international arbitration is based on the autonomy of the parties, the choice of arbitrators depends on the parties to the dispute themselves or on the arbitration institution. This is important because the arbitrators are chosen by

the disputing parties, who have the winning of the case in the first place and the arbitrator whose name is on the rumor is more likely to be chosen. Therefore, everything should be done to make female arbitrators and lawyers visible.

Reference

1. American Bar Association, Commission on Women in the Profession, A Current Glance at Women in the Law. National Association of Women Lawyers, 2019 Survey Report on the Promotion and Retention of Women in Law Firms. – 2019.
2. Apoorva Patel, Implicit Bias in Arbitrator Appointments: A Report from the 15th Annual ITA-ASIL Conference on Diversity and Inclusion in International Arbitration // Kluwer Arbitration Blog. – May 7 2018.
3. Greenwood Lucy. Unblocking the Pipeline: Achieving Greater Gender Diversity on International Arbitration Tribunals // ABA Int'l L. News 1, 3. – Spring 2013.
4. HKIAC Arbitrator Appointments and Confirmations [Electronic resource]. – Access mode: <https://www.hkiac.org/arbitration/arbitrators/arbitrator-appointments-and-confirmations-0> (accessed: 05.04.2022).
5. HKIAC Women in Arbitration Initiative [Electronic resource]. – Access mode: <http://www.hkiac.org/news/hkiac-launcheswomen-arbitration-initiative> (accessed: 05.04.2022)
6. Law Firms' Survey Report 2018 // PricewaterhouseCoopers. – 2018.
7. LCIA News Annual Casework Report 2020 and Changes to the LCIA [Electronic resource]. – Access mode: <https://www.lcia.org/News/lcia-news-annual-case-work-report-2020-and-changes-to-the-lcia-c.aspx> (accessed: 05.04.2022).
8. Moses Margaret. The Principles and Practice of International Commercial Arbitration // Cambridge University Press – 2017.
9. SCC First Report on Gender Diversity in Arbitration [Electronic resource]. – Access mode: <https://sccinstitute.com/about-the-scc/news/2020/first-report-on-gender-diversity-in-arbitration/> (accessed: 05.04.2022).
10. Sheryl Sandberg's initiative «Lean In» [Electronic resource]. – Access mode: <https://leanin.org/education/what-is-unconscious-bias> (accessed: 05.04.2022).

11. Swedish Women in Arbitration Network [Electronic resource]. – Access mode: <http://swannetwork.se/> (accessed: 05.04.2022).
12. The 2019 Law Society Report [Electronic resource]. – Access mode: <https://www.lawsociety.org.uk/topics/research/annual-statistics-report-2019> (accessed: 05.04.2022).
13. The Women Way in Arbitration, Latin America [Electronic resource]. – Access mode: <https://wwarb.org/> (accessed: 05.04.2022).
14. «Unstereotyped Mindset’ Key to Unlocking Gender Equality in the Workplace: new Unilever Research // BusinessWire. – 19 January 2017.
15. Veeder V.V. Who Are the Arbitrators? in Legitimacy: Myths, Realities, Challenges // ICCA Congress Series No. 18 /// Albert Jan van den Berg ed. – 2015.