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# The Relation Between State Courts and Arbitration: Latvia's Perspective

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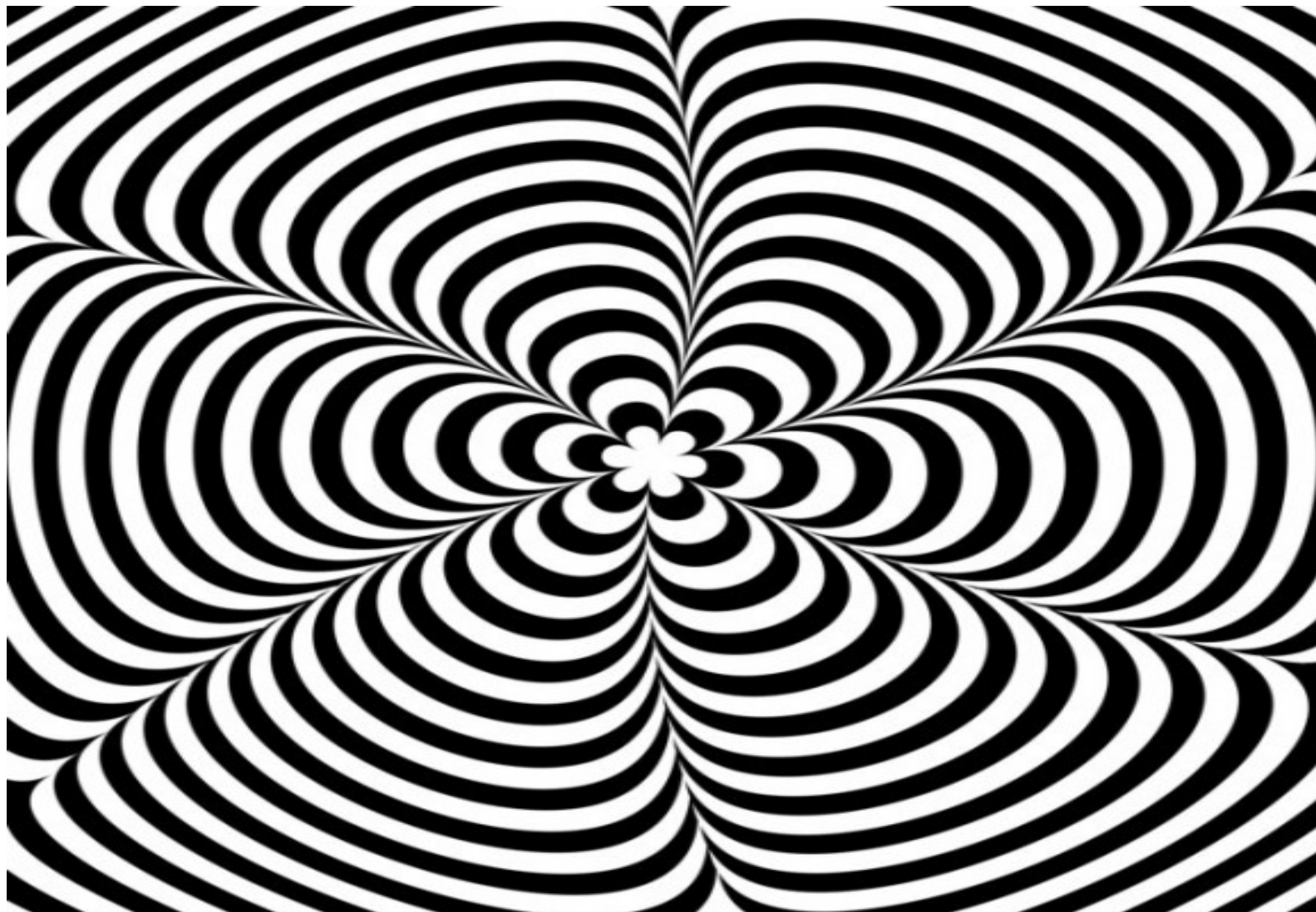
Baltic Arbitration Days

3 June 2016



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# Plan of Presentation

- Short introduction: arbitration in Latvia
- Awarding interim measures
- Conclusions



# Arbitration in Latvia

- 214 (2013) → 83 (01.06.2016) arbitral institutions
- New Law on Arbitration Courts
  - In force as from 01.01.2015
  - **Not based** on Model Law
    - No court assistance, incl. **no set aside!**
  - New requirements
    - Arbitral Institutions
    - Arbitrators (incl. registered closed lists of arbitrators)
    - E-Arbitration agreement



# Constitutional Court case

No. 2004-10-01

- The structure of arbitral institution, previous relations of the arbitrator with the parties could also serve as the reasons for **doubts** on the existence of independence and impartiality
- The control of arbitration courts is concentrated **only** on the stage of issuance of the writ of execution



# Constitutional Court judgment

No. 2014-09-01

- **The competence-competence** principle does not exclude the possibility that the jurisdiction of arbitration court is examined by a court of general jurisdiction.
- An increase in the workload of the court of general jurisdiction **cannot be used to justify** why parties cannot contest arbitration clause in the court
- Legislator shall consider to introduce **set aside procedure!**



# Interim measures



# Interim measure (CPL)

- If parties agreed to submit the dispute to arbitration, the claim can be secured only before the commencement of arbitration proceedings
- If there is a reason to believe that enforcement of the court judgment in the case may become problematic or impossible, the judge may, according to a reasoned application by the claimant, take a decision to secure a claim (Art.137(1))
- In deciding an issue regarding securing of a claim, a court or judge shall take into account *prima facie* formal legal grounds (Art. 140(1))





# Ship case

- Buyer (Panama) v. Seller (Liberia)
- Agreement on sale of ship
  - Arbitration clause (London)
  - Indicated seller's bank account in Latvian bank
- Non-conformity of ship
- Request to secure the claim in Latvian court before commencement of arbitration in U.K.



# Ship case Decision



- The court:
  - Respondent's property is not located in Latvia as money in account is not property (asset) (**nauda nav manta..**)
  - There are no evidences submitted that the money is in account
  - Refuses to take the application and returns it to possible claimant



# Measures of securing claims (CPL)

- The measures by which claims may be secured are arrest of movable property **and** monetary funds of the respondent [..] v.
- If the parties have agreed to submit the dispute to arbitration, application (*for interim measures*) shall be submitted to a court in accordance with the location of the debtor or his/her property (Art. 139 (2))
- 2015 Report on SC practice: in CPL monetary funds are clearly separated from immovable property; money in bank account is not asset within the meaning of CPL thus court has no jurisdiction.
  - int'l cases?



# Problematic aspects

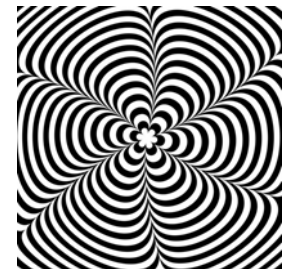
- 53% (12,4 billion euros) non-resident deposits in Latvian banks...
- Brussels Ibis Regulation (article 35)
- Bilateral treaties – no special rules
- Time to change CPL rules and include int'l element?!





# Conclusions

- Try to improve arbitration environment
  - But do the special qualification of arbitrators guarantee the independence and impartiality?
- Need for courts' assistance in arbitration proceedings according to UNCITRAL ML
  - Set aside proceedings
- Need for improvements in securing the claims





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Thank you for attention!

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