UDC 341.637

O.V. Koch, Master of Law
Odessa I.I. Mechnikov National University
the Department of General and International Law
Frantsuzskiy Boulevard, 24/26, Odessa, 65058, Ukraine

Supervisor: E.J. Streltsova, Candidate of Juridical Sciences,
Associate Professor, Honored Scientific Worker of Education of Ukraine

PRINCIPLE IURA NOVIT CURIA IN INTERNATIONAL COMMERCIAL ARBITRATION

The article is devoted to the analysis of the perspectives of application of civil law principle *Iura novit curia* to international commercial arbitration with an aim to ensuring effective dispute resolution. It is considered that the application or non-application of the principle *Iura novit curia* may be evaluated as a violation of the arbitral procedure, and consequently, risks of refusal recognition and enforcement of arbitral award by national court may arise.

The analysis of the latest research and case law demonstrates that the way of application of *Iura novit curia* to arbitration depends on the applicable law to arbitration procedure and on judicial system of national court that is entitled to recognize the arbitral award. The research argues that besides the fact that there is no standardization in this field, there are specific conditions of application of the *Iura novit curia* to arbitration such as: conformity to principles of *due process* and *a right to be heard*, and also a permissive approach.

Key words: international commercial arbitration, principle *Iura novit curia,* applicable law, recognition and enforcement of arbitral award.

Problem statement. The application of the concept of civil law *Iura novit curia* and its adaptation to international commercial arbitration (hereinafter – arbitration) have recently become a subject of worldwide discussions. A number of problems on defining the applicable law and limits of arbitrators' power have appeared due to the growing role of arbitral courts in dispute resolution. Considering that the application of the principle *Iura novit curia* is not expressly provided neither in international law nor in rules of arbitral courts it causes uncertainty when it comes to practice. The application or non-application of the principle *Iura novit curia* may be evaluated as a violation of the arbitral procedure, and as a consequence, risks of refusal of recognition and enforcement of arbitral award by national courts may arise.

Analysis of recent research and publications. General aspects related to the process of proof and ascertaining applicable law by arbitral courts have been a subject of research of a number of scientists and practitioners, among which are: N. Erpyleva, P. Fouchard, E. Gaillard, B. Goldman, M. Hunter, Yu. Prytyka, M. Rosenberg, A. Redfern, J. Savage, T. Slipachuk, etc. A significant contribution to the study of the application of the maxim *Iura novit curia* in arbitration has been made by D. Bigge, T. Giovannini, T. Isele, G. Kaufmann-Kohler, G. Knuts, P. Landolt, J. Lew, A. Mantakou, A. Panov, K. Pilkov, A. Rigozzi, J.Waincymer, etc.

Paper purpose. The purpose is to explore the perspectives of application of civil law principle *Iura novit curia* to international commercial arbitration with an aim to ensuring the effective dispute resolution and enforcement of arbitral awards.

Paper main body. *Iura novit curia* is a Latin legal maxim literally translated as *«the court knows the law; the court recognizes rights»* [1, p. 852]. Principle *Iura novit curia* emerged from the Roman law. Originally its essence was expressed in a longer maxim in Codex Justinianus in II Corpus Juris Civils translated as «*judge should not hesitate to complete and elaborate whatever has been inadequately stated by the parties or their attorneys, insofar as he knows it to be relevant to the laws and public justice»* [2, p. 102].

The modern interpretation of the principle *Iura novit curia* is reduced to the statement that judges are obliged to know and apply laws if it is necessary without any directions from the parties and independently of parties' submissions. In other words, the court applies the law *ex officio*, *sua*

sponte, proprio motu, i.e. of its own accord, without being limited to the legal arguments of the parties [3, p. 488].

The application of this principle depends on the law system to which the court relates. Principle *Iura novit curia,* as it came from Roman law, is basic for civil law jurisdictions and rarely is used in common law countries. National courts of a civil law system are under an affirmative obligation to investigate and to apply foreign law. The contents of the applicable law are determined by the judge's own research and the court may apply foreign law irrespective of the will of the parties [4, p. 9]. However, these statements cannot be applied to international commercial arbitral courts, thus they are not a part of any state court system.

In general, application of the principle *Iura novit curia* in arbitration may be realized in two ways: 1) by raising legal issues not discussed by the parties; 2) by characterizing legal situations differently from the parties.

According to Dr. Mantakou A. the principle *Iura novit curia* had fully been incorporated in arbitration in the past decades [3, p. 489-490].

In modern arbitration practice there is a tendency to modification of the principle *Iura novit curia.* It seems to be almost impossible to ensure the application of this principle according to its original meaning in arbitration. The transnational character of commercial disputes, the necessity of recognition and enforcement of foreign arbitral awards under national laws make arbitration procedure much more complicated. Moreover, arbitration awards have been challenged more frequently than before on the grounds that an arbitral court has exceeded mandate or has not granted the parties with sufficient opportunity to present their views on its interpretation of the case. Such grounds are sometimes invoked, when the arbitral court applies the principle *Iura novit curia* while determining the contents of the applicable substantive law [5, p. 669].

Unlike civil courts, the will of the parties is of a primary importance for arbitral courts. Arbitral courts have to consider any law as foreign law. The arbitration procedure is conducted according to arbitration rules and agreements between parties. If parties agree so, arbitral court may decide cases *ex aequo et bono (amiable compositeur)*, i.e. to decide case upon general principles of law and equity, without ascertaining the law [6, art. VII(2)]; [7, art. 28 (3)]; [8, art. 35.1]; [9, art. 61]; [10, Art 21(3)]; [11, art. 27.3]; [12, art. 33]; [13, Section 9 (2)].

Application of the principle *Iura novit curia* is related directly to the defining the subject to be proven *thema probandum* in arbitration, particularly whether or not parties should prove the law that applies to the case. A significant study of arbitrators' initiatives to obtain legal evidence is the 2008 report of the International Commercial Arbitration Committee of the International Law Association on «Ascertaining the Contents of the Applicable Law in International Commercial Arbitration» (hereinafter- «ILA Report»). Due to the ILA Report the principle *Iura novit curia* in arbitration is limited by the parties' duty to bring forth legal arguments on which arbitrators should rely primarily [4, p. 22].

The fundamental provisions on applicable law in arbitration are stated in the European Convention on International Commercial Arbitration and in the UNCITRAL Model Law. Due to the Art. VII of the Convention on International Commercial Arbitration the parties shall be free to determine, by agreement, the law to be applied by the arbitrators to the substance of the dispute. Failing any indication by the parties as to the applicable law, the arbitrators shall apply the proper law under the rule of conflict that the arbitrators deem applicable [6]. According to the Art. 28 of the UNCITRAL Model Law failing any designation by the parties of rules of law as applicable to the substance of the dispute, the arbitrators shall apply the law determined by the conflict of laws and rules, which it considers applicable [7]. Both acts provided, that arbitral tribunal shall decide the case in accordance with the terms of the contract and the usages of the trade applicable to the transaction. In this context the reference to the laws and rules as may be applicable includes besides national law, transnational law (e. g. Lex Mercatoria, the UNIDROIT Principles, the Shari'ah, trade usages), relevant principles of international law [14, p. 108].

Provisions of arbitration rules of different arbitral courts in most cases correspond to the UNCITRAL Model Law and to the European Convention on International Commercial Arbitration, e.g. Arbitration Rules of the UNCITRAL [8, art. 35.1], the International Chamber

of Commerce (ICC) [10, art. 21], the Stockholm Chamber of Commerce (SCC) [15, Art. 22], the World Intellectual Property Organization (WIPO) [9, Art. 61], the Singapore International Arbitration Centre (SIAC) [11, Art. 27] state that in the absence of agreement on applicable law between parties, arbitral tribunal shall apply rules of law which it determines to be appropriate. Art. 16 of the SIAC Rules provides that tribunal shall conduct the arbitration in such manner after consulting with the parties [11].

The law applicable to the arbitration agreement and the procedure shall be the law of the place of arbitration (national law), unless the parties have expressly agreed on the application of another rules and such agreement is permitted by national law, e.g. Arbitration Rules of the London Court of International Arbitration (LCIA) [16, art. 16.4], of the WIPO [9, art. 61], of the ICC [10, art. 19].

Considering the obligation of the parties to present the evidence of law, rules of some arbitral courts contain a provision that besides a statement of facts parties should submit to the tribunal legal arguments supporting their claims. Parties should present the contentions of law on which they rely in full, e.g. Arbitration Rules of the UNCITRAL [8, art. 20.2], of the SIAC [11, art. 17.2(b)], of the Czech Arbitration court [13, Section 34], of the WIPO [9, art. 41(b)].

Noteworthy is the Swiss arbitration process as a part of which principle *Iura novit curia* is totally recognized. Thus, only if Respondent raises an objection to the jurisdiction of the arbitral tribunal, the Statement of Defence shall contain the factual and legal basis of such objection [12, art. 19.2]. The arbitral tribunal shall decide the case in accordance with the rules of law with which the dispute has the closest connection, if a choice of law by the parties is absent [12, art. 33].

Generally, international law and arbitration rules do not directly express if arbitral courts have a power or a duty to apply law on their own motion. Such provisions of arbitration procedure are aimed at ensuring the recognition and enforcement of arbitral award. National courts may only refuse to recognize and enforce arbitral award on the grounds of procedural errors, no review on the merits is available. If the *Iura novit curia* principle had been included in arbitration rules or provided by international standards as obligatory in arbitration, as it is in courts of civil law jurisdictions, it would have become a procedural duty of arbitrators to ascertain the law and to apply it in conformity with national law-enforcement practices. Thus, a great number of arbitral awards would have been challenged on the grounds of substantive law violations, regarded as procedural violations.

Considering the possibility of developing a common approach to application of the principle *Iura novit curia* in arbitration, it seems to be quite doubtful due to the transnational nature and high level of autonomy of arbitration. Moreover, the standardization for that matter is not an issue of quality. Thus, it is not relevant.

Due to the ILA Report the principle *Iura novit curia* in arbitration may be applied under the following conditions: 1) arbitrators decide the dispute within the mandate defined by the arbitration clause; 2) arbitrators conduct the proceedings consistent with *due process*; 3) arbitrators approach a dispute with an open mind; 4) public policy considerations may legitimately influence the approach of arbitrators to determining the contents of applicable law [4].

To define the prospective of application of the principle *Iura novit curia* in international commercial arbitration it is necessary to weigh all the *pros and cons*.

The disadvantages are usually connected with nonconformity of *Iura novit curia* principle to the fundamental principles of arbitration such as *due process* and *parties' rights to be heard*. One of the most fundamental *due process* requirements is laid out in Art. 18 of the UNCITRAL Model Law that the parties shall be treated equally and each party shall be given a full opportunity of presenting its case [7]. *Due process* requires that arbitrators subject their findings to the parties for comments in order to respect *adversary principle* [5, p. 671]. Due to the Art.34.2(a)(iv) of the UNCITRAL Model Law the award may be set aside if the arbitration proceedings do not comply with these *due process* requirements [7]. Principle *parties' rights to be heard* imply that parties should have a reasonable opportunity to address important legal points. Furthermore, rendering an award by the arbitral court beyond the submissions of the parties to arbitration may

be considered as exceeding arbitrators' mandate that is one of the limited bases, on which an award can be annulled or recognition and enforcement can be denied under the Art. V of the New York Convention [17] and Art. 34.2(a)(iii) of the UNCITRAL Model Law [7].

For instance, the Paris Court of Appeal set aside the arbitral award in the case *Engel Austria GmbH v. Don Trade (2009)* on the basis that arbitrators referred to the Austrian law principle of *Wegfall der Geschäftsgrundlage (Frustration of Contract)* despite neither of the parties had invoked it. Thereby, the parties were deprived of the possibility to be heard on the application of such principle. The Swiss Federal Supreme Court in case *Urquijo Goitia v. da Silva Muñiz* (*2009)* set aside the arbitral award on the grounds that arbitral court violated the parties' *right to be heard* and apply the law *ex oficio* despite the case had no link to law of Switzerland (Swiss law recognizes principle *Iura novit curia* in arbitration). The Quebec Superior Court in case *Dreyfus v. Tusculum (2008)* stated that arbitrators had taken on the role of *amiable compositeur* although the parties had not requested, mandated or permitted it to do so. In all three cases national courts concluded that the arbitral courts had gone too far in its application of the principle *Iura novit curia*, in result, the respective arbitral awards were set aside [5, p. 680].

Thus, the principle *Iura novit curia* seems to take gradually the shape of *Iura* ***non*** *novit curia* [3, p. 497]. Arbitrators who attempt to develop legal issues in a strict application of *Iura novit curia* approach a risk of refusal of recognition and enforcement of the arbitral award. According to the ILA Report arbitrators should not give decisions that might reasonably be expected to surprise the parties, or any of them, or that are based on legal issues not raised by or with the parties [4, p. 22]. Otherwise, the national courts deciding the cases on recognition and enforcement of arbitral awards may apply the concept of «*legitimate expectation*» or «*unfair surprise*» as a ground for setting aside the arbitral award [18].

As a matter of fact, arbitral courts should not reach conclusions on law or fact, nor decide issues, without giving the parties an opportunity to address them. The parties must know the method, which the arbitrators are to follow in their analysis of law and facts, so they can address these issues accordingly [19].

An obstacle to the application of *Iura novit curia* in arbitration, as Prof. Kaufmann-Kohler G. stated, is also the transnational legal environment involving participants from different legal cultures, and the possible difficulties of accessing the applicable law for reasons of language, availability, or reliability of the pertinent sources [20, p. 84-87]. Apparently, according to Prof. Julian Lew, international arbitrators do not always «know the law». Where uncertain as to the applicable rules, or if it considers that an important legal issue arises relevant to the outcome of the case and/or which the parties have not adequately addressed, the arbitrator may do its own research. Thus, the application of *Iura novit curia* is fraught with probability of costs increases, related to the necessity to appoint an independent legal experts on applicable law [19; p. 82-85]. This is a reason why a number of scholars claim that *Iura novit curia* is almost never a part of a *lex arbitrii*. Among them are P. Landolt [21, p. 184], J. Lew [19, p. 94], L. Mistelis [19, p. 94], S. Kröll [19; p. 94], J. Waincymer [22, p. 202].

However, the practice of some civil courts that have decided cases on recognition and enforcement of arbitral awards evidences to the contrary, from which it follows that the application of the *Iura novit curia* principle in arbitration depends on the attitude of national civil courts to this issue.

The starting point for numerous decisions as to the scope of *Iura novit curia* principle in arbitration was marked by the decision of the Supreme Court of Switzerland that was the first body to uphold the application of *Iura novit curia* in arbitration in 1994 (*Westland Helicopters Ltd. v. The Arab British Helicopter Company*) [23]. Swiss courts took a similar approach in cases: *N.V. Belgische Scheepvaartmaatschiappij – Compagnie Maritime Belge v. N.V. Distrigas, Bundesgericht (2001); Bank Saint Petersburg PLC v. ATA Insaat Sanayi v. Ticaret Ltd (2001),* etc. In case *X. SA v. Y. SA (2010)* Federal Supreme Court of Switzerland concluded that *the right to be heard* covers in particular the right to present the facts of the case; with regard to legal issues, as a rule, the principle of *Iura novit curia* prevails [5]. In case *MHH AS v. Axel's Konsult och Förvaltning AB (2014)* the Svea Court of Appeal stated that due to the principle *Iura novit*

curia, the arbitrator must apply the law even if it has not been referenced by a party [24]. Western Sweden Court of Appeal in case *Berde Plants Sweden AB v. Borkhult Invest AB (2015)* noted that arbitrator is obliged to apply legal rules which have not been referenced by the parties, and doing so does not mean that he exceeds his mandate [25]. Also the case law demonstrates that *Iura novit curia* with regard to arbitration has been applied in Belgium, Germany [26, p. 126], Finland (*Werfen Austria v. Polar Electro)* [27].

The significant advantage of application of the principle *Iura novit curia* in arbitration is that by this way may be avoided the probability that the award may become a precedent, in case the motivation of the arbitral award was based on weak representation of the parties. Also in case it is impossible to determine legal solution with arguments raised by the parties, arbitrators may be deprived of the power to render an award, unless they will be guided by the principle *Iura novit curia*.

On balance, *Iura novit curia* principle should be given a secondary importance after the *due process* principle. Noteworthy is the point of view of Dr. Mantakou A. that the *Iura novit curia* principle lost its autonomy and became a part of the *due process* in the widest form possible of the latter [3, p. 494].

In top priority for arbitrators is to ensure that an arbitral award will be final and legally enforceable. The arbitral tribunal may conduct the arbitration in such manner, as it considers appropriate, provided that the procedure is fair, impartial, practical and expeditious and the parties are treated with equality.

Conclusions. As discussed above the application of the principle *Iura novit curia* in international commercial arbitration is an issue on which no consensus has yet been found. Considering that arbitral courts are independent bodies, not connected with any state judicial system, such situation seems to be quite natural.

The numerous studies on the probability to adapt the *Iura novit curia* principle to arbitration and multiple attempts to develop a common approach of application of this principle demonstrate the great relevance of this issue.

International law and arbitration rules are silent on the matter of to which extent *Iura novit curia* may be applied, if arbitral courts have a power or duty to apply law on their own motion and whether or not parties to a dispute need to plead or to prove law that is to be applied to the case. Analysis of the latest researches and case law demonstrates that it is impossible to fully implement or fully avoid the application of the principle *Iura novit curia* in arbitration. On this basis, a balanced approach is assumed as the most acceptable general approach to the determination of the contents of the applicable law in international commercial arbitration.

In traditional sense, the principle *Iura novit curia* is not being widely applied in arbitration nowadays. However, on the other hand, it is inappropriate to claim that *Iura novit curia* is not being applied in arbitration at all. Passive arbitrators, who decide cases based only on the arguments presented by the parties, as well as arbitrators, who attempt to develop legal issues in a strict application of *iura novit curia* approach risk that the award may be challenged or even rendered unenforceable. Accordingly, the arbitration prospective of application of the principle *Iura novit curia* may be based on following conditions. Firstly, principle *Iura novit curia* in arbitration should be considered as permissive rather than mandatory. Secondly, it should be applied only after the requirements of *due process* are complied with. Thirdly, arbitrators applying principle *Iura novit curia* should give an opportunity to parties to comment on legal issues they have not invoked.

References

1. Black's Law Dictionary, 6th ed. Joseph R. Nolan, ed. – St. Paul: «West Publishing Co.», – 1990. – 1657 p.
2. Krueger P. Corpus iuris civilis. /P. Krueger //Volume 2; Codex Justinianus // Cambridge University Press. – 2014. – 534 p.
3. Mantakou A. P. The Misadventures of the Principle Jura Novit Curia in International Arbitration /A. P. Mantakou // [Electronic resource]. – Access mode: www.hiifl.gr/wp-content/uploads/MANTAKOUjuranovitcuria.pdf – Title from the screen.

4. Recommendations of the International Law Association on «Ascertaining the contents of the applicable law in international commercial arbitration» 2008 [Electronic resource]. – Access mode: www.ila-hq.org/ – Title from the screen.
5. Knuts G. Jura Novit Curia and the Right to be Heard – An Analysis of Recent Case Law /G. Knuts// Arbitration International. – 2012. – Volume 28, Issue 4. – P. 669 – 689.
6. European Convention on International Commercial Arbitration 1961 [Electronic resource]. – Access mode: treaties.un.org/doc/Treaties/1964/01/19640107%2002-01%20AM/Ch_XXII_02p.pdf – Title from the screen.
7. UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006 [Electronic resource]. – Access mode: www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html – Title from the screen.
8. UNCITRAL Arbitration Rules 2014 [Electronic resource]. – Access mode: www.uncitral.org/pdf/english/texts/arbitration/arb-rules-2013/UNCITRAL-Arbitration-Rules-2013-e.pdf – Title from the screen.
9. Arbitration Rules of World Intellectual Property Organization [Electronic resource]. – Access mode: www.wipo.int/amc/en/arbitration/rules/newrules.html – Title from the screen.
10. Arbitration Rules of the International Chamber of Commerce [Electronic resource]. – Access mode: www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/ – Title from the screen.
11. Rules of Arbitration of Singapore International Arbitration Centre [Electronic resource]. – Access mode: www.siac.org.sg/our-rules – Title from the screen.
12. Rules of International Arbitration of the Swiss Chambers of Commerce Association for Arbitration and Mediation [Electronic resource]. – Access mode: www.swissarbitration.org/sa/en/rules.php – Title from the screen.
13. Rules of the Arbitration court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic [Electronic resource]. – Access mode: en.soud.cz/rules – Title from the screen.
14. Redfern A., Hunter M. Law and Practice of International Commercial Arbitration / A. Redfern, M. Hunter// London: Sweet & Maxwell. – 2004. – 659 p.
15. Arbitration Rules of the Arbitration institute of the Stockholm Chamber of Commerce [Electronic resource]. – Access mode: sccinstitute.com/media/40120/arbitrationrules_eng_webbversion.pdf – Title from the screen.
16. Arbitration Rules of the London Court of International Arbitration [Electronic resource]. – Access mode: www.lcia.org//Dispute_Resolution_Services/lcia-arbitration-rules-2014.aspx – Title from the screen.
17. Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 [Electronic resource]. – Access mode: www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html – Title from the screen.
18. Панов А. А. Доктрина «неожиданного решения» в международном коммерческом арбитраже /А. А. Панов // Вестник международного коммерческого арбитража. – 2012.- № 2. – С. 74 – 88.
19. Lew J. D. M., Mistelis L. A., Kröll S. M. Chapter 5 Judicial Nature of Arbitration in Comparative International Commercial Arbitration /J. D. M. Lew, L. A. Mistelis, S. M. Kröll // Kluwer Law International. – 2003. – P. 71 – 97.
20. Kaufmann-Kohler G., Rigozzi A. International Arbitration: Law and Practice in Switzerland /G. Kaufmann-Kohler, A. Rigozzi// Oxford University Press. – 2015.– 1st ed. – 672 p.
21. Landolt P. Arbitrators' Initiatives to Obtain Factual and Legal Evidence /P. Landolt// Journal of the LCIA. – 2012. – Volume 28 No. 2. – P. 173-223.
22. International Arbitration and the Duty to Know the Law /J. Waincymer // Journal of International Arbitration. Kluwer Law International. – 2011. – Volume 28. Issue 3. – P. 201– 242.
23. Westland Helicopters Ltd. v. The Arab British Helicopter Company (ABH): Judgment of the Swiss Federal Tribunal, case No. DFT 120 II 172 of 19 April 1994.
24. MHH AS v. Axel's Konsult och Förvaltning AB: Judgment of the Svea Court of Appeal in case No. T 2610-13, 04.12.2014 [Electronic resource]. – Access mode: www.arbitration.sccinstitute.com/dokument/Court-Decisions/2352485/Judgment-of-the-Svea-Court-of-Appeal-4-December-2014-Case-No-T-2610-13?pageid=79572 – Title from the screen.
25. Berde Plants Sweden AB v. Borkhult Invest AB: Judgment of the Court of Appeal for Western Sweden, Case No. T 4028-13, 27.02.2015 [Electronic resource]. – Access mode: www.arbitration.sccinstitute.com/dokument/Court-Decisions/2352487/Judgment-of-the-Court-of-Appeal-for-Western-Sweden-27-February-2015-Case-No-T-4028-13?pageid=79572. – Title from the screen.
26. Wirth M., Rouvinez C., Knoll J. Earch for Truth in Arbitration: Is Finding the Truth What Dispute Resolution Is About /M. Wirth, C. Rouvinez, J. Knoll // ASA Special Series. – No. 35 // Juris Publishing, Inc. – 2011. – 188 p.
27. Werfen Austria GmbH v. Polar Electro Europe B.V., KKO 2008:77: Judgment of the Finnish Supreme Court, case No. 1517 of 02 July 2008.

Article received 24.05.2016

Е.В. Коч, магистр права
Одесский национальный университет имени И.И. Мечникова
Кафедра общеправовых дисциплин и международного права
Французский бульвар, 24/26, Одесса, 65058, Украина

Научный руководитель: ***Е.Д. Стрельцова***, канд. юрид. наук, доцент
Заслуженный работник образования Украины

ПРИНЦИП IURA NOVIT CURIA В МЕЖДУНАРОДНОМ КОММЕРЧЕСКОМ АРБИТРАЖЕ

Резюме

Статья посвящена анализу перспектив применения принципа гражданского права *Iura novit curia* в международном коммерческом арбитраже с целью эффективного разрешения споров. Обращается внимание на то, что применение или неприменение принципа *Iura novit curia* может быть оценено как нарушение арбитражной процедуры, в результате чего может возникнуть риск отказа в признании и исполнении арбитражного решения национальным судом.

Анализ последних научных исследований и судебной практики демонстрирует, что способ применения принципа *Iura novit curia* в арбитраже зависит от применимого права к арбитражной процедуре и от правовой системы, к которой относится национальный суд, уполномоченный признать арбитражное решение. Указано, что, несмотря на отсутствие стандартизации в этой области, существуют условия применения *Iura novit curia* к арбитражу, такие как: соответствие принципам *надлежащего процесса* и *права сторон быть услышанными*, а также – дозволительный метод.

Ключевые слова: международный коммерческий арбитраж, принцип *Iura novit curia,* применимое право, арбитражное решение.

О.В. Коч, магістр права
Одеський національний університет імені І.І. Мечникова
Кафедра загальноправових дисциплін та міжнародного права
Французький бульвар, 24/26, Одеса, 65058, Україна

Науковий керівник: ***Є.Д. Стрельцова***, канд. юрид. наук, доцент
Заслужений працівник освіти України

ПРИНЦИП IURA NOVIT CURIA У МІЖНАРОДНОМУ КОМЕРЦІЙНОМУ АРБІТРАЖІ

Резюме

Стаття присвячена аналізу перспектив застосування принципу цивільного права *Iura novit curia* в міжнародному комерційному арбітражі з метою ефективного вирішення спорів. Підкреслюється, що застосування або незастосування принципу *Iura novit curia* може бути оцінено як порушення арбітражної процедури, в результаті чого може виникнути ризик відмови у визнанні та виконанні арбітражного рішення національним судом.

Аналіз останніх досліджень і судової практики демонструє, що спосіб застосування принципу *Iura novit curia* в арбітражі залежить від застосовного права до арбітражної процедури і від правової системи, до якої належить національний суд, уповноважений визнати арбітражне рішення. Зазначено, що, незважаючи на відсутність стандартизації в цій галузі, існують умови застосування *Iura novit curia* до арбітражу, такі як: відповідність принципам *належного процесу* і *права сторін бути почутими*, а також – дозвільний метод.

Ключові слова: міжнародний комерційний арбітраж, принцип *Iura novit curia*, застосовне право, арбітражне рішення.