

Kluwer Arbitration Blog

Recognition of Arbitral Awards under the New York Convention by Cypriot Courts

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Cyprus is a hub for international business transactions and tax structures. It is also a place where the assets of numerous multinational corporations and businesses are maintained. As such, it is a place which where the enforcement of international arbitration awards is frequently sought. In light of the above, one would expect Cyprus to be arbitration-friendly for the above purposes. Nonetheless, several first instance judgments by Cypriot courts have followed a seemingly restrictive approach regarding the issue of jurisdiction to entertain an application to enforce a foreign judgment or arbitral award in Cyprus. Some of these judgments involve arbitration awards falling within the ambit of the New York Convention (“NYC”), and their reasoning appears to lack conformity with NYC provisions and relevant case law from other jurisdictions, such as the US (see for example: *James Edward O’Connor v. Maritime Management Corp.*, 2017 WL 1018586 (E.D. La. Mar. 16, 2017)). This restrictive approach has not been examined by the Cypriot Supreme Court yet, but it is expected that an opportunity will soon arise for the issue of be clarified.

In this post, we look into the seminal first-instance case law where this restrictive approach was adopted. We also look at the more balanced approach taken in *Base Metal Trading Ltd v. MEAT “NKAZ”*, another first instance case. We conclude that the latter approach is compatible with the provisions of the NYC, whereas the former is not, and that the Cypriot Supreme Court could potentially provide clarity on this crucial issue in the future.

Relevance of the NYC

Cyprus is a signatory to the NYC. It follows that Cyprus is bound under Article III of NYC by an obligation to “*recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in [NYC]*”. Under the same provision, Cyprus cannot impose “*substantially more onerous conditions... than are imposed on the recognition and enforcement of domestic arbitral awards*”. This provision has been interpreted by Cypriot courts as granting them jurisdiction to hear and decide applications for the recognition and enforcement of arbitral awards falling within the ambit of NYC.

Law 121(I)/2000

The Judgment of Foreign Courts (Recognition, Registration and Enforcement by Convention) Law of 2000 (L.121(I)/2000) prescribes the procedure under which a foreign “judgment” can be recognized and enforced in the Republic of Cyprus. A “judgment” is widely defined in section 3 of the law and includes “arbitral awards”. Accordingly, the law is applicable whenever recognition and enforcement of a foreign arbitral award is sought in Cyprus on the basis of the NYC or other bilateral or multilateral conventions. According to section 2 of L.121(I)/2000, the “court” to which an application for recognition is made is “the District Court at the district where the respondent resides...” and, “in case the respondent resides abroad... the District Court... at the district where the applicant resides”. The above definition does not designate the appropriate court in the situation where none of the parties resides in Cyprus.

One would have thought that L.121(I)/2000 is merely a procedural law, that is irrelevant to the matter of jurisdiction of the Cypriot courts. It would follow that the definition of “court” in L.121(I)/2000 relates to the issue of which District Court is competent amongst the various Cypriot District Courts, by laying down rules for the determination of the competent District Court where an application to recognise any award can be entertained. However, several District Court Judgments have interpreted L.121(I)/2000 very differently, considering that the said definition sets the limits of the jurisdiction of Cypriot Courts to entertain applications for recognition of international arbitration awards.

Baltiyskiy Bank v. Artur Vladimirovich

Albeit related to an application for the recognition of a judgment of the Petrogradsky District Court (instead of an arbitral award), *OAO Baltiyskiy Bank v. Artur Vladimirovich Kirilenco*, D.C. Nicosia App. No.1339/2009 is worth examining. The case regarded an application for the recognition of a judgment under the [Treaty between the Republic of Cyprus and the Union of Soviet Socialist Republics on Legal Assistance in Civil and Criminal Matters](#) (the “**Treaty**”). In a judgment dated 08.04.2011 (per Parparinos, PDC), the District Court of Nicosia found that it lacked jurisdiction to entertain the application because none of the parties resided in Cyprus. However, this judgment was not based on an erroneous reading of L.121(I)/2000. It relied on Article 28.2 of the Treaty, which states that an application for enforcement of a judgment issued in a contracting state may be submitted to the courts of the other contracting state if the applicant has a permanent or temporary residence in that other contracting state.

The same conclusion was reached in *D.C. Nicosia App. No.1340/2009*, which related to another judgment between the same parties. By judgment dated 30.04.2012 (per Yiasemis, PDC), an application for recognition of a judgment was dismissed with the same reasoning. Similar applications were dismissed on substantially the same grounds in: *VTB Bank v. Alekseyevich*, D.C. Nicosia App. No.378/2014, Judgment dated 27/06/14 (per Economou, PDC); and *Nikolaevna v. Fridrihovich*, D.C. Limassol App. No.5/2013, Judgment dated 14/11/14 (per Kalogirou, PDC). However, in the judgment in *D.C. Nicosia App. No.1340/2009*, the court went on to comment that L.121(I)/2000 was not merely procedural, but substantially regulated the matter of recognition and enforcement of foreign judgments. As such, said law prevailed over Cypriot laws that ratified

international conventions. The latter position is clearly wrong, as Article 169 of the Constitution of Cyprus expressly and clearly provides that international conventions prevail over national laws.

Nonetheless, the position taken in *OAQ Baltiyskiy Bank v. Artur Vladimirovich Kirilenco* and subsequent case law was approved by the Cypriot Supreme Court in *VTB Bank v. Alekseyevich and others*, Civil Appeal No.206/2014, Judgment dated 12.06.2020.

Kismetia Ltd v. Nilsson Lupusco Volga Farming Ltd

Kismetia Ltd v. Nilsson Lupusco Volga Farming Ltd and others, D.C. Nicosia App. No.1639/2011, Judgment dated 02.05.2012 (per Parparinos, PDC) was an application for the recognition of an NYC arbitral award. In this case, the District Court of Nicosia again dismissed the application for lack of jurisdiction, examined *sua sponte*. The court summarily rejected the applicant's arguments that Cypriot courts were bound to recognise such awards under the NYC. On substantially the same grounds, a similar application was dismissed in *Hepp III Luxembourg Master S.A.R.L. v. Central Europe Finance (Holding) S.A.*, D.C. Limassol App. No.20/2012, Judgment of 24.09.2013 (per Psara-Miltiadou, PDC).

Base Metal Trading Ltd v. MEAT "NKAZ"

A more balanced approach was taken in *Base Metal Trading Ltd v. MEAT "NKAZ"*, D.C. Nicosia App. No.58/2001, Judgment of 19.12.2013 (per Michaelidou, PDC, unreported, but cited in *Cruz City I Mauritius Holdings v. Unitech and others*, D.C. Nicosia App. No.402/2014, Judgment dated 30.12.2015 (per Santis, PDC) where the District Court of Nicosia accepted jurisdiction despite both parties residing abroad. The court found that L.121(I)/2000 did not result in the Cypriot courts lacking jurisdiction to entertain applications for recognition. The contrary position would render the provisions of NYC nugatory (see also: *Cruz City I Mauritius Holdings v. Unitech and others*, D.C. Nicosia App. No.402/2014, Judgment dated 30.12.2015 (per Santis, PDC))

Commentary

This issue has not been decided by the Cypriot Supreme Court yet. Until it is, the conflicting judgments in *Kismetia* and *Base Metal* reveal the legal uncertainty over the jurisdictional issue, that may be faced by a successful party seeking to enforce an arbitral award in Cyprus, when neither party resides within the jurisdiction. The *Base Metal* approach appears to be more balanced, in line with case law of other jurisdictions and compatible with NYC and the contracting states' obligations under it. A few of the cases mentioned above have been appealed. It is therefore a matter of time before the Supreme Court is asked to clarify the issue.

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