

# Kluwer Arbitration Blog

## Enforceability of Foreign Arbitral Award in the Greece: An Enlightening Supreme Court Decision

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An interesting issue regarding the enforceability of foreign arbitral awards, in relation to the provisions of the New York Convention of 1958 and its alleged conflict with domestic Greek Civil Code provisions in relation to conflict of laws and public policy doctrines arose in Greek jurisdiction. The matter is of specific interest as the dispute went all the way up to the Supreme Court for determining the viability of enforcing the particular foreign arbitral award in Greece.

The actual arbitration dispute arose in late 2004 in relation to a distribution agreement of 1998 between an American and a Greek company regarding medical equipment. The parties' contractual arbitration clause called for an arbitration proceeding under the auspices of the International Center for Dispute Resolution of the American Arbitration Association. Both parties expressly submitted to arbitration after the dispute arose, and recognized the competence of the appointed sole arbitrator (the "Arbitrator") to decide the matter.

The Claimant (the American company) filed a claim for the amount of 1.062.655,33 US\$ while the Respondent (the Greek company) counter-claimed unspecified damages estimated at the time of filing to be between 1-5 million US\$. The arbitration hearings took place between 15-18 August 2005 in the USA, and an interim decision was issued by the Arbitrator on the acceptance of the change of the claimant's company name, which took place at that time. On 6 September 2005 a final reasoned arbitration award was issued. The Arbitrator decided in favor of the Claimant and determined that the total amount due to the Claimant was 1.137.117,00 US\$.

When the Claimant attempted to enforce the award in Greece on the basis of the provisions of the NY Convention of 1958, it was met with resistance by the Respondent who filed various objections against its enforceability. Thus the matter went through all instances of civil courts' jurisdictions in Greece and found its way to the highest level (Areios Pagos/ Supreme Court) in civil law matters.

The Supreme Court was called to examine various alleged legal flaws and issued a comforting decision to proponents of ADR of both domestic and international level, as it highlighted and supported the viability of enforcing foreign arbitral awards in Greece, a matter that for a number of years has been in real need of such clarification from the highest judicial body, for securing the smooth foreign arbitration awards enforcement in Greece.

The Supreme Court's approach on the issues before it, which concentrated on whether there were any legal flaws in the earlier Court of Appeal's ruling, was rather careful and well-balanced. The

Court made it quite obvious from the beginning of its rationale that the purpose of the proceeding was not to re-examine the arbitral award on the merits, as an “appeal” against it is not allowed by law. Furthermore, the Court noted that the three-month deadline following the issuance of the foreign arbitral award had elapsed with neither party filing a request for rectification or vacation as provided by the relevant Affidavit and Rules of the International Center for Dispute Resolution of the American Arbitration Association.

As such the Court went through the various objections made by the Respondent on the issues related to the actual enforceability of the award in Greece, namely that the enforcement of the award violates the provisions of article 5(2)(b) of the NY Convention of 1958, and is against the public policy of Greece, and rejected, *ab initio*, the following three objections made by the Respondent holding that as per the earlier Court of Appeal’s decision that they did not relate to enforcement issues *per se* but rather attempted to re-examine the issues on the merits, namely:

- a. that the arbitration award failed to take into account the provisions of Article 81 of the EEC which prohibits discriminative policies and hindrance of competition in terms of invoicing policies.
- b. That the arbitration award violated the Directive 86/653 EC and the Greek Presidential Decree 219/1991 regarding damages afforded to distributors.
- c. That the contractual party in the Distribution Agreement was a different entity to the company that acted as the Claimant in the actual arbitration proceeding.

The Court therefore turned its focus on the Respondent’s objection that

- a. the arbitration award lacked reasoning and;
- b. the scope of the arbitration clause did not encompass the dispute at issue and therefore that the Arbitrator lacked or exceeded its competence in determining the matter and issuing the arbitration award.

The Supreme Court focused on the earlier determination of the Court of Appeal’s decision and while it held that it partially and indirectly violated the relevant conflict of laws and public policy provisions of both the NY Convention of 1958 and the Greek Civil Code by failing to actually examine the above allegations in full prior to issuing its decision, it still affirmed the earlier ruling and held in favor of the enforcement of the foreign arbitral award as it determined that no conflict of laws or public policy considerations should preclude its enforcement. The Court found that the allegations on lack of reasoning and lack of “competence” relating to the arbitration proceeding were unsubstantiated and dismissible. In doing so the Supreme Court confirmed the enforceability and proper application of international arbitration principles and norms in the Greek jurisdiction and fortified the viability and effectiveness of international ADR proceedings in Greece.

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