

Kluwer Arbitration Blog

Is Arbitration In Venezuela In Danger?

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Recently, the Constitutional Chamber of the Venezuelan Supreme Court of Justice (the “Court”) issued an [interlocutory judgment](#) ordering the Business Center for Conciliation and Arbitration (CEDCA) to stay an arbitration and to forward the arbitration file in order to decide on a request for “*avocamiento*” filed by one of the parties before the Court.

This issue is so troubling that the Arbitration Committee of the IBA issued an open letter to the President of the Caracas Bar Association expressing concerns that this decision may result in a

“disquieting precedent as regards the ability of parties to an agreement providing for arbitration seated in Venezuela to enjoy and enforce their rights under their agreement. If the avocamiento remedy can be applied to arbitrations seated in Venezuela such that the Venezuelan courts can deprive an arbitral tribunal of its exclusive jurisdiction to decide the merits of a dispute submitted to arbitration, it may in effect reduce agreements to submit disputes to arbitration seated in Venezuela to dead letter.”

The full letter can be read [here](#).

What is “*avocamiento*”

Under Venezuelan law, the Chambers of the Venezuelan Supreme Court of Justice, may take over a case from the lower judicial courts or reassign it to a different court when there are “*serious procedural disorders or scandalous violations of the legal system that ostensibly harm the image of the Judicial Branch, public peace or democratic institutional framework*” ([Article 107 of the Organic Law of the Supreme Court of Justice](#)). From the language of the law, it appears to be clear that this figure applies to proceedings before instance courts ([Article 108 of the Organic Law of the Supreme Court of Justice](#)), not to arbitration proceedings.

What we know so far

The case at hand involves a domestic arbitration under the rules of the CEDCA seated in Caracas. In the final phase of the arbitration procedure, the arbitral tribunal shared with the parties a draft award for them to submit observations to be considered by the arbitral tribunal before issuing the award. However, on 10 February 2020, the losing party applied to the Constitutional Chamber of the Supreme Court of Justice for an “*avocamiento*.” The Court’s interlocutory judgement has merely stayed the arbitration. It provides neither a discussion nor a decision on the applicability of *avocamiento* to arbitration, which, indeed, had never before been invoked with respect to an arbitration.

Why it matters

While the Constitutional Chamber is yet to issue its final decision on the “*avocamiento*,” the fact that it has agreed to stay the arbitration in the meantime gives cause for serious concern about the integrity of arbitrations seated in Venezuela. If the Court were to grant the request, this would entail seizing the decision on the merits from the arbitral tribunal, and this at a stage when the arbitral tribunal had already produced a draft award and shared it with the parties for them to comment.

As [pointed out](#) by the Venezuelan Arbitration Association, “*Commercial arbitration laws around the world authorize the intervention of the courts only in very specific cases. Under no circumstances are ordinary courts or a Chamber of the Supreme Court of Justice authorized to interfere in the decision on the merits or to stay the proceedings. This is precisely the fundamental feature of arbitration, in which the parties, from the outset when they submit to arbitration, waive their right to assert their claims before the judges.*”

While the Constitutional Chamber of the Venezuelan Court of Justice has proclaimed to take a “*pro arbitration*” stance in the past, we will have to wait and see if it will follow through when deciding on this odd request.

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