

Kluwer Arbitration Blog

The Contents of the Yearbook Commercial Arbitration, Volume XLVII (2022)

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A new upload of materials from the 2022 volume of the Yearbook Commercial Arbitration is now available on the [KluwerArbitration](#) database.

It consists of 21 decisions and includes, among others, three decisions each from Hungary and Pakistan, and four decisions rendered by the courts of Spain. Here are some of the highlights.

First, in what is becoming another cross-Channel saga, the UK Supreme Court in [Kabab-Ji v. Kout](#) affirmed that the choice for English law as the governing law of the contract also applied to the contract's arbitration agreement, and that the agreement was invalid under English law because it did not extend to Kout, a nonsignatory. This conclusion is famously at odds with the decisions of the French courts in the same dispute that French law governed the issue, and that the arbitration agreement bound Kout under French law.

Second, in a decision that is relevant for the interaction between international arbitration and constitutional law, the German Constitutional Court in [Pechstein](#) overturned the Federal Supreme Court, which had upheld the validity of an arbitration agreement in favor of the Court of Arbitration for Sport (CAS) in a dispute with an athlete concerning sanctions for doping. While recognizing that the right to arbitrate was protected by the German Constitution as part of the freedom to contract, the Constitutional Court held that the lack of a public hearing in the CAS proceeding breached the athlete's constitutionally guaranteed right of access to justice.

Third, deciding on the attempt by Turkmenistan to enforce an ICSID award against a Turkish investor, the [Turkish Court of Cassation](#) noted that Turkey had not designated the competent court or authority for enforcement under Art. 54(2) of the ICSID Convention. Finding that the enforcement procedures provided for domestic court decisions could not be applied instead, this prevented enforcement of the ICSID award in Turkey.

Finally, the upload contains the much-discussed decisions of the Court of Justice of the European Union in *Komstroy* and *PL Holdings* in which the Court concretized the consequences of its *Achmea* decision. In [Komstroy](#), the Court held that EU law prevented the resolution of intra-EU investment disputes under the Energy Charter Treaty; in [PL Holdings](#), it held that EU law did not permit disputing parties to rely on an ad hoc agreement to arbitrate in order to circumvent the


invalidity under EU law of arbitration agreements formed on the bases of an intra-EU investment treaty.

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