

Kluwer Arbitration Blog

Colombia's Supreme Court of Justice: Recent Decisions on Recognition and Enforcement of Foreign Awards

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This post addresses the recognition and enforcement of foreign awards in Colombia and summarizes two important cases decided in 2022 by the Civil Chamber of the Colombian Supreme Court of Justice (“Court”) on the matter. These cases illustrate the process of analysis undertaken by the Court to decide requests for recognition and enforcement of foreign awards, namely the review of grounds that can be autonomously addressed by the Court.

Applicable legal framework

Before delving into the specific cases discussed, a brief overview of the applicable legal framework for recognition and enforcement of foreign awards in Colombia is undertaken below.

Colombia's Arbitration Statute – [Law n. 1563 of 2012](#)– (“Law 1563” or the “Arbitration Statute”) establishes that domestic awards – i.e. those issued in domestic arbitrations- and awards resulting from international arbitrations seated in Colombia can be enforced in Colombia without the need for prior recognition. However, Law 1563 provides that, (i) foreign awards – i.e. those issued in a country other than Colombia, as defined in Article 111 (3) of Law 1563 – or (ii) awards resulting from international arbitrations seated in Colombia in which the parties have waived their right to seek annulment (in those cases permitted by Law 1563) shall undergo a recognition process before Colombian competent court prior to their enforcement before its domestic courts.

Proceedings for recognition of awards are governed exclusively by: (i) articles 111 to 116 of Law 1563, and (ii) provisions of international treaties and conventions ratified by Colombia. Thus, provisions of domestic procedural law that govern recognition and enforcement of judgements issued by foreign courts are not applicable to these proceedings.

Recognition and enforcement of foreign awards can only be denied on the grounds stated in Article V of the New York Convention, which can either be invoked by the parties (Article 112 (a) of Law 1563) or be autonomously reviewed by the judge. As per Article 112 (b) of Law 1563, only two specific grounds can be autonomously reviewed by judges: (i) when the dispute was not arbitrable according to Colombian law (also known as objective arbitrability) and (ii) when recognition and enforcement of the award would be contrary to Colombian international public policy.

Proceedings for recognition and enforcement are specifically regulated by Law 1563. No appeal or recourse is available against the final decision on the recognition of awards.

One particularity of these proceedings is that two different courts, pertaining to different subject matter jurisdictions, are competent to decide on recognition requests as per Article 68 of Law 1563: (i) the Council of State, in case of recognition of foreign awards that have as a party either a Colombian public entity or an entity that performs administrative functions in Colombia; and (ii) the Civil Chamber of the Supreme Court of Justice, in all other cases. The cases referred to in this post were decided by the Civil Chamber of the Supreme Court of Justice.

- ***Tricon Dry Chemicals LLC v Agroindustrias El Molino de la Costa SAS*, Case No. 11001-02-03-000-2022-02145-00, Decision No. SC3462-2022, November 15, 2022, M.P. Luis Alonso Rico Puerta (“*Tricon v Agroindustrias*”)**

In *Tricon v Agroindustrias*, the Court recognized an award issued on November 30, 2021 in an arbitration administrated under the rules of the [Society of Maritime Arbitrators of the State of New York’s](#) expedited procedure. The arbitration was seated in New York City. The sole arbitrator concluded that Agroindustrias – respondent in the arbitration – had breached its contract and therefore was under an obligation to pay damages plus interest and the costs of the arbitration to Tricon. Respondent was served with process but did not partake of the proceedings of recognition and enforcement.

The Supreme Court of Justice considered that the requirements for recognition had been satisfied and recognized the award, because of the following reasons:

- *First*, claimant had provided a copy of the award with an official translation into Spanish.
- *Second*, as respondent had not participated in the proceedings nor raised any ground to deny claimant’s recognition request, the Court analyzed the only two grounds that can be autonomously reviewed. Turning onto these two grounds the Court found that the dispute related to patrimonial consequences of a contract for the sale of goods, and thus was arbitrable under Colombian law. In addition, the Court concluded that there were no reasons to suggest that recognizing the award could threaten or affect Colombian international public policy. To do so, the Court recalled the concept of international public policy as enshrined in a Court’s decision of 2016, i.e. “...*the basic or fundamental principles and values in which the legal institutions of the national system are founded on.*”
- ***Zurgroup SA v Importaciones y Exportaciones Fenix SAS*, Case No. 11001-02-03-000-2021-04294-00, Decision No. SC3650-2022, November 15, 2022, M.P. Aroldo Wilson Quiroz (“*Zurgroup v Fenix*”)**

In *Zurgroup v Fenix*, the Court granted recognition of an award issued in an arbitral proceedings administrated under the rules of the [Centro Nacional de Arbitrajes de Chile](#) on November 15, 2022. The award found that Fenix – respondent in the arbitration – had breached an international sales contract and was thus obligated to make payment of the pending invoices plus interest. Considering its nonappearance in the arbitral proceedings and the fact that claimant had prevailed in the case, respondent had also to bear the costs of the arbitration.

Although respondent failed to participate in the arbitral proceedings, it did participate in the recognition proceedings. Before the Court, respondent acknowledged the existence of the debt in the benefit of claimant but alleged that the default was due to its grave financial situation, which had in turn led respondent to a restructuring process before Colombia's Superintendence of Corporations. Accordingly, respondent requested the suspension of the recognition proceedings.

The Court based its ruling on the Arbitration Statute, the New York Convention and the Panama Convention, to which Colombia and Chile are parties. However, the Court restated the *pro-recognition principle*, according to which requirements in the law that are less strict vis-a-vis those in said conventions should be applicable. Based on this principle, the Court observed that it was not necessary to provide the duly authenticated original award, or a duly certified copy thereof, and the original arbitration agreement, or a duly certified copy thereof, under Article IV of the New York Convention, since the provisions of Law 1563 were more favorable towards recognition. Indeed, Article 111 of Law 1563 allows claimant to present an original version or a copy of the award and does not require the submission of the arbitration agreement.

The Court then noted that the requirements to grant recognition and enforcement were fulfilled. Once again, because respondent had not raised any grounds for annulment in these proceedings, the Court limited its analysis to the two grounds that can be autonomously reviewed:

- *First*, the Court concluded that the matter referred to arbitration fell under the concept of objective arbitrability because it arose from a specific legal relationship and was related to disposable rights.
- *Second*, the Court analyzed whether recognition of the award was contrary to Colombia's international public policy. The Court reaffirmed the concept of international public policy and noted that the award under recognition did not violate Colombian international public policy. On the contrary, the Court found that the decision of the Tribunal was grounded on principles and rules regarding compliance with contractual commitments that were consistent with rules under Colombian law on the matter.
- *Finally*, regarding the decision on payment of interests, the Court observed that recognition was possible, provided that Colombian thresholds for payments in foreign currencies were not trespassed. The Court, however, did not address respondent's request for suspension or its hardship allegations.

Conclusion

These decisions illustrate the process of analysis undertaken by the Court when assessing requests for recognition of foreign awards. *First*, the Court reviews the formal requirements provided in Law 1563, bearing in mind the pro-recognition principle. *Second*, and in the absence of allegations by the Parties on grounds to deny recognition, the Court autonomously reviews whether the award fulfills objective arbitrability requirement and is compatible with Colombia's international public policy. In doing so, the Court's analysis seeks to be consistent with the criteria set forth in prior decisions on the matter. For a comprehensive review of the Court's recent jurisprudence on international arbitration, please see the [compendium published by the Court in 2022](#).

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This entry was posted on Monday, April 17th, 2023 at 8:09 am and is filed under [Arbitrability](#), [Arbitral Award](#), [Colombia](#), [Enforcement](#), [Latin America](#), [Public Policy](#)

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