

Kluwer Arbitration Blog

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The ITA Board of Reporters have reported on the following court decisions.

[OGH – 7 Ob 79/22a, Supreme Court of Justice of Austria, 7 Ob 79/22a, 29 June 2022](#)

Matthias Hofer and Katherine Khan, Freshfields Bruckhaus Deringer LLP, ITA Reporters for Austria

An Austrian court confronted with arbitral lis pendens due to the claim having been raised earlier in a parallel arbitration cannot take into account the termination of that arbitration and must dismiss the claim, if the termination occurs after the court closes its proceedings – even if that is before the court decision is rendered. This is because the closure of court proceedings bars further submission of evidence, and the court cannot ex officio examine whether lis pendens has been cured.

Matthias Hofer and Katherine Khan, Freshfields Bruckhaus Deringer LLP, ITA Reporters for Austria

[OGH – 3 Ob 80/22v, Supreme Court of Justice of Austria, 3 Ob 80/22v, 08 September 2022](#)

Matthias Hofer and Katherine Khan, Freshfields Bruckhaus Deringer LLP, ITA Reporters for Austria

Enforcement of arbitral awards rendered under the ICSID Additional Facility rules is subject to the enforcement regime of the New York Convention. When examining a jurisdictional objection thereunder, the enforcement court must establish on what basis did the tribunal establish its jurisdiction. Equally, when examining jurisdiction, the enforcement court must distinguish that BIT claims under different protection standards may require different attribution tests.

OGH – 18 OCg2/22a, Supreme Court of Justice of Austria, 18 OCg2/22a, 11 January 2023

Matthias Hofer and Katherine Khan, Freshfields Bruckhaus Deringer LLP, ITA Reporters for Austria

An arbitral tribunal does not lack jurisdiction in a contractual liability dispute where the parties disagree whether one of two underlying contracts is genuine if the two contracts only differ in the description of goods, but nothing else – including the wording of the arbitration clause.

Beijing Zhong Guang Wei Ye Import and Export Co., Limited v. Ronald A. Chisholm Limited, Higher People’s Court of Beijing, (2021) Jing Min Zhong No. 1003, 26 August 2022

Arthur X. Dong, JunHe LLP, ITA Reporter for China

Generally, an arbitration agreement in a contract only binds upon the parties who concluded such contract, and it cannot bind upon a non-signatory party. However, it is an issue that, for a contract concluded between a principal’s agent and a third party which contains an arbitration agreement, whether the principal will also be bound by such arbitration agreement when it asserts its right against the third party. In this case, the High People’s Court of Beijing held that the answer to this question is yes.

Lawrence B. Landman and Clear Battery Recycling Inc. v. AkkuSer Oy, Court of Appeal of Helsinki, Case No. S20/2169, Decision No. 746, 02 June 2022

Anna-Maria Tamminen and Viktor Saavola, Hannes Snellman Attorneys, ITA Reporters for Finland

The Helsinki Court of Appeal evaluated whether an arbitral award was to be declared null and void pursuant to Section 40(1)(2) of the Finnish Arbitration Act (“FAA”) on the basis of the award being contrary to the public policy of Finland. The key question was whether one party had intentionally failed to submit documents as a result of a document production order and thus violated the procedural order issued by the sole arbitrator intentionally misleading the sole arbitrator. The other party had obtained the documents in parallel proceedings in the United States through the local discovery procedure.

Société Schooner Capital LLC, Société Atlantic Investment Partners LLC et M. Vincent J. Ryan v. République de Pologne, Court of Appeal of Paris, RG 21/01497, 31 May 2022

Nataliya Barysheva and Valentine Chessa, MGC Arbitration, ITA Reporters for France

The Paris Court of Appeal dismisses the annulment of an award that rejected jurisdiction over tax related claims raised by American investors against Poland, as the applicable BIT expressly excluded these matters from treaty protection.

[SA Société Orléanaise d'Electricité et de Chauffage Electrique \(Sorelec\) v. Etat de Libye, Court of Cassation of France, First Civil Law Chamber, Arrêt n° 610 FS-B, Pourvoi n° E 20-22.118, 07 September 2022](#)

Nataliya Barysheva and Valentine Chessa, MGC Arbitration, ITA Reporters for France

The French Cour de cassation confirms that the control of international public policy by the French judge is not conditioned by the parties' submissions before the Arbitral Tribunal.

[République Bolivarienne du Venezuela v. Société \[G\] Mining Limited, Court of Appeal of Paris, RG 21/10427, 07 June 2022](#)

Nataliya Barysheva and Valentine Chessa, MGC Arbitration, ITA Reporters for France

The Paris Court of Appeal refuses to annul an ICSID Additional Facility award that ordered Venezuela to pay damages to a Canadian investor due to expropriation without compensation, as the former mainly questioned the admissibility of the claims, which escapes the powers of the annulment judge.

[Blue Marine Cargo S.A. de C.V. v. Torm Singapore Pte. Ltd, Supreme Court of Justice of Mexico, Amparo Directo en Revisión 7856/2019, 14 October 2020](#)

Cecilia Flores Rueda, Flores Rueda Abogados, ITA Reporter for Mexico

The First Chamber of the Supreme Court of Justice in Mexico ruled that the requirement to supply a “duly authenticated” original award or a certified copy thereof, contained in the second paragraph of article 1461 of the Mexican Arbitration Law is unconstitutional:

The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof and the original arbitration agreement referred to in Article 1416 section 1 and Article 1423 or a duly certified copy thereof.

If the award or agreement is not made in Spanish, the party shall supply a duly certified translation by an official expert.

[CNO S.A., CNO S.A. Sucursal Perú y Odebrecht Perú Ingeniería y Construcción S.A.C. v. SICIM S.p.A. – Sucursal del Perú \(Sicim Perú\), Superior Court of Justice of Lima, Expediente No.](#)

00403-2022-0-1817-SP-CO-01, 24 January 2023

Fernando Cantuarias Salaverry, Law School of Universidad del Pacifico, ITA Reporter for Peru

The Commercial Chamber of the Superior Court of Justice of Lima declared the annulment of an award inadmissible.

9REN Holding S.A.R.L. v. Kingdom of Spain, United States District Court, District of Columbia, Civil Action 19-cv-01871 (TSC), 15 February 2023

Renata Auler Monteiro, King & Spalding LLP, ITA Reporter for the United States of America

Petitioner 9REN Holding S.A.R.L. (“9REN”) obtained an ICSID award compensating it for Spain’s breaches of the Energy Charter Treaty (“ECT”) and requested its confirmation before the United States District Court for the District of Columbia.

While the judicial proceeding was ongoing, Spain petitioned the courts of Luxembourg for a declaration enjoining the investor from pursuing enforcement of the award in foreign jurisdictions. 9REN countered by seeking an anti-suit injunction before the D.C. District Court.

The D.C. District Court granted the investor’s petition and enjoined the state from pursuing its anti-enforcement injunction in Luxembourg. The judge found she had jurisdiction under the Foreign Sovereign Immunities Act and further stated that U.S. courts have a duty to protect their jurisdiction to provide full justice to litigants.

This decision largely reflects the court’s reasoning for granting a similar preliminary injunction in NextEra Energy Global Holdings B.V. v. Kingdom of Spain, Case 1:19-cv-01618-TSC, ECF Nos. 84, 85 (February 15, 2023).

Barbara Turner v. Concord Nursing and Rehabilitation Center, LLC, Appellate Court of Illinois, No. 1-22-1721, 20 March 2023

Juan Manuel Poggio Aguerre, King & Spalding LLP, ITA Reporter for the United States of America

Courts may deem an arbitration agreement unenforceable if it is procedurally or substantively unconscionable

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