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Chilean Courts Continue to Support International Arbitration

Francisco Aninat, Juan Luis Chomali (Bofill Escobar Silva) · Monday, September 11th, 2023

On 12 May 2023, the Santiago Court of Appeals ("Court") denied EP Petroecuador's ("Petroecuador") (Ecuador national oil company) petition to set aside a US$63 million international commercial arbitration award. The decision is consistent with the Court's history of denying petitions to set aside international commercial arbitration awards and marks an important milestone for Servicios Integrados Pañaturi S.A. ("Pañaturi") to collect its oilfield improvement fees from Petroecuador after almost four years since the dispute started. Pañaturi is a subsidiary of Sinopec International Petroleum Service Corporation, a state entity from the People's Republic of China.

In this post, we discuss the background of the case and the Court's decision.

Key Facts

The award was issued in an international commercial arbitration in connection with three contracts executed in 2014 between Petroecuador and Pañaturi for the improvement of three oilfields located in Ecuador's Amazon region (the "Contracts").

The parties disagreed on how to calculate Pañaturi's fees for its services. The Contracts provided that Pañaturi's fees were to be calculated in connection with the oilfields' production but was silent as to whether this included Petroecuador's own production from the oilfields. On one hand, Petroecuador contended that Pañaturi should be compensated based on the fair value of the services it provided. On the other hand, Pañaturi argued that the Contracts provided a fee based on total output (including Petroecuador's fees).

After a month of failed negotiations, Pañaturi filed a request for arbitration in 2019 alleging that Petroecuador breached its payment obligation to Pañaturi. The Arbitral Tribunal had its seat in Santiago de Chile, pursuant to the dispute resolution clauses of the Contracts. Ecuadorian State entities often include in their contracts a clause providing for Santiago de Chile as the seat for any arbitration.

Nearly three years later, on 21 February 2022, the Arbitral Tribunal issued its final award, upholding Pañaturi's claim and ordering Petroecuador to pay US$63,357,630, plus interests. Subsequently, Petroecuardor sought to set aside the award in Chile.

Chile's Law on International Commercial Arbitration (Law No. 19,971) closely follows the 1985 UNCITRAL Model Law. When a decision is issued, the parties' sole recourse is an application to the Court to set aside the award, which is only allowed under very narrow circumstances.

Petroecuardor argued that: (i) the dispute was not covered by the arbitration agreement because the Arbitral Tribunal (a) imposed joint arbitration by treating the three Contracts as if they were one, (b) disregarded the amount in dispute which should not have triggered an international commercial arbitration, and (c) assumed jurisdiction based on an arbitration clause that was only optional for the parties; (ii) the arbitration disregarded certain stages whcih were prerequisites, in particular the stage requiring the appointment of a technical expert during negotiations; and (iii) the decision violated Chilean public policy.

Under case N° 10.750-2022 before the Court, Pañaturi's response was filed on 24 August 2022, and it included law expert reports in support of the award and in support of Pañaturi's position. A court hearing was held on 4 April 2023, where both parties' arguments were heard and five weeks later, a decision upholding the award was issued. Petroecuador's petition was rejected entirely.

The Decision of the Santiago Court of Appeals

The Court's decision *first* pointed out that a petition to set aside an award is an extraordinary recourse to address egregious violations of narrowly defined grounds, and that the Court follows the principle of minimum intervention. The Court then concluded that it was only appropriate to examine whether the Arbitral Tribunal exceeded its powers by resolving matters that were not submitted to its decision and whether such an error violated Chilean public policy.

Second, the Court dismissed the alleged violation of joining disputes related to separate Contracts in the same arbitration proceeding, explaining that this issue was duly addressed by the Arbitral Tribunal, which stated that the three Contracts were signed simultaneously, and the parties agreed on the same number of addenda on the same dates. Moreover, the arbitration clauses of the three Contracts were similar and were based on the same model contract for hydrocarbon processing activities.

Third, although Petroecuador argued that one of the claims was barred from arbitration because it did not meet the US$10 million of *minimis* requirement (and thus the dispute should had been brought before Ecuadorian courts), the Court found that Petroecuador failed to assert the specific damages caused. As a result, the Court found that Petroecuador's claim was ill-founded and thus dismissed it.

Fourth, it found that the alleged lack of express and unequivocal consent to submit to arbitration by Petroecuador did not bar the case from arbitration. The Court emphasized that the term "may" ("*podrán*" in Spanish) found in the arbitration clause of the Contracts, meant that either party had the right to initiate arbitration without requiring consent from the other.

Fifth, it found that the duty to resort to expert determination during the direct negotiation stage before filing a request for arbitration was inapplicable to the case, as the discussion was not technical but rather of interpretation of a payment clause in the Contracts. Therefore, the Court also rejected Petroecuador's allegation on this issue.

Finally, the Court's decision concluded with two important statements regarding petitions to set aside international commercial arbitration awards: (i) a party's dislike of the outcome of a dispute that was duly resolved and founded by an arbitral tribunal does not provide grounds to set aside an arbitral award; and (ii) to set aside an award, a violation must be extremely serious, such as an award being based on manifest and serious breaches of international public policy (not national) or due process (which did not occur in this case).

As mentioned above, this decision is in line with previous cases from Chilean courts, which, so far, have consistently rejected similar petitions to set aside international arbitration awards. Since the enactment of Law No. 19,971, this local ruling is consistent with other decisions that demonstrate Chile's pro-arbitration stance, upholding the principle of minimum domestic intervention.

Conclusion

Thus, once again, an international commercial arbitration award was upheld by the Chilean courts, confirming the principle of minimum intervention that prevails in Chilean judiciary decisions.

By upholding the award and rejecting Petroecuador's petition, the Court's decision reaffirms its tradition that the petition to set aside an international award is an extraordinary recourse to address egregious violations for narrowly defined grounds, and that the breach of international public policy must be manifest and serious.

In sum, when the parties choose Santiago de Chile as the seat of an international arbitration, an award will not be set aside if one of the parties is not satisfied with the decision on the merits, as long as the award is duly reasoned, and the basic principles of due process have been respected.

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