

Kluwer Arbitration Blog

KluwerArbitration ITA Arbitration Report, Volume No. XXI, Issue No. 7-8 (September 2022)

Roger Alford (General Editor) (Notre Dame Law School), Crina Baltag (Managing Editor) (Stockholm University), and Monique Sasson · Sunday, September 17th, 2023

The Institute of Transnational Arbitration (ITA), in collaboration with the **ITA Board of Reporters**, is happy to inform you that the latest *ITA Arbitration Report* was published: a free email subscription service available at [KluwerArbitration.com](https://www.kluwerarbitration.com) delivering timely reports on awards, cases, legislation and current developments from over 60 countries and 12 institutions. To get your free subscription to the ITA Arbitration Report, click [here](#).

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

Avelock Dominicana, S.R.L. v. Laudo Arbitral núm. 1606282, emitido por el Centro de Resolución Alternativa de Controversias de la Cámara de Comercio y Producción de Santo Domingo Inc., Constitutional Court of the Dominican Republic, Sentencia núm. TC/0297/21Expediente núm. TC-01-2019-0004, 21 September 2021

Stephan Adell, Adell & Merizalde, ITA Reporter for the Dominican Republic

The Dominican Constitutional Court held that arbitral awards are not subject to constitutional actions such as the “acción directa de inconstitucionalidad”.

A v. B and C Ltd., Supreme Court of Finland, Case No. S2022/186, Decision No. 2023:38, 01 June 2023

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

The Supreme Court evaluated, as a first question, whether the prohibition of appeals under section 17(3) of the Finnish Arbitration Act (the “FAA”) also applies to court’s decision to reject an application for the appointment of an arbitrator. As a second question, the Supreme Court evaluated whether a pathological dispute resolution clause referring to a non-existent arbitration

board and non-existent rules was ‘pathological’ in a way that it was apparent, as referred to in section 17(1) of the FAA, that there were no legal grounds to resolve the dispute in arbitration.

BGH – I ZB 33/22, Federal Court of Justice of Germany, I ZB 33/22, 09 March 2023

Patrick Gerardy, Cleary Gottlieb Steen & Hamilton LLP, and Harry Nettleau, Willkie Farr & Gallagher LLP, ITA Reporters for Germany

If a state court at the seat of the arbitral tribunal dismisses an application to set aside an arbitral award, such a dismissal has no binding effect in a German court proceeding to declare the same (foreign) arbitral award enforceable pursuant to Sec. 1061(1) of the German Code of Civil Procedure (Zivilprozessordnung, or “ZPO”) in conjunction with the New York Convention (“NYC”). The prospective respondent in such an enforceability proceeding may file a request with the competent German court to declare that the respective award must not be recognized in Germany. Such a declaratory action or request is not subject to a time limit. If, however, the applicant requests a declaration of enforceability of the same arbitral award, the declaratory request becomes moot for lack of a legal interest (since the same issues will be decided with the ordinary enforceability proceeding).

OLG Frankfurt am Main – 26 Sch 14/22, Higher Regional Court of Frankfurt am Main, 26 Sch 14/22, 27 April 2023

Patrick Gerardy, Cleary Gottlieb Steen & Hamilton LLP, and Harry Nettleau, Willkie Farr & Gallagher LLP, ITA Reporters for Germany

Pursuant to Sec. 1054(1) sentence 2 of the German Code of Civil Procedure (Zivilprozessordnung, or “ZPO”), it is formally sufficient if the majority of tribunal members signs an arbitral award, provided that a reason for any missing signature is stated in writing. In this respect, a mere note “signature could not be obtained” is not sufficient.

Redacted party v. Liberian Company (Redacted), Court of Appeal of Athens, Decision No. 326/2023, 01 December 2023

Ioannis Vassardanis, Ioannis Vassardanis & Partners, ITA Reporter for Greece

Preliminary order by an Arbitral Tribunal. Under Greek law, interim measures can be ordered by arbitral tribunals under strict conditions. Interim measures are not enforceable unless validated by the Greek courts under Art. 17§2 L. 2735/1999. A stay of execution application before the Athens Court of Appeal was rejected, as the preliminary order, not having been validated by a Greek Court, was not yet enforceable, and thus, there was no legal basis for such an application thereof.

A v. Y, Intellectual Property High Court of Japan, Reiwa 2 (NE) 10009 and Reiwa 2 (NE) 10037, 26 January 2023

Akiko Inoue, Hisaya Kimura and Koki Yanagisawa, Nagashima, Ohno & Tsunematsu, ITA Reporters for Japan

The Intellectual Property High Court ruled differently from the WIPO ruling issued prior to the lawsuit, adding that its judgment differed because the WIPO Ruling had been rendered based on (i) the rules on burden of proof applicable to the arbitration proceedings and (ii) the evidence submitted in the arbitration proceedings at that time and therefore the high court judgment should not be affected by the WIPO Ruling.

[Tradhol Internacional S.A. v. Inpasa, Supreme Court of Justice of Paraguay, Constitutional Chamber, 370/2022, 15 June 2022](#)

José A. Moreno Rodríguez, Altra Legal, ITA Reporter for Paraguay

On June 15, 2022, the Constitutional Chamber of the Supreme Court of Justice rejected a challenge of unconstitutionality, considering that the rulings of the inferior courts did not meet the requirements to be deemed as arbitrary or contrary to the constitutional order.

[Manuel Canseco Sánchez v. Constructora y Servicios Generales Kallpa S.A.C., Superior Court of Justice of Lima, 00456-2022-0-1817-SP-CO-01, 13 April 2023](#)

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

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

[OI European Group B.V. v. Bolivarian Republic of Venezuela, United States Court of Appeals, Third Circuit, Nos. 23-1647, 23-1648, 23-1649, 23-1650, 23-1651, 23-1652, 23-1781, 07 July 2023](#)

Viva Dadwal, King & Spalding LLP, ITA Reporter for the United States of America

Multiple judgment creditors of the Bolivarian Republic of Venezuela brought actions in which they moved for writs of attachment fieri facias on, inter alia, shares of a Delaware corporation that was a wholly-owned subsidiary of Venezuela's national oil company. The oil company intervened and moved to dismiss on the basis that it was no longer Venezuela's alter ego following a change in government. The United States District Court for the District of Delaware granted motions for writs of attachment and denied the oil company's motions to dismiss. Appeals were taken and consolidated, and Venezuela intervened. The Court of Appeals affirmed the District Court's decision, finding that the oil company was still the alter ego of Venezuela and lacked sovereign immunity in the U.S.

[Grupo Unidos por el Canal, S.A., Sacyr, S.A., WeBuild, S.P.A., Jan De Nul, N.V. v. Autoridad del](#)

Canal de Panama, United States Court of Appeals, Eleventh Circuit, No. 21-14408, 18 August 2023

Nathaniel J. Bilhartz, King & Spalding LLP, ITA Reporter for the United States of America

Grupo Unidos por el Canal, S.A. et al (“Grupo Unidos”) sought to vacate an ICC tribunal’s awards in favor of Autoridad del Canal de Panama (the “Canal Authority”) in an arbitration arising from a construction project that Grupo Unidos performed on the Panama Canal.

Grupo Unidos argued that the arbitrators had failed to timely disclose their prior involvement in arbitrations that also involved other members of the tribunal and counsel for the Canal Authority and that the relationships among the arbitrators and counsel would lead a reasonable person to question the arbitrators’ impartiality.

The district court denied Grupo Unidos’s motion to vacate and granted the Canal Authority’s motion to confirm the awards, finding that “the allegations of possible bias ... are so weak that, even if a reasonable person could believe that a potential conflict exists, confirmation of the award would not violate” basic notions of morality and justice.

The Eleventh Circuit upheld the district court’s decision, concluding that none of the late-disclosed relationships constituted “evident partiality” and finding that “Grupo Unidos has presented nothing that comes near the high threshold required for vacatur.”

Devas Multimedia Private Ltd., et al v. Antrix Corp. Ltd., United States Court of Appeals, Ninth Circuit, No. 22-35103, D.C. No. 2:18-cv-01360-TSZ, 01 August 2023

Julian Ranetunge, King & Spalding LLP, ITA Reporter for the United States of America

Respondent Antrix Corp. Ltd. (“Antrix”), an Indian company wholly owned by the national space agency of the Republic of India, challenged a District Court’s order confirming a foreign ICC arbitration award rendered against it in favour of Petitioner Devas Multimedia Private Limited (“Devas”), an Indian company.

The U.S. Court of Appeals for the 9th Circuit (“Appeals Court”) ruled that the District Court had erroneously failed to apply the “minimum contacts” test. While personal jurisdiction over a foreign state in a civil action is governed by the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1330, longstanding 9th Circuit precedent establishes that the traditional minimum contacts analysis must also be satisfied. The District Court also erred in concluding that Antrix had the requisite minimum contacts with the U.S. As a result, the Appeals Court reversed the District Court’s judgment confirming the award.

In a concurring opinion, two Circuit Judges opined that the precedent applying the minimum contacts test to the exercise of personal jurisdiction over foreign states has no foundation in the Constitution or the FSIA, and is contrary to the views of other courts of appeals. They explained that, in an appropriate case, it should be reconsidered en banc.


To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).


Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the
newly-updated
*Profile Navigator and
Relationship Indicator*

 Wolters Kluwer



This entry was posted on Sunday, September 17th, 2023 at 8:15 am and is filed under [ITA Arbitration Report](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.