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The Chilean Experience: Practical Aspects of an Application for Set Aside an International Commercial Arbitration Award

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In 2004, Chile enacted [Law No. 19.971 on International Commercial Arbitration](#) (“**LACI**”) based on the [UNCITRAL Model Law of 1985](#) (“**Model Law**”). This note describes, without assessing its merits, how the process to resolve an application to set aside awards has evolved in practice in Chile (“**Application for Set Aside**” or “**Application**”), the sole remedy provided by the LACI to challenge an award issued in international commercial arbitration proceedings. Specifically, this study addresses the most significant practical aspects concerning the procedure of this application in light of the comprehensive review of all Applications for Setting Aside that have been filed in Chile. In the nearly 20 years since the enactment of the LACI, all Applications have been processed before the Court of Appeals of Santiago (the “**Court**”).

Notification of an Application for Set Aside

Historically, the Court has required the party presenting the Application (“**Petitioner**”) to formally notify the opposing party (“**Respondent**”) about the initiation of the process, through a notary public, at its domicile. However, the Court recently allowed this notification to be carried out via email when this method of service has been agreed upon in the arbitration. ([Case No. 10.750-2022](#); [Case No. 12.506-2022](#)).

Right of the Respondent to Submit a Written Response

The LACI does not establish a formal opportunity for the Respondent to submit a written response. On the contrary, the LACI does provide an opportunity for the Respondent to give oral arguments during a single hearing in which the parties present their case (“**Hearing**”) before the Court handling the Application. As a result, Respondents typically offer their oral arguments during this hearing while also providing the Court with a written document outlining their position and arguments.

Nevertheless, the law does not prohibit the Respondent from submitting a written response before the Hearing. As this could be relevant to the Respondent (for instance, to ensure parity between the parties), in a recent case, the Court granted a period for the Respondent to submit a written

response before the Hearing ([Case No. 10.750-2022](#)).

Priority in the Processing of an Application for Set Aside

In Chile, the hearings held before the courts are scheduled weekly on a calendar that determines the sequence of the respective sessions. Due to the courts' heavy workload, hearings often take several months, and even more than a year, after the submission of an Application for Set Aside. To expedite the decision-making process, the LACI mandates that the Hearing be immediately scheduled on this calendar and given priority over other ordinary cases.

On some occasions, the Court has not followed the special procedure outlined by the LACI. In those cases, the parties have requested the Court to comply with the provisions of the law and the Court has granted such requests (*see* [Case No. 1971-2012](#); [Case No. 7278-2012](#)).

Following the Hearing, an Application for Set Aside can be decided immediately or subsequently. The Court has resolved them promptly in less than 10% of cases. The Court has taken an average of 4 months to issue a judgment from the time an Application enters into deliberation, with a maximum delay of 13 months and a minimum of 8 days.

Expected Processing Time of an Application for Set Aside

The average time that the Court has taken to process an Application for Set Aside, from filing to the issuance of the judgment, is 15 months. The fastest-processed Application took eight months, while the longest extended to two years and nine months.

Certain actions tend to prolong the procedure, such as the order to transfer the arbitration file ([Case No. 10.750-2022](#)) for the court's review, or the Court's request for the judicial prosecutor, who collaborates with the administration of justice and is responsible for representing the public interest in special cases, to provide an opinion on an Application ([Case No. 7278-2012](#)). In this case, the Prosecutor submitted its report after 25 days, recommending that the Application should not be granted).

Stay of Enforcement of the Arbitration Award During the Processing of an Application

In several cases, Petitioners have attempted to halt the enforcement of the award subject to an Application for Set Aside. For this purpose, they have pursued two strategies: (i) they have requested that the status quo not be altered while an Application is being decided (a Stay Order or *Orden de no Innovar*); and (ii) they have invoked Article 34 No. 4 of the LACI, which states: "*the tribunal, when requested to annul an award, may suspend the set aside proceedings, when appropriate and upon the request of one of the parties, for a period it determines to allow the arbitral tribunal the opportunity to resume the arbitral proceedings or to take any other measure that, in the arbitral tribunal's judgment, eliminates the grounds for the petition to set aside.*"

In practice, to date, neither of these strategies has succeeded. When a request for an Stay Order has

been made based on the improbability of the Respondent being able to refund the paid amount in case the annulment of the award is granted, the Court has rejected the request (Case No. 7413-2019). On the other hand, when Article 34 No. 4 of the LACI has been invoked, the Court has rejected the request (Case No. 12.506-2022) or, in a case where it claimed to have granted the request, it did not suspend the enforcement of the award but rather the processing of the Application for Set Aside (Case No. 6975-2012).

Impossibility to Appeal the Judgment that Decides the Application

As of now, in Chile, no Application for Set Aside has been granted. In some cases, the Petitioners have sought to challenge the judgment rejecting the Application before the Supreme Court through a *recurso de queja* (a complaint against the judge for serious misconduct or abuse). In the majority of those cases, this challenge has been declared inadmissible by the Court (Case No. 4394-2019 and Case No. 11466-2015). One challenge is currently pending (Case No. 124.645-2023). In only one case, though the challenge was deemed inadmissible by the Court, a Justice of the Supreme Court argued that it should be admissible, but subsequently rejected it on its merits. (Case No. 1420-2010).

In a recent case, after the Court rejected an Application for Set Aside, one of the parties submitted a *recurso de queja* against that decision before the Supreme Court. Prior to the admissibility analysis by the Supreme Court, the same party filed the same request to the Constitutional Court, which suspended the Supreme Court proceedings (Case No. 14.474-23-INA).

The party has also requested the Constitutional Court to declare the provision in the LACI that designates the Application for Set Aside as the exclusive means to challenge the constitutionality of an award as ‘inapplicable due to unconstitutionality.’ This request aims to enable the Supreme Court to review and rectify any abuse of power or address any misconduct by the Court’s judges involved in deciding the Application.

According to the petitioner, the LACI prevents the Supreme Court from exercising the disciplinary power granted by the Chilean Constitution, as any decision of the Court concerning the annulment of an award may be reviewed by the Supreme Court.

The opposing party has contended that the provision is not unconstitutional, and that the Constitutional Court has already ruled on this matter when exercising preventive constitutional control of the LACI. The decision on this request is pending.

Conclusion

After reviewing all the Applications for Set Aside filed to date in Chile, it can be asserted that (1) The LACI prioritizes the processing of Applications for Set Aside; (2) Chilean courts are actively complying with this legal mandate; (3) Efforts to obstruct the enforcement of arbitration awards and attempts to overturn the rulings resolving the Applications to Set Aside have proven fruitless; and (4) As of now, no Application for Set Aside has been granted.

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