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The ECtHR and the Recognition of International Arbitral Awards: The Court's Judgment in Iliria S.R.L. v. Albania

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On 5 March 2024, the European Court of Human Rights ("ECtHR" or "the Court") delivered its judgment in ***Iliria S.R.L. v. Albania*** ("*Iliria*"), a case concerning a complaint under Article 6(1) of the European Convention on Human Rights ("ECHR" or "the Convention") relating to a more than 17-year delay in the conclusion of recognition (*exequatur*) proceedings in respect of an international arbitral award against Albania. The judgment has important implications for future cases concerning the recognition of international awards that may come before the Court.

Iliria's 18-Year Legal Battle for Recognition of the Arbitral Award in Albania

The applicant in *Iliria* spent nearly 18 years attempting to obtain recognition of its arbitral award in Albania. The award ordered the Albanian Government to pay 48.2 billion Italian Lira (about US$27 million at the time), plus interest. In 1998, Iliria applied to have the award recognised in Albania, and the Tirana Court of Appeal approved the request, making it executable. In 2009, following several rounds of appeals and remittals of the case, the Court of Appeal dismissed Iliria's request for the recognition and enforcement of the award on the basis that it was "contrary to the basic principles of the Albanian law" (para 13). The Supreme Court dismissed Iliria's appeal in 2012. Iliria then filed two constitutional appeals, complaining, *inter alia*, of the length of proceedings. In 2015, after nearly two decades, the Constitutional Court dismissed Iliria's claim as manifestly ill-founded. In its complaint to the Court, Iliria argued that "the length of the proceedings concerning the recognition of the Arbitral Award was unreasonable" (para 22) and therefore contravened its rights under Article 6(1) of the Convention (the right to a fair trial).

Iliria's Article 6(1) Application was Admissible, Notwithstanding That Its Domestic Claim was Ultimately Rejected on the Merits

The Government had attempted to have the application dismissed as inadmissible, on the basis (among others) that (a) the award-holder's domestic claim for recognition of the arbitral award was ultimately rejected on the merits, and (b) the award-holder had also begun *exequatur* proceedings in Italy. The Court gave both arguments short shrift. On (a), the Court found that what mattered was that "the applicant company was entitled under domestic law to a decision on whether the

Arbitral Award was enforceable in Albania or not" (para. 25). On (b), all that was relevant was that the Albanian court proceedings at issue had concluded.

Accordingly, the Court has made it clear that award-holders whose enforcement proceedings ultimately end in non-recognition in a Council of Europe member State, or who have pending enforcement proceedings in other jurisdictions, are not for those reasons alone precluded from bringing applications under Article 6(1) of the Convention.

The ECtHR's Approach to Delays in Local Court Proceedings

The right to a fair trial under Article 6(1) of the Convention guarantees the right to prompt implementation of a final and binding judicial decision, and is an integral aspect of the "right to a court" (e.g., ***Hornsby v. Greece***, para. 40). An unreasonably long delay in enforcing a binding judgment may therefore breach the Convention (***Burdov v. Russia (no. 2)***, para 66; ***Regent Co v. Ukraine***, para 60). As the Court recalled in *Iliria*, such delays:

> "must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute" (para 29).

In addressing the delays in the Albanian court system, the ECtHR noted that, while it is not for it to "analyse the quality of the decision-making of the domestic courts", "serial remittals within the same set of proceedings may disclose a serious deficiency in the judicial system, considerably extending the overall length of proceedings" (para 33). The Court found that the delays in the Albanian proceedings could not be attributed to the applicant's conduct or the complexity of the case (paras 32-38). In the Court's view, "[e]ven if the case was of some complexity, that alone could not justify legal proceedings lasting for 17 years and 9 months" (para 38). The Court concluded that Albania had violated Article 6(1) of the Convention (para 39).

The *Iliria* Merits Judgment in the Context of the ECtHR's Jurisprudence on Arbitral Awards

The *Iliria* judgment follows the ECtHR's decision in ***BTS Holding, a.s. v. Slovakia*** ("*BTS*") (see also **here**), in which the Court found that Slovakia violated BTS Holding's Convention rights when its courts arbitrarily refused to enforce a Paris-seated ICC commercial arbitration award against the Slovak National Property Fund. Unlike *Iliria*, in which only an Article 6 violation was raised, the Court's analysis in *BTS* focused on the alleged violation of Article 1 of Protocol No. 1 ("A1P1") of the Convention (protection of property). The ECtHR confirmed that an arbitral award constitutes a "possession" under A1P1, and the non-enforcement of an award can constitute an unlawful and unjustified interference with the possession (*BTS*, paras 64-73). The *BTS* judgment follows the ECtHR's approach in other cases involving interference with an arbitral award under A1P1 (e.g., ***Stran Greek v. Greece***; ***Kin-Stib v. Serbia***). Iliria has a second application pending before the ECtHR relating to the same facts (but filed some seven years later), claiming a "breach of its right

to property" under A1P1 as a result of Albania's failure to enforce the arbitral award.

Compensation Under the Convention

Iliria sought compensation of €100,000 in non-pecuniary damages in respect of the delays (nothing by way of pecuniary damages) and €21,000 in respect of costs and expenses incurred in the Albanian court proceedings. The Court awarded the applicant a total of €10,800, covering costs incurred due to the delay and non-pecuniary damages (paras 40-43). These figures of course pale in comparison to the value of the award (approximately US$27 million when rendered).

The level of compensation for a self-standing Article 6 claim is notoriously difficult to determine or predict. The ECtHR is generally reluctant to speculate as to the outcome of proceedings had there been no breach of the procedural guarantees of Article 6 (***Ezeh and Connors v. UK***, para 112). Where an award of compensation is made, it is directed to the pecuniary and non-pecuniary impact on the claimant of the proceedings themselves (as opposed to the impact on the underlying right). Thus, success on a claim under Article 6(1) alone may prove to be something of a pyrrhic victory for the claimant. The *Iliria* judgment is a clear example.

It remains to be seen whether Iliria's new A1P1 complaint will offer an opportunity for further recovery. The Court in *Stran Greek* accepted that a violation of A1P1 can only be remedied by the full payment of the amount awarded in the arbitration, along with interest, to compensate for the pecuniary damage suffered by the applicants (paras 77, 81-82). The Court has since taken the same approach in other cases involving interference with an arbitral award under A1P1 (e.g., *Regent Co*, para 66; *Kin-Stib*, para 97).

The Treatment of Judicial Delays in Investment Treaty Jurisprudence

The *Iliria* judgment shows that the ECtHR, while well-equipped to address delays in domestic proceedings concerning recognition and enforcement of awards, may not always be the best route for those seeking valuable (and prompt) recovery. After all, nearly 15 years had elapsed from the date of the application to the Court's judgment, and the compensation recovered is negligible by comparison to the value of the award. Where available, investment treaty arbitration may present a more appealing alternative.

Investor-State tribunals have established that an undue delay in dealing with investors' claims or enforcement of investors' rights may violate the effective means and the FET standards (e.g., ***Mercuria v. Poland (II)***; ***Chevron v. Ecuador (I)***; ***White Industries v. India***). Tribunals have adopted a similar approach to the ECtHR in assessing delays in domestic proceedings, by considering factors such as the "complexity of the case, the behavior of the litigants involved, the significance of the interests at stake in the case, and the behavior of the courts themselves" (e.g., *Chevron v. Ecuador (I)*, para 250).

In *Chevron v. Ecuador (I)*, the ICSID tribunal found that a 13-year delay across seven court cases breached the BIT's "effective means" standard (para 270). The tribunal took about five years to issue its Final Award, awarding the claimants compensation of nearly US$78 million, plus interest. The *White Industries v. India* UNCITRAL tribunal similarly held that extensive judicial delays by

Indian courts in the context of proceedings to set aside an ICC award amounted to a breach of India's obligation to provide "effective means" (paras 11.4.18-20). The tribunal issued its final award in just over a year from the start of the arbitral proceedings, awarding the claimant the US$4 million payable under the original ICC award, plus interest and the costs of the ICC arbitration (para 16.1.1). More recently, in *Mercuria v. Poland (II)*, an SCC tribunal found that Poland had violated both the effective means and the FET standards under the ECT by failing to implement several court decisions issued in claimant's favour (paras 810-817, 837-842). The arbitral proceedings concluded in just over three years, with the tribunal awarding the claimant 145.10 million PLN (around US$33 million) in damages, plus interest (para 930).

While not exhaustive, the above examples show that investment arbitration may provide a more effective remedy to judicial delays, particularly in terms of recovery. That said, the arbitration route is far from certain. Ultimately, the choice between the ECtHR and the arbitration route will depend on the specific circumstances of each case and the applicable legal frameworks.

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