

Kluwer Arbitration Blog

Kluwer Arbitration ITA Arbitration Report, Volume No. XXII, Issue No. 4 (April 2023)

Roger Alford (General Editor) (Notre Dame Law School), Crina Baltag (Managing Editor) (Stockholm University), and Monique Sasson · Saturday, July 20th, 2024

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.

[Akbar, S.R.L. v. Fluke Corporation Inc. & TDP Dominicana, S.R.L., Constitutional Court of the Dominican Republic, TC/0391/23, 28 June 2023](#)

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

The Dominican Constitutional Court ruled that the restriction on a party's right to appeal judgments referring a case to an arbitral tribunal based on the existence of arbitration agreements does not violate constitutional principles of access to justice, effective judicial protection, and due process. This ruling is based on Article 12 of Law No. 489-08 on Commercial Arbitration (the "Dominican Arbitration Law"), which incorporates the principle of kompetenz-kompetenz into the Dominican legal system.

[Centro Médico Cibao, S. A. v. C.J.G.L., J.E.G.G., and C.D.G.L., Supreme Court of Justice of the Dominican Republic, SCJ-PS-22-2783, 14 September 2022](#)

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

The Dominican Supreme Court of Justice ruled that courts of first instance and courts of appeal cannot scrutinize the applicability of an arbitration clause, as such matters fall under the jurisdiction of arbitral tribunals according to the principle of kompetenz-kompetenz. This decision

is based on Articles 12(1) and 20 of Law No. 489-08 on Commercial Arbitration (the “Dominican Arbitration Law”), which incorporate the principle of kompetenz-kompetenz to the Dominican legal system. The Supreme Court also determined that the responding party must invoke the arbitration clause during the proceedings before the court of first instance or risk forfeiting the opportunity to do so during any subsequent appeal.

[BGH – I ZB 37/23, Federal Court of Justice of Germany, I ZB 37/23, 21 December 2023](#)^v

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

A respondent may raise grounds for refusal of enforcement of an arbitral award pursuant to Art. V(1) of the New York Convention (“NYC”) in German state court regardless of the fact that it did not initiate annulment proceedings against the award at the foreign seat of arbitration within an applicable time limit. State courts must observe the prohibition of *révision au fond*. In this regard, they are also regularly barred from assessing an arbitral tribunal’s evaluation of evidence.

[BayObLG – 101 SchH 237/23 e, Highest Regional Court of Bavaria, 101 SchH 237/23 e, 31 January 2024](#)^v

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

The question of whether two contracting parties have agreed to arbitration by means of an arbitration clause, even though that clause refers to an arbitration agreement to be concluded separately, is to be determined by way of interpretation of the contract. The decisive factor is whether it is clear from the concluded contract that the parties intended to submit legal disputes arising from a specific legal relationship to arbitration under exclusion of state courts.

[LLC “KelBi” v. UAB “Baltijos unigrup?”, Supreme Court of Lithuania, e3K-3-178-823/2023, 29 June 2023](#)

Vytautas Vaicekauskas, Motieka & Audzevičius, ITA Reporter for Lithuania

In June 2023, the Supreme Court of Lithuania ruled that the decision of the Court of Appeal of Lithuania shall remain unchanged, establishing that the application of CMR Convention (Convention on the Contract for the International Carriage of Goods by Road), where parties had no explicit agreement on the Convention, does not invalidate the arbitration agreement and does not violate public policy.

[KESKO OYJ v. UAB „Kesko Senukai Lithuania“ and A. R., Supreme Court of Lithuania, e3K-3-177-381/2023, 08 June 2023](#)

Vytautas Vaicekauskas, Motieka & Audzevičius, ITA Reporter for Lithuania

In June 2023, the Supreme Court of Lithuania annulled the decision of the Court of Appeal of Lithuania, establishing that set aside procedure of an arbitral award in the seat of arbitration has no effect on the binding nature of the arbitral award, as well as, in itself is an insufficient ground for the suspension of the recognition and enforcement proceedings.

Alberto Benítez & Cristina Bejarano de Benítez v. Derlis Núñez Quiñonez s/ Anulación o Revocación de Acto Jurídico, Court of Appeal in Civil and Commercial Affairs of Asunción, 63/2023, 12 December 2023

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

On December 12, 2023, an Asunción Appeals Court granted an annulment request based on Arts. 40 (a)(1), 40 (a)(2), and 40 (b) of the Paraguayan Arbitration Law. As concluded by the Appeals Court, the award's annulment corresponds as it left one of the parties defenseless and also as it dealt with a non-arbitrable matter.

Proibérica S.A. v. Estado Paraguayo – Ministerio del Interior – Policía Nacional, Court of Appeal in Civil and Commercial Affairs of Asunción, 09/2024, 14 March 2024

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

On March 14, 2024, an Asunción Appeals Court rejected an annulment request based on Art. 40 (b) of the Paraguayan Arbitration Law after concluding that the annulment recourse does not cover allegations of *citra petita* violations.

*A*X S.A. v. Estado Paraguayo (Policia Nacional), Court of Appeal in Civil and Commercial Affairs of Asunción, 21/2024, 12 April 2024*

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

On April 12, 2024, an Asunción Appeals Court rejected an annulment request based on Art. 40 (b) of the Paraguayan Arbitration Law after concluding that the applicant failed to prove the existence of a violation of public policy.

Ilsung Construction Corporation v. B&B S.A., Court of Appeal in Civil and Commercial Affairs of Asunción, 09/2024, 18 March 2024

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

On March 18, 2024, an Asunción Appeals Court granted an annulment request based on Art. 40 (b) of the Paraguayan Arbitration Law. As the majority of the Appeals Tribunal concluded, the

award's annulment corresponds as it disregarded a condition of *lis pendens* that affected one of the parties. Moreover, the majority of the Appeals Tribunal considered that the arbitral tribunal's analysis of the calculation of the time limits violated public policy.

[Engineering SRL v. Administración Nacional de Electricidad \(ANDE\) s/ Constitución del Tribunal Arbitral, Court of Appeal in Civil and Commercial Affairs of Asunción, 44/2021, 10 May 2021](#)

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

On May 10, 2021, an Asunción Appeals Tribunal, via majority of votes, rejected an annulment request against an award rendered by an arbitral tribunal in an *ex aequo et bono* arbitration. As the majority of the Appeals Tribunal concluded, annulment requests against awards in *ex aequo et bono* arbitrations face an even higher threshold since the parties deposit their trust in the tribunal to decide the dispute based on principles it believes to be just, further requiring that the request be founded in the limited procedural grounds for annulment found in the Paraguayan Arbitration Law.

[Banco Familiar S.A.E.C.A. v. Azucarera Iturbe S.A., Court of Appeal in Civil and Commercial Affairs of Asunción, 105/2018, 19 October 2018](#)

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

On October 19, 2018, an Asunción Appeals Court rejected an annulment request as the Applicant did not prove the existence of any defects in the procedure or any misapplication of the law in the interpretation of the invoked facts and the law in the case.

[Consortio Asunción v. Ministerio de Obras Públicas y Comunicaciones \(Estado Paraguayo\) s/ Cumplimiento de Contrato y Otros, Court of Appeal in Civil and Commercial Affairs of Asunción, 122/2022, 17 October 2022](#)

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

On October 17, 2022, an Asunción Appeals Court rejected an annulment request, as the Applicant did not prove that any of the alleged annulment grounds found in Art. 40 were met in the case at hand.

[Consortio Matias v. Superintendencia Nacional de Aduanas y de Administración Tributaria \(SUNAT\), Superior Court of Justice of Lima, Expediente N° 00441-2023-0-1817-SP-CO-01, 29 January 2024](#)

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

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

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](#).

2024 Summits on Commercial Dispute Resolution in China

17 June – Madrid
20 June – Geneva

Register Now →



This entry was posted on Saturday, July 20th, 2024 at 8:50 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.