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## Recognition of Foreign Awards in Ecuador: A Long-Standing Discussion That is Finally Settled

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Through Ruling No. 3232-19-EP/24, Ecuador's Constitutional Court ("**Court**") settled a long-standing discussion and confirmed that recognition prior to the enforcement of foreign arbitral awards is an unreasonable requirement in light of the Ecuadorian legal system.

In this post, we describe the factual background of the Court's ruling and examine the procedural issues underlying the recent decision on the enforcement of foreign awards in Ecuador.

### Background

CW Travel Holdings N.V. ("**CW Travel**") commenced a Paris-seated arbitration against Seitur Agencia de Viajes y Turismo ("**Seitur**") under the International Chamber of Commerce Arbitration Rules (ICC Case No. 19058/GFC). In the arbitration, CW Travel obtained a favorable award of approximately US\$ 2,14 million. Afterwards, CW Travel sought the enforcement of the ICC Award in the Ecuadorian national courts.

The competent national trial court rejected the petition for enforcement, stating that **(i)** the award lacked a certificate of finality<sup>1)</sup> and **(ii)** the award was not recognized pursuant to Article 363 of the Ecuadorian domestic procedural law—*Código Orgánico General de Procesos* ("**COGEP**"). CW Travel appealed the decision before the Provincial Court of Pichincha, but the appeals court affirmed the decision.

In light of the above, CW Travel filed an extraordinary protection action before the Constitutional Court arguing that the lower courts' decisions rejecting the enforcement of a foreign award violated its right to due process and legal certainty.

### Decision

The Constitutional Court's [decision](#) ruled that the Ecuadorian legal system does not require the recognition of a foreign award prior to its enforcement. To reach its decision, the Court analyzed and found as follows:

- The rules that establish recognition as a requirement for the later enforcement of a foreign award in Ecuador were repealed. Therefore, a recognition process is an unreasonable requirement to enforce foreign awards in light of the [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#) (“**New York Convention**”) and the Ecuadorian legal system.
- Demanding a certificate of finality—or any other requirement that is not foreseen in the procedural legislation under which the award is issued—constitutes an unreasonable obstacle to enforce foreign arbitral decisions.

Based on the above, the Constitutional Court decided that the lower courts violated CW Travel’s rights to due process and legal certainty by rejecting the enforcement of the foreign award.

## Analysis

Enforcement of foreign arbitral awards has not been a peaceful process in Ecuador. Article 42 of the [Arbitration and Mediation Law](#) (“**AML**”) provides in its last paragraph that “[t]he awards rendered in an international arbitration proceeding shall have the same effects as the awards rendered in a domestic arbitration proceeding.” Therefore, in application of this provision, under Ecuadorian law, it is not necessary to recognize a foreign award prior to its enforcement. Historically, this rule, which was in force since the issuance of the AML in 1997, was repealed with the enactment of the COGEP in 2015. In Articles 102 to 106, the COGEP introduced a rigorous procedure for the recognition of foreign arbitral awards which required a series of formalities that went beyond the nature and content of Articles IV and V of the New York Convention and provided the possibility of filing an opposition to the homologation of the foreign arbitral award.

The [Organic Law of Productive Development](#), enacted in 2018, amended the COGEP and eliminated the phrase “arbitration awards” from Articles 102 to 106 of the COGEP. Undoubtedly, the intention of this law was to eliminate the recognition process for foreign awards and to grant them evidentiary value without the need of such a process prior to their enforcement. Moreover, this law reestablished the last paragraph of Article 42 of the AML, according to which foreign arbitration awards are enforced in the same way as domestic awards. Furthermore, the regulations of the AML were issued in 2021, and expressly provided that the enforcement of foreign awards does not require a previous recognition process.

Notwithstanding the foregoing, the recognition of foreign arbitral awards was still a discussed issue in Ecuador, as it can be seen in the background of the Constitutional Court’s ruling.

This problem should have been solved from the beginning by construing the Ecuadorian legal system as a whole. In fact, Ecuador’s Constitution (i) recognizes arbitration as an alternative dispute resolution method subject to the law, in matters which by their nature can be settled, and (ii) establishes that international treaties are hierarchically superior to any other provision of the Ecuadorian legal system, with the exception of the Constitution.

Hence, Ecuadorian law did not require recognition of foreign awards prior to its enforcement as the COGEP provisions were repealed by the Organic Law of Productive Development. Moreover, Ecuador is a contracting state of the New York Convention which, as an international treaty, is hierarchically superior to any other legal provision other than the Constitution.

As the Constitutional Court noted, pursuant to Article III of the New York Convention, this instrument does not impose a specific procedure for the enforcement of international awards on contracting states but allows each state to regulate it according to domestic needs. However, what the New York Convention does is establishing general principles that regulate minimum standards that cannot be surpassed by the contracting states. In this case, the procedure for recognition and enforcement of a foreign award could not include requirements beyond the scope of Articles IV and V of the New York Convention nor requirements that constitute an unreasonable burden as it was the case with provisions included in Article 102 to 106 of the COGEP as this violated Article III of the New York Convention.

Based on these considerations, the Court held that “if Ecuadorian domestic awards do not require recognition for their enforcement, neither could such a requirement be imposed for the enforcement of foreign awards, since this would constitute an ‘appreciably more rigorous’ condition that would differentiate them, under penalty of incurring in a breach of such international obligation” (Ruling No. 3232-19-EP/24, ¶60). Moreover, the “recognition requirement” is “unreasonable [...] since it does not apply to foreign awards” (Ruling No. 3232-19-EP/24, ¶75), in light of the New York Convention.

Pursuant to Article VII of the New York Convention, Ecuador’s decision to eliminate the process for recognition of arbitral awards should be construed as a favorable and therefore applicable rule per the New York Convention. This is why the Constitutional Court finally ended the discussion regarding the “recognition requirement” pursuant to Ecuadorian law. Moreover, in application of these principles, the Court found that demanding recognition—or any other requirement not provided under the applicable law—is unreasonable and violates the due process and legal certainty rights of the party who seeks enforcement of a foreign arbitral award.

## Conclusion

The Constitutional Court finally settled this long-standing discussion regarding recognition of foreign arbitral awards prior to its enforcement in Ecuador. The erroneous interpretation of the Ecuadorian legal system has led practitioners and judges to delay and even deny the direct enforcement of foreign arbitral awards.

It is now clear that the Ecuadorian legal system, through the Constitution, the New York Convention, and the AML and its regulations, provides for a flexible procedure for the recognition and enforcement of foreign awards, in which neither prior recognition nor a certificate of finality is required. Any contrary decision would violate the due process and legal certainty rights of those who seek enforcement of a foreign arbitral award.

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## References

- ?1 In Ecuadorian law, a certificate of finality is a non-jurisdictional act that attests that a decision has acquired the authority of formal *res judicata*.

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