

# Kluwer Arbitration Blog

## Santiago Court of Appeals Upholds Arbitral Award Against the Republic of Ecuador

Elina Mereminskaya (Independent Arbitrator) · Thursday, January 9th, 2025

On October 18, 2024, the Santiago Court of Appeals rejected a petition seeking the annulment of an international arbitration award, once again providing strong arguments in favor of the validity of international commercial awards (Case No. 12506-2022). In the twenty years since the enactment of the [International Commercial Arbitration Law \(ICAL\) No. 19971](#), no international award has been annulled by Chilean courts.

### Background

The award was issued by the three-member arbitral tribunal, consisting of Chair José-Miguel Júdece and co-arbitrators Manuel Conthe and Juan Pablo Cárdenas, in CPA No. 2018-12 case *Gente Oil Ecuador Pte. Ltd. v. the Republic of Ecuador*.

In terms of jurisdiction, the Arbitral Tribunal ruled that it had jurisdiction *ratione personae* and *ratione materiae* “to rule on the merits of the Claimant’s claims against those who are parties to the Arbitration Agreement.”<sup>1)</sup> As for the merits, it rejected the request for early termination of the Contract, considering that the breaches were neither essential nor significant enough. However, the Tribunal ordered the Ecuadorian State to pay compensation for material and moral damages in the total amount of US\$10,710,768.

### The Annulment Petition

On 23 August 2022, the Republic of Ecuador filed the petition for annulment of the award with the Santiago Court of Appeals alleging that it contained “serious violations of Chilean law and public policy.”<sup>2)</sup> The petition for annulment was based on four grounds: first, that the award arrogates jurisdiction to hear disputes outside the material scope of the arbitration agreement; second, that the award arrogates jurisdiction over acts carried out by third-party public entities beyond the subjective scope of the arbitration agreement; third, that it contravenes the rule of law and the principle of legality governing the conduct of state entities; and fourth, that it seriously contravenes several fundamental principles that form the legal system and constitute rules of public policy.

The grievances justifying annulment of the award were as follows: it imposes a financial burden of approximately US\$4,000,000 on Ecuador for sunk costs (pre-contractual liability) and moral damages; it violates Ecuadorian contracting laws, attributing liability without establishing a causal link between the alleged act and the harm; it undermines legal security by interfering with state functions and imposing restrictions on public officials; it hinders the global fight against corruption; and it deprived Ecuador of access to its natural judge, alternative remedies, and a fair hearing by overstepping jurisdiction on pre-contractual liability. Ecuador faces the paradox of being free of contractual breach yet liable for substantial non-contractual damages. The award jeopardizes arbitration's legitimacy and Chile's reputation, making annulment essential to uphold the rule of law.

The Santiago Court of Appeals emphasized that the annulment remedy, being strictly regulated by law, may only proceed on grounds explicitly specified by the legislator. It also underlined the principle of minimum intervention of the national courts provided for in Article 5 of the ICAL.

In addition, the Court referred to jurisprudence stating that annulment actions under the special legislation rely on precisely defined grounds, which do not permit extensive or analogical interpretation. These provisions concern only the award's formal aspects, not its substantive merits, and affirm the fundamental principle of its validity. The Court further stated that

“[T]hrough the annulment action—as an extraordinary and strictly regulated remedy—the court is prohibited from reviewing the merits of the decision, as the grounds for annulment are limited to ensuring minimum standards of legality. This refers specifically to the procedural aspects of the arbitration process, particularly the guarantees that the law itself grants to the parties. This challenge does not constitute an appeal or a review that would allow reevaluating evidence or examining the interpretation and legal qualification of the facts established by the arbitral tribunal, except in cases involving public policy of Chile.”<sup>3)</sup>

The legal grounds invoked by the petitioner were that “the award addresses a dispute not contemplated in the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement” (Article 34(a)(iii) ICAL) and that “the award is contrary to the public policy of Chile” (Article 34(b)(ii) ICAL).<sup>4)</sup>

The first ground invoked by the petitioner concerns the claim that the arbitral tribunal exceeded the scope of its jurisdiction by ruling on two issues allegedly outside the contract: pre-contractual compensation and the compensation for moral damages. In view of this allegation, the Court considered the broad scope of the arbitration clause. The clause encompassed disputes arising from the “performance” of the contract, and from “any breach of the Applicable Law or other circumstances related to the contract.”<sup>5)</sup> Based on the above, the arbitral tribunal's decision on pre-contractual liability and moral damages was deemed within the scope of the arbitration clause.

Regarding the second allegation—lack of jurisdiction over other entities within the Central Public Administration—the Court emphasized that the award only imposes obligations on the appropriate party to the dispute, as specified in the operative part of the award. Furthermore, the arbitral tribunal explicitly stated that “it lacks jurisdiction over claims related to alleged contractual and

legal violations involving the Comptroller's Office, the Attorney General's Office, and the Public Prosecutor's Office, as these matters fall outside the scope of the Arbitration Agreement."<sup>6)</sup>

The Court concluded that "there is no such overreach regarding the parties involved, and that the grounds for annulment are more related to the arguments on which the tribunal based its decision, including evidentiary and evaluative issues of merit. These matters are not subject to review under the invoked ground for annulment."<sup>7)</sup>

Thirdly, the Court addresses the allegation that "the arbitral award would violate Chilean public law by opposing fundamental principles [. . .], such as legality, good faith and reasoning" of the award.<sup>8)</sup> The Court contended:

"With regard to the first issue, the arguments presented by the petitioner do not reveal any violation of the principle of legality as understood under our domestic law. Indeed, as previously stated, the award held the Republic of Ecuador accountable for actions deemed attributable to it, considering them comprehensively in light of its contractual obligations toward Gente Oil. There is no indication that this created an impossibility, limitation, or disincentive for fulfilling its functions as a public authority."

Moreover, the arguments raised in support of the petition clearly show that the Republic of Ecuador seeks to have this court replace the arbitral tribunal's decision by reviewing the evidence submitted or reevaluating the actions taken by the parties in light of the contract and the principles governing its interpretation. However, as has been established, such a review does not fall within the scope of the present ground for annulment."<sup>9)</sup>

The Court reached the same conclusion regarding the alleged breach of the principle of good faith, noting that issues related to contract interpretation fall outside the scope of an annulment action.

The same conclusion applies to the alleged violation of the principle of due process concerning the duty to provide reasoning in the award. Moreover, upon review, the award demonstrates a thorough evaluation of the evidence and offers detailed reasoning explaining the tribunal's decision to partially uphold the claim and order the Republic of Ecuador to fulfill certain requested obligations.

With respect to the alleged inconsistency in the arbitral tribunal's decision to deny the termination of the contract while awarding damages, the Court held that the lack of reasoning due to contradiction arises only in cases where there is a logical inconsistency between two decisions or aspects of a decision, rendering it impossible for both to remain valid or enforceable. The Court observed that "the two [decisions] can coexist independently and be enforced concurrently, as has indeed occurred in this case."<sup>10)</sup>

For the foregoing reasons, the petition for annulment was denied.

## Conclusion

Particularly valuable is that the Court has been able to narrow down the concept of public policy, addressing previous uncertainties in the country's legal circles about its application. In line with the international practice, the Court has developed a restrictive criterion that has served as a basis for rejecting as unfounded attempts to annul international arbitral awards.

As previously [reported](#), this decision reinforces the strong support that the Santiago Court of Appeals continues to provide to international commercial arbitration seated in Chile.

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## References

- ?1 Santiago Court of Appeals, Case No. 12506-2022, 18 October 2024, p. 5.
- ?2 Santiago Court of Appeals, p. 2.
- ?3 Santiago Court of Appeals, p. 22.
- ?4 Santiago Court of Appeals, p. 22.
- ?5 Santiago Court of Appeals, p. 23.
- ?6 Santiago Court of Appeals, p. 24.
- ?7, ?8 Santiago Court of Appeals, p. 25.
- ?9 Santiago Court of Appeals, ps. 25-26.
- ?10 Santiago Court of Appeals, p. 27.

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