Kluwer Arbitration Blog

When “Only” Is Not Just Another Word: The Chilean Constitutional Court Upholds the Constitutionality of the Term in Article 34 of Law on International Commercial Arbitration

Elina Mereminskaya (Independent Arbitrator) · Wednesday, March 19th, 2025

On January 30, 2025, the Constitutional Court of Chile issued a decision regarding a request for inapplicability due to the unconstitutionality of certain provisions of Law No. 19,971 on International Commercial Arbitration (“Law No. 19,971” or “International Commercial Arbitration Law”).[1)]

The contested provision was the word “only” used twice in Article 34 of Law No. 19,971:

> “(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article. (2) An arbitral award may be set aside by the respective Court of Appeals only if: […].”

Background

The request was submitted in relation to an arbitration administered by CAM Santiago, seated in Chile, between the Italian company, FIMER SpA, and the Chilean company, ENEL Green Power Chile S.A. The dispute centered on two photovoltaic energy projects located in northern Chile, owned by ENEL, for which FIMER supplied and installed conversion cabins. ENEL filed a claim against FIMER for damages caused by the malfunctioning of the equipment, obtaining a favorable award.

On April 27, 2023, FIMER filed a petition to annul the award based on the ground set forth in Article 34(2)(b)(ii) of the International Commercial Arbitration Law, that provides the following:

> “*The award can only be annulled by the respective court of appeals:* […] [if] *the award is contrary to the public policy of Chile*.”

The Santiago Court of Appeals rejected the petition to annul the arbitration award through a decision dated January 11, 2024.

FIMER subsequently filed a complaint (*recurso de queja*) before the Supreme Court against the judges of the Court of Appeals who issued this decision. This complaint is a disciplinary recourse, directed against judges, and applies when there is a serious fault or abuse in the decision they issued.[2)]

In the context of this latter procedure, FIMER brought the matter before the Constitutional Court. FIMER argued that the word "only" (used twice in Article 34 of Law No. 19,971 identical to the UNCITRAL Model Law) renders the complaint remedy against the Court of Appeals decision inadmissible, and with that, it deprives the Supreme Court of its constitutional power to perform disciplinary oversight over the inferior court.

This authority is enshrined in Article 82 of the Political Constitution of the Republic, which states:

> "The Supreme Court has directive, corrective, and economic oversight over all courts in the Nation. […] The superior courts of justice, in the exercise of their disciplinary powers, may only invalidate jurisdictional rulings in the cases and manner established by the respective constitutional organic law."

The petitioner argued before the Constitutional Court that the application of the challenged provisions to the specific case absolutely prevents the Supreme Court from exercising this authority regarding the decision adopted by the judges of the Santiago Court of Appeals. This is because it precludes the annulment of an arbitral award through any means other than the special annulment procedure regulated by the contested provision and because it does not allow for the annulment of the arbitral award to be declared by a court other than the Court of Appeals. Secondly, the petitioner argued that the challenged legal provisions violate the principles of constitutional supremacy and legality, as enshrined in Articles 6 and 7 of the Political Constitution, respectively.

The Decision

After analyzing the term "only" in numeral (1) of Article 34 of Law No. 19,971, the Constitutional Court concluded that Article 34 provides that the "petition to annul" is the sole remedy available against an arbitral award. The term "only" is used in a doubly restrictive manner, referring both to the admissibility of the petition to annul and to its grounds. This establishes a limited jurisdiction of the Court of Appeals to review the arbitral award.

The Constitutional Court further added that international commercial arbitration is based on the autonomy of the parties' will and their agreement, enabling them to agree on arbitral clauses, select applicable rules, and appoint the arbitral tribunal, with a corresponding limitation on judicial review. Such a restriction does not violate the Constitution but rather legitimately develops the power to shape procedural frameworks, which safeguards the efficiency and expediency of arbitration.

In turn, the complaint remedy (*recurso de queja*) is an extraordinary mechanism in the Chilean procedural system, based on the directive, corrective, and economic oversight authority exercised by the Supreme Court over the courts, as established in the first paragraph of Article 82 of the Constitution. Unlike ordinary remedies, such as appeals, the complaint does not constitute a third instance, as it does not seek to reopen the debate on the merits of the case.

Based on these considerations, the Constitutional Court concluded that the application of the term "only," contained in numeral (1) of Article 34 of Law No. 19,971, to the specific case does not violate Article 82 of the Political Constitution of the Republic.

In addition, the Constitutional Court recalled that the contested provision had already been subject to preventive constitutional review by the same Court during the legislation process, which determined that Article 34 of Law No. 19,971 is constitutional. Therefore, it would not be appropriate to question its essential validity again through a request for inapplicability.

Since the provision under analysis does not override the authority granted to the Supreme Court by Article 82 of the Political Constitution of the Republic, there is no violation of the principle of constitutional supremacy, and therefore Articles 6 and 7 of the Political Constitution of the Republic are not infringed in this case.

Regarding the term "only" contained in numeral (2) of Article 34 of Law No. 19,971 ("The award can only be annulled by the respective Court of Appeals"), the Constitutional Court noted that the term does not alter the substance of its decision. Even if it were declared inapplicable to a specific case, the same exhaustive grounds for annulment would remain unchanged. Furthermore, the Constitutional Court determined that this part of the provision had already ceased to apply in the annulment proceedings and was neither applicable nor decisive in the remaining proceedings, particularly in the complaint remedy against the decision of the Santiago Court of Appeals.

The decision was adopted by six votes, with one dissenting opinion in favor of granting the inapplicability request. Additionally, another member of the Constitutional Court issued a concurring opinion with the majority, emphasizing that it was not the word "only" that prevented the complaint remedy but rather the regulation of that remedy in Article 545 of the Organic Code of Courts, which states that the complaint remedy "shall only be admissible when the fault or abuse is committed in an interlocutory judgment that either terminates the case or renders its continuation or conclusion impossible or in a final judgement." The concurring opinion stressed that the ruling resolving a special annulment motion under Law No. 19,971 is certainly neither an interlocutory judgment nor a final judgment, as annulment proceedings do not constitute an instance where the disputed substance matter is discussed.

Conclusion

With this decision, the Constitutional Court reaffirms the stance it originally took during the legislative process of Law No. 19,971. At the same time, this ruling contributes to defining the autonomy principle in international commercial arbitration within the Chilean legal system. It is expected that this position of the Constitutional Court could be maintained over time.

The hope of those who support international commercial arbitration as an indispensable mechanism for resolving disputes is that this position will also serve to discourage appeals both

before the Constitutional Court and the Supreme Court, given that Law No. 19,971 has not assigned these forums any supervisory role regarding arbitral awards issued in Chile.

References

?1 Case Nº 15.144-2024, "Requerimiento de inaplicabilidad por inconstitucionalidad respecto de la expresión 'sólo', contenida en los numerales 1), y 2), del artículo 34, de la ley n° 19.971, sobre arbitraje comercial internacional, FIMER SpA en el proceso Rol N° 1888-2024, sobre recurso de queja, seguido ante la Corte Suprema, https://www2.tribunalconstitucional.cl.

?2 Article 545 of the Organic Code of Courts: "The complaint remedy (*recurso de queja*) has the exclusive purpose of correcting serious faults or abuses committed in the issuance of jurisdictional resolutions. It is only admissible when the fault or abuse occurs in an interlocutory judgment that either terminates the case, renders its continuation impossible, or is final, and when no other remedy, ordinary or extraordinary, is available, without prejudice to the Supreme Court's authority to act ex officio in the exercise of its disciplinary powers."

This entry was posted on Wednesday, March 19th, 2025 at 8:17 am and is filed under Annulment, Chile, Enforcement, International Commercial Arbitration, Latin America
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.