

Supreme Court considers Article IV of New York Convention for registration of arbitral awards

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Introduction

In the recent Supreme Court case *Intersputnik International Organization of Space Communications v Alrena Investments Limited*,⁽¹⁾ the appellants challenged the first-instance court judgment which had refused the registration and execution in Cyprus of an arbitral award issued by the International Commercial Arbitration Court at the Russian Federation Chamber of Commerce and Industry on December 27 2011. The appellants claimed that the first-instance judge had erred in concluding that the requirement under Article IV(1)(a) of the New York Convention 1958 – which is incorporated into Cypriot law through Law 84/1979 – had not been fulfilled.

Facts

Pursuant to Article IV(1)(a) of the New York Convention:

"1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof."

At first instance, the appellants submitted a document which they argued was a duly authenticated original version of the arbitral award, as it bore:

- the signatures of the judges concerned;
- the tribunal's seal; and
- a statement to the effect that three original documents were signed and that the award was final.

The first-instance court adopted the principles in *Bristol Business Corporation v Besuno Ltd* ((2011) 1(B) AAD 934), which held that the requirements imposed by Article IV are imperative and substantial and need to be strictly satisfied. In dismissing the application for registration of the arbitral award, the first-instance court concluded that a duly authenticated original had not been submitted, as the authenticity of the signatures and the seal of the arbitral tribunal had not been certified.

The appellants submitted to the Supreme Court that this interpretation of Article IV(1)(a) was incorrect and contrary to relevant case law on the topic. Further, it was argued that this interpretation of Article IV infringed one of the underlying objectives of the New York Convention, which is to incorporate an accessible and swift process of recognising and enforcing foreign arbitral awards.

Decision

The Supreme Court stated that international conventions concerning the execution of judgments issued in a different country are strictly interpreted when incorporated into Cypriot law. However, it highlighted the need to provide a rapid mechanism to serve the interests of justice and recognised that the New York Convention provides a specific and autonomous procedure.

The court accepted that the document submitted was an original and proceeded to examine whether it was a "duly authenticated original". In its analysis, the court drew on Albert Jan van de Berg, *The New York Convention of 1958: An Overview*, which defines a 'duly authenticated original award' as follows:

"The authentication of a document is the formality by which the signature thereon is attested to be genuine. The certification of a copy is the formality by which the copy is attested to be true copy of the original."

The court also drew on the Hong Kong High Court's approach in *Medison Co Ltd and Victor (Far East) Limited* (HCCT 4/2000) and *Guangdong New Technology Import and Export Corp Jiangmen Branch v Chiu Shing* ((1991) 2 HKC 460), which – with reference to Mustill and Boyd's *The Law and Practice* – stated that the terms 'duly authenticated' and 'duly verified' add nothing to the usual rules of evidence in presenting documents.

The Supreme Court also referred to the Court of Appeal of England and Wales case *Antony Lombard-Knight v Rainstorm Pictures Inc* (2014) EWCA Civ 356, in which the court held that an arbitral award is considered to be authentic when the document includes the arbitrators' original signatures.

The court also accepted the appellants' submission regarding Article IV(1)(a)'s requirements concerning certified copies and original documents and the meaning of the terms 'authentication' and 'certification'. It found that if a document contains the arbitrators' original signatures, no further certification is required. Producing a document which comprises the original signatures of the individuals who adjudicated the dispute and the official seal of the award leaves no scope for challenging their validity or the award's authenticity.

Comment

In light of the above, the Supreme Court accepted the appellants' arguments and allowed the appeal. This case serves as a useful reminder that courts should not apply the strict provisions of international conventions too rigorously or in a manner which hampers the operation of the New York Convention's underlying objectives.

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Endnotes

(1) Civil Appeal 298/2013, April 4 2017.

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