

Recognition of Chinese Arbitral Award in Finland

I've read this morning the post I reproduce below. I was wondering, do Finnish practitioners agree with the last comment?

Background

A Chinese construction company and a Finnish governmental entity were involved in arbitral proceedings in China. The proceedings were held under the applicable CIETAC rules in the Chinese language and the case was tried in accordance with the material laws of China as set forth in the contract between the parties. The award was rendered in December 2010 in favour of the Chinese company. However, the Finnish party refused to adhere to the award and the Chinese company was forced to commence a recognition and enforcement process in Finland. The Chinese company filed its application for recognition and enforcement of the arbitral award in October 2011 with the competent Finnish court. The Finnish party disputed the application and demanded its dismissal.

Helsinki District Court rendered a decision concerning the recognition and enforcement of the arbitral award in June 2012. The arbitral award was ordered to be recognised and enforced in Finland as requested by the Chinese company. As a result, the Finnish party was also found liable to compensate the Chinese company for all of its legal costs accrued in the Finnish recognition process.

The Finnish law concerning recognition and enforcement of arbitral awards is based on the New York Convention of 1958. Article V(2)(b) of the Convention concerning public policy as a ground for refusal of recognition has been implemented with only minor amendments in the Finnish Arbitration Act. Other impediments for recognition listed in the Convention are also adopted in the Finnish Act with only some slight differences. Therefore, international case law can be used as guidance in Finland and any Finnish cases can be exploited internationally.

Grounds for Objecting the Recognition and Enforcement

In the proceedings, the Finnish party pleaded that the arbitral tribunal was partial and neglected the Finnish entity's procedural rights. The Finnish party claimed that the arbitrators had unfairly advised the Chinese company during the proceedings and that the Finnish party's right and chance to present both oral and written evidence were, in certain respect, completely ignored. Furthermore, it was claimed that the award was based on wrong application of the Chinese law, both in material and procedural respect.

Accordingly, the Finnish party claimed that its right to due process was violated and therefore the arbitral award, was against the Finnish ordre public.

The Finnish party demanded an oral hearing at the Finnish court in order to prove its claims and appointed several witnesses to witness about the arbitral proceedings.

The Court Decision

The District Court of Helsinki dismissed the Finnish party's request for an oral hearing and rendered its decision in written proceedings. The court reasoned that the award rendered by the arbitral tribunal was final and it would be inappropriate as well as against the Finnish Arbitration Act, CIETAC rules and the Convention of New York to organise an oral hearing. The court reasoned that an oral hearing would mean that the case would be retried in practice although there already was a final decision.

The court also reasoned that Article 8 of CIETAC rules (2005) requires a party to submit its objection promptly when it holds that the CIETAC rules have not been complied with or the party shall be deemed to have waived its right to object. As the Finnish party had not submitted any objections during the arbitral proceedings, the court reasoned that it had waived its right to do so later. The court also stated that an arbitral award can be deemed invalid only extraordinarily.

After rejecting the Finnish party's request for an oral hearing, the court briefly ruled that no grounds had been presented not to recognise and enforce

the arbitral award in Finland. Therefore the court decided to accept the Chinese company's application and ordered the arbitral award to be recognised and enforced in Finland.

In conclusion, the recognition process of arbitral awards in Finland is very summary and despite a party's request, the courts are reluctant to organise any oral hearings. As a result, challenging an arbitral award in Finland is at least for the moment quite difficult.