

New York Convention applies to the recognition and enforcement of Basketball Arbitral Tribunal awards

It has been widely supported in legal scholarship that arbitral awards issued by the Basketball Arbitral Tribunal may be recognized and declared enforceable by virtue of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. A recent judgment rendered by the Thessaloniki Court of first Instance examined a pertinent application, and granted recognition and enforcement of the BAT award in Greece.

THE PROCEEDINGS IN GENEVA

The Greek Player V.K. and his Agency, S. Enterprise Ltd., filed a claim against the Greek Club A. B.C. 2003 for outstanding salaries, bonuses, agent fees, declaratory relief and interest. The Claimant submitted that the Respondent breached the contractual relationship by failing to pay several salary instalments as well as the agent fees. The Respondent did not participate in the proceedings. The claim was partially upheld by the Arbitrator. The Tribunal ordered the Club to pay a series of amounts and costs to the applicants.

THE PROCEEDINGS IN THESSALONIKI

Less than a month later, the award creditors filed an application for the recognition and enforcement of the BAT award before the Thessaloniki 1st Instance Court. For this purpose, they submitted a true copy of the award and the arbitration agreement, both duly translated in Greek.

The Club countered with a number of defences:

- It was not summoned to the BAT proceedings, which resulted in its

default of appearance.

- After the application in Greece, the parties signed a private agreement, following which the player agreed to downsize his claim to the sum of 85.000 Euros, and both applicants agreed to be paid by instalments.
- The Club had already paid the amount of 51.000 Euros, which should not be declared enforceable.
- By seeking recognition of the BAT award before the court, the applicants violated the private agreement, where it was agreed that both parties would refrain from any legal action during its implementation.
- It was also agreed that the player would apply for discontinuance, and in the event of payment default, the applicants were obliged to send the Club a notice in written, which however was omitted.

THE JUDGMENT OF THE THESSALONIKI COURT

- The court saw no violation of the audience rights of the Club: the latter was duly and timely served with the application and the summons to appear in the proceedings, as evidenced by the documents submitted to the court.
- By signing the private agreement, the court saw a tacit acceptance of the BAT award by the Club.
- The court dismissed the Club's request to deny the enforceability of the amount already paid. It underlined that this would mean a revision on the merits. Apart from the above, the court continued, the Club is not deprived of its right to request partial stay of execution in the enforcement stage.
- For the same grounds the court refrained from the examination of the particulars of the agreement, considering that the allegations of the Club against the applicants are out of the scope of the exequatur proceedings.
- With respect to the grounds of refusal, the court dismissed the public policy defence raised by the Club in regards to the costs of the arbitration proceedings: The total amount of 12.500 Euros is not excessive, given the subject matter of the dispute (140.000 Euros).

SHORT COMMENT

The judgment of the Greek court is a positive sign for the free circulation of BAT awards in national jurisdictions. The losing party failed to prove any grounds of refusal. The last bastion is now the application for a stay of execution. However, a re-examination on the merits is strictly forbidden in this stage; the Club's only hope is to trace potential flaws in the enforcement proceedings.

Finally, free circulation is also guaranteed for CAS rulings, as evidenced by a judgment issued by the same court nearly seven years ago.