

Bitcoin and public policy in the field of international commercial arbitration

Is a foreign arbitral award granting damages in bitcoin compatible with substantive public policy? The Western Continental Greece Court of Appeal was recently confronted with this question. Within the framework of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, it ruled that the recognition of a US award runs contrary to Greek public order. Cryptocurrency, such as bitcoin, favors tax evasion and facilitates economic crime, causing insecurity in commercial transactions to the detriment of the national economy.

FACTS

The applicant, a German national, was a member of a website, governed by a US company. The website was a platform through which members could conclude credit contracts in cryptocurrency (bitcoin). The applicant agreed with a resident of Greece to finance his enterprise by providing a credit of 1.13662301 bitcoin. The Greek debtor failed to fulfill his obligations, and he refused to return the bitcoin received. On the grounds of an arbitration agreement, an award was issued by an online arbitration court, located in the USA. The debtor appeared in the proceedings and was given the right to challenge the claim of the applicant. The court of first instance decided that the arbitral award may not be recognized in Greece for reasons of substantive public policy (CFI Agrinio 23.10.2018, unreported). The applicant lodged an appeal.

THE JUDGMENT OF THE COURT APPEAL

The appellate court began with a short description on the nature of bitcoin. It then mentioned the position of the European Central Bank with respect to the same matter. It concluded that the use of bitcoins endangers transactions both for the parties involved and the state. This comes from the fact that any income resulting from the use of cryptocurrency is tax-free, given that this kind of transactions are not regulated in Greece. Hence, importing capital in bitcoins and generally any kind of cryptocurrency, irrespective of the type of legal matter,

infringes the domestic legal order, because it favors tax evasion and facilitates economic crime, causing insecurity in commercial transactions to the detriment of the national economy.

As a result of the above, the recognition of an award which recognizes bitcoin as a decentralized currency unit (peer to peer), and orders the payment of a certain debt in bitcoins, runs contrary to public policy, i.e., to fundamental rules and principles of Greek legal order in present times, reflecting predominant social, financial, and political values.

Finally, by enhancing transactions in bitcoin and promoting its equalization to legal currency, the recognition of such an award in Greece would essentially disturb prevailing standards of the country, given bitcoin's sudden and unpredictable fluctuations [Western Continental Greece Court of Appeal 27.09.2021, unreported].

COMMENT

Unlike the profound analysis of the first instance court, the appellate court confirmed the judgment mechanically, with zero references to legal scholarship and case law. The developments in the subject matter between 2018 (publication of the first court's ruling) and 2021 (publication of the appellate court's judgment) were not taken into account. The Hellenic Republic has transposed crucial directives related to cryptocurrency (see DIRECTIVE (EU) 2019/713 of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA). New income tax rules and regulations focusing on cryptocurrency are prepared by state authorities. Even now, i.e., without a special law on cryptocurrencies, bitcoin profits must be declared for taxation purposes. Bitcoin exchange offices are active in the country. To conclude, the judgment seems to be alienated from contemporary times.

Referring to the judgment of the CJEU in the case *Skatteverket / David Hedqvist* (C-264/14), the first instance ruling underlined that the decision focused on the Swedish economic environment, which may not be compared to the situation in Greece. Therefore, and in light of recent developments in the country, we may hope that the courts will soon shift course towards a more pragmatic approach.

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