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Cyprus No. 2017-2, Intersputnik International Organization of Space Communications v. Alrena Investments Limited, Supreme Court of Cyprus, Appeal no. 298/2013, 4 April 2017

Summary

The Supreme Court annulled the decision below, which had denied an application to enforce an ICAC Moscow award on the ground that the certification requirement under Art. IV(1)(a) of the 1958 New York Convention was not met. The Court referred to doctrine and English and Hong Kong case law holding that the original award is "duly authenticated" when it bears the original signatures of the arbitrator(s). Here, the applicant supplied the original award, bearing the arbitrators' original signatures and accompanied by an attestation that it was one of three original awards issued by the tribunal and that it was final and enforceable. This sufficed to prove the award's prima facie authenticity in the first stage of the enforcement proceeding; any objections may be raised by the opposing party only at the second stage of the proceeding. The certification requirement applied by the court below only refers to copies.

2017-2. Supreme Court of Cyprus, 4 April 2017, Appeal no. 298/2013 (1)

On 27 December 2011, an arbitral tribunal of the International Commercial Arbitration Court at the Russian Federation Chamber of Commerce and Industry (ICAC Moscow) rendered an award in favor of Intersputnik International Organization of Space Communications (Intersputnik) against Alrena Investments Limited (Alrena). Intersputnik sought recognition and enforcement of the Russian award in Cyprus.

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The Limassol District Court denied the application, finding that the original award supplied by Intersputnik, bearing the signatures of the three arbitrators on the panel and the ICAC Moscow seal, was not a "certified" copy as required by Art. IV(1)(a) of Law no. 84/1979, which ratifies the 1958 New York Convention in Cyprus. Intersputnik appealed.

By the present decision, the Supreme Court of Cyprus annulled the decision below and remanded the case to the District Court for an examination of Alrena's remaining grounds for opposing enforcement of the ICAC Moscow award.

The Supreme Court held that the award supplied by Intersputnik was a "duly authenticated original award" within the meaning of the New York Convention and its implementing Cypriot legislation.

The Court first referred to doctrine explaining the expression "duly authenticated original award" as meaning that the authenticity of an original document is sufficiently proved by the original signatures of the arbitrator(s).

It then referred to jurisprudence of the English and Hong Kong courts embracing the same doctrine.

In particular, Hong Kong jurisprudence has held that "duly authenticated original award" is an expression unfamiliar in a common law context that probably adds nothing to the usual rules of evidence concerning the production of documents. Rather, the most common method to prove the authenticity of a document is to supply it together with a sworn affidavit confirming that the document is authentic.

Further, noted the Supreme Court, English case law holds that there are two stages in an application for recognition and enforcement under the New York Convention: a first stage in which the applicant must supply the "duly authenticated award" and has a prima facie right to have the award recognized and enforced under the Convention, and a second stage in which the other party can raise the objections available under the Convention and its implementing legislation.

The Supreme Court stressed that this liberal approach is in line with the purpose of the New York Convention to provide a swift mechanism for international dispute resolution, and with the Convention's pro-enforcement bias.

In the present case, Intersputnik met prima facie the "duly authenticated award" requirement of the first stage of the proceeding by providing the original award bearing the original signatures of the three arbitrators, the ICAC Moscow seal and an attestation by the arbitral tribunal that the award was one of three originals issued by the tribunal and that it was final and enforceable.

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The court below, noted the Supreme Court, erroneously thought that the signatures and seal should be certified: the certification requirement only applies to copies.

Bibliographic reference

'Cyprus No. 2017-2, Intersputnik International Organization of Space Communications v. Alrena Investments Limited, Supreme Court of Cyprus, Appeal no. 298/2013, 4 April 2017', in Albert Jan van den Berg (ed), Yearbook Commercial Arbitration 2017 - Volume XLII, Yearbook Commercial Arbitration, Volume 42 (© Kluwer Law International; Kluwer Law International 2017) pp. 1 - 10



Excerpt

I Introduction

1 The Decision of the District Court

[1] "The first instance court dealt with a request to issue an order for the recognition, registration and enforcement in the Republic of an award handed down by the International Commercial Arbitration Court at the Russian Federation Chamber of Commerce and Industry (hereinafter referred to as the 'Arbitration Court'), in case No. 50/2011, dated 27 December 2011. The court rejected the application after referring to the parties' submissions and the case law on the subject, which it applied to the facts of the present case. The reason for rejecting the application was that the condition set out by Art. IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Ratification) Law 84/1979 was not satisfied.

[2] "According to the court, the recognition, registration and the possibility of execution of an arbitral award requires that, when the application is submitted, a duly authenticated original of the award or a duly certified copy thereof, as well as an original of the arbitration agreement or a duly certified copy thereof, are submitted to the court. Exhibit A was attached to the application; according to the applicants' advocates, it was a duly authenticated original of the award of the arbitral tribunal, of 27 December 2011, bearing the signatures of the president of the arbitral tribunal, Mr. Ios. Zigin, and the other two members, as well as the relevant seal of the Arbitration Court. Further, [the advocates pointed out that] the award stated that three equivalent copies had been signed, one to be filed with the Arbitration Court, one that would remain with the applicant and one with the respondent; the original award submitted with the application constituted one of the three authenticated originals by the arbitral tribunal.

[3] "According to the first instance court and with reference to the cases of *A. Groutas Co Ltd v. Dimitrios Pepelasis*, (1998) 1 AD. 1675 and *Bristol Business Corporation v. Besumo Limited*, (2011) 1 AAA 934, the above was not sufficient for the court to deem that a 'certified' copy of the award was supplied. There was no certification of the authenticity of the signatures and the seal, and therefore the imperative – according to the court – provision that a duly authenticated original be supplied was not satisfied. This resulted in the dismissal of the application without there being any need to consider any of the other grounds for objection."

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2 The Appellant's Appeal


[4] "The appeal challenges the dismissing judgment for exactly this reason, in that it was erroneously considered that Exhibit A annexed to the affidavit of the application was not a 'duly authenticated original'. There was disregard of the information given in the application and the relevant case law, as well as the literature on the topic of document authenticity, particularly in respect of international arbitral awards, where no strict approach should be adopted. The purpose of Conventions for the recognition of arbitral awards between Member States is to have a relatively smooth and swift registration process in order to facilitate the awards' execution. Consequently, the court [below] was mistaken in deciding that something more was required, beyond the existence of the signatures of the three arbitrators and the seal of the Arbitration Court, in order to prove the authenticity of the arbitral award.

[5] "Furthermore, the document submitted for registration and enforcement in the Republic was one of the three copies issued by the arbitral tribunal. In addition, a confirmation from the said arbitral tribunal was attached to the effect that the award was final and became mandatory for execution from 27 December 2011. The judgment of the first instance court contravenes the rules of interpretation because it added to the text of Law No. 84/79 conditions for the authenticity of the award to be registered beyond those laid down in the Law itself.

[6] "Moreover, the first instance court mistakenly applied the authorities relating to the term 'certified copy' rather than the authorities or case law relating to the term 'authenticated original'. The judgments referred to concerned different issues and facts, as they concerned certified copies rather than duly authenticated originals.

[7] "The result was that the first instance Court was led to an erroneous conclusion with a highly formalistic approach."

3 The Respondent's Position

[8] "The opposing view of the Respondent is that the first instance court accurately relied on case law interpreting the relevant Convention and the relevant Ratifying Law in the Republic and decided to reject the application because, at the time of filing, the applicants were obliged to produce the duly authenticated original of the award or duly certified copy thereof, a condition that has been interpreted to require a certification of the authenticity of the original and the confirmation to this effect by an official authority or competent  person. The signatures of the arbitrators and the seal of the International Arbitration Court alone were not enough to make the award document a duly authenticated original.

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[9] “By reference to writings and judgments, the Respondent contends that if the legislature’s intention had been different, it would simply have referred to ‘the original of the award or a duly certified copy of the award’.

[10] “In conclusion, the Respondent concludes that Cypriot case law has followed the strictest of the approaches adopted on the matter and that the approaches of foreign courts adopting a more flexible approach are not of assistance to the Cypriot courts.”

II Analysis

[11] “Having examined the first instance judgment in light of the satisfactory submissions of counsel acting for the parties on appeal, it is necessary to repeat the contested Article of the Convention as ratified by Law No. 84/79. The English original text reads as follows:

‘Art. IV

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;
 - (b) The original agreement referred to in article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.’

[12] “The Greek text reads as follows:....

[13] “The fact that the English text is the original and the Greek text is its translation is referred to in Art. 2 of the Ratifying Law No. 84/79. Consequently, the original writings and interpretations of the original English text are particularly helpful.

▲ P 6 [14] “International conventions are interpreted strictly, when they are incorporated in the Cypriot legal system, taking into account that they refer to ▲▼ procedures for the enforcement in a third country of judgments handed down in the territory of another country. However, at the same time the philosophy underpinning international commercial arbitration is to provide a rapid mechanism for the administration of justice and dispute resolution at an international level. Both Law No. 84/79, which is based on the 1958 New York Convention, as well as the International Commercial Arbitration Law No. 101/87 and the Foreign Courts Decisions (Recognition, Registration and Enforcement of Laws Law No. 121 (I)/2000, on which the contested application was also founded in the first instance, provide a unique and autonomous procedure, as was recognized in the case *Application Beogradska Banka DD* (1995) 1 AA. 737 at least in respect of Law No. 101/87, which is based on the UNCITRAL Model Law on International Commercial Arbitration.

[15] “Having scrutinized the first instance application and its supporting material, we note that the original award was indeed attached as Exhibit A: namely the award of the arbitral tribunal, bearing the original seal of the Court as well as three original signatures – of the president and the two other arbitrators who formed the tribunal constituted to examine the case.

[16] “Hence, the first question to be asked is whether attaching this original document can be considered attaching a ‘duly authenticated original award’. If it is deemed to be so, there is no need to examine whether the translation submitted and attached to the original application was, in the alternative of Art. IV(1)(a), ‘a duly certified copy thereof’.

[17] “In the text of Albert Jan van den Berg’s *The New York Convention of 1958: An Overview*, the notion of ‘duly authenticated original award’ is explained. In particular, it is stated that the authenticity of a document is certified by the embedding of the signature, which shows the genuineness, and hence the authenticity, of the document.


[18] “As long as the original signatures of the judge or arbitrator are present no further certification is necessary. The author, at pp. 12-13, states the following verbatim:

‘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.’

▲ P 7 [19] “In *Medison Co Ltd and Victor (Far East) Limited* HCCT 4/2000, (2) a Hong Kong High Court judgment, and in *Guangdong New Technology Import and Export Corp. ▲▼ Jiangmen Branch v. Chiu Shing* (1991) 2 HKC 460, (3) also a judgment of Hong Kong, the phrase ‘duly authenticated original award’ – which is found in the corresponding Sect. 43 of Cap 341 – was interpreted by reference to Mustill and Boyd’s *The Law and Practice of Commercial Arbitration in England* (2nd ed.) p. 425. These authors note that the words ‘duly authenticated’ or ‘duly verified’ are unfamiliar in an English context, and proceed to state that these phrases probably add nothing to the usual rules of evidence concerning the production of documents. The most common method of proof is by supplying the document itself in a sworn affidavit that confirms its authenticity or accuracy as a copy, or the accuracy of the translation as the case may be. The production of the document, which was said to be prima facie ‘the duly authenticated original award’, was adequate to satisfy the provisions of Art. 43 of the Hong Kong Act.

[20] “In *Anthony Lombard-Knight et al. v. Rainstorm Pictures Inc* (2014) EWCA Civ 356, (4) the English Court of Appeal relied on the comments of the author mentioned above, Albert Jan van den Berg, concluding that for an arbitration award to be considered authentic, what is required is merely the original signatures of the arbitrators, in light of the fact that the objective of the New York Convention is to facilitate the process of enforcing arbitral awards, without imposing unnecessary hurdles on this process, with courts being quite liberal in accepting the original awards with the authentic signatures of the arbitrators without the need for further certification or verification.

[21] “The aforementioned English judgment adopted the words of Mance L.J. (as he was at the time) in *Dardana Limited v. Yukos Oil Company* (2002) 1 All E.R. Comm 819, (5) that under the New York Convention a party successful [in the arbitration] has prima facie the right to recognize and enforce that award. At the first stage, the party seeking recognition and enforcement must supply the ‘duly authenticated award’ and it is only at the next stage that the other party can argue that one of the exceptions recognized by the law applies. For example, the party against whom the arbitral award is sought to be enforced may at the second stage argue that the award is the result of forgery and accordingly should not be enforceable. But this concerns the substance of the award and not its form.

[22] “This more liberal approach is in line with the purpose and philosophy of the New York Convention itself, as explained in the [ICCA’s] *Guide to the Interpretation of the 1958 New York Convention: A Handbook for Judges* (May 2012  Edition), which highlights that the Convention is based on a ‘pro-enforcement bias’, thus serving the purpose of international trade and business.

[23] “Consequently, the ‘duly authenticated award’ requirement is prima facie satisfied and the application should not have been rejected. The first instance application attached the original award, not a copy of it, with the original signatures of the three arbitrators and the seal of the Arbitration Court, as well as a certificate/attestation that the award was one of the three authentic documents issued by the arbitral tribunal, which also stated that the award was final and enforceable.

[24] “The observation of the Appellant’s lawyer, that any further certification of the original signatures and the original seal would unnecessarily introduce, in respect of originals, the conditions imposed in relation to copies, is accurate.

[25] “Hence, the existence of the signatures is sufficient for demonstrating the genuineness of the document, thus rendering it authentic, and the inclusion of the seal completes the formality surrounding the award of the Arbitration Court. By contrast, a copy requires certification of the document itself by a competent third person.

[26] “In *A. Groutas Co Ltd* the court examined a substantially different provision, that of Sect. 24.3 of the Ratification Law of the Convention on Legal Cooperation between the Republic of Cyprus and the Hellenic Republic on Civil, Family, Commercial and Criminal Law of 1984 (Law No. 55/84), which required that the application for recognition must ‘be accompanied by a certified copy of the decision’. The appellate court, in contrast with the first instance judgment, considered that the supplied copy of the judgment, though signed by the judge and the secretary and also sealed, did not constitute a ‘certified copy’ because a certification of the signatures and of the seal was necessary.

[27] “In *Bristol Business Corporation*, where Art. IV(1) itself was the section in question, though Sub-para. (b) rather than (a) as in the present case, the issue did not concern the production of a ‘duly authenticated original’ and subparagraph (a), but rather ‘the original agreement or a duly certified copy thereof’. In that case the agreement was concluded by fax, so there was no original agreement and copies were duly certified by the secretary of the international arbitration tribunal. The appellate court applied *A. Groutas Co Ltd* as to the requirement of confirmation of the authenticity of the signatures and the seal. The first instance interpretation was accepted in that the certification did not confirm that the document supplied was the true copy of the specific agreement between the parties and there was a difference between the texts submitted, one in the Russian language and one in the English, as to the number of signatures.

[28] “The above authorities therefore differ both as to the facts and to the legal points examined. The references by the Respondent’s learned lawyers to *G. Babiniotis’s Dictionary of the Modern Greek Language* as regards the meaning of the verb ‘certify’ and to the legal dictionary *Black’s Law Dictionary* (4th ed.) for the definition and meaning of the word ‘authenticate’, precisely confirm that what is in essence required, in order to comply with the prerequisites of the law of evidence, is an attestation by a competent person that the text of the award or the document is what it is said to be. The presence of the original signatures of the same individuals who tried the arbitration, as well as the formal seal of the award, leaves no room for doubt as to their own capacity, on the one hand, and the authenticity of the award, on the other hand.

[29] “Furthermore, Wolf, *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, to which lawyers for the Respondent refer, distinguishes between ‘authentication’ and ‘certification’. The former concerns the original documents; the latter, copies.

[30] “It is to be noted that the conditions for a valid ‘authentication’ or ‘certification’ are not included in Art. IV(1) itself. It is up to the recognizing state or the court to apply domestic legislation in such cases.”

III Conclusion

[31] “In light of all the above, we consider, with all due respect, that the approach of the first instance court to the matter under appeal was not correct. Therefore, the first instance judgment dismissing the application on the ground of non-compliance with the conditions of Art. IV(1)(a) of Law No. 84/79 is annulled.

[32] “The first instance court did not examine the remaining grounds for objection and the appeal was limited to the above matter. With the annulment of the first instance judgment, it is regrettable that it is necessary to remit the case to the Limassol District Court in order for a different judge to continue the examination of the application.

[33] “Costs in first instance and on appeal shall be awarded to the Appellant and against the Respondent, as calculated by the Registrar and approved by the Court.”



References

- 1) The General Editor wishes to thank Constantinos Pashiardis, George Z. Georgiou & Associates LLC, Nicosia, Cyprus, for his invaluable assistance in providing this decision and translating it from the Greek original.
- 2) Reported in Yearbook XXVI (2001) pp. 774-779 (Hong Kong no. 16).
- 3) Reported in Yearbook XVIII (1993) pp. 385-388 (Hong Kong no. 3).
- 4) Reported in Yearbook XXXIX (2014) pp. 512-515 (UK no. 96).
- 5) Reported in Yearbook XXVII (2002) pp. 570-592 (UK no. 60).

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