Russian Arbitration Center

at the Russian Institute of Modern Arbitration

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CASE LAW DEVELOPMENTS

Third Party's the Charm: US Court of Appeals Finds Arbitration Clause Extends to Non-Party to Contract

The US Court of Appeals for the Eleventh Circuit refused to hear a dispute regarding equipment malfunction at a power plant owned by an Algerian state enterprise. According to the court, the parties must follow the arbitration clause specified in the contract between the power plant operator and service companies.

The dispute involving claims worth $28 million USD relates to the breakdown of a gas turbine that is part of the equipment at a power plant in the city of Tipaza (Algeria). The power plant is owned by Algerian enterprise SKH, which is controlled by the Government of Algeria (49%) and Algerian Utilities International Ltd (51%). The latter, in turn, is controlled by the power plant operator, company SNC. The power plant equipment was serviced by companies within the General Electric holding. The service contract for the power plant was concluded with the operator, not the owner.

Proceedings in US courts were initiated by insurance companies to whom the right to claim damages was transferred through subrogation. The right to claim was transferred from the power plant owner, who was not a party to the service contract. The respondents, in turn, filed a motion to transfer the proceedings to ICC in accordance with the arbitration clause. According to the respondents, the clause extends to the power plant owner and its successors, by virtue of the third-party beneficiary doctrine.

The Court of Appeals recalled that the essence of the doctrine is that contracting parties can create rights in favour of a third party (third-party beneficiary). If such a contract contains an arbitration clause, the third-party beneficiary may be recognised as a party to the clause. At the same time, the signatory party has the right to compel the third-party beneficiary to resolve the dispute in arbitration.

The court noted that the service contract explicitly granted the power plant owner certain rights. The owner could make decisions on structural changes, had access to reports from service companies, and in certain circumstances had the right to unilateral actions. Thus, the dispute between insurers and service companies is covered by the arbitration clause.

Read

Under What Conditions Can Third Parties Seek Interim Relief

A dispute involving no fewer than four parties, currently being considered in judicial instances of three states, arose from grain delivery for a relatively small amount - $7.6 million USD Manta (*Penyez Shipping and Uraz Shipping v Zuhoor Alsaeed Foodstuff Company* [2025] EWHC 353 (Comm)). The grain seller concluded a charter contract with Manta Penyez company. It was supposed to deliver grain to a buyer in Yemen, using two ships - one owned and another belonging to Manta Uraz company. Manta Uraz was in the same group as Manta Penyez but was not a party to the charter contract.

When the ships were at sea, the grain seller contacted Manta Penyez and asked to redirect them to Djibouti, as the buyer from Yemen had not paid for the cargo. Manta Penyez did so, after which the grain was sold to a local company. This displeased the buyer from Yemen. He claimed that he had transferred money to

the company that was a party to the grain purchase contract and did not know why it had not paid the final seller who chartered the ships. To secure his claims, the buyer applied to state courts in Yemen and Djibouti, which subsequently arrested both ships.

Soon the grain seller joined the proceedings in the Djibouti court. His representatives managed to convince the local judge to lift the arrest from the Manta Penyez ship in exchange for providing a bank guarantee. The guarantee was provided by a UAE bank, with the grain seller as principal and the buyer as beneficiary. According to the guarantee, the grain buyer was to cease all legal proceedings against Manta Penyez and Manta Uraz and transfer the dispute with them for consideration to LMAA, as provided by the arbitration clause in the charter contract.

The grain buyer accepted the bank guarantee but simultaneously attempted to challenge the Djibouti court's decision to lift the arrest from the Manta Penyez ship, continued attempts to arrest the Manta Uraz ship in Yemen, and also resorted to trickery by obtaining a decision from the Yemeni court prohibiting the unloading of the Manta Penyez ship and attempting to enforce it in Djibouti as a foreign court decision.

Manta Penyez and Manta Uraz applied to the English court requesting anti-suit interim relief against the grain buyer. The claimants based their position on the fact that according to the bank guarantee, the grain buyer should have ceased legal proceedings, and also on the fact that the charter contract contained an LMAA clause. The judge accepted both of these arguments.

First, the judge noted that the introduction of anti-suit interim relief can be requested not only in the presence of an exclusive forum clause, such as an arbitration clause, but also to secure a contractual obligation to refrain from filing claims in court. Despite the fact that the claimants were not parties to the bank guarantee, the court considered that they could demand its performance from the grain buyer. The court named three conditions that made it possible to introduce anti-suit measures at the request of third parties:

- the bank guarantee was clearly aimed at benefiting the claimants (lifting the arrest from their ships).
- both claimants were mentioned in this guarantee.
- nothing in the bank guarantee suggested that third parties could not demand enforcement of its terms.

The argument about the presence of an arbitration clause in the charter contract also convinced the judge. He indicated that a non-signatory to an arbitration agreement can request the introduction of anti-suit interim relief regarding claims that are filed against the non-signatory in a state court but should be considered in arbitration. The judge also noted that the grain buyer actively participates in LMAA arbitration proceedings against Manta Penyez, and in this context, the arrest of the Manta Uraz ship can be viewed as an attempt to obtain double enforcement.

Read

Paris Court Refuses Enforcement of Arbitral Awards against Frozen Iraqi Assets

The Paris Court of First Instance found no grounds to enforce three ICC awards in the case *Instrubel, N.V. v. Iraq* (ICC Case No. 7472 CK/AER/ACS), which were rendered in 1995, 1996 and 2003, against frozen assets of Panamanian trust Montana Management Inc., whose funds were held in French banks.

A Belgian company concluded a contract in the 1980s for the supply of military and industrial equipment with Iraqi authorities. In the 1990s, after the supplier fulfilled its contractual obligations, the UN Security Council imposed an arms embargo on Iraq in connection with the military conflict in Kuwait. The Belgian supplier applied to ICC with a claim against Iraqi authorities, accusing them of disrupting contractual relations as a result of violating the UN Charter. The arbitral tribunal satisfied the claimant's demands.

The Belgian company applied to the Paris court with a request for recognition and enforcement of arbitral awards against frozen Iraqi assets, including the Montana Management trust. To resolve the question of admissibility of recovery, the court examined two issues: whether the trust is a "state emanation" within the meaning of French legislation and whether the French government authorised recovery of the trust's funds.

When considering the first question, the Paris court concluded that the trust was founded by Saddam Hussein's family using funds illegally withdrawn from Iraq, was subsequently included in sanctions lists and excluded from them at the request of Iraq's new authorities. According to the court, this indicates the preservation of ties between the trust and the state. Accordingly, the "state emanation" doctrine applies in the case under consideration.

On the second question, the court noted that for recovery of the trust's property, it is necessary for the French government to issue two decrees. The first decree should include a list of frozen Iraqi assets against which recovery can be made under enforcement documents issued before 2003. The second decree should establish the procedure for transferring assets. The French government issued only the first decree, which included the trust's assets. Thus, according to the court, France did not provide permission for recovery of the trust's assets.

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Arbitral Tribunal Orders Respondent to Pay Astreinte for Violating Emergency Arbitrator's Orders

The dispute in *AVZ International Pty Ltd et al. v. Cominière (I)* (ICC Case No. 27720/SP/ETT(EA)) relates to the activities of joint venture Dathcom Mining, engaged in developing a lithium deposit in Congo. Australian company AVZ acquired a controlling stake in the joint venture, the second participant of which was state enterprise Cominière.

The Congolese enterprise attempted to sell its share in the joint venture to Chinese company Jin Cheng Mining. According to AVZ, such a sale violated the right of first refusal for the share. The conflict between the companies led to Cominière notifying AVZ of its intention to terminate the joint venture agreement.

In the dispute under consideration, administered by ICC, the claimant filed an application for urgent interim relief in the form of prohibiting the respondent from taking actions aimed at liquidating the joint venture. Additionally, the claimant requested prohibiting the Congolese enterprise from initiating legal proceedings in local courts with a similar purpose. The emergency arbitrator issued two orders in which she granted the claimant's motions.

As followed from the emergency arbitrator's first order, in case of violation of the prohibition, an astreinte of €50,000 would be imposed on the respondent. The second order reflected the circumstance of issuing a permit for developing the deposit to a new joint venture. The emergency arbitrator refused to review the

prohibition issued in the first order and noted that the question of preserving the joint venture should become the subject of consideration by the main arbitral tribunal.

Certain procedural issues that became the subject of consideration by the main arbitral tribunal are interesting. In particular, the arbitrators refused to impose security for costs against the claimant. The respondent could not convince the arbitrators that the involvement of a third party financing the claimant's participation in arbitration, as well as the absence of assets in DRC, indicated the claimant's insolvency.

During discussion of the terms of reference document, the parties expressed disagreements on the issue of confidentiality of proceedings. The arbitral tribunal considered that Article 22(3) of the ICC Arbitration Rules 2021 does not establish a general rule on process confidentiality. The arbitral tribunal separately noted that both parties published information about the course of proceedings.

The arbitral tribunal indicated that the respondent violated both prohibitions imposed by the emergency arbitrator. Moreover, the respondent did not notify either the claimant or the arbitral tribunal about proceedings in DRC courts aimed at terminating the joint venture agreement. Despite the respondent's objections to jurisdiction, the arbitral tribunal considered that prima facie jurisdiction was sufficient for imposing an astreinte.

The arbitrators concluded that they had authority to confirm the astreinte as well as to determine its amount. According to the arbitral tribunal, the very idea of emergency arbitrator orders is that they can subsequently become enforceable through the adoption of a corresponding arbitral award. In the dispute under consideration, the arbitral tribunal issued a partial arbitral award in which it ordered the respondent to pay €40 million in astreinte plus interest at the rate in accordance with French legislation.

Read

Pakistani Court Refuses Recognition of Foreign Arbitral Award Based on New York Convention

The Lahore High Court in *SpaceCom International, LLC v Wateen Telecom Ltd* (2024 LHC 5494) refused recognition and enforcement of a foreign arbitral award, citing Article V(1)(d) of the New York Convention 1958, which allows refusal of enforcement of awards if the arbitral process did not comply with the parties' agreement.

A dispute arose between *SpaceCom International, LLC* and *Wateen Telecom Ltd* in which the key issue was determining the seat of arbitration. The arbitration agreement between the parties provided that proceedings would take place "in Dubai, UAE," but at the same time referred to the non-existent "Dubai International Financial Centre (DIFC) Arbitration Rules."

During proceedings, the parties interpreted the seat of arbitration differently and identified both Dubai (based on the simple wording "in Dubai") and DIFC as such.

The DIFC Court, to which this question was referred at an early stage of arbitration, determined that the seat of arbitration was DIFC and that the DIFC-LCIA Arbitration Rules applied. In turn, the arbitral tribunal in the case accepted this decision as res judicata without independent analysis.

The Lahore High Court disagreed with this approach and applied de novo review of the case circumstances to determine the seat of arbitration. The court indicated that:

- DIFC and Dubai are two different legal regimes and cannot be considered interchangeable.
- The DIFC Court's decision cannot replace analysis of legal issues by the arbitral tribunal, and the latter should have conducted its own assessment of the question of the seat of arbitration.
- Application of DIFC-LCIA Arbitration Rules was improper since DIFC jurisdiction itself was in question.

The court cited the precedent *Dallah Real Estate and Tourism Holding Company v Pakistan* ([2010] UKSC 46), where the UK court also applied the concept of de novo review to verify the arbitral tribunal's competence.

Based on these conclusions, the court concluded that the arbitral proceedings were not conducted in accordance with the parties' agreement and refused recognition and enforcement of the award in Pakistan.

Read

Development of Arbitration in California: Decision in *Berman v. Freedom Financial Network* and Its Global Implications

The California Supreme Court issued a decision in *Berman v. Freedom Financial Network*, 13 Cal. 5th 763 (Cal. 2024), which affected the enforcement of arbitration agreements in consumer contracts. The case related to a dispute arising between a consumer and a debt settlement company, where the consumer challenged an arbitration agreement included in the contract. He claimed that the arbitration agreement was unconscionable both in terms of form and content.

The court found that the arbitration agreement in this case was invalid because it was included in the contract in small print that did not allow the consumer to fully understand its terms, which were essentially one-sided, violating the consumer's rights. This decision is diametrically opposed to the idea embedded in the Federal Arbitration Act (FAA), according to which arbitration agreements are enforced even if they contradict individual state laws.

The decision in *Berman* emphasises the continuing discrepancies between California legislation oriented toward consumer protection and US federal policy through the FAA (as demonstrated in *AT&T Mobility LLC v. Concepcion*).

This decision is also relevant in the global context as it reflects the general trend of strengthening consumer protection in arbitration. In the European Union, for example, the Consumer Rights Directive (2011/83/EU) operates, requiring arbitration clauses in consumer contracts to be transparent, fair and easily understandable to consumers. In the UK, the Consumer Rights Act 2015 also regulates the content of arbitration clauses in terms of ensuring their fairness.

Read

Enforcement Abroad of Russian Court Decisions Rendered Under Article 248.1 of the Russian Arbitration Procedure Code

RusChemAlliance failed to enforce on the territory of Kazakhstan a court decision rendered in accordance with Article 248.1 of the Russian Arbitration Procedure Code (APC).

This court decision was rendered against Dutch and British companies in the Linde group. Almost 200 billion roubles were recovered from them for terminating a construction contract concluded with RusChemAlliance. The arbitration clause in the construction contract was recognised as unenforceable due to RusChemAlliance being under sanctions.

RusChemAlliance attempted to enforce this court decision on the territory of Kazakhstan by recovering against the respondents' shares in Kazakh company Linde Gas Kazakhstan. The state court of Kazakhstan refused to satisfy this application.

At the same time, the court bypassed such provocative issues of this dispute as the application of Article 248.1 of the APC and the enforceability of the arbitration agreement. The judge limited himself to indicating that the respondents were not registered on the territory of Kazakhstan, which the claimant itself did not dispute. Consequently, according to the court, the Russian court decision should have been submitted for enforcement not in Kazakhstan, but in Great Britain and the Netherlands.

Read

Amsterdam Court of Appeal Rejects Respondent's Objections About Exceeding Arbitration Agreement and Claimant's Commission of Corruption

The Amsterdam Court of Appeal recognised and enforced the award in *Mammoet Salvage BV v. Basra Oil Company (BOC)* (ICC Case No. 23878/AYZ). The court rejected the respondent's arguments that the arbitral tribunal exceeded the limits of the arbitration agreement, as well as about violation of public policy due to corruption.

A Dutch company specialising in raising sunken ships concluded an agreement with an Iraqi oil company. The subject of the agreement was raising an oil tanker that sank off the coast of Iraq during the First Gulf War. The sunken tanker complicated access to the oil terminal. During project implementation, disagreements arose between the parties regarding the method of raising the tanker, as well as in connection with payment delays. The Dutch company attempted to withdraw its ships from the tanker raising zone, but the ships were detained by Iraqi naval forces. Eventually, the sunken tanker was successfully raised from the seabed.

The Dutch company applied to ICC with a claim for damages caused by ship downtime. The Iraqi company filed counterclaims and stated that the claimant attempted to bribe a member of the Iraqi parliament to resolve the issue of ship detention. The arbitral tribunal satisfied the claimant's demands and also satisfied the respondent's counterclaim, noting that the claimant committed an act of corruption.

During court proceedings in the Netherlands, the respondent indicated that the arbitral tribunal exceeded its powers by resolving issues related to the actions of the Iraqi navy. Additionally, according to the respondent, bribery of an official violates public policy.

The court rejected both of the respondent's arguments. The court noted that the arbitral tribunal did not make conclusions about the actions of Iraqi naval forces. The arbitrators, based on the evidence presented, concluded that the detention of the claimant's ships occurred as a result of instructions given by the respondent. Accordingly, this concerns violations of obligations by the respondent. Regarding corruption arguments, the court concluded that the arbitral tribunal thoroughly investigated this issue and found the respondent's counterclaim justified.

Read

INVESTMENT ARBITRATION NEWS

Conditions for Application of Article 68 of the English Arbitration Act

The High Court of England and Wales again remitted an arbitral award to the arbitral tribunal for reconsideration in accordance with Article 68 of the Arbitration Act (*Republic of Kazakhstan v World Wide Minerals Ltd and others* [2025] EWHC 452 (Comm)). This arbitral award was rendered in a dispute between Kazakhstan and company WWM, which invested in a uranium processing plant in that country.

The investor claimed that Kazakhstan violated the bilateral investment treaty, particularly by not issuing an export license for uranium sales and not properly notifying the investor about the bankruptcy of the entity through which investments were made.

The first time, the arbitral tribunal issued an award in favor of the investor, finding that Kazakhstan violated the bilateral investment treaty. However, the English court remitted the award for reconsideration, considering that Kazakhstan was denied the opportunity to examine how damages should be assessed.

After conducting an additional stage of document exchange and oral hearing, the arbitral tribunal again issued an award against Kazakhstan. However, this time the English court saw a violation admitted during case consideration. As the court indicated, one of Kazakhstan's main arguments was that the investor could not have obtained profit from its investments in any case, so the refusal to issue an export license did not affect the occurrence of damages.

Nevertheless, the arbitral tribunal did not consider this argument, and analysis of the causal relationship between Kazakhstan's actions and the resulting damages was given one paragraph out of the entire award. The court indicated that when challenging an award on this ground, it is necessary to prove three facts:

- there was a substantial issue in the case that was significant for resolving the dispute;
- this issue was raised by the parties before the arbitral tribunal;
- the arbitral tribunal in no way resolved the raised issue.

The court considered that all three facts were proven in this case. At the same time, according to the court, this error cannot be corrected by clarifying the arbitral award, as it concerns not ambiguity but an unconsidered issue.

Read

Australian Court Recognises India's Immunity in Antrix-Devas Case

A recent decision by the Full Court of the Federal Court of Australia in *Republic of India v. CCDM Holdings, LLC & Ors*. [2025] FCAFC 2 became a new turn in proceedings in the *Antrix-Devas* case. The court recognised that an arbitral award rendered based on a bilateral investment agreement between India and Mauritius cannot be enforced against India due to state immunity.

The Full Court ruled that India did not waive its immunity under Australian sovereign immunity law (Immunities Act). Although India acceded to the New York Convention 1958 (Convention), it made a reservation that the Convention applies only to commercial disputes. The court concluded that investment arbitration disputes, such as the one submitted for its consideration, do not fall into the category of commercial under Indian law and therefore do not fall under the Convention.

This decision is consistent with the position of the High Court of India adopted in *Vodafone Group PLC & Anr*. The court then established that investment arbitral awards are not "commercial" and are not subject to enforcement in India under the Convention. The Full Court's decision in Australia confirms this conclusion, further complicating the possibility of enforcing investment arbitral awards against India abroad.

Read

Swiss Court Sees No Problems in Enforcing Arbitral Award in "Intra-European" Dispute

A Swiss court imposed an arrest on a historic building in Zurich belonging to Italy. The arrest was imposed as part of enforcing an arbitral award rendered in a dispute between Italy and investors from Austria and Germany.

Investors claimed that they invested large sums in building solar power plants in Italy and the government of that country promised to maintain stable tariffs, but in 2015 reduced electricity tariffs for small and medium businesses, causing investors to incur losses.

The claim to ICSID was filed based on the Energy Charter Treaty (ECT). During arbitration, a question was raised about whether the arbitral tribunal had competence to consider the dispute given that it was "intra-European," i.e., between an EU investor and an EU member state. The arbitral tribunal considered that the EU Court's prohibition on considering "intra-European" investment disputes in arbitration does not extend to this case, as the ECT is a multilateral treaty, and the prohibition expressed by the EU Court in *Achmea* concerned only bilateral treaties. The arbitral tribunal also indicated that, based on the most favoured nation regime, the applicable international treaty should be one providing the investor with more guarantees, i.e., the ECT.

The Swiss state court found no violations in this arbitral award and imposed an arrest on Italy's property in Switzerland at the investors' request. Nevertheless, Italy plans to appeal the Swiss court's decision.

Read

Time is Money: Arbitral Tribunal Refuses Bifurcation on Hungary's Objections Due to "Impracticality"

The arbitral tribunal in *Stratius Investments Limited v. Hungary* (ICSID Case No. ARB/24/6) issued an order refusing bifurcation of proceedings. Hungary raised objections about the absence of the arbitral tribunal's competence to consider the dispute, citing two circumstances. First, Hungary believed that the ICC award

issued in favor of the claimant was not a protected investment within the meaning of the Energy Charter Treaty (ECT). Second, the state cited the illegality of investments.

As follows from the order, the investment dispute at ICSID arose in connection with ICC proceedings between the claimant, Cypriot company Stratius Investments Limited, and Hungarian energy company MVM. The claimant acquired 24% of shares worth €12 million in company Kárpát-Energo, which was to carry out construction of a gas power plant in the city of Vásárosnamény (Hungary). According to a put option concluded between the claimant and MVM, the latter committed to acquire shares at the purchase price plus the price of any undistributed dividends for the first 3 years at 10% of the investment amount.

The Hungarian energy company not only cancelled the power plant construction but also refused to fulfil the obligation to acquire shares. After this, the claimant applied to ICC, and the arbitral tribunal issued an award in its favour. According to the claimant, Hungary made every effort to prevent enforcement of the ICC arbitral award. Additionally, the former head of MVM was brought to criminal responsibility for concluding the put option.

The arbitral tribunal concluded that the claimant's demands were based not only on the ICC award but were also related to other assets. Accordingly, the respondent's jurisdictional objection, even if supported by the arbitrators, would not lead to case termination or substantial reduction in the volume of claims under consideration. Regarding the objection related to criminal proceedings, the arbitrators considered that this issue was so closely related to the merits of the dispute that bifurcation of proceedings would be impractical.

Read

Arbitral Tribunal Rejects Georgia's Objections Under Expedited Procedure, Citing Complex Nature of Jurisdictional Issues

In the investment dispute *Mirian G. Dekanoidze and T.G. Trade LLC v. Georgia* (ICSID Case No. ARB/23/45), the respondent initiated an expedited procedure for considering objections about the absence of jurisdiction. This mechanism, provided by Article 41(1) of the ICSID Arbitration Rules 2022, allows raising an objection about the manifest lack of legal merit of claims.

The procedure allows, in shorter timeframes, without resorting to bifurcation, to terminate arbitral proceedings, with the objection possibly relating to the merits of the dispute, ICSID jurisdiction, or the arbitral tribunal's competence.

The dispute was initiated by Mirian Dekanoidze, a former member of Georgia's government. Together with his wife and business partner, the investor founded company T.G. Trade, which subsequently acquired a controlling stake in a plant in Tbilisi specialising in railway repair. According to the claimant, the total amount of investments was at least $150 million USD. The investor's company subsequently transferred the shares to the original owner. According to the claimant, the share transfer occurred due to persecution by the state. Subsequently, the claimant moved to the US and obtained corresponding citizenship.

Georgia raised two objections about the absence of jurisdiction. First, the state indicated that at the time of the alleged violation of investor rights, the latter retained Georgian citizenship. The presence of dual citizenship in such a case prevents application to ICSID. Second, according to the respondent, the investor never owned company T.G. Trade, considering Georgian legislation.

The arbitral tribunal disagreed with the respondent's arguments, although it noted that they concerned "serious questions regarding the presence of jurisdiction." According to the arbitrators, to terminate proceedings in accordance with Article 41 of the ICSID Arbitration Rules 2022, it is necessary to establish the obvious lack of merit of claims. Georgia's objections are non-standard and complex in nature. To resolve them, it is necessary to determine the moment of the investor's exit from Georgian citizenship, as well as establish the fact of owning company T.G. Trade. These issues require detailed investigation of Georgian legislation.

Read

You Cannot Enter the Same River Twice: Arbitral Tribunal Refuses Investor's Claims, Applying Principles of *Res Judicata* and No Abuse of Procedural Rights

In *Ahron G. Frenkel v. Republic of Croatia* (ICSID Case No. ARB/20/49), the arbitral tribunal faced the necessity of assessing what impact the resolution of a dispute in related arbitral proceedings has. Israeli citizen Aaron Frenkel filed a claim in international investment arbitration. The dispute relates to a project for building a resort with a golf course, luxury apartments and hotel in the Croatian city of Dubrovnik. According to the investor, Croatian authorities unreasonably revoked the environmental permit and annulled the concession agreement for resort construction.

Earlier, other persons filed a claim against Croatia in international investment arbitration. The dispute was initiated by two companies registered in Croatia and the Netherlands, the beneficial owner of which was Aaron Frenkel. This refers to the dispute *Elitech B.V. and Razvoj Golf D.O.O. v. Republic of Croatia* (ICSID Case No. ARB/17/32). When Croatia in the *Elitech* case raised objections about the intra-European nature of the dispute, the Israeli investor attempted to consolidate the arbitral proceedings. The arbitral tribunal in the *Elitech* case refused to consolidate proceedings but also rejected Croatia's objections about the intra-European nature of the dispute.

The arbitral tribunal in the *Frenkel* case issued an order in which it concluded the necessity of waiting for the award in the *Elitech* case, notably without suspending proceedings. After receiving the award, the parties were offered to conduct a hearing and send written positions following its results.

Having studied the award in the *Elitech* case, the arbitrators considered it necessary to determine which aspect of proceedings is affected in case of a related arbitral case, namely: admissibility of the Israeli investor's claims or the arbitral tribunal's jurisdiction. The arbitral tribunal concluded that it temporarily (pro tem) recognises the fact of the presence of investments covered by the Israel-Croatia agreement on which the dispute was based.

Separately, the arbitral tribunal considered what approach to applying the res judicata principle should be applied: formal or related to studying the merits of claims. The arbitrators decided to study the merits of the stated claims. To understand whether two arbitral proceedings are identical from the point of view of the res judicata doctrine, the arbitral tribunal applied a test for checking the identity of three elements: persons filing the claim, claims and grounds for claims. Having assessed the circumstances of the two cases, *Frenkel* and *Elitech*, the arbitral tribunal concluded that the claims in both cases are identical, the claims themselves have the same basis, and were filed by persons who had a common interest.

The qualification of claims as identical was not affected by the fact that they were formally filed for violations of two different investment agreements (Israel-Croatia and Netherlands-Croatia). Regarding individual facts

and evidence that were not presented in the *Elitech* case, the arbitral tribunal concluded they were inadmissible due to violation of the principle against abuse of procedural rights. New facts and evidence should have either been presented in the *Elitech* case or stated as grounds for reviewing the award in that case. In connection with this, the arbitrators refused to satisfy the investor's claims.

The relevance of applying the res judicata principle is also increasing in international commercial arbitration: this year the IBA arbitration committee issued a corresponding report.

Read

Arbitral Proceedings Against Costa Rica Terminated Due to Claimant's Non-Performance of Security for Costs Order

The arbitral tribunal in *José Alejandro Hernández Contreras v. Republic of Costa Rica (II)* (ICSID Case No. ARB(AF)/22/5) issued an order terminating arbitration because the claimant did not transfer funds for security for costs. Earlier, the claimant had already filed a claim against Costa Rica in international investment arbitration, but that proceeding was also terminated.

According to the investor, the respondent violated the Colombia-Costa Rica investment agreement. The violation consisted in the fact that the state regulatory body in the field of electricity revoked from the claimant's company V-Net previously granted exclusive rights to distribute Kolbi brand telecommunications products in certain areas of Costa Rica.

The dispute was considered in accordance with the ICSID Additional Facility Rules 2022. Due to the fact that the applicable rules provided less stringent rules for applying security for costs, Costa Rica filed a corresponding request. The arbitral tribunal obliged the claimant to pay security for costs in the amount of $1.2 million USD. The arbitrators presented the following arguments in favour of the necessity of security for costs:

- Both the claimant and his company V-Net are debtors in a bankruptcy case being considered by a court in Costa Rica;

- The claimant's participation in the investment dispute is financed by a third party, but the claimant did not disclose whether the financing agreement provides for covering costs in case the award is rendered in favour of the respondent.

It is important to note that filing claims in international investment arbitration by persons who have been declared insolvent is happening more frequently. In particular, in March 2025, ICSID registered the filing of a claim against Algeria by Dirk Andres, bankruptcy administrator of German company Heitkamp BauHolding in connection with, probably, unilateral refusal by Algerian authorities of a contract for construction of the Sheliff River dam.

Read

In the Blue Sea, in White Foam: US Submits Statement on Interpretation of Trade Promotion Agreement in Case of Sunken Ship

The US, acting as a non-disputing party, submitted a statement in *Sea Search-Armada, LLC v. The Republic of Colombia* (PCA Case No. 2023-37). The statement is devoted to interpreting provisions of the Trade Promotion Agreement (Agreement) between Colombia and the US, on which the claimant bases its claims against Colombia. Earlier, the US had already submitted a statement on issues of interpreting the Agreement in the context of Colombia's objections regarding the arbitral tribunal's competence (arbitrators rejected the respondent's objections).

The context for submitting the second statement was the previously adopted decision of the Free Trade Commission of January 15, 2025 No. 9, which caused criticism within the US itself: Congress accused the Biden administration of changing the content of the treaty without proper transparency.

In the new statement, the US took a harsh position against expanding investor protection and explained how, in their opinion, key investor protection standards should be applied, including most favoured nation treatment (MFN), minimum standard of treatment and protection from expropriation. Key points:

- The US opposed automatic "import" of norms from other investment treaties in response to the claimant's attempt to apply more favourable norms from the Switzerland-Colombia agreement through MFN enshrined in the Agreement;

- The US supported a narrow understanding of investor protection standards, which contradicted the claimant's desire to expand them;

- The US indicated that the claimant is obliged to prove the presence of jurisdiction at any moment of proceedings, regardless of whether process bifurcation was carried out.

Marine exploration companies specialising in searching for sunken ships (and treasures they transported) increasingly resort to attempts to initiate proceedings in international investment arbitration. US-registered company GlobalMarine Exploration sent the Dominican Republic a notice of dispute based on the Free Trade Agreement between the Dominican Republic, Central America and the US. According to the American company, the Dominican Republic unreasonably terminated a contract for marine space exploration and also illegally seized part of equipment and items raised from the depths. The contract provided for exploration of the crash site of a Spanish ship that sank 450 years ago.

Read

Nigeria Decides Not to Learn the US Supreme Court's Opinion on Applicability of New York Convention to Sovereign Acts of States

Parties to the investment dispute *Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria* filed a joint statement withdrawing Nigeria's complaint filed with the US Supreme Court. The Chinese investor who won the dispute was able to achieve recognition and enforcement of the arbitral award in US courts. Nigeria objected to award enforcement, believing that state immunity applied to the state in this case.

Having suffered failure, Nigeria attempted to appeal lower court decisions to the US Supreme Court. According to Nigeria, the New York Convention 1958 does not extend to recognition and enforcement of awards in disputes where the state acts as sovereign. The investment dispute concerned violation of rights of a Chinese investor who owned a share in a joint venture located in the Ogun state free trade zone. The Federal Government of Nigeria did not make any decisions regarding the investor while being held liable for actions that fell under state jurisdiction.

According to the respondent, these circumstances indicate that Nigeria carried out actions as sovereign (*acta jure imperii*). In turn, the New York Convention covers only disputes of states in which the latter act as participants in commercial transactions (*acta jure gestionis*). Subsequently, Nigeria decided to refuse further consideration of the dispute without disclosing reasons.

Read

EU Above All: Supreme Court of Lithuania Refuses to Suspend Local Court Proceedings Due to Parallel Intra-European ICSID Proceedings

The Supreme Court of Lithuania overturned lower court decisions to suspend proceedings in Lithuania's claim against a French investor. The latter insisted on the necessity of suspending proceedings until ICSID issues an award in *Veolia Environnement S.A. et al. v. Republic of Lithuania* (ICSID Case No. ARB/16/3). Notably, the French company also initiated SCC proceedings against the municipality of Vilnius.

Initially, Lithuania presented a counterclaim within ICSID arbitral proceedings, citing illegal actions by investors. However, in light of the European Union (EU) Court's decision in *Achmea*, Lithuania withdrew its counterclaim and filed it in a competent Lithuanian court. In response to these actions, the investor attempted to suspend proceedings in the Lithuanian court until resolution of disputes in ICSID and SCC.

The Supreme Court of Lithuania investigated grounds for suspending court proceedings. According to the court, the presence of parallel arbitral proceedings in the case under consideration is not grounds for suspending proceedings. The SCC dispute has a different subject composition (Lithuania does not participate in it) and, in connection with this, does not relate to proceedings on Lithuania's claims.

Separately, the court assessed the relevance of ICSID proceedings in the context of the dispute in Lithuanian national courts. The court recalled that the ICSID system is independent from national systems, while ICSID awards are not subject to review by national courts and should be recognised and enforced similarly to national court decisions.

At the same time, the court pointed to EU Court practice in *Achmea* and *Komstroy* cases, according to which "intra-European" investment disputes contradict EU law. Accordingly, the arbitration agreement in the France-Lithuania investment agreement on which the ICSID dispute is based lost force from the moment of Lithuania's accession to the EU. Accordingly, even if the arbitral tribunal in the ICSID case issues an arbitral award, it is not subject to recognition and enforcement on Lithuanian territory. Thus, the arbitral tribunal's conclusions will not be relevant to proceedings in Lithuanian courts.

Read

ADR NEWS AND EVENTS

Adjudication Rules (Dispute Resolution by Dispute Boards)

The Russian Arbitration Centre (RAC) published Russia's first adjudication rules, which became a response to business needs for a tool for resolving technical disputes and disagreements in complex and lengthy projects, such as construction.

Adjudication is a method of rapid dispute resolution in which dispute boards, consisting of independent experts, accompany projects, prevent conflicts and resolve arising disagreements. Decisions of dispute boards obtain contractual force. The rules provide for three types of dispute boards.

RAC administers adjudication and also forms the Adjudication Committee - a body responsible for appointing and terminating powers of adjudicators. The Committee includes:

- Christopher To (Hong Kong)
- Lilia Klochenko (Austria)
- Maxim Kuznechenkov (Russia)
- Robert Sliwinski (UAE, UK)
- Slava Kiryushin (UAE)

Robert Sliwinski was elected Committee Chairman.

- More about adjudication
- Adjudication rules text
- Clauses (based on UNCITRAL recommendations)
- Q&A

Read

15th Moscow Pre-Moot of Willem C. Vis International Commercial Arbitration Competition: Results

On March 15-16, 2025, the Russian Institute of Modern Arbitration (RIMA) conducted the 15th Moscow Pre-Moot of the Willem C. Vis International Commercial Arbitration Competition. The pre-moot is designed to help teams prepare for Vis Moot, one of the most prestigious competitions in international commercial arbitration in the world.

26 teams from different countries participated in the rounds, including Azerbaijan, Belarus, Bulgaria, Hungary, Vietnam, Egypt, India, Iraq, Kyrgyzstan, China, Russia, Serbia, France, Montenegro, Sri Lanka and

Switzerland. Teams from Lomonosov Moscow State University and Kutafin Moscow State Law University showed the best results and met in the final round.

The final round arbitrators were:

- Carmen Núñez-Lagos - Independent arbitrator, founding partner of Nuñez-Lagos Arbitration law firm;
- Lilia Klochenko - Lawyer, managing partner of Klochenko and Partners law firm, FCIArb, arbitrator, mediator, PhD in Law;
- Mariana Zhong - Partner at Hui Zhong law firm.

The Lomonosov Moscow State University team won the final round and took first place at the 15th Moscow Vis Pre-Moot.

Read

RAC and RIMA Annual Report | 2024

RAC and RIMA presented the results of their activities in 2024. Last year, RAC received 265 claims, of which 37 were considered within international arbitration, indicating growing interest in international disputes. Cases were administered with participation of parties from 11 countries, including Italy, Finland, Egypt, Uzbekistan and others, indicating expansion of participant geography and increasing authority of the centre at the international level.

Seven memoranda of understanding were signed with arbitration institutes and educational centres, contributing to strengthening cooperation and experience exchange. RIMA also conducted business and educational events in 5 countries and 7 cities worldwide, allowing for increased awareness of alternative dispute resolution opportunities and their advantages. These events, conducted with participation of leading experts, contributed to arbitration practice development and improvement of lawyers' professional skills. RAC and RIMA activity results demonstrate their proactive role in developing arbitration as an effective dispute resolution tool, allowing parties to choose the most suitable procedure and experts for resolving arising disagreements.

Read more about us and our performance results here.

Read

Riyadh International Disputes Week 2025: A New Stage in International Commercial Arbitration Development

Riyadh International Disputes Week (RIDW25) successfully took place from February 23-27, 2025, strengthening Riyadh's position as a global centre for commercial dispute resolution. Organised by the Saudi Centre for Commercial Arbitration (SCCA), this week brought together more than 4,800 participants from 82 countries, including 87 specialised legal events and 470 speakers from around the world. The fourth RIDW25

allowed participants to discuss such important aspects of arbitration as the role of artificial intelligence in dispute resolution and international legal integration.

The event also featured the sixth SCCA International Arbitration Moot (SIAM6), which contributed to developing skills of Arabic-speaking students in arbitral case models. Dr. Walid bin Sulayman Abanumay, SCCA Chairman, emphasised that RIDW25 helps present Saudi Arabia as a reliable place for commercial dispute resolution and stimulates the country's economic growth. He noted the importance of creating a platform for knowledge and experience exchange between professionals working in law and business.

Organised with participation of leading world experts, RIDW25 became an important stage in international arbitration development, serving as a platform for discussing the future of dispute resolution and providing a unique opportunity for interaction between lawyers and business representatives. The event also presented new technologies and approaches to dispute resolution, contributing to improved efficiency and transparency of arbitral processes.

Read

IPO-2025 Conference

On February 27, 2025, in Moscow, PREQVECA and Cbonds Congress companies conducted the "IPO-2025 Conference" - a flagship event in the IPO, SPO and pre-IPO market.

Organised with support from "Reestr" and "Reestr-Consulting" group of companies, the conference brought together leading experts and financial market professionals to discuss current issues related to IPO and pre-IPO markets. The event featured program sessions devoted to such topics as current IPO market problems, quality standards in deals, path to IPO through active M&A strategy, structuring and risk management in IPO and M&A, experience of leaders in the high-tech sector, balance of interests of all IPO process participants, trends, risks and opportunities of the Russian pre-IPO market, as well as peculiarities of small-cap company IPOs. The event became an important occasion for companies planning IPOs and for all interested in IPO market development in Russia.

More details on the conference official website.

Read

Publication of IBA Arbitration Committee Working Group Report on Application of *Res Judicata* Principle in International Commercial Arbitration

The IBA Arbitration Committee issued a working group report on application of the res judicata principle in international commercial arbitration. Working group members examined legislation and judicial practice in 19 countries from both continental legal system and common law system.

Special attention was paid to developing an autonomous (or transnational) approach to res judicata, not connected with national law, as well as obstacles to its implementation (existing differences in national regulation and traditions, public policy issues and arbitral award enforcement, potential application of the principle to investment arbitration).

Read

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