

European Court of Arbitration
Cour Européenne d'Arbitrage

Corte Arbitrale Europea
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Le / The
BULLETIN

**LE BULLETIN ELECTRONIQUE
DE LA
COUR EUROPEENNE D'ARBITRAGE**

CONTENTS

**THE INTERNATIONAL
REPORTS**

- Italy
- France
- Bahrein
- Egypt
- United Arab Emirates
- Jordan
- Kuwait
- Lebanon
- Dubai
- China
- U.S.A.
- Cyprus
- Czech Republic

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THE INTERNATIONAL REPORTS

> ITALY

The Council of Ministers has issued Executive Decree no. 28, March 4, 2010, which deals with with Mediation in Civil and Commercial matters.

Such decree, which is the first thorough Statute in this field in Italy, will enter into force on March 20, 2010, implementing the guidelines provided by the Parliament by Statute no. 69 [2009] as to civil proceedings.

This Statute aims to reduce the number of proceedings in Italy, as well as to introduce the EU provisions in the field of mediation.

Further regulatory provisions will deal with its implementation.

> FRANCE

Court of Cassation, First Division, February 25, 2010, no. 09-12.126

“A submission to arbitration between the insurer and the insured entered into after a dispute has arisen, is not to be treated as an agreement between a professional on the one side and a non professional, or a consumer, on the other side and is consequently not a burdensome clause under art. L. 132-1 of the Consumers Code.

> BAHREIN

Court of Cassation, judgment no. 165/2005, hearing October 3, 2005

“An arbitration agreement providing that disputes as to the amount to be paid under the insurance policy will be decided by arbitration, does not apply to the issue of liability, which can then be decided by state courts”.

> EGYPT

Court of Appeal, 7th Commercial Circuit, judgment June 9, 2009, no. 102/123

“A party which does not complain of a procedural violation before the arbitral tribunal, may not use it as a ground to challenge the award before the state court”.

> UNITED ARAB EMIRATES

Court of Cassation Dubai, judgment no. 141/2006, hearing Tuesday 10, 2006

“The time to render the award may be extended by the parties or by the arbitral tribunal, if so empowered. An award rendered after the so extended deadline is null and void”.

> JORDAN

Court of Cassation, judgment August 29, 2007, docket no. 1336/2007

“A mandate to a third party to supervise the payment of the amount agreed by the parties in settlement does not amount to a mandate to resolve a dispute and consequently may not be treated as an arbitration agreement”.

> KUWAIT

Court of Cassation, Commercial Division, hearing of February 2, 2001, docket no. 1336/2007

“A mandate is not null and void for the reason that it has not dealt with a defence which, even if granted, does not cause its annulment”.

> LEBANON

Court of Appeal, Beirut, 3rd Chamber, April 16, 2009, no. 540/2009

“The award is subject to recourse for its setting aside through retrial, by the Court of Appeal. The judgment of the Court of Appeal is subject to recourse to the Court of Cassation”.

(these reports are based on the Journal of Arab Arbitration [issue no. 3, August 2009, edited by Jalal El Ahdab]).

> DUBAI

The Dubai International Financial Centre (DIFC) Arbitration Law 2008 has turned the DIFC into an opt-in jurisdiction on a consensual basis.

This system provides for arbitration and for its enforcement by the DIFC Courts. The Rules which apply to the latter are based on the main provisions of the Uncitral Model Law, amongst which the authority to grant interim measures.

The Rules of the DIFC Courts are very much based on the Rules of Civil Procedure of England and Wales.

> CHINA

Although the foreign parties to arbitration to which a party is Chinese and to be enforced in China, fear that the Court will find that the award is in breach of Chinese public policy, Chinese courts, and in particular the High Courts (which - as to foreign related arbitration - automatically review the decision of the Intermediate People’s Court) and the Supreme People’s Court of China, very rarely refuse enforcement on this ground.

It is reported that during 2007 and 2008 the Supreme Court has only twice refused enforcement of foreign related awards on the grounds of public policy.

On December 26, 1997 the Supreme Court held that “The social and public interest of our country would be harmed by the enforcement of an award which had found that the Chinese party had breached a contract which had not been approved by the Ministry of Culture because its performance had gone beyond the scope of the approval by said Ministry (*US Production Co. Ltd. & Tom Hewlett v. China Women Travel Agency*).

In 2008 in *Hemofarm DD, MAG Intl. Trading Company Sulam Meda Ltd. v. Jinan Yongning Pharmaceutical Co. Ltd.*, the Supreme Court refused the enforcement of an ICC award on the ground that it has ruled on matters previously decided by Chinese courts and in so doing it had violated the jurisdiction of Chinese Courts and therefore the sovereignty of China (both reports are based on the 2009 *International Arbitration Report*, edited by Jonathan Sutcliff, Fulbright & Jaworski).

> U.S.A.

Section 1782 of 28 U.S.C. provides that district courts may order to give testimony or to produce a document “for use in proceedings in a foreign or international tribunal”.

In *Intel v. Advanced Micro Devices Inc.* 1542, U.S. 241 (2004) the US Supreme Court held that the Commission of the European Community qualified as a foreign or

international tribunals since it was the antitrust enforcement body and as such had a quasi judicial nature.

Since then, several district courts granted applications under section 1782 for use in commercial arbitration proceedings. However more recently some Circuits have not granted a similar applications for us in commercial arbitration proceedings.

> CYPRUS

Alternative dispute resolution (ADR) is becoming an increasingly popular choice, particularly for disputes relating to cross-border transactions and commercial matters. In order to commence arbitration proceedings, there must be an arbitration agreement between the parties, which is usually irrevocable and therefore binding, unless it contains a contrary provision or a court order is issued (Arbitration Law 1944, Section 3, Cap. 4 – the law governing domestic arbitration in Cyprus). The agreement should be in writing - Arbitration Law 1944, Section 2 and the International Commercial Arbitration Law L.101/87 - international arbitration. If the parties commence legal proceedings in any Court against an arbitration agreement, the Court has a discretionary power to stay the proceedings under Article 8 of the domestic arbitration law for referral to an arbitrator. A matter may be referred to arbitration during the course of litigation by the Court on its own motion or following a request by the parties to the proceedings where there are specialized issues to be determined by the Court, such as in the case of building contracts disputes, Courts of Justice Act 1960. In Cyprus, all commercial matters are arbitral. However, any matter concerning criminal or family law is considered to be non-arbitral.

> CZECH REPUBLIC

Procedural Justice, Arbitrator Bias

Case No. US 2266/09, Constitutional Court of the Czech Republic, October 22, 2009

In that case, the famous Czech brewery changed its legal counsel during arbitral proceedings. The newly appointed counsel happened to be a member of the executive committee of the arbitral body in charge of the proceedings. This connection to the arbitral institution, according to the plaintiff, in itself raised doubts about the impartiality of the arbitrator.

The Constitutional Court rejected the argument and noted, inter alia, the fact that counsel happened to be on the roster of arbitrators is not relevant in itself in the absence of a special relationship between the counsel and arbitrators. The plaintiff phrased its claim in absolute terms which, if accepted, would lead to the impossible situation where all the arbitrators of the court would ex post be disqualified to serve at arbitral proceedings. Ultimately, the Constitutional Court rejected the notion that Article 36 of the Charter of Human Rights applies to arbitral proceedings, as was confirmed by its own previous jurisprudence.