

LITIGATION & DISPUTE RESOLUTION

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Recent rulings dictated by the Argentine Supreme Court regarding arbitration

By Hernán Martín Oriolo



Since 2017, the Argentine Supreme Court has issued five rulings on arbitration. This article outlines each claim and analyses the criteria established by the Supreme Court in reaching its outcome.

Ricardo Agustín Lopez, Marcelo Gustavo Daelli, Juan Manuel Flo Díaz, Jorge Zorzopulos c/Gemabiotech S.A. s/organismos externos

5 September 2017

The plaintiffs filed an arbitral claim against Gemabiotech S.A. for a balance due under a share purchase agreement and, prior to the award, requested its suspension, due to criminal complaints related to the arbitration.

The tribunal rejected the suspension. The plaintiffs filed a nullity appeal, which was denied by the arbitral tribunal, and subsequently a complaint before the Commercial Chamber F of

the National Court of Appeals, which declared the arbitral award null.

Gemabiotech S.A. filed a federal extraordinary appeal, denied by the Chamber, leading to the intervention of the Supreme Court.

Supreme Court's decision:

It held that the plaintiffs' nullity appeal was not based on specific grounds allowed by law to challenge an arbitral award and that the Chamber had exceeded its jurisdiction.

Therefore, it granted Gemabiotech S.A.'s complaint, upheld the extraordinary appeal, and annulled the Chamber's judgment.

Additionally, it reaffirmed that the grounds for nullity under article 760 of the National Civil and Commercial Procedure Code ("CPCCN") must be strictly verified and cannot include a revision of the merits of the award.



EN - Procuración del Tesoro Nacional c/ (nulidad del laudo del 20-III-09) s/ recurso directo 6

November 2018

In the context of a management contract financed by the Inter-American Development Bank, the National State unilaterally terminated the contract with UTE Propyme, resulting in an arbitral claim.

The first award was annulled by the National Court of Appeals in Administrative Litigation, ("CNFed.CA"), due to a procedural essential defect, and a new arbitrator partially ruled against the National State.

The State filed a nullity appeal alleging ignorance of applicable law, error in the evaluation of evidence, and failure to apply emergency currency regulations. The CNFed. CA declared the award null for not applying public order rules but rejected the other arguments.

The National State filed a complaint before the Supreme Court, arguing inadequate judicial review.

Supreme Court's decision:

It indicated that when ruling on the admissibility of extraordinary appeals directly against decisions issued by arbitral tribunals, judicial intervention was only permissible through the limited grounds set forth in section 760, of the CPCCN. Based on this, it reaffirmed that it is not allowed the review of the merits of the arbitral award.

It considered that the State had not demonstrated a procedural essential defect or the public policy to be affected. Consequently, it affirmed that extraordinary appeals are only admissible against judgments addressing specific grounds for nullity, without revisiting the merits of the arbitral award.

Lllorente y Villarruel Contenidos s.a. c. Televisión Federal s.a. telefé s/ organismos externos"

18 December 2018

The plaintiff filed a nullity appeal against an award which had been dismissed for untimely filing by the Arbitration Tribunal. After the filing of a revocation recourse the arbitration tribunal

decides to reject the nullity recourse by treating the grounds of the same.

The plaintiff filed an appeal before the Commercial Chamber of Appeals which instead of treating the grounds of the appeal, declared the same abstract arguing that the nullity recourse had been already solved by the arbitral tribunal.

The plaintiff filed an extraordinary recourse before the Supreme Court and argued that the Chamber's judgment was arbitrary and violated due process of law, as the substantive arguments of the nullity recourse were not considered by the Chamber.

Supreme Court's decision:

It granted the extraordinary appeal and overturned the appealed judgment, concluding that:

- i. When deciding on the granting of a nullity appeal, arbitrators must limit themselves to verifying compliance with the formal prerequisites necessary for its grant in order to send the case to the Chamber of Appeals which was the estate branch to review and decide on such nullity recourse.
- ii. The analysis of substantive arguments regarding the nullity of the award constitutes a task outside the scope of the Arbitral Tribunal, which violates due process by altering the legally prescribed procedure (article 763 CPCCN) by which it is determined that the Chamber is in charge of deciding if the recourse must be admitted.
- iii. Closing off any review of the arbitral award process undermines due process and the right to a fair trial. By deciding in such a manner, the Supreme Court did not authorize a broad revision of the award. To the contrary, it only

determined that such limited review must be performed by the Chamber of Appeals and not by the arbitrators themselves.

Deutsche Rückversicherung AG c/ Caja Nacional de Ahorro y Seguro en liquidac. y otros s/ proceso de ejecución

24 September 2019

Deutsche Ruckversicherung AG requested the enforcement of an arbitral award obtained in Int'l Ins. Co. v. Caja Nacional de Ahorro y Seguro 293 F.3d 392 (7th Cir. 2002).

The Federal Trial Court in Civil and Commercial Matters No. 2 denied the enforcement of the award, arguing that it affected Argentine public order.

The Chamber of Appeals overturned such judgment, recognising the award and admitting its enforcement. The National State appealed this decision.

Supreme Court's decision:

It reaffirmed the obligation to recognise and enforce foreign arbitral awards in accordance with international conventions and local procedural laws, avoiding reevaluation of the merits decided by the arbitral tribunal. If necessary, enforcement must comply with public order provisions without invalidating the award.

Milantic Trans S.A. c/ Ministerio de la Producción (Ast. Río Santiago y ot.) s/ ejecución de sentencia - recurso extraordinario de inaplicabilidad de ley y nulidad

5 August 2021



The ruling pertains to a process of recognition and enforcement of a foreign judicial award. The Trial Court recognised the enforcement of the award. The Provincial estate only appealed the imposition of legal costs; however the Chamber of Appeals fully overturned the trial court judgment, arguing that no provincial law approving the contract had been issued by which the Provincial State accepted to decide the controversy by arbitration. The Provincial Supreme Court confirmed the decision of the Chamber.

Federal Supreme Court's Decision:

It revoked the Provincial Supreme Court Chamber's judgment and determined that

courts cannot exceed the terms of the appeal and that the stability of judgments is essential for legal certainty. Therefore, since the Provincial Estate had not appealed the trial court decision on the recognition and enforcement of the award, the chamber was not entitled to revoke the same even if matters of public policy were raised.

In conclusion, the Federal Supreme Court keeps confirming the stability of arbitration as an effective method of dispute resolution, narrowing the possibility of revision of the award and allowing the recognition of foreign arbitral decisions.



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Hernán Martín Oriolo is a member of the panel of arbitrators approved by the Arbitral Tribunal of Barcelona, proposed as president of many arbitration tribunals by the Permanent Court of Arbitration, and a member of the Arbitrator Panel of the Business Centre for Mediation and Arbitration. He achieved a Masters in International and Comparative Law (LLM) from the Southern Methodist University in Dallas, Texas, USA. Hernán has also authored many publications on topics related to dispute resolution.

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