

Jana Jubail Chemical Industries Co. v. Kotlomontazh LLC, Court of Appeals of the Oblast of Zaporizhzhya, 335/10957/17, 10 May 2018

A contribution by the ITA Board of Reporters

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Headnote

Refusal to recognise arbitral award because it was considered by the arbitral institution not envisaged by the arbitration agreement.

Summary

Facts of the case

In September 2017, Jana Jubail submitted to Ordzonikizevskiy District Court of Zaporizhzhya ("district court") a petition for recognition and enforcement in Ukraine of the award of International Court of Arbitration at International Chamber of Commerce in case No.21132/MHM dated 30 March 2017 ("Award"). The Award granted Jana Jubail the right to collect debt from Kotlomontazh LLC based on Supply Agreement No.0102-12 dated 01 February 2012 under outstanding payments for the supplied goods, penalties, arbitration and legal fees.

The district court reviewed the petition and did not uphold it. Jana Jubail appealed, however, on 10 May 2018, Zaporizhzhya Region Court of Appeal rendered that it may not satisfy the statement of appeal and allow for enforcement of the Award.

Question in Dispute

In the course of the case review, it was established that the arbitral tribunal as well as the arbitration procedure did not comply with the arbitration agreement. In particular, the arbitral institution that rendered the Award, International Court of Arbitration at International Chamber of Commerce based in Paris, was not International Court of Arbitration in Prague (Czech Republic) as stipulated in the arbitration agreement. Also, the case was to be reviewed based on arbitration rules of the International Chamber of Industry, but not of the International Chamber of Commerce. Hence, the Award may not be recognised, nor enforced in Ukraine.

Arguments of the Parties

Kotlomontazh LLC submitted that the arbitration agreement did not allow parties to resolve a dispute before International Court of Arbitration at International Chamber of Commerce in Paris but before International Court of Arbitration in Prague. It was further asserted that the case was reviewed by wrongful application of arbitration rules. Therefore, the Award did not comply with the parties' arbitration agreement and may not be enforced

Judgment of the Court

By rendering its decision, Zaporizhzhya Region Court of Appeal applied provisions of Article 5 of Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and Article 36 of Ukrainian Law on International Commercial Arbitration. The court further pointed out that Kotlomontazh LLC was not properly notified of the time and place of the arbitration case hearing, and hence, was not able to participate in the arbitration, while Jana Jubail provided no proper evidence otherwise. Based on the above conclusions, Zaporizhzhya Region Court of Appeal ruled to uphold the ruling of the first instance court and refuse to allow for enforcement of the Award.

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The summary of the case file and full text of summarized court decision are available on:
<https://www.kluwerarbitration.com/document/kli-ka-ons-18-28-012?jurisdiction=Ukraine&type=Court%20Decisions>