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| Deutsche Rückversicherung AG v. Caja Nacional de Ahorro y Seguro, in liquidation, y otros  |  |  | | --- | --- | | Court | National Supreme Court of Justice | | Date | 24 September 2019 | | Summary | On 26 April 2006, an **arbitral tribunal in New York City** rendered an Award by which it ordered *Caja Nacional de Ahorro y Seguro*, in liquidation, and/or the *Instituto Nacional de Reaseguros* and/or the State of Argentina to pay Deutsche Rückversicherung AG the sum of US$ 7,390,044, together with interest. The Award was confirmed on 1 August 2007 by the United States District Court for the Southern District of New York.  Deutsche Rückversicherung AG (Claimant) sought recognition and enforcement of the Award and the US confirmation decision in Argentina, as well as post-award, pre-decision interest until full payment. An Argentine first instance court denied the application. The National Court of Appeals for Federal Civil and Commercial Matters reversed this decision and granted partial enforcement of the Award. The appellate court noted that the arbitral tribunal and the US court had failed to apply the Argentine law rules on consolidation of debts (Law No. 23.982 of 1991, consolidating all Argentine State’s obligations to pay amounts accrued until 1 April 1991 and administratively or judicially recognized in a final manner). This constituted, in the opinion of the appellate court, a violation of Argentinean public policy which, however, did not prevent the Court from granting partial recognition and enforcement of the Award after modifying it to comply with the requirements of the regime of debt consolidation. Only the Argentine State challenged the decision.  The National Supreme Court of Justice confirmed the Court of Appeal ruling. | |

**Excerpt**

(…)

[2] “Chamber III of the National Court of Appeals for Federal Civil and Commercial Matters set aside the first instance court decision and granted recognition and enforcement of the arbitral award and the foreign decision, in accordance with the regime of consolidation of debts applicable to the case (Laws 23.982 and 25.565), in respect of the amount resulting from the liquidation which had to be carried out and approved in the lower instance”.

[5] (…) The Appellant argues, in its statement pursuant to Art. 280(2) of the Code of Civil and Commercial Procedure of the Nation [CCP]:

(a)That the award and the confirmation decision cannot be enforced and do not comply with the provisions of Art. 517(4) - (5) CCP, because they affect domestic public policy and are incompatible with decisions of the Argentine courts. The National State argues in this respect that the national legislation on the powers of representation was not respected, because the arbitral award held that a letter signed by a person who was not an authorized representative of Claimant could interrupt prescription; that the award applied the five-year statute of limitation provided for in the Dutch Civil Code, in contradiction with the one-year time limit provided for in Art. 58 of Law 17,418 and with the doctrine expressed in decisions rendered by several Argentine courts, which hold that [this time limit] applies to insurance contracts and retrocession; and that the award violates the requirement that decisions rendered against the State must have a merely declaratory character, as well as the conditions of payment established in the consolidation regime (Arts. 1, 3, and 6 of Law 23,982, Art. 17 of Law 24,624, and Arts. 61 and 62 of Law 25,565).

(b)That the application to this case of Law 23,982 implies a substantive modification of the award and the foreign decision; this is not legally viable, because exequatur may only recognize [the award and decision] and grant or deny their enforcement”.

[6] “The arguments concerning the disregard of Argentine law on the powers of representation and of the statute of limitations applicable to the contracts concluded between the parties were not submitted to the Court of Appeals. To this purpose, the generic claim Argentina made at the end of its statement in opposition to the claims against it – that is, notwithstanding what it had said in respect of the consolidation regime, ‘we repeat all the objections raised in the reply to the request’ – is clearly insufficient. (…)”.

[8] “(…) the Appellant makes things worse by arguing that although the application of the consolidation regime to an entire arbitral award – domestic or foreign – is mandatory because of its public policy character, the decision of the judge of the exequatur cannot substantively modify the award and the foreign decision, but can only recognize them and order or deny their enforcement. Such arguments do not dispute the main bases for the decision of the [appellate court], namely, that Art. III of the [1958 New York Convention], approved by Law 23,619, provides that the Contracting States shall not impose substantially more onerous conditions than are imposed on the recognition or enforcement of domestic arbitral awards and that, as a consequence, in the same manner as if a national decision is rendered in violation of the provisions on the consolidation of debts, the solution is not to find that decision to be null, but rather to adapt it to that legal regime. In the case of a foreign arbitral award, the award must be enforced in accordance with the provisions of public policy on the regime of the consolidation of debts: the failure of the arbitral tribunal to apply this regime does not inevitably lead to a denial of recognition and enforcement”.

[9] “Equally inadmissible is the claim of the Appellant that the regime of the consolidation of debts cannot be applied in this case, because – as it argues – the award did not indicate the date from which interest must be paid. This claim cannot succeed, because it does not prove that it is impossible to determine the dates on which the amounts awarded became due (before 1 April 1991), which the arbitral tribunal adopted as the *dies a quo* for calculating interest, in accordance with the evidence at the file”.

[10] “For all the above reasons, the ordinary appeal filed by Argentina is denied (…)”.

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