

Supreme Court clarifies incidental matters in technical and legal disputes

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Facts

Decision

Comment

Domestic arbitrators sitting under the institutional arbitration rules of the Technical Chamber of Greece have jurisdiction to hear only technical disputes (including disputes on the fees of designers) and not legal disputes. However, legal disputes of an incidental nature to the main technical dispute can be heard.

Facts

A dispute arose out of an agreement for design and construction of a private hospital. The dispute related to the fees of the contractor (the owner paid only part of its fees) and various breaches of the agreement which influenced the demand for fees, as well as a limitation of action issue. The agreement provided for domestic arbitration under the institutional arbitration rules of the Technical Chamber of Greece.

The contractor initiated arbitration requesting the unpaid fees and the arbitral tribunal partly accepted its request.

The owner sought to set aside the award before the Athens Court of Appeal, which upheld the petition and annulled the award. The court held that the dispute was of a legal and not a technical nature and thus fell outside the jurisdiction of a tribunal sitting under the arbitration rules of the Technical Chamber.**(1)**

The contractor appealed before the Supreme Court.

Decision

The court held that the dispute over the contractor's fee was of a technical nature according to the legal provisions establishing the institutional arbitration of the Technical Chamber of Greece and providing that only disputes of a technical nature may validly be referred to such arbitration.**(2)**

The special scientific knowledge and experience of the members of the Technical Chamber were considered essential for determining the contractor's fee; the arbitrators based their determinations on assessments of the designs from both quantitative and qualitative perspectives.

The court also held that while some legal issues did not require technical knowledge (eg, the breach of contract and limitation of action), they nevertheless fell under the jurisdiction of the tribunal and were incidental matters in relation to the main technical issue. The dispute was therefore characterised as being of a technical nature.

Comment

In domestic arbitration, the establishment of institutional arbitration bodies is governed by the

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applicable legal provisions of the Code of Civil Procedure.(3) The Technical Chamber has established an institutional body for the arbitration of technical disputes only.(4) The relevant law stipulates that 'technical disputes' are those arising out of contracts for technical projects, constructions and installations, and other matters falling under the scientific knowledge or experience of the members of the Technical Chamber.(5)

The courts have consistently held that arbitrators sitting under the rules of the Technical Chamber do not have jurisdiction to decide non-technical disputes – in particular legal disputes – and if they do so, their awards may be set aside for exceeding the jurisdiction that was conferred on them by law.(6)

The Supreme Court judgment qualifies this rule by clarifying the position with respect to incidental matters that are of a legal nature. The court based its judgment on the express legal provision that confers jurisdiction on arbitrators to deal with incidental matters.(7) provided that the parties have not agreed otherwise in the arbitration agreement.(8) As an incidental question is ancillary to the main issue that determines the request of the claimant, the nature of the dispute (ie, as technical or not) is decided solely with regard to the request that is shaped by the main issue and not by the incidental issue.

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Endnotes

(1) Athens Court of Appeal Judgment 2812/2014.

(2) Supreme Court Judgment 272/2016 (Civil Division A2).

(3) See Article 902 of the Code of Civil Procedure.

(4) By Presidential Decree 723/1979, a delegated act under Article 902 of the Code of Civil Procedure. An earlier form of technical arbitration existed since 1923.

(5) See Article 1(2) of Presidential Decree 723/1979.

(6) See, for example, Supreme Court Judgments 536/2007 and 1610/2008 (Civil Division A1). Excess of jurisdiction conferred by law is expressly provided as grounds for setting aside an award in Article 897.4 of the Code of Civil Procedure (for domestic arbitration).

(7) See Article 887(2) of the Code of Civil Procedure.

(8) *Ibid.*

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