

Arbitration - Ecuador

Execution of Arbitral Award Cannot be Suspended by Constitutional Writ

Contributed by **Coronel & Pérez**

October 16 2008

Introduction

Facts

Decision

Comment

Introduction

The Constitutional Tribunal has ruled that the constitutional writ known as constitutional *amparo* is not available to deter the enforcement of an arbitral award. An *amparo* is a rapid procedure available to private parties to suspend the effects of an order issued by an administrative organ, or to prevent the issuance of such an order, when the constitutional rights of the petitioner have been violated or will be affected manifestly.

According to the tribunal, the decision of the insurance regulator to initiate the liquidation of an insurance company that refused to pay an arbitral award which had become final could not be challenged by resorting to a constitutional *amparo*.⁽¹⁾

Facts

At the request of a reinsurance company, an arbitration tribunal was established to rule on its complaint against an insurance corporation. The tribunal issued its award in favour of the petitioner, ordering the insurance company to pay it the sum of \$125,868.44. Under Ecuador law, the Superintendency of Banks and Insurance has the authority to initiate, at the request of an insured party, the liquidation of an insurance company that refuses to pay an undisputed and definite claim to an insured party. Thus, after unsuccessfully attempting to collect the moneys due to it for one year, the reinsurance company filed a petition to have the insurance company liquidated. The insurance company sought to suspend the liquidation procedure by filing a constitutional *amparo*.

The insurance company submitted its petition for constitutional protection before the Administrative Tribunal for the District of Quito. The tribunal refused the injunction, however, so the petitioner appealed to the Constitutional Tribunal.

Decision

The tribunal first noted that the 1998 Constitution requires the existence of certain conditions before a constitutional *amparo* can be granted by a judge or tribunal:

- The administrative decision adopted or to be adopted by the authority must be illegitimate;
- The decision must infringe or have the potential to infringe a right of the petitioner that is recognized by the Constitution or international treaties; and
- The action (or inaction) of the authority must have caused, or be likely to cause imminently, serious damage to the affected party.

The tribunal then cited the rules of the Organic Act of the Judicial Function to classify arbitrators as judges of conventional jurisdiction (as opposed to legal jurisdiction). The tribunal also noted that the Code of Civil Procedure provides that conventional jurisdiction is established by agreement of the parties. The tribunal ruled that the award of \$125,868.44 issued by the arbitrator should have been complied with immediately, as established by Article 32 of the Arbitration and Mediation Act. It also noted that when the Superintendency of Banks learned of the position of the insurance company, it summoned the company to comply with the award within 15 days under threat of liquidation.

The tribunal then observed that under the rules that regulate the writ of constitutional

Author

Hernán Pérez Loose



protection (*amparo*), an act of a public authority is regarded as illegitimate only if the authority acted without competence or in manifest violation of the procedures established by the legal system, or if the act itself was contrary to the legal order or was issued without proper motivation. The tribunal did not find that the superintendency had acted illegitimately by ordering the insurance company to comply with the award. Moreover, the tribunal noted that the petitioner had not shown which of its constitutional rights had been violated by the actions of the insurance regulator.

Comment

This ruling is a positive step in the development of domestic arbitration in Ecuador. By citing the rules of the Organic Act of the Judicial Function and the Code of Civil Procedure that deal with jurisdiction and arbitration, the tribunal seems to have adhered to the school that emphasizes the procedural (and therefore public) components of arbitration. The *amparo* is characterized by its speed and simplicity; this is one of the reasons why it is used in the most diverse situations to the point of abuse, as in this case.

In another case the Constitutional Tribunal also rejected the proposition that an *amparo* can affect an arbitration process.⁽²⁾ The case involved a petition filed by one party to arbitration to avert the establishment of an arbitral tribunal under the argument that the way in which the tribunal was to be established violated the petitioner's constitutional right to due process. The Constitutional Tribunal rejected the petition. On that occasion, however, the tribunal adopted a more decisive approach, applying Article 95 of the Constitution (which prohibits the filing of constitutional *amparo* against judicial decrees) to arbitral decisions.⁽³⁾

For further information on this topic please contact [Hernán Pérez Loose](#) at Coronel & Pérez by telephone (+593 4 2519 900) or by fax (+593 4 2320 657) or by email (hperez@coronelyperez.com).

Endnotes

(1) Constitutional Tribunal, Resolution 1303-06-RA Official Register 1999 (Supplement) October 26 2007.

(2) Constitutional Tribunal Case 758-98-RA.

(3) "The *amparo* action shall not be available against judicial decisions adopted in a process."

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Online Media Partners



© Copyright 1997-2013 Globe Business Publishing Ltd