



School of International Arbitration

School of International Arbitration, Queen Mary, University of London

International Arbitration Case Law

*Academic Directors: Ignacio Torterola
Loukas Mistelis**

J&P AVAX SA V. TECNIMONT SPA (REIMS COURT OF APPEALS) DECISION

Case Report by Georgios Soumalevris**
Edited by Ignacio Torterola***

A Decision rendered on November 2, 2011, under the French Code of Civil Procedure.

Claimant's counsel: DELVINCOURT-JACQUEMET-CAULIER-RICHARD Professional Partnership, assisted by Mr. Emmanuel GAILLARD, Mr. Philippe PINSOLLE, Mr. Fernando MATILLA-SERRANO, SHEARMAN & STERLING LLP

Defendant's Counsel: SIX-GUILLAUME-SIX Professional Partnership, assisted by Mr. Louis Christophe DELANOY, BREDIN PRAT LLP

* Directors can be reached by email at ignacio.torterola@internationalarbitrationcaselaw.com and loukas.mistelis@internationalarbitrationcaselaw.com

** Georgios Soumalveris is an associate with EUTRADEDEFENCE. He advises multinational clients and states on international trade and policy, including anti-dumping and anti-subsidy proceedings, foreign investment law.

*** Ignacio Torterola is co-Director of International Arbitration Case Law (IACL)

Digest

1. Facts of the Case

J&P Avax SA (“Avax”), a Greek company, and Tecnimont S.p.A. (“Tecnimont”), an Italian company, concluded a subcontracting agreement for the construction of a propylene plant in Thessaloniki, Greece. Following a partial award rendered in Paris on December 10, 2007, by an arbitral tribunal composed of Ms. Dimolitsa, Mr. Kaissis and Mr. Jarvin, as presiding arbitrator, Avax filed an appeal with the Paris Court of Appeals to have such award set aside. After taking into consideration the ties that Jones Day LLP (the employer of Mr. Jarvin) maintained with Tecnimont and its mother company and its subsidiaries during the course of the arbitration proceedings, the Paris Court of Appeals decided that Mr. Jarvin was not independent and thus, the tribunal was unlawfully composed. As a result, the Court set aside the award.

The French Supreme Court, ruling upon an appeal filed by Tecnimont, decided to nullify the Paris Court of Appeals’ decision. The Supreme Court found that the Paris Court of Appeals erred in amending the subject of the lawsuit by deducing that the above-mentioned ties and affiliations were unknown to Avax before the rendering of the partial award, even though Avax had challenged Mr. Jarvin on September 14, 2007 on the basis of almost the same facts. Following the Supreme Court’s Decision, Avax brought the case to the Reims Court of Appeals asking the Court to set aside the partial award due to the unlawful composition of the tribunal.

2. *Legal Issues Discussed in the Decision*

(a) **Admissibility**

The Reims Court of Appeals concluded that Avax’s appeal was admissible. The Court noted that a challenge made before the ICC Court of Arbitration is a different action from one seeking to set aside an award before a state court, because the two do not have the same purpose and are not subject to the same authority.¹ The Court held that it was not bound by the 30-day time limit provided by the ICC Rules for the admissibility of a petition to challenge an arbitrator, and that Avax was allowed to request the setting aside of the award, despite the fact that it did not challenge Mr. Jarvin’s independence further after September 14, 2007. The Reims Court then recalled that the ICC Court of

¹ Decision of the Reims Court of Appeals, p. 4

Arbitration decisions do not have *res judicata* effect, and, therefore, do not bar the Claimant from pursuing its set aside action, as long as it has not waived its right to do so. The Reims Court of Appeals stated that, in the case of a continuous firm-client relationship (such as the one between Jones Day LLP and Tecnimont) that does not correspond to the facts disclosed to the parties upon the nomination of an arbitrator, and that was not disclosed in a timely fashion thereafter, the parties are allowed to request the setting aside of the award on the basis of the unlawful composition of the tribunal.² As a result, the Court held, Avax's appeal was admissible.

(b) Composition of the Tribunal

The Reims Court of Appeals concluded that Avax had reasonable doubts concerning the independence of Mr. Jarvin. The Court recalled Avax's numerous attempts to obtain the necessary information regarding Jones Day LLP's affiliation with Tecnimont, as well as Mr. Jarvin's gradual and incomplete disclosure of the requested information. The Court then stated that arbitrators are under a continuous obligation to disclose all facts that may cause reasonable doubt to the parties regarding their impartiality, whether those facts are personal to them or involve a relationship with their employers. In this case, the Court noted that Mr. Jarvin did not seek further information from Jones Day regarding any potential conflicts of interest. Having set out all affiliations between Jones Day LLP and Tecnimont from 2002-2007, the Reims Court of Appeals ruled that Mr. Jarvin had failed to disclose relevant ties in a complete fashion and, therefore, caused Avax to have reasonable doubt as to his independence.³

3. Decision

The Court set aside the partial award and ordered Tecnimont to pay Avax the amount of €70,000 in accordance with Article 700 of the Code of Civil Procedure, in addition to Avax's attorneys' fees.

² *Id.*, p. 6.

³ *Id.*, p. 8.