

2 July 2024
Paris Court of Appeal
RG n° 23/19857

Pole 5 - Room 16

Text of the **decision**

Header

FRENCH REPUBLIC ON BEHALF OF THE

FRENCH PEOPLE PARIS

COURT OF APPEAL INTERNATIONAL COMMERCIAL
CHAMBER
POLE 5 CHAMBER 16

JUDGMENT OF 02 JULY 2024

on a request for rectification of a clerical error or for interpretation

(No. 65 /2024, 11 pages)

Registration number in the general register: N° RG 23/19857 - N° Portalis 35L7-V-B7H-CIVCG

Decision referred to the Court: Judgment of the Paris Court of Appeal (pole 5 - chamber 16) delivered on 24 October 2023 (N° RG 19/13396)

Applicants to the application:

Mr [J] [K] [L]

residing at: [Address 1] (UNITED STATES),

Mrs [E] [K] [G]

residing at: [Address 1] (UNITED STATES),

Attorney-at-law: Matthieu BOCCON GIBOD of SELARL LX PARIS-VERSAILLES-REIMS, attorney at the Paris Bar, toque: C2477

Attorney-at-law: Mr. Shaparak SALEH and Mr. Camelia AKNOUCHE of the PARTNERSHIPS THREE CROWNS (Services) LLP, attorneys at the Paris Bar, toque: L181 and Mr. Christophe SERAGLINI AND Mr. Quentin HERRUEL of the LLP FRESHFIELDS BRUCKHAUS DERINGER LLP, Attorneys at the Paris Bar, toque: J007

Defendant on the application:

BOLIVARIAN REPUBLIC OF VENEZUELA

acting by the Procurador General de la República Bolivariana de Venezuela -
Procuraduría General de la República,

[Address 2] (VENEZUELA)

Attorney-at-law: Mr. Luca DE MARIA de la SELARL PELLERIN - DE MARIA - GUERRE,
attorney at the Paris Bar, toque: L0018

Attorney-at-law: Mr. Alfredo DE JESUS O., of SELARL ALFREDO DE JESUS O. -
TRANSNATIONAL ARBITRATION & LITIGATION, attorney at the PARIS Bar, toque:
D0790

COMPOSITION OF THE COURT:

The case was referred to on 07 May 2024, in open court, before the Court composed of:

Mr Daniel BARLOW, President of the Chamber

Ms Fabienne SCHALLER, President of the Chamber

Mrs. Laure ALDEBERT, Councillor

who deliberated on it.

A report was presented at the hearing by Mr Daniel BARLOW under the conditions laid down in Article 804 of the Code of Civil Procedure.

Registrar, at the hearing: Ms Najma EL FARISSI

HELD:

- inter partes

- delivered in public by making the judgment available at the Court Registry, the parties having been notified in advance under the conditions provided for in the second paragraph of Article 450 of the Code of Civil Procedure.

- signed by Daniel BARLOW, President of the Chamber and by Najma EL FARISSI, Registrar, to whom the minute of the decision was delivered by the signatory magistrate.

Statement of Dispute

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I/ FACTS AND PROCEDURE

1. The Court has before it a motion for rectification or interpretation of a judgment delivered on 24 October 2023 in proceedings for annulment of a final award rendered in [Location 3] on 26 April 2019, under the aegis of the Permanent Court of Arbitration of The Hague, in a dispute between Mr [J] [K] [L] and his daughter, Ms [E] [K] [G], to the Bolivarian Republic of Venezuela.

2. That judgment ruled as follows:

"(1) Dismisses the pleadings served by the Bolivarian Republic of Venezuela on 13 March 2023;

(2) Holds that there are no grounds for checking the handwriting and for rejecting Exhibit No. 18 produced by Mr [J] [K] [L] and Ms [E] [K] [G];

(3) Sets aside in part the final award rendered at [Locality 3] on 26 April 2019 under the aegis of the Permanent Court of Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law in PCA Case No. 2013-3 in so far as:

- orders the Bolivarian Republic of Venezuela to compensate Mr. [J] [K] [L] in the

amount of 75,677,393.94 US dollars (seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars and fourteen hundred)' (c) of the operative part of the award;

- orders the Bolivarian Republic of Venezuela to pay to Mr. [J] [K] [L] interest on this sum at the LIBOR rate for 12 months plus 4.5% per annum, capitalized in each twelve-month period, beginning on May 20, 2010, the value of which until February 2019 is US\$50,637,156.71 (fifty million six hundred and thirty-seven thousand one hundred and fifty-six dollars and seventy-one cents) ' (d) (i) of the sentence;

4) Dismisses the action for annulment brought by the Bolivarian Republic of Venezuela against this award for the remainder;

5) Recalls that pursuant to Article 1527, paragraph 2, of the Code of Civil Procedure, the dismissal of the action for annulment confers exequatur on the arbitral award, for the part not annulled;

6) Dismisses the claims made by the parties on the basis of Article 700 of the Code of Civil Procedure;

(7) Holds that each of the parties shall retain the costs which it has incurred for the purposes of the proceedings. 3

. The [K] consorts filed a request for rectification of a clerical error or interpretation on December 4, 2023.

4. After an exchange of written submissions, the parties were summoned to the hearing on 7 May 2024 at which their counsel were heard.

II/ CLAIMS OF THE PARTIES

5. In its latest submissions notified by e-mail, On 16 April 2024, Mr [K] [L], the only concluding decision, asks the Court, on the basis of Articles 461 and 462 of the Code of Civil Procedure, to kindly : ' Primarily:

- Rectify the operative part of the judgment delivered on 24 October 2023 in case RG No.

19/13396 as follows:

o Replace:

'(3) Set aside in part the final award rendered at [Location 3] on 26 April 2019 under the aegis of the Permanent Court of Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law in PCA Case No. 2013-3 in so far as:

- orders the Bolivarian Republic of Venezuela to compensate Mr. [J] [K] [L] in the amount of 75,677,393.94 US dollars (seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars and fourteen hundred)' (c) of the operative part of the award;

- orders the Bolivarian Republic of Venezuela to pay to Mr. [J] [K] [L] interest on this sum at the LIBOR rate for 12 months plus 4.5% per annum, capitalized in each twelve-month period, beginning on May 20, 2010, the value of which until February 2019 is

US\$50,637,156.71 (fifty million six hundred and thirty-seven thousand one hundred and fifty-six dollars and seventy-one cents) ' (d) (i) of the sentence;

o By

"(3) Set aside in part the final award rendered at [Locality 3] on 26 April 2019 under the aegis of the Permanent Court of Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law in PCA Case No. 2013-3 in so far as it:

- orders the Bolivarian Republic of Venezuela to indemnify Mr [J] [K] [L] in the amount of 52,068,915.16 US dollars (fifty-two million sixty-eight thousand nine hundred and fifteen US dollars and sixteen cents) in respect of the advances granted to Benipaula S.A. and MSM S.A. ' para. 524 and (c) of the operative part of the award;

- orders the Bolivarian Republic of Venezuela to pay to Mr. [J] [K] [L] interest on the said sum of 52,068,915.16 US dollars (fifty-two million sixty-eight thousand nine hundred and fifteen US dollars and sixteen cents), at the LIBOR rate for 12 months plus 4.5% per annum, capitalized in each twelve-month period, beginning on 20 May 2010 ' by. 541 and (d) (i) of the operative part of the award".

' In the alternative: - Interpret the judgment delivered on 24 October 2023 in case RG No.

19/13396 as follows:

"To rule that the partial annulment of the final award rendered in [Locality 3] on 26 April 2019 under the aegis of the Permanent Court of Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law in PCA Case No. 2013-3 in so far as it orders the Bolivarian Republic of Venezuela to compensate Mr. [J] [K] [L] in the amount of 75,677,393.94 US dollars (seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars and fourteen

hundred) ' (c) of the operative part of the award relates only to the advances granted to the companies Benipaula S.A., in the amount of USD 10,853,307.42, and MSM S.A. in the amount of USD 41,215,607.74, i.e. the sum of 52,068,915.16 US dollars (fifty-two million sixty-eight thousand nine hundred and fifteen US dollars and sixteen cents); and

Hold that the partial annulment of the final award rendered in [Locality 3] on 26 April 2019 under the aegis of the Permanent Court of Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law in PCA Case No. 2013-3 in so far as it orders the Bolivarian Republic of Venezuela to pay interest to Mr. [J] [K] [L] relates to this sum, namely 52,068,915.16 U.S. dollars at LIBOR for 12 months plus 4.5% per annum, capitalized in each twelve-month period, commencing on May 20, 2010 ' (d) (i) of the operative part of the award".

On Venezuela's claims, the Court is asked to:

' Primarily:

- Dismiss Venezuela's claims for rectification, on the ground of absence of a clerical error;

' In the alternative:

- Rectify the operative part of the judgment if it contains an error in the reproduction in full of the amount of the operative part as follows:

o Replace:

"orders the Bolivarian Republic of Venezuela to compensate Mr. [J] [K] [L] in the amount of 75,677,393.94 US dollars (seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars and fourteen hundred)"

o By:

"orders the Bolivarian Republic of Venezuela to compensate Mr. [J] [K] [L] in the amount of 75,677,393.94 US dollars (seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars and ninety-four hundred)" (c) of the operative part of the award".

In any event:

- Judge that this decision will be mentioned on the minute and on the dispatches of the judgment that it rectifies and will be notified as follows;

- Leave the costs to be borne by the State.

6. In its latest submissions, notified electronically on 30 April 2024, the Bolivarian Republic of Venezuela requests the Court, in visa of Articles 461, 462, 696 and 700 of the Code of Civil Procedure, the case-law cited and the documents submitted to the proceedings, to kindly:

I. On the request for rectification of Mr. [J] [K] [L]

- On the main request for rectification of a clerical error,

' DECLARE INADMISSIBLE THE MAIN REQUEST FOR RECTIFICATION of Mr. [J] [K] [L], due to the absence of a clerical error;

' Failing that, DISMISS the main request for rectification of Mr [J] [K] [L] as unfounded.

' DISMISS all of Mr [J] [K] [L]'s claims, claims, claims and submissions.

- On the alternative application for interpretation,

' DECLARE INADMISSIBLE THE ALTERNATIVE APPLICATION FOR INTERPRETATION of Mr [J] [K] [L] for lack of ambiguity in the provisions of the judgment referred to by Mr [J] [K] [L];

' Failing that, DISMISS the alternative application for interpretation of Mr [J] [K] [L] as unfounded.

' DISMISS all of Mr [J] [K] [L]'s claims, claims, claims and submissions.

II. On the request for rectification of the Bolivarian Republic of Venezuela

- RECTIFY the operative part of the judgment delivered on October 24, 2023 in case RG No. 19/13396 as follows:

o Replace:

"(3) Partially annuls the final award rendered to [Locality 3] on 26 April 2019 under the aegis of the Permanent Court of Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law in PCA Case No. 2013-3 in so far as:

- orders the Bolivarian Republic of Venezuela to compensate Mr. [J] [K] [L] in the amount of 75,677,393.94 US dollars (seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars and fourteen hundred) ' (c) of the operative part of the award;'

-By:

"3) Partially annuls the final award rendered in [Locality 3] on April 26, 2019 under the aegis of the Permanent Court of Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law in PCA Case No. 2013-3 in so far as it:

- orders the Bolivarian Republic of Venezuela to compensate Mr [J] [K] [L] for the value corresponding to the guarantees paid to Alimentos Frisa's suppliers of goods, in the amount of 75,677,393.94 US dollars (sixty-quinteen million six hundred and seventy-seven thousand three hundred and ninety-three U.S. dollars and ninety-four hundred)' (c) of the operative part of the award; -

DISMISS all of Mr [J] [K] [L]'s claims, claims, claims and submissions.

III. The claims for costs

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ORDER Mr [J] [K] [L] and Ms [E] [K] [G] to pay all the costs;

- ORDER Mr. [J] [K] [L] and Mrs. [E] [K] [G] to pay the sum of EUR 15,000 pursuant to Article 700 of the Code of Civil Procedure to the Bolivarian Republic of Venezuela.

IV. In any event

- DISMISS all of Mr [J] [K] [L]'s claims, claims, claims and submissions.

III/ REASONS FOR DECISION

A. The main claim for rectification

7. In support of his request for substantive rectification of the judgment delivered on 24 October 2023, Mr [K] [L] submits that:

- the inconsistency between the amount mentioned in the grounds of the judgment and the amount set out in the operative part of that decision constitutes a clerical error that may be rectified, in accordance with Article 462 of the Code of Civil Procedure;

- the court annulled the compensation for all the advances granted in respect of the security deposits made due to Mr [K] and the interest relating thereto in its operative

part, whereas, in accordance with the grounds of the judgment, the convictions relating to amounts not tainted by tax evasion should not have been the subject of such annulment;

- it is not a question of modifying the appeal judgment but of correcting a clerical error made within the operative part which is not faithful to the reasons stated;

- the error is material because it affects the judgment in its literal expression and not in its substance, its rectification not calling into question what has been ruled but making it possible to ensure that the operative part reflects the reasoning adopted by the Court;

- the court is not asked to revise or modify its intellectual reasoning;

- the rectification will not have the consequence of revising the final award either, since the force of *res judicata* in international arbitration is attached to the award in its entirety, and there is no requirement that it be set out in the form of an operative part;

- The arbitral tribunal itself proceeded to split the amounts relating to the AVAs and identified them by carrying out a case-by-case analysis;

- the Court is in no way asked to modify the amount of the sentences imposed on Mr [K] [L] by the arbitral tribunal, but simply to rectify a clerical error which the Court itself made in annulling part of the compensation which was not covered by the censorship on the basis of a violation of international public policy.

8. The Bolivarian Republic of Venezuela replies that:

- the judgment in question is a clear, precise and coherent decision setting out a single head of compensation imposed by the arbitral tribunal in respect of security deposits;

- Mr [K] [L] distorts the wording of the judgment in an attempt to create an alleged 'inconsistency' which does not exist, from which the error would arise which, even if admitted, would be intellectual, since the request for the alleged purpose of rectification would in fact lead to a prohibited modification of the rights and obligations of the parties;

- there is no discrepancy between the grounds and the operative part;

- under the guise of a request for rectification of a clerical error, it is the modification of the intellectual reasoning that is requested since the Court is asked to modify the scope of the annulment decided on the heads of compensation relating to the security deposits;

- under the guise of his request for rectification, Mr [K] [L] asks for the parties to be determined on the merits and for a right of evocation to be exercised as in domestic arbitration, the Court being called upon to act as an arbitrator at second instance by deducting the guarantees affected by the tax evasion;

- it is not disputed that the "provisions" of the final award set aside in part are to be found in the operative part of the latter, even though there is no obligation for the arbitrators to include their decision in an operative part, the court can only delete the "provisions" of the award referred to it, i.e. its decisive parts, wherever they are.

Motivation

ON THIS:

9. According to Article 462 of the Code of Civil Procedure, material errors and omissions affecting a judgment, even if it has become final, may always be remedied by the court which delivered it or by the court to which it is referred, depending on what the file reveals or, failing that, what reason requires.

10. Mr [K] [L] claims in the present case that there was a clerical error in the judgment delivered by the Court of Justice on 24 October 2024 by alleging a discrepancy between the grounds and the operative part of that decision concerning the scope of the partial annulment of the award, pronounced for breach of international public policy.

11. According to the operative part of the judgment, that annulment relates to the operative parts of the award under appeal, which:

'- orders the Bolivarian Republic of Venezuela to compensate Mr [J] [K] [L] in the amount of 75,677,393.94 US dollars (seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars and fourteen hundred)' (c) the operative part of the award;

"- orders the Bolivarian Republic of Venezuela to pay interest on this sum in the amount of 50,637,156.71 US dollars (fifty million six hundred and thirty-seven thousand one hundred and fifty-six dollars and seventy-one hundred)' (d) (i) of the operative part of the award;

12. In concluding that this award should be set aside, the court held that it specifically and clearly violated international public policy "by awarding compensation for an investment which contributed, at least in part, to the commission of a large-scale tax evasion which has been judicially established" (§ 79, emphasis added).

13. In the absence of indivisibility, however, it decided to limit that annulment 'solely to the heads of the decision relating to [the] security deposits' corresponding to that investment (§ 81), noting that 'the sentences handed down for compensation for the

security deposits [were] the subject of specific provisions' (ibid.).

14. While it is true that those provisions include, in addition to the reimbursement of the sums concerned by the fraud, compensation for advances granted to other suppliers not covered by the criminal proceedings which gave rise to the finding of the breach of international public policy, it is clear from the reasoning referred to above that the court did not intend to reassess the amount of the sentences handed down by the arbitral tribunal in the operative part of the award concerned, which it did not have the power to do, but decided to annul them in so far as they compensated an investment "at least in part" tainted by fraud, regardless of the fact that the reasons for the award break down the amounts constituting that investment.

15. There is therefore no discrepancy between the grounds and the operative part of the judgment, the rectification requested by the applicant was not material but substantial and was in fact aimed at a review of what had been decided.

16. In those circumstances, the application for rectification of a clerical error put forward by Mr [K] [L] must be dismissed as unfounded, the Court noting that, although the Bolivarian Republic of Venezuela contends that it is inadmissible, it does not put forward any plea calling into question the applicant's right to bring proceedings.

B. The alternative request for interpretation

17. Mr [K] [L] asks the Court to interpret the operative part of the judgment by maintaining that:

- the Court's reasoning refers only to the advances granted to the companies Benipaula S.A. and MSM S.A. in respect of security deposits as being affected by the fraud, whereas it refers, in its operative part, to advances granted by undertakings which have not been charged with tax evasion;

- it is settled case-law that the Court may have recourse to the grounds of a decision to interpret the scope of the operative part, but the interpretation of the operative part adopted by Venezuela would amount to the Court annulling more than what its reasoning implied annulling;

- since the request strictly adheres to the interpretation of the appeal judgment due to an inconsistency which gives rise to a difference of opinion on its interpretation, the latter seeks to obtain clarification of its scope and in no way to modify the Court's reasoning;

- It is legitimate to consider that this divergence justifies the Court's intervention.

18. The Bolivarian Republic of Venezuela replies that:

- interpretation is possible only if the operative part of the decision contains an obscure or ambiguous provision which renders enforcement uncertain or if the new decision does not make any modification or make any deletions or additions;

- the judge is thus prohibited from modifying the rights and obligations recognised to the

parties by the decision submitted for interpretation;

- the terms of the operative part are clear and there is no contradiction between the reasoning and the operative part of the judgment which would require interpretation;

- the Court of Appeal did not refer only to advances tainted by tax fraud, having been aware of the fact that tax fraud affected only part of the advances and having expressed it perfectly by the use of the expression "at least in part";

- the two heads of the final award annulled each form a whole in their entirety and could therefore only be set aside in their entirety, without any possible division of the amount of compensation as awarded by the arbitral tribunal.

ON THIS:

19. According to Article 461 of the Code of Civil Procedure, it is up to each judge to interpret his decision.

20. It follows from the foregoing grounds that the terms of the judgment delivered by the court on 24 October 2023 are clear and precise as regards the scope of the partial annulment of the award which is the subject of the action for annulment.

21. Under the guise of interpretation, Mr [K] [L] is seeking a review of the decision and an amendment of the solution adopted by the court, which there is no justification.

22. His request for interpretation, which is admissible, in the absence of any plea calling into question the right to bring proceedings of the person concerned, will therefore be

dismissed as unfounded

. The interlocutory application for rectification of a clerical

error

23. The Bolivarian Republic of Venezuela seeks the rectification of two clerical errors, stating that:

- firstly, the operative part of the judgment does not faithfully reproduce the French translation of the operative part of the arbitral award drafted in Spanish;

- the transcription in full of part of one of the sums mentioned by this system is incorrect.

24. Mr [K] [L] replies that Venezuela's requests for rectification of clerical errors are unfounded and must be rejected in that:

- the first request for rectification is unfounded since his main claim for rectification of a clerical error is granted;

- In any event, the paraphrase of the award, without a literal reproduction, is not a material error and is irrelevant since it does not change the understanding of the operative part.

ON THIS:

25. The first indent of paragraph 3) of the operative part of the judgment contains a purely clerical error, which should be corrected in the terms set out in the operative part of this decision, in that it transcribes in full the sum of USD 75,677,393.94 into 'seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars and fourteen hundred' instead of mentioning 'ninety-four cents'.

26. The difference in translation relied on by the Republic of Venezuela concerning that same passage does not, however, need to be corrected since, first, the judgment did not intend to repeat the verbatim of the proposed translation and, on the other hand, that it has not been demonstrated that this discrepancy would have any impact on the execution of the decision rendered.

D. Costs and expenses

27.
The costs shall be borne by the public treasury.

28. Since the application of the [K] consorts has entailed costs for the Bolivarian Republic of Venezuela, which would otherwise clearly not have applied to the court for a substantive correction, Mr [K] [L] will be ordered to pay the Bolivarian Republic of Venezuela the sum of EUR 15 000 pursuant to Article 700 of the Code of Civil Procedure.

IV/ DISPOSITION

Device

For these reasons, the Court:

(1) Declares admissible the application for rectification of a clerical error or for interpretation filed by Mr [J] [K] [L] and Ms [E] [K] [G];

2) Rejects it;

(3) Dismisses all of Mr [J] [K] [L]'s claims;

4) Grants the request for rectification of a clerical error of the Bolivarian Republic of Venezuela relating to the statement of the sums appearing in the first indent of 3) of the operative part of judgment No. 79/2023 rendered by this Court on October 24, 2023 under the number of RG 19/13396;

Consequently,

(5) Finds that, in the operative part of this decision, instead of:

"- orders the Bolivarian Republic of Venezuela to compensate Mr. [J] [K] [L] in the

amount of 75,677,393.94 US dollars (seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars) and fourteen hundred) ' (c) of the operative part of the award; It

should read:

"- orders the Bolivarian Republic of Venezuela to compensate Mr [J] [K] [L] in the amount of 75,677,393.94 US dollars (seventy-five million six hundred and seventy-seven thousand three hundred and ninety-three US dollars and ninety-four hundred) ' (c) of the operative part of the award; » ;

(6) Holds that this decision shall be mentioned on the minute of the judgment which it corrects;

7) Holds that there is no need for any other correction;

(8) Orders Mr [J] [K] [L] to pay to the Bolivarian Republic of Venezuela the sum of fifteen thousand euros (€15,000.00) pursuant to Article 700 of the Code of Civil Procedure;

9) Leaves the costs to be borne by the Public Treasury.

THE CLERK, THE PRESIDENT,