Lisbon - Court of Appeal
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Revision/Confirmation of a Foreign Judgement

Case No. 108/24.7YRLSB (review of a foreign arbitral award)

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Rapporteur: Judge Gabriela de Fátima Marques Adjuncts: Judge Teresa Pardal

Judge Nuno Gonçalves

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Summary:

I. The recognition of a foreign arbitral award is regulated in our common law by the Voluntary Arbitration Act (LAV), but with the express exception of the mandatory provisions of the New York Convention (CNI), and in addition to the grounds for refusal set out in article 56 of the LAV and in the Convention, it is important to add non-conformity with public international law, European Union law and the Constitution.

II. It has been understood that the grounds for recognising a foreign arbitral award are if it protects the trust placed in defining the disputed relationship through arbitration, if it is important for the development of international trade, and finally if it respects the self-determination of the parties.

III. The Defendant, as a Sovereign State, cannot invoke immunity from jurisdiction if it is only seeking recognition of the Arbitral Award, and also because the Defendant, through the arbitration agreement, waived it, and also because the Defendant, through an express reference to the CNI, consented to the exercise of jurisdiction by the courts to which the application requesting recognition of the Arbitral Award was made.

IV. The negative wording contained in Article 5(2)(b) of the CNI has been interpreted restrictively, referring only to international public order relevant to private international law, so that the mere violation of any rule of immediate or necessary application in force in the legal order of the forum state cannot be invoked to trigger the action of the international public order reservation.

(Summary drawn up by the rapporteur)

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The Judges of the 6th Civil Chamber of the Lisbon Court of Appeal agree:

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Reference: 22710387

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I. REPORT:

GOLD RESERVE INC, originally incorporated under the laws of the Territory of Yukon, Canada, and now incorporated under the laws of Alberta, Canada, with its registered office at 999 West Riverside Ave, Suite 401, Spokane, Washington, 99201, United States of America, hereby, pursuant to and for the purposes of Articles I, III and IV of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, and Articles 55 et seq. of the Arbitration Act, declares that it is in compliance with the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.In accordance with Articles 55 et seq. of the Voluntary Arbitration Law, bring against the BOLIVARIAN REPUBLIC OF VENEZUELA this special action for recognition of a foreign arbitral award, application requesting recognition of the Arbitral Award rendered unanimously in Paris, France, on 22 September 2014, by the Arbitral Tribunal constituted under the ICSID Additional Facility Rules, composed of the Arbitrators Professor Pierre-Marie Dupuy, Professor David A.R Williams QC and Professor Piero Bernardini, seated in Paris, France, under ICSID Case No. ARB(AF)/09/1.

It claims, in summary, that under the terms of the aforementioned Arbitral Award, the Defendant was ordered to pay the Claimant $740,331,576.00 (seven hundred and forty million, three hundred and thirty-one thousand, five hundred and seventy-six US dollars), plus interest thereon. To date, the Defendant has not paid that amount in full.

Serving the defendant, it argued immunity from jurisdiction, violation of the public policy of the Portuguese State and abuse of rights, concluding that the application should be dismissed, saying:" In these terms, and for all the above reasons, the application for recognition of the judgement requested in these proceedings cannot proceed, if it is found that the necessary requirements for its confirmation are not met, under the terms and for the purposes of article 980, paragraph f) of the Code of Civil Procedure" and also "(...)be rejected, because:a) The Defendant, as a Sovereign State, has jurisdictional immunity, including immunity from execution; and, in the alternative,

b) the requirements on which the law makes such review and confirmation dependent have not been met."

A. replied, arguing, in short, that the Defendant is not immune from the jurisdiction of the Portuguese courts to decide the present action, either because it is only a matter of

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recognition of the Arbitral Award, both because the Defendant, by means of the arbitration agreement it signed with the Claimant, waived its immunity from jurisdiction, as results, in particular, from Article 17(c) of the United Nations Convention on the Jurisdictional Immunities of States and Their Property. It further argued that the Defendant, by expressly referring to the CNI, consented to the exercise of jurisdiction by the courts from which recognition of the Arbitral Award was applied for, which fulfils the assumptions of the legal hypothesis of Article 7(1)(a) of the UNCITRAL. It also argued to the contrary that the recognition comes from the CNI and the LAV, and none of the exhaustive grounds set out in Article V of the CNI and Article 56 of the LAV that allow for refusal can be found, nor can the defendant dispute the decision on the merits adopted by the Court in the recognition action. As for the alleged violation of the international public policy of the Portuguese State, not only is this manifestly unfounded, but in fact the Arbitral Award is fully compatible with the international public policy of the Portuguese State, since our legal system is governed by rules and principles similar to those applied by the Arbitral Tribunal, hence the compatibility of the solution reached in the Arbitral Award with the Portuguese legal system. It concludes as it did in the initial petition.

Having complied with the provisions of article 982 of the Code of Civil Procedure, the parties maintained and reiterated, in their pleadings, the positions they had already taken.

The Honourable The Deputy Attorney General argued that there was no legal obstacle to the intended review and confirmation, stating in particular that in the case in question, having regard to the subject matter of the case and the nature of the agreement subject to the court's scrutiny, the arbitral award did not lead to a result that was manifestly incompatible with the international public order of the Portuguese State, further maintaining that "(...) it is clear from the arbitral award that it settled a dispute relating to a set of mining rights concessions in Venezuela and investments made by the Plaintiff within the scope of that concession in the territory of Venezuela.) it is clear from the arbitral award that it settled a dispute relating to a set of mining rights concessions in Venezuela and the investments made by the Claimant under that concession in the Defendant's territory under an Agreement between the Government of Canada and the Government of the Republic of Venezuela for the Promotion and Protection of Investments. The arbitral tribunal ordered the Defendant to pay compensation that does not appear to be disproportionate, given the nature of the agreements and the large investments made in them.

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require. Nor does the decision appear arbitrary, since it is clear from the documentary evidence that the arbitral tribunal had regard to the circumstances of the specific case. And both parties have consented to the jurisdiction of an arbitral tribunal."

Having seen all the evidence, a decision must be taken.

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Question to be decided:

The subject matter of the appeal is defined by the appellant's conclusions (Articles 5, 635(3) and 639(1) and (3) of the CPC), beyond what is known off the record, and because appeals are not intended to create decisions on new matters, it is delimited by the content of the contested decision.

Thus, it is important to know if, in this case, the foreign arbitral award should be recognised, which ordered the Bolivarian Republic of Venezuela to pay the Claimant $740,331,576.00 (seven hundred and forty million, three hundred and thirty-one thousand, five hundred and seventy-six US dollars), plus interest thereon.

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II. RATIONALE:

The content of the documents enclosed and the confession prove the following facts:

1. The Claimant is a company originally incorporated under the laws of the Territory of Yukon, Canada, and currently incorporated under the rules of Alberta, Canada, which has as its object mining activity, specifically the acquisition, exploration and development of projects in this industry (a fact proven by Doc. no. 1 attached to the Statement of Claim).

2. On 22 September 2014, the Arbitral Tribunal constituted under the ICSID Additional Facility Rules, composed of Arbitrators Professor Pierre-Marie Dupuy, Professor David A.R Williams QC and Professor Piero Bernardini, seated in Paris, France, unanimously rendered an award in ICSID case no. ARB(AF)/09/1, which is attached to the case file and whose content is reproduced, under which the defendant was condemned in the following terms:

(i) to pay the Claimant compensation in the amount of USD 713,032,000.00, plus interest accrued from 14 April 2008 until the date of the Arbitral Award, calculated at the interest rate for United States Government Treasury Bills,

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compounded annually, which corresponded to USD 22,299,576.00 on the date of the Arbitral Award, totalling USD 735,331,576.00;

(ii) to pay the Claimant the interest due on the total amount referred to in (i), at the LIBOR rate plus 2%, compounded annually, from the date of delivery of the Arbitral Award until full payment; and

(iii) to reimburse the Claimant the amount of USD 5,000,000.00, as compensation for the costs and expenses incurred by the Claimant in connection with the arbitration (see Doc. no. 2 attached to the Statement of Claim, the content of which is reproduced herein);

3. Of the amount of the arbitration award, the Defendant paid the Claimant the sum of USD 13,811,558.00, of which USD 5,000,000 was charged to the payment of the costs and expenses specified in the Arbitration Award and the remaining USD 8,811,558 charged to the payment of accrued interest on the amount of the award (confession of the Defendant);

4. The arbitration award was rendered under the "Agreement between the Government of Canada and the Government of the Republic of Venezuela for the Promotion and Protection of Investments" of 1 July 1996, attached as doc. 3, the content of which is reproduced;

5. This agreement, signed on 1 July 1996 between the governments of Canada and the Republic of Venezuela, took effect on 1 January 1998, and was aimed at guaranteeing the protection of investments by investors from the Defendant States in the territory of the other State Party, thereby promoting economic initiative and the development of economic cooperation between the two countries (see the preamble to the agreement in Doc. 3).

6. In that Treaty, the Defendant consented to settle disputes arising from it by arbitration by issuing, in Article XII, a unilateral offer to arbitrate to any "Investor" within the meaning of that Treaty: "Settlement of disputes between an investor and the Host Contracting Party [...] 2. If a dispute has not been settled amicably within six months from the date on which it was initiated, it may be submitted by the investor to arbitration in accordance with paragraph 4. [...]".

7. The dispute may, by the investor concerned, be submitted to arbitration under the following terms: [...]

(b) the ICSID Additional Facility Rules, provided that the Contracting Party to the dispute or the investor's Contracting Party, but not both, is a party to the ICSID Convention [...]

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Each Contracting Party gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article." (fact proven by Doc. no. 3 attached to the Statement of Claim);

8. Article XII(6)(a)(ii) of the Canada-Venezuela Treaty reaffirms the existence of a written arbitration agreement between the Claimant and the Defendant by providing that: "6. (a) The consent given under paragraph 5, together with the consent given under paragraph 3, or the consents given under paragraph 12, shall satisfy the requirements as to: [...] (ii) the existence of a 'written agreement' for the purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, York")."(fact proven by Doc. no. 3 attached to the Initial Application).

9. On 21.10.2009, the Claimant, as an Investor within the meaning of the Venezuela-Canada Treaty, accepted the Defendant's proposal to arbitrate the dispute arising from the "Brisas Project", by submitting the Request for Arbitration which culminated in the delivery of the Arbitral Award (fact proven by Doc. no. 6 attached to the Statement of Claim).

10. The dispute decided by the Arbitral Award concerns the "Brisas Project", a set of mining concessions held by the Claimant, the Arbitral Tribunal concluded that these concessions were illegitimately terminated by the Defendant, in violation of the obligation of "fair and equitable treatment" of the Claimant's investment, under Article II, paragraph 2, of the Venezuela-Canada Treaty (fact proven by Doc. no. 2 attached to the Statement of Claim, cf. items 564 to 615).

11. On 17.07.2016, after the Arbitral Award was issued and notified to the parties, the Claimant and the Defendant entered into a Settlement Agreement, which was modified three times (a fact proven by Doc. no. 3 attached to the Reply to the Opposition, the content of which is reproduced).

12. The Settlement Agreement and the three subsequent amendments state that:

- The Defendant confessed to being fully liable for the amount it was ordered to pay in the Arbitral Award and agreed with the Claimant the terms under which it would pay that amount (see Clause 2.2 (a) of the Settlement Agreement, Doc. no. 3 attached to the Reply to the Opposition);
- The Defendant has expressly waived immunity from the jurisdiction of a) the arbitral tribunals constituted to settle disputes arising from the Settlement Agreement and b) the courts

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from which enforcement of decisions rendered by such arbitral tribunals is requested (see Clause 7 of the Settlement Agreement, Doc. No. 3 attached to the Reply to the Opposition).

13. After the award was rendered, both Parties requested that the arbitral award be corrected, which was rejected by the Arbitral Tribunal in a decision dated 15 December 2014 (see Doc. 4 attached, which corresponds to the Decision rendered by the Arbitral Tribunal on 15 December 2014 on the Parties' applications requesting corrections).

14. The Arbitral Award was the subject of an application for annulment by the Defendant, filed before the French Courts, the jurisdiction where the Arbitral Award was rendered, which has already been definitively judged unfounded by the Paris Court of Appeal on 7/02/2017 (see Doc. 5, which constitutes the decision of the Court of Appeal).

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III. THE RIGHT:

The object of this action is the recognition of a foreign arbitral award, which is regulated in our common law by the Voluntary Arbitration Act (LAV), approved by Law 63/2011 of 14 December (Chapter X), but with the express proviso in Article 55(1), of the 1958 New York Convention.

Therefore, article 55 of the LAV states, under the heading "need for recognition", that without prejudice to the mandatory provisions of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as well as other treaties or conventions binding the Portuguese state, awards rendered in arbitrations located abroad will only have effect in Portugal, whatever the nationality of the parties, if they are recognised by the competent Portuguese state court, in accordance with the provisions of this chapter of this law.

In turn, Article 56 of the LAV sets out the grounds for refusing recognition and enforcement, stating that:

1 - Recognition and enforcement of an arbitral award rendered in an arbitration located abroad may only be refused:

a) At the application requesting the party against whom the judgement is invoked, if that party provides the competent court before which recognition or enforcement is sought with proof that:

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i) one of the parties to the arbitration agreement was incapacitated, or the arbitration agreement is not valid under the law to which the parties subjected it or, in the absence of any indication in this regard, under the law of the country in which the award was rendered; or

ii) The party against whom the award is invoked was not duly informed of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise not given an opportunity to assert his or her rights; or

iii) The award deals with a dispute not covered by the arbitration agreement or contains decisions that go beyond the terms of the arbitration agreement; however, if the provisions of the award relating to matters submitted to arbitration can be separated from those that have not been submitted to arbitration, only the former can be recognised and enforced; or

iv) The constitution of the tribunal or the arbitral proceedings were not in accordance with the agreement of the parties or, in the absence of such an agreement, with the law of the country where the arbitration has taken place; or

v) the judgement has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the judgement was ; or

b) If the court finds that:

i) The subject matter of the dispute cannot be decided by arbitration under Portuguese law; or

ii) The recognition or execution of the judgement leads to a result that is manifestly incompatible with the international public order of the Portuguese state.

To these grounds, or to clarify them, it is important to add the lack of conformity with Public International Law, with European Union Law and with the Constitution (in this sense Luís Lima Pinheiro, in Direito Internacional Privado vol. III, tomo II- Reconhecimento de decisões estrangeiras pág. 287).

With regard to the New York Convention, Portugal acceded to it by depositing its instrument on 18 October 1994, following its approval for ratification by Assembly of the Republic Resolution No. 37/94, and subsequent ratification by Chairperson's Decree No. 52/94 of 8 July, which

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entered force on 16 January 1995 (see Ministry of Foreign Affairs Notice 142/95 of 21 June).

Therefore, it is clear that the rules contained in the New York Convention (CNI) are in force in the domestic legal system, as they are rules of international law with primacy and preferential application over domestic law, under the terms of Article 8(2) of the Constitution of the Portuguese Republic. If Article I(1) of the CNI states that this convention "shall apply to the recognition and enforcement of arbitral awards rendered in the territory of a State other than that in which the recognition and enforcement of the awards are sought". Under the terms of paragraph 3 of the same article, "any State may, on the basis of reciprocity, declare that it will apply the Convention to the recognition and enforcement only of awards rendered in the territory of another Contracting State."

The Portuguese State, using the prerogative granted by that provision, made the reservation that "within the scope of the principle of reciprocity, Portugal will only apply the Convention if the arbitral awards have been rendered in the territory of States bound by it." (cf. article 2 of Assembly of the Republic Resolution 37/94).

This primacy of international rules has been affirmed by doctrine and case law, an example of which is the STJ ruling of 23/10/2014 (Case no. 1036/12.4YRLSB.S1, available at www.dgsi.pt.), the summary of which reads: "I - This international treaty applies primarily to the review of an arbitral award rendered by an arbitral tribunal seated in a State that has signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, and the Portuguese state court, to which application requesting its recognition is made, is bound to refuse it if it finds of its own motion that the result reached in that decision is contrary to the international public policy of the Portuguese State".

This is why the provisions of Chapter X of the LAV, on the recognition and enforcement of foreign arbitral awards, have a residual scope of application, essentially applying to arbitral awards from states that have not ratified the New York Convention and with which Portugal has not signed any other international conventions in this area.

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The arbitral award whose recognition the Claimant seeks in this action was rendered by an Arbitral Tribunal constituted under the ICSID Additional Facility Rules, with its seat in Paris, France. Moreover, the French State is also a party to the CNI, by virtue of ratification on 26 June 1959 (see information available on the website https://newyorkconvention1958.org/ - Date of signature 25-11-1958; Date of ratification 26-06-1959; Date of entry into force 24-09-1959). The French national legislation on arbitration was amended in 2011 by "Décret no. 2011-48 du 13 janvier 2011 portant réforme de l'arbitrage", which can be consulted at https://www.legifrance.gouv.fr.

It should also be considered that the same award has become final, since it is true that after the award was handed down, both parties requested that the arbitral award be corrected, but this was rejected by the Arbitral Tribunal in a decision dated 15 December 2014. On the other hand, the Arbitral Award was also the subject of an application for annulment by the Defendant, filed before the French Courts, the jurisdiction where the Arbitral Award was rendered, which has already been definitively dismissed by the Paris Court of Appeal on 7/02/2017.

With regard to the grounds for recognising a "foreign" arbitral award, Luís de Lima Pinheiro (ob. cit., p. 280) states that they lie in the protection of the trust placed in definition of the disputed relationship by arbitration, the importance for the development of international trade, "if it combined with the practical effectiveness of court decisions, preventing enforcement from being impeded by the location of assets outside the state of the 'nationality' of the decision". But also respect for the self-determination of the parties, given that such arbitration has a contractual basis and must be based on a valid arbitration agreement. Given these foundations, the conditions are inherent in them or derive from the aims pursued by private international law. Thus, the parties' self-determination must be conditioned on "the arbitrability of the dispute under the law of the State of recognition, as well as the compatibility of the recognition of the decision with international public order". Alongside these, a minimum standard of substantive and procedural justice must also be considered. Finally, "the system of recognition has to be concatenated with state regulation and control of arbitration by

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States that have a particularly significant connection with the arbitration, especially the State of the seat of the arbitration".

Recognition will thus have to be assessed, bearing in mind that the provisions of the New York Convention will have to be applied, as well as, residually, the provisions of the LAV and the compatible common rules.

Before discussing this system, it is important to have in mind that Portuguese law, after the current wording of the LAV, adopted the system of assimilation, i.e. the system established for the recognition of foreign judicial decisions was applicable, with the necessary adaptations, to the recognition of foreign arbitral decisions. Currently, under the LAV, a foreign arbitral award is not treated in the same way as a "national" award and is subject to a recognition process, but the grounds for refusal are those set out in the New York Convention, and the refusal to recognise contained in article 56 of the LAV are based on the UNCITRAL (United Nations Commission on International Trade Law) Model Law and correspond substantially to those established by the New York Convention.

Article 1 (I) of the CNI states that: "This Convention shall apply to the recognition and enforcement of arbitral awards rendered in the territory of a State other than that in which the recognition and enforcement of the awards are sought and arising out of disputes between natural or legal persons. It shall also apply to arbitral awards which are not considered national awards in the State in which their recognition and enforcement are sought."

According to paragraph 2, "arbitral awards" means not only awards rendered by arbitrators appointed for specific cases, but also those rendered by permanent arbitration bodies to which the parties have submitted themselves."

In the case in point, there is no doubt that these rules have been laid down, so the case should be assessed in the light of the regime laid down in the CNI, without prejudice to the fact that many of the solutions enshrined in the LAV follow the regime laid down in that Convention

We must also consider Articles IV(4) and V (5) of the New York Convention Article, which states that: Article 5

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1 - In order to obtain the recognition and enforcement referred to in the previous article, the Party wishing to apply for recognition and enforcement must attach the following to its application:

a) The duly authenticated original of the judgement, or a copy thereof, provided the conditions required for its authenticity are met;

b) The original of the agreement referred to in Article II, or a copy thereof, provided the conditions required for its authenticity are met.

2 - If the said judgement or convention is not written in an official language of the country in which the judgement is invoked, the Party requesting recognition and enforcement shall have to submit a translation of the said documents into that language. The translation must be certified by an official translator or by a diplomatic or consular agent."

And in Article 4:

1 - Recognition and enforcement of the judgment shall be refused, at the request of the Party against whom it is invoked, only if that Party furnishes the competent authority of the country in which recognition and enforcement are sought with proof of: (a) that the Parties to the agreement referred to in Article II are incapacitated under the law applicable to them, or that the said agreement is invalid under the law to which the Parties have subjected it or, in the case of an omission, as to the law applicable under the law of the country in which the award is rendered; or (b) that the Party against whom the award is invoked has not been duly informed either of the appointment of the arbitrator or of the arbitration proceedings, or that it has been otherwise unable to present its defence; or c) that the award relates to a dispute which was not the subject of either the written agreement or the arbitration clause, or contains decisions which go beyond the terms of the written agreement or the arbitration clause; however, if the content of the award relating to matters submitted to arbitration can be separated from that relating to matters not submitted to arbitration, the former may be recognised and enforced; or d) that the constitution of the arbitral tribunal or the arbitration procedure was not in accordance with the agreement of the Parties or, in the absence of such an agreement, that it was not in accordance with the law of the country where the arbitration has taken place; or e) that the award has not yet become binding on the Parties, has been set aside

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or suspended by a competent authority of the country in which, or under the law of which, the judgement was rendered.

2 - Recognition and enforcement of an arbitral award may also be refused if the competent authority of the country in which recognition and enforcement have been applied for finds: (a) that under the law of that country the subject-matter of the dispute is not capable of settlement by arbitration; or (b) that recognition or enforcement of the award would be contrary to public policy in that country."

It should also be borne in mind that "there are formal requirements that, while not expressly mentioned in Article IV(1)(a), the arbitral award must fulfil, as they logically derive from the purposes of the recognition action" (cf. António Sampaio Caramelo, O Reconhecimento e Execução de Sentenças Arbitrais Estrangeiras, Almedina, 2016, p. 114).

Therefore, there is no doubt that recognition is being requested in Portugal and the Arbitral Award was rendered in France, and the Claimant has attached a certified copy of the Arbitral Award and a copy of the arbitration agreement, as well as the respective translations, so the formal requirements have been verified, as is the case under the terms of article 980(1)(a) and (b), and there is no violation of the provisions of the CNI and the LAV in its formal and authenticity aspects.

Furthermore, as provided for in Articles 3 and 5 of the CNI, "Contracting States are under an obligation to recognise and enforce arbitral awards rendered in other States, which shall only be waived if one of the grounds for refusal of recognition set out in the exhaustive list contained in Article V is proven". Thus, the CNI exclusively and exhaustively establishes all the grounds that can be invoked in refusing recognition, which is why it contains a favourable predisposition towards the recognition of arbitral awards. In fact, according to article 56 of the LAV or article 5 of the CNI, the international public order of the Portuguese state only acts as a ground for refusing recognition when this leads to a result that is manifestly incompatible with it. To explain, Luís Lima Pinheiro (in ob. cit. p. 287) states that the CNI precept should be interpreted "as referring to the international public order of the State of recognition, and in the sense that only the manifest incompatibility of the result of the recognition with the international public order of the State of recognition should be interpreted as referring to the international public order of the State of recognition, and in the sense that only the manifest incompatibility of the result of the recognition with the international public order of the State of recognition".

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the refusal of recognition". It should also be borne in mind that the recognition sought is only for the effects of the award as a judicial act, since the constitutive, modifying or extinguishing effect of legal situations that the arbitral award may produce as a legal act depends on the law applicable to the situations in question.

Having assessed the applicable rules and regulations, let's look at the grounds put forward by the defendant to prevent such recognition.

- The alleged immunity of the defendant Bolivarian Republic of Venezuela from the jurisdiction of Portuguese courts, under the terms of Articles 5 and 6 of the United Nations Convention on the Jurisdictional Immunities of States and Their Property, adopted by the United Nations General Assembly on 2 December 2004 (hereinafter "UNCITRAL").

The defendant maintains that it has immunity from jurisdiction, as a sovereign state, under the terms of Article 5 of the United Nations Convention on the Jurisdictional Immunities of States and Their Property, and that there is no doubt that this action for recognition of a foreign judgement is a case brought against a sovereign state that has jurisdictional immunity from the courts of the Portuguese state. It also argues that there is no commercial transaction at issue between the Republic of Venezuela and the Claimant, and that the exceptions provided for in Articles 11, 12, 14, 15 and 17 of the United Nations Convention do not therefore have any application, citing, in relation to the latter provision, that there would always be jurisdictional immunity in relation to enforcement measures. It also invoked the inapplicability, in relation to execution, of articles 19 and 20 of the same convention.

Firstly, as the Claimant rightly explains, she is clearly not right for three reasons:

a) Because the present action is only for recognition of the Arbitral Award, it is not appropriate at this stage to invoke (or verify) the immunity of the State of Venezuela the enforcement of that Award;

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b) Because the Defendant, by means of the arbitration agreement it signed with the Claimant, waived its immunity from jurisdiction, as results, inter alia, from Article 17(c) of the United Nations Convention on the Jurisdictional Immunities of States and Their Property (hereinafter "UNCITRAL"): in other words, it is one of the cases of exception to immunity from jurisdiction; and furthermore

c) Because the Defendant, by expressly referring to the CNI, consented to the exercise of jurisdiction by the courts to which recognition of the Arbitral Award was applied for, which fulfils the assumptions of the legal hypothesis of Article 7(1)(a) of the CNUIJ.

In addition to all of the above, the following grounds, in conjunction with the applicable regime, do not exist: none of the exhaustive grounds set out in Article 5 (V) of the CNI and Article 56 of the LAV that allow for the refusal to recognise the arbitral award. Furthermore, the defendant recognised and accepted the decision because, on 17 July 2016, after the Arbitral Award had been rendered, it entered into a Settlement Agreement with the Claimant, in which it confessed the debt and agreed with the Claimant the terms under which it would pay that amount. This situation requires consideration of both the invocation of immunity in order to rule it out, as well as the abuse of rights that will be mentioned following.

In Portugal, the United Nations Convention on Jurisdictional Immunities of States and Their Property (ICJEB) was signed by Assembly Resolution 46/2006 of 2006.04.20, published on 2006.06.20 and ratified by the Chairperson of Republic by Decree-Law 57/2006.

The Convention affirms the principle of the immunity of states, except in situations where it has expressly or implicitly waived immunity and in situations where immunity is refused in the case of commercial transactions, labour agreements, damage to persons and property, ownership, possession and use of property.

However, in view of the provisions of Article 30 of the Convention, its entry into force was dependent on the deposit of the 30th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations. So far, however, only thus

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Twenty-one signatory states have ratified the Convention, which means that, although it has already been ratified by Portugal, it cannot yet be considered to be in force.

Nevertheless, as Jónatas E. Machado states (in "Direito Internacional", Coimbra Editora, 4th ed., p. 242), even before the entry into force of the United Nations Convention on Jurisdictional Immunities of States and Their Property, and even with regard to non-adhering states, it can be said that it expresses, in its essential features, the customary law in force in this field. Jurisdictional immunity of foreign states is therefore a rule of international law according to which a sovereign state cannot be sued in the courts of another state.

The doctrine of immunity from the jurisdiction of the state and its property has as its basis: 1) deference to the prerogatives of sovereignty of the defendant state; 2) the practical impossibility, in many cases, of enforcing a judgement rendered against it by the forum state; 3) the notion that, in a conflict between sovereign states, the courts of one of them, in their capacity as sovereign bodies, do not offer guarantees of independent and partial justice (Claimant in ob. Cit. Page 239).

Now that the principle of Immunity from Jurisdiction has been abandoned in absolute terms - in which immunity covered all acts of the state whenever it was sued or prosecuted by a court in another state - this principle is now based on the distinction between acts of empire (*acta ius imperii*) and acts of management (*acta jure gestationem*). The former are those performed by the state in the exercise of its sovereign power, and the latter are those performed by the state on equal terms with private individuals, i.e. acts of law and private interests (cf. Juliana de Souza Guimarães, "A Imunidade de Jurisdição do Estado seu Cenário Contemporâneo e na Jurisprudência Brasileira Trabalhista", in RIDB, Ano 2 (2013), nº 14, p. 16991, available on the net at www.cidp.pt).

According to José Lebre de Freitas, the current trend, which has into account developments in more recent international legislation, although not binding on the Portuguese state, is to restrict immunity to acta *iure imperii* (in "Código de Processo Civil Anotado", Vol. 1, Articles 1 to 361, 3rd edition, Coimbra Editora 2014, p. 125).

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Thus, in the consolidation of the relative theory of the state's immunity from jurisdiction, acts of management (concerning private acts and agreements) are currently excluded from it, and only acts carried out under the name of acts of empire are considered to be immune from the jurisdiction of states.

Thus, Article 5 of the ICJEB enshrines the general principle of the immunity of states, and this immunity from the jurisdiction of the state constitutes a guarantee that the state enjoys in relation to itself and its property and which prevents other states from exercising jurisdiction over the acts it carries out in the exercise of its sovereign power.

However, adhering to the theory of relative immunity from jurisdiction, Part III of the ICJEB provides that in certain judicial proceedings the state may not invoke immunity by refusing it when commercial transactions, labour agreements, damage to persons and property, ownership, possession and use of property, intellectual or industrial property, participation in a company or other legal persons and ships owned or operated by a state are at issue.

As alluded to in the STJ judgement of 7.12.2006 (in.www.dgsi.pt): "(Immunity) has its basis in deference to the defendant state's prerogative of sovereignty; the practical impossibility, in many cases, of enforcing a judgement rendered against it by the forum state and the notion that in a conflict between sovereign states, the courts of one of them, in their capacity as sovereign bodies, do not offer the guarantees of independent and impartial justice.

From the outset, the sovereign immunity of states includes "procedural immunity", under which a state, including any of its constituent units, organs, entities exercising prerogatives of sovereignty or representatives, cannot be submitted to the internal jurisdiction of another state without its consent, and domestic legal systems must ensure the existence of a procedural exception of lack of jurisdiction.

The increase in state activity led to a distinction between acts of government (*jus imperii*) and acts of a commercial nature (*jure gestiones*), denying immunity from jurisdiction in the latter case - this is the doctrine of restrictive or relative immunity.

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Thus, it has been understood that the guarantee of immunity can be absolute - when a state simply refuses to submit any act of another state to its jurisdiction - or relative - when the recognition of immunity is based on distinctions, such as those that distinguish between acts *iure imperurim* and acts *iure gestiones*, based on the nature and purpose of the act, subjecting only the latter acts to the jurisdiction of another state.

Hence the importance of the distinction between acts of sovereign authority or empire, in which the state behaves as a sovereign entity, and acts of private law, in which the foreign state carries out acts as a legal person, which are not proper to its quality as a sovereign entity.

Therefore, only if a state acts without the *jus imperium* is it understood that that state can be held responsible in another state and be subject to its jurisdiction."

It is also important to have in mind that immunity from jurisdiction and immunity from execution are different institutes. The former establishes the impossibility of a sovereign state being a party to an action in the court of another sovereign state; the latter determines the impossibility of certain assets of a sovereign state being the object of enforcement measures in another sovereign state. The first is determined according to the quality of the person, by reference to the entity that benefits from it; the second is determined in relation to the nature of the assets, the purpose for which the assets are used (if Jónatas E. M. Machado, in ob. Cit. p. 242).

Therefore, the defendant's call for enforcement is irrelevant, as it is not the subject of this action.

Furthermore, the defendant cannot also invoke the prerogative relating to immunity from jurisdiction, since a sovereign country can waive or renounce such immunity, as provided for by Article 8 of the ICJEB. Moreover, in addition to such a waiver under the aegis of the ICJEB, the Washington Convention should also be mentioned, which was approved for ratification by Portuguese Government Decree no. 15/84 of 3 April, namely in the part relating to such a waiver in the light of article 54 of the same Convention, even if it is applicable in terms of enforcement, although this is not known in this decision, nor is it useful in the application for recognition.

However, in the specific case, it is more evident if such an invocation by the sovereign state is non-existent or ineffective, given the agreement or treaty established between the parties, by the

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that the Defendant cannot invoke immunity from the jurisdiction of the Portuguese courts in the present action because the conditions of the legal hypothesis in Article 7(1)(a) of the UNCITRAL are fulfilled, that is to say, the Defendant has consented to the exercise of jurisdiction. Article 7 of the UNCITRAL provides that: A State may not invoke immunity from legal proceedings in a court of another State in respect of a matter or dispute if it has expressly consented to the exercise of jurisdiction by that court in respect of that matter or dispute: a) By international agreement.

In fact, it is undeniable that the arbitral award was rendered under the "Agreement between the Government of Canada and the Government of the Republic of Venezuela for the Promotion and Protection of Investments" of 1 July 1996, attached hereto as doc. no. 3, the content of which is reproduced. This agreement, signed on 1 July 1996 between the Governments of Canada and the Republic of Venezuela, took effect on 1 January 1998, and aimed to guarantee the protection of investments by investors from the States Parties in the territory of the other State , thereby promoting economic initiative and the development economic cooperation between the two countries (see the preamble to the Agreement, attached as Doc. 3). In that Treaty, the Defendant consented to settle disputes arising from it by arbitration by issuing, in Article XII, a unilateral offer to arbitrate to any "Investor" within the meaning of that Treaty: "Settlement of disputes between an investor and the Host Contracting Party [...] 2. If a dispute has not been settled amicably within six months from the date on which it was initiated, it may be submitted by the investor to arbitration in accordance with paragraph 4 [...]". It is further stipulated that the dispute may be submitted to arbitration by the investor concerned under the terms of: [...] (b) of the ICSID Additional Facility Rules, provided that the Contracting Party to the dispute or the investor's Contracting Party, but not both, is a party to the ICSID Convention [...]. "Each Contracting Party gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article." (fact proven by Doc. No. 3 attached the Statement of Claim); It should also be emphasised that Article XII(6)(a)(ii) of the Canada-Venezuela Treaty reaffirms the existence of a written arbitration agreement between the Claimant and the Defendant, by providing that: "6. (a) The consent given under paragraph 5, together with the consent given under paragraph 3, or the consents given under paragraph 12,

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(ii) the existence of a "written agreement" for the purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, York")." (fact proved by Doc. no. 3 attached to the Statement of).

As we have mentioned, in addition to this treaty, which notoriously removes the defendant's desire to invoke immunity by waiving it, on 17 July 2016, after the Arbitral Award was issued and notified to the parties, the Claimant and the Defendant entered into a Settlement Agreement, which was amended three times. The Settlement Agreement and the three subsequent amendments state that:

− The Defendant confessed to being fully liable for the amount it was ordered to pay in the Arbitral Award and agreed with the Claimant the terms under which it would pay that amount (see Clause 2.2 (a) of the Settlement Agreement, Doc. no. 3 attached to the Reply to the Opposition);

- The Defendant expressly waived immunity from the jurisdiction of a) the arbitral tribunals constituted to settle disputes arising from the Settlement Agreement and b) the courts from which enforcement of decisions rendered by such arbitral tribunals is application requested (cf. Clause 7 of the Settlement Agreement, Doc. no. 3 attached to the Reply to the Opposition).

, the objection in question is unfounded.

• The alleged violation of the public order of the Portuguese State

In its defence to the refusal of recognition, the defendant points out that it has been unanimously understood that if a judgment, in the light of the Portuguese legal system, is perceived as unfair or inadequate, or if it imposes disproportionate or irrelevant obligations on the Portuguese state, it can be refused. Or if it offends against fundamental principles of the Portuguese legal order.

It claims that the judgement in question, in condemning Venezuela for violating the obligation to grant the Claimant fair and equitable treatment under Article II(2) of the BIT, made certain "opinions" and value judgements about the decision adopted by the Venezuelan administration which, in the Defendant's view, are a manifest attack the fundamental principles and rights of a democratic state governed by the rule of law, incurs: a violation of the Portuguese legal order as a rule of constitutional principles; secondly, a violation of the Portuguese legal order as a rule of constitutional principles; and thirdly, a violation of the Portuguese legal order as a rule of law.

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thirdly, the violation of the Portuguese legal order as a rule of manifest violation of the principle of non-interference and, thirdly, the violation of the Portuguese legal order as a rule of manifest violation of the principle of proportionality.

To this end, it relies on decisions that state that the judgement is incompatible with the principles of international public order of the Portuguese State - Article 980(f) of the Code of Civil Procedure. Arguing that this is because the decision of the judgement violates the principle of the superior interest of the State, in the primacy of collective interests and state sovereignty over individual or private interests. It also states that in this context there is a violation of the principle of proportionality and weighting, both in the grounds and in the calculation made, which, in the defendant's view, is based precisely on the dichotomy: on the one hand, the protection of Venezuela's internal laws, its obligations towards the environment, and the protection of indigenous peoples, and on the other hand, the economic interests of Gold Reserve in maintaining the Brisas Concession. In conclusion, if the latter were to prevail, this would jeopardise public order.

On the other hand, it also claims that recognition would violate the principle of non-interference, as it believes that this determines interference in the defendant's internal affairs, which is one of the pillars of international law and peaceful coexistence between states, without there being any connection with the Portuguese legal order.

There is clearly no violation of the State's principles of international public order, or even a violation of constitutional or European Union rules. In fact, similarly to the interpretation of Article 980(f) of the CPC, i.e. the requirement that the judgement does not contain a decision whose recognition leads to a result that is manifestly incompatible with the principles of international public order of the Portuguese state, Ferrer Correia (Lições de Direito Internacional Privado I, Almedina, 2000, p. 406) states that each state has its own fundamental legal values, which it believes it should not give up, and interests of all kinds, which it considers essential and which it must protect in any case. This implies that the application of foreign law will be refused "to the extent that such application would jeopardise some basic principle or value of the national legal system, which is held to be irrevocable, or some interest of primary importance to the local community". So, to repeat the quote from Ferrer Correia (above-mentioned work, p. 483), "it is not, therefore, the

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The decision itself counts, but the result that its recognition would lead to. The decision can be based on a rule which, considered in the abstract, would be said to be contrary to the international public order of the Portuguese state, but whose concrete application is not."

Furthermore, the introduction of the adverb "manifestly" is intended to emphasise the exceptional nature of public order intervention.

In the words of the Supreme Court of Justice, "the exception of international public policy or reservation of public policy provided for in Article 1096(f) only has a place when the application of cogent foreign law results in flagrant contradiction with and gross violation or intolerable offence of the fundamental principles that shape the national legal order and thus the conception of justice of substantive law, as understood by the State. Confirmation of foreign judgements should only be denied if they contain in themselves, and not in their grounds, decisions contrary to the international public order of the Portuguese state - a more limited nucleus than that corresponding to the so-called internal public order, which is historically defined according to the economic, social and political values that society cannot do without, but which operates in each specific case to avoid the shocking results that may arise from the application of foreign law. The reservation is therefore only appropriate if the result of the application of foreign law contradicts or undermines the fundamental principles of the domestic legal order, jeopardising interests of the utmost dignity and transcendence, and is therefore "such as to shock the conscience and provoke an exclamation" (judgement of 21 February 2006, www.dgsi.pt, case 05B4168).

In this case, we must refer to the CNI and the aforementioned, in the sense that under the terms of Articles III and V of the CNI, "the Contracting States are under an obligation to recognise and enforce arbitral awards rendered in other States, which only ceases if one of the grounds for refusal of recognition set out in the exhaustive list contained Article V is proven" (António Sampaio Caramelo, in "O reconhecimento e execução de sentenças arbitrais estrangeiras perante a Convenção de Nova Iorque e Lei de Arbitragem Voluntária, Coimbra, Almedina, 2016, p. 127). 127).

Thus, as national and international doctrine and jurisprudence peacefully understand, this Convention contains a predisposition in favour of the recognition of

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arbitral awards. It is true that one of the grounds that can lead to the refusal to recognise and enforce foreign arbitral awards is that "the recognition or enforcement of the award is contrary to the public policy of that country" (cf. Article V/2/b) of the CNI), which, under the terms of Article 56.71/b/ii) of the LAV, is concretised as follows: "the recognition or enforcement of the award leads to a result that is manifestly incompatible with the international public policy of the Portuguese State".

The recent STJ ruling of 22/06/2023 (case no. 991/20.5YRLSB.S1, in www.dgsi.pt) reaffirms this principle, ruling that:" With regard to the ground for refusing to recognise and enforce foreign arbitral awards, which is contrary to international public policy, our domestic law (Article 56(1)(b)(ii) of the LAV) provides for a more favourable regime for such recognition than that provided for in the CNI (Article V(2)(b)).Therefore, with regard to this specific ground for refusing to recognise and enforce foreign arbitral awards, in accordance with Article 7(1) of this Convention, our domestic law is applicable."

It should be noted that the "international public order of the Portuguese state" is not to be confused with its internal public order: while the concept of material or internal public order corresponds to the fundamental principles and rules of each legal order, which pursue fundamental public interests, determining the nullity of facts or situations that are contrary to them and limiting private autonomy, the concept in question here is the one used in private international law, also known as the reservation or exception of international public order, which is a means of control and a basis for refusing to apply foreign law and/or recognise and enforce foreign judgements. In terms of content, material or internal public policy and the reservation of international public policy partially coincide, the former being more comprehensive and including the latter, which is a more restricted nucleus (cf. António Sampaio Caramelo, in ob. cit. p. 117 et seq.).

As stated in the Court's judgement of 19/11/2019, "international public order is restricted to the essential values of the Portuguese State. Only when our higher interests are jeopardised is it not possible to tolerate the declaration of law made by a foreign legal system."

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But the offence to the public order of the State in which the award is being applied for has to result directly from this and not from the content of the award to be recognised, as was decided in the STJ decision of 21/03/2023, even though it referred to an arbitral award: "The state court does not retry the dispute decided by the arbitral tribunal in order to verify if it would reach the same result as that reached by the arbitral tribunal, it only has to verify if the award, by the result to which it leads, offends any principle considered essential by the legal order, hence the contravention of the international public order of the Portuguese State (...) presupposes that the decision leads to a result that is intolerable and unassimilable by our community, as it constitutes an effective gross violation of the dominant ethical-legal sentiment and interests of our community.... presupposes that that decision leads to a result which is intolerable and unacceptable to our community, as it constitutes an effective gross violation of the prevailing ethical-legal sentiment and of major interests or structuring principles of our legal order." (Case No 2863/21.7YRLSB.S1, available at www.dgsi.pt.).

The negative wording contained in Article 5(V)(2)(b) of the CNI has been interpreted restrictively, referring only to international public order relevant to private international law, so it cannot be invoked in the simple violation of any rule of immediate or necessary application in force in the legal order of the forum state to trigger the action of the reservation of international public order. As Luís Lima Pinheiro points out (in ob. cit. p. 324) the violation of a rule of immediate or necessary application will only be relevant for this purpose when, at the same time, this rule constitutes a fundamental principle structuring the Portuguese legal order (which includes fundamental principles of international legal order and the legal order of the European Union). The same author specifically states that "deciding the merits of the case on the basis of extra-state rules or principles (namely *lex mercatoria* or public international law) does not, as such, constitute a violation of public international order; it is the solution given to the case and not the source of the decision-making criteria" (p. 325).

The decision rendered does not violate the international public order of the Portuguese State, since our legal system applies rules and principles similar to those applied by the Arbitral Tribunal, such as the promotion and protection of investments, and private autonomy, but also the rules relating to the calculation of compensation.

As the Claimant rightly points out, and we support her view, in the case in point, the balance between the principle of pursuing the public interest and fundamental rights must be weighed up.

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or private interests of investors, protected by an international convention to which the Venezuelan State is a party-Contracting Party, was assessed by the Arbitral Tribunal in the Arbitral Award. Therefore, the result reached is not manifestly incompatible with the principle of pursuing the public interest, nor with the principle of proportionality that is applied when weighing up the two conflicting principles and/or rights in question. We also believe that the defendant is mistaken, because with specific regard to the "principle of the superior interest of the State", what needs to be ascertained is if recognising the Arbitral Award violates the fundamental values of the Portuguese legal system and not the superior interest of the State of Venezuela.

The international public order of the Portuguese state is not to be confused with its internal public order: if the latter refers to the set of imperative rules of our legal system, constituting a limit to private autonomy and contractual freedom, the international public order is restricted to the essential values of the Portuguese state. Only when our higher interests are jeopardised by the recognition of a foreign judgement, considering its outcome, is it not possible to tolerate the declaration of law made by a foreign legal system. So it is only if the outcome of that judgment flagrantly clashes with the first-rate interests protected by our legal system that the foreign judgment should not be recognised.

The STJ ruling of 26 September 2017, rendered in case no. 1008/14, which can be accessed at www.dgsi.pt, stating the following: "In any case, there is a broad consensus that the content of this clause is shaped by the structuring principles of the legal order, such as those that, due to their relevance, are part of the constitution in the material sense, since it is constitutional rules and principles, especially those that protect fundamental rights, that not only inform but also shape the international public order: the Constitution reflects the most significant values that shape the structural plan or the fundamental legal order of a national community, so it is on the rules of constitutional hierarchy that the state's international public order rests, as we noted above.

The same is true of the fundamental principles of European Union law. They are also referred to as part of the international public order of each country.

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These include fundamental principles such as good faith, good customs, the prohibition of abuse of rights, proportionality, the prohibition of discriminatory or exploitative measures, the prohibition of punitive damages in civil matters and the basic principles and rules of competition law, both from EU and national sources. However, since they have a broad or indeterminate normative content - albeit more so in some cases than others - invoking their violation as grounds for annulling an arbitration award will have to be subject to sharp restrictions. And this is the interpretative direction that, in one way or another, has been pointed out by case law and doctrine in general. (...) As has been said, it is not a question here of speculating on a hypothetical divergence between the rules of law used in the arbitration award and those that would be applied by the state courts, or of assessing the adequacy of the grounds of fact or law used by the state courts in realising the statutory consequences of the (declared) breach (...). It doesn't matter which law is applied to the merits of the case in the judgement in question, as it is only a question of if the result of the judgement, by its content, violates structural principles of our legal system, to the item where the latter cannot tolerate it as a valid and binding solution to the dispute it deals with.

And, for the same reasons, the merits of the assessment made by the majority of the arbitrators as to the balance of the interests at stake (...) do not fall within the scope of this enquiry either."

In fact, given all of the above, there is an even more relevant factor in not considering this ground of opposition, since it is not the object of the recognition to re-examine the merits of the decision adopted in the Arbitral Award, beyond the assessment of the alleged manifest incompatibility of the recognition of the Arbitral Award in Portugal with the international public order of the Portuguese State, what needs to be determined in these proceedings is not if the weighting made in the Arbitral Award between the environmental interests of the Venezuelan State and the economic interests of Gold Reserve offends the superior interests of the Venezuelan State, since such a judgement would naturally imply a re-examination of the merits of that decision and would correspond to an appeal of the decision on the merits itself, and not to a control according to the international public order of the Portuguese State.

There has also been no violation of the principle of non-interference in the internal affairs of other states, in particular the State of Venezuela, laid down in Article 7(1) of the Charter of Fundamental Rights of the European Union.

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Constitution of the Portuguese Republic. This presupposes the presumption of international validity of arbitral awards rendered in the territory of other states and the obligation to recognise and enforce them in their territories, which constitutes the fulfilment of an international obligation assumed by the Portuguese state vis-à-vis the Venezuelan state as a party to the CNI.

Finally, the invocation of a violation of the principle of proportionality is irrelevant, since the calculation contained in the award cannot be analysed by this Court, and it should not be forgotten that Gold Reserve and the Venezuelan State signed a Settlement Agreement in which the Venezuelan State acknowledged that it owed the amount of compensation that it was ordered to pay through the Arbitral Award, which was the subject of three amendments in which the Venezuelan State again acknowledged that it owed that amount.

The result is that the opposition's argument is unfounded.

- The Claimant's alleged abuse of rights in bringing this action The defendant repeats the arguments it has put forward and which relate to the violation of the principle of the

proportionality, or interference, calling on issues related to the possible execution of the decision, to substantiate the abuse of rights.

For all the above reasons, it is not substantiated, nor if the requirements of abuse of rights are verified, nor is such an invocation contained in the possibility allowed by the CNI.

In fact, it is clear from the arbitration award that it settled a dispute related to a set of mining rights concessions in Venezuela and the investments made by the Claimant under that concession in the Defendant's territory under an Agreement between the Government of Canada and the Government of the Republic of Venezuela for the Promotion and Protection of Investments. The arbitral tribunal ordered the Defendant to pay compensation that does not appear to be disproportionate, given the nature of the agreements and the large investments they require. Nor does the decision appear arbitrary, since it is clear from the documentary evidence that the arbitral tribunal has taken into consideration the

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circumstances of the specific case. And both parties have consented to the jurisdiction of an arbitral tribunal.

In conclusion, this ground for refusing to recognise the arbitral award that is the subject of this action does not exist either, nor does any other, and therefore recognition in the terms sought by the Claimant is required.

The defendant will also be responsible for paying the costs of the action - cf. article 527 of the Code of Civil Procedure.

*

IV. DECISION:

For all the above reasons, it is agreed to uphold the present action and, consequently, the Arbitral Award rendered unanimously in Paris, France, on 22 September 2014, by the Arbitral Tribunal constituted under the ICSID Additional Facility Rules, composed of Arbitrators Professor Pierre- Marie Dupuy, Professor David A.R Williams QC and Professor Piero Bernardini, seated in Paris, France, under ICSID Case No. ARB(AF)/09/1, in which the defendant was ordered to pay the claimant:

i) compensation in the amount of USD 713,032,000.00, plus interest accrued from 14 April 2008 until the date of the Arbitral Award, calculated at the interest rate for US Government Treasury Bills, compounded annually, which corresponded to USD 22,299,576.00 on the date of the Arbitral Award, making a total of USD 735,331,576.00;

(ii) interest accruing on the total amount referred to in (i), at LIBOR plus 2 per cent, compounded annually, from the date of delivery of the Arbitral Award until payment in full; and

(iii) to reimburse the Claimant the amount of USD 5,000,000.00, as compensation for the costs and expenses incurred by the Claimant in connection with the arbitration.

Value of the claim:€ 30,000.01. Costs for the defendant.

Register and notify.

Lisbon, 20th February 2025

Case: 108/24.7YRLSB
Reference: 22710387

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Revision/Confirmation of a Foreign Judgement

Gabriela de Fátima Marques Teresa

Pardal

Nuno Gonçalves