

Dutch Supreme Court reinstates PDVSA awards set aside due to corruption

by *Practical Law Arbitration* with *Van Oosten Schulz De Korte Advocaten*

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In *Wells v Bariven* (ECLI:NL:HR:2021:1171), the Dutch Supreme Court annulled the Appeal Court's decision setting aside an award due to corruption and, reinstated the award.

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The Dutch Supreme Court has annulled the Court of Appeal in The Hague's decision in which it had set aside an award due to corruption and reinstated the award.

Upon an application by Bariven (a subsidiary of Venezuelan state giant, PDVSA), the Court of Appeal had, due to corruption, set aside an ICC award ordering Bariven to pay USD12 million to Wells for the purchase of propulsion engines (see [Legal update, Dutch court sets aside ICC award holding that underlying agreement was influenced by corruption \(Court of Appeal in The Hague\)](#)).

Wells appealed that decision to the Supreme Court and the Attorney-General advised the Supreme Court to reject the appeal (see [Legal update, Attorney-General advises Dutch Supreme Court to reject cassation of decision setting aside an award due to corruption](#)).

The Supreme Court ruled that the tribunal's finding (obiter dictum) that Bariven would need to compensate Wells for the engines in the amount of the purchase price, in itself justified the tribunal's order. The tribunal's finding was part of its assessment of Wells' principal claim, which was based on two separate grounds (payment pursuant to the agreement and payment of compensation for the engines if the agreement was null and void).

According to the Supreme Court, the setting aside application could only be granted if Bariven successfully submitted grounds to set aside both separate bases of the tribunal's order. As Bariven had only invoked grounds to set aside the tribunal's order for payment pursuant to the agreement, the Appeal Court was wrong to set aside the award. Even if the underlying agreement was influenced by corruption, Bariven still needed to compensate its vendor Wells for the goods delivered.

Contrary to the Appeal Court and the Attorney-General, the Supreme Court did not find that allegations of corruption allow state courts to perform a full review on the merits despite procedural rules preventing a re-hearing of an arbitration. The decision also confirms that parties and arbitrators should duly address separate bases of a claim, especially if the claim is partially based on an agreement that may be considered null and void. This is so in particular with regard to potential proceedings to set aside.

Case: *Wells v Bariven* (ECLI:NL:HR:2021:1171) (16 July 2021).

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