

Court of Appeal in The Hague upholds award requiring Ecuador to prevent enforcement of corrupt judgment

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

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In *Ecuador v Chevron and others* (ECLI:NL:GHDHA:2022:1122), the Court of Appeal in The Hague upheld an award ordering Ecuador to take measures to prevent the enforcement of an Ecuadorian judgment rendered by a corrupt judge.

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The Court of Appeal in The Hague has upheld a second partial award in an investment treaty arbitration between Chevron and Ecuador ordering Ecuador to take measures to prevent the enforcement of an Ecuadorian judgment, which was in part written by representatives of the claimants in return for compensation to the judge.

The court confirmed the first instance decision (see [Legal update, District Court in The Hague denies Ecuador's application to set aside track II award in favour of Chevron](#)), dismissing Ecuador's arguments that the tribunal had violated its mandate, that the award was not reasoned and that the award would violate public order.

First, the court ruled that the fact that the Ecuadorian legal system did not provide a remedy to overturn the corrupt judgment, or for an order to prevent the enforcement of the judgment inside and outside of Ecuador, did not mean that the tribunal had ordered Ecuador to do the impossible, in violation of international law. The court interpreted the award not to mean that Ecuador must guarantee that the judgment could not be enforced, but to order Ecuador to take measures within its power to prevent enforcement. The fact that a corrupt Ecuadorian judge rendered a judgment ordering Chevron to pay USD8.6 billion cannot be considered to be at the expense and risk of Chevron instead of Ecuador.

The court also held that the tribunal's order that Ecuador take measures to prevent enforcement "to the satisfaction of the tribunal" did not violate the *functus officio* principle. The award was final and binding and merely allowed the tribunal to assess if Ecuador complied with the order at a later stage in the arbitration. Further, the court ruled that the tribunal did not render a surprising decision, as Ecuador itself admitted that essential defences were observed but rejected. Moreover, in earlier interim awards, the tribunal also ordered Ecuador to take measures to prevent the enforcement of the judgment (see [Legal update, Dutch Supreme Court upholds interim and partial final arbitral awards in Chevron-Ecuador saga](#)), so that a similar order being included in the award was not surprising.

Lastly, the court found that that tribunal had not ignored Ecuador's essential defence that restitution could not be imposed pursuant to article 35 of the International Law Commission Articles on State Responsibility, as the tribunal had substantiated why it considered the order to be an appropriate form of restitution.

Case: *Ecuador v Chevron and others* (ECLI:NL:GHDHA:2022:1122) (28 June 2022).

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