

# Court of Appeal in the Hague rejects claim to set aside award and confirms tribunal's finding that claimant failed to bring a claim within time

by *Practical Law Arbitration*, with *OSK Advocaten*

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In *X v Mongolia* (ECLI:NL:GHDHA:2023:318), the Court of Appeal in the Hague refused to set aside an award and confirmed the tribunal's finding that the claimant had failed to bring a claim in the quantum phase of the arbitration within time.

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The Court of Appeal in The Hague has rejected a Russian citizen's claim to set aside a 2018 arbitral award made in a Dutch-seated investment arbitration against Mongolia. The court confirmed the tribunal's finding that the claimant had failed to bring a claim of over USD1 billion in 2011 in a timely manner under the Agreement on Encouragement and Reciprocal Protection of Investments between the Russian Federation and Mongolia.

First, the court ruled that the arbitral tribunal was not *functus officio* by the mere expiry of a 30-day deadline for bringing a claim for damages previously set during the arbitration. The court held that, pursuant to the UNCITRAL Arbitration Rules, which applied here, an order to that effect from the tribunal was necessary for the arbitration to end, which the tribunal had not done at the time it ruled that the claimant's claim for damages was out of time. The fact that the tribunal had deposited earlier awards on jurisdiction and liability with the District Court in The Hague did not change that fact.

The court then ruled on whether the award could be set aside (assuming that the later order confirming the termination of the arbitration qualified as such). In assessing this, the central question was whether the arbitral tribunal was entitled to rule that the effect of the expiry of the 30-day period was that the claimant's right to claim damages had lapsed. The court ruled that the 30-day deadline should be considered as a deadline with consequences of which the claimant was evidently aware, as demonstrated by the claimant's request for an extension of an earlier deadline to pursue its claim for damages.

The court also ruled that there was no denial of justice because the claimant had not been deprived of the right to bring a claim for damages. For the same reason, there was no surprise decision in which the claimant's right to be heard was violated.

Lastly, the court ruled that, although it assumed that the order confirming the termination of the arbitration should be considered a final arbitral award, that did not mean that the order, which was signed by the chair only, must also meet the formal signature requirements applicable to an arbitral award, which include a requirement that the award is signed by all arbitrators. Moreover, the chair had confirmed that the order was supported by the other arbitrators.

Case: *X v Mongolia* (ECLI:NL:GHDHA:2023:318) (28 February 2023).

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