

Court of Appeal in The Hague upholds award in which tribunal declined jurisdiction

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

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In *Güris v Bursa (NL:GHDHA:2023:999)*, the Court of Appeal in The Hague refused to set aside an award, ruling that state courts lack power to set aside an award if the tribunal declines jurisdiction.

Geert Wilts, OSK Advocaten

The Court of Appeal in The Hague has upheld an award in which the tribunal declined jurisdiction to rule on a dispute concerning a claim by Güris about delay in the construction of a subway in the Turkish city of Bursa. In two earlier arbitrations, a different tribunal had issued an award, rendered by only two of three arbitrators, rejecting Güris' claim to damages, and another tribunal had issued an award declining jurisdiction.

The court ruled that the available ground to set aside an award for lack of an arbitration agreement does not provide for the setting aside of an award where the tribunal declines jurisdiction, as confirmed by the Dutch Supreme Court in *Claimants v Venezuela (NL:HR:2023:636)*. In such cases, access to justice within the meaning of Article 6 of the European Convention on Human Rights is not at stake, because the dispute can be submitted to state courts. Moreover, the court considered that Güris had disputed the jurisdiction of the Dutch courts in court proceedings initiated by Bursa to establish that it had no liability towards Güris, and in court proceedings initiated by Güris to set aside the earlier award declining jurisdiction, in which Bursa filed a counterclaim to establish that it had no liability towards Güris. Furthermore, Güris did not appeal after a Turkish court declined jurisdiction.

Also, the court refused to set aside the award for violation of the tribunal's mandate, as that would allow an award in which the tribunal declined jurisdiction to be set aside after all, in circumstances where the tribunal's mandate had ended on issuing an award declining jurisdiction. The court also refused to set aside the award for violation of public order. The fact that Güris could challenge an award accepting jurisdiction and not an award declining jurisdiction is a consequence of the legal system.

Lastly, the court observed that, following the amendment of the Dutch Arbitration Act in 2015, the present situation could not have occurred, as majority awards no longer terminate the arbitration agreement (thereby creating the jurisdiction of the state courts) but allow another arbitration to be commenced.

The judgment is another disappointing outcome for Güris in more than two decades of litigation in which both parties seemingly have taken inconsistent positions. Apart from an appeal to the Dutch Supreme Court, arbitration or litigation in the Netherlands no longer appears to be an option for the parties.

Case: [Güris v Bursa \(NL:GHDHA:2023:999\)](#) (6 June 2023) (Dutch language).

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