Award Without Damages Rendered Against Egypt in Cementos la Union

By:

Munia El Harti Alonso

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On 30 October 2020 the award in *Cementos la Union* was rendered against Egypt.[1] The case was filed 7 years ago by Spanish construction company Cementos la Union, based on the Egypt-Spain BIT of 1992. The BIT provided for a general approach to the scope of the claims (Article 1), as well as ICSID in the choice of forum clause (Article 11.2). Claimants are *Cementos la Union*, "the second largest cement producer in Egypt through its majority stake in the Arabian Cement Company", [2] and Spanish investment fund Aridos Jativa.[3]

The dispute arose in relation to a cement operating license awarded to *Cementos la Union* for a cement operating plant.[4] It was reported that before the operating plant was due to operate in 2008, Egypt implemented new measures requiring the Arabian Cement Company to pay additional licensing and electricity fees. The essence of the case concerned the Egyptian authorities failure to provide gas and electricity supply to the cement plant, as well as the

denial of justice by the Egyptian judiciary. Claimants consequently requested USD 236 Million in damages.

The award, not made public yet, contains a partial dissent and partial concurring opinion from Judge Charles Brower. It was reported that the decision found liability against Egypt based on the Most Favored Nation clause. The MFN operation implicated importing from the US-Egypt BIT article 2.7 and 2.8 an obligation for Egypt to provide "effective means" to the investor to assert its claims and enforce its rights with respect to its investment.[5]

Very peculiarly the tribunal did not award any damages, which was celebrated by local Egyptian news as a win for Egypt. This rationale from the majority was allegedly based on the fact that claimants if provided with effective means would not have prevailed. The majority also factored in the fact that Egypt was not in breach of the Fair and Equitable Treatment ("FET") obligation. It was reported that the dissent from Judge Charles Brower argued that the failure to provide effective means alone required compensation. It is possible that Claimants will rely on this dissent to file an annulment in the next 3 months before ICSID, based on Article 52 of the ICSID Convention.[6]

Claimants were represented by Egyptian law firm Youssef & Partners Attorneys, whilst Egypt retained Bredin Prat (Paris) in conjunction with its State Lawsuits Authority.

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[1] *Cementos La Union S.A. and Aridos Jativa S.L.U v. Arab Republic of Egypt* (ICSID Case No. ARB/13/29), Award, 30 October 2020.

[2] Cementos la Union counsel website, accessible at : https://youssef.law/work-highlights/our-highlights; see also, Arabian Cement Company corporate information "Arabian Cement Company (ACC) was founded in 1997 by a group of Egyptian shareholders. ACC was established with the aim of building a cement plant with a capacity of 2.5 MTA producing grey cement for the local Egyptian market. However, due to market conditions, the project was halted for a while until September 2004, when the Spanish cement group Cementos La Union, decided to invest in ACC, resuming ACC's activities", accessible at :

http://www.arabiancementcompany.com/en/about-us.

[3] Aridos Jativa corporate information, accessible at: https://www.expansion.com/directorio-empresas/aridos-jativa-sociedad-limitada_2383370_K67_46.html.

[4] M. ABDEL WAHAB (2017) Investment Arbitration: The Chronicles of Egypt: A Perilous Path to Pass, The International Journal of Arbitration, Mediation and Dispute Management, Issue 1, p. 69.

[5] Articles 2.7 and 2.8 of the US-Egypt 1986 BIT establish that : “Each Party recognizes that in order to maintain a favorable environment for investments in its territory by nationals or companies of the other Party, it should provide effective means of asserting claims and enforcing rights with respect to investment agreements, investments authorizations and properties”.

[6] Claimants have 120 days from the rendering of the Award on 30 October 2020, implicating that they have until end of February to file a request for annulment.

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