

TENANCY DISPUTES ARBITRABILITY

The Lisbon Court of Appeal recently affirmed the competence of arbitral tribunals to judge all tenancy disputes, including those related to the termination of lease agreements.⁽¹⁾

FACTS

The plaintiff filed an enforcement request petition against the defendant in a court. The request was based on an arbitration award (the enforcement order) which had ruled on the termination of a lease agreement between the parties.

However, the court found the arbitration agreement to be null and void. According to this first instance court decision, the parties could not have established the arbitrability of the termination of the leasing agreement (particularly when the termination is made by the tenant) since Portuguese law does not allow it. ⁽²⁾. As a result the court found the arbitration award to be invalid and subsequently rejected the request.

The plaintiff appealed to the Lisbon Court of Appeal.

DECISION

The Lisbon Court of Appeal clearly stated that:

- (i) arbitral tribunals are competent to judge leasing disputes;
- (ii) all disputes between parties (including the termination of a lease agreement) are arbitrable.

According to the Lisbon Court of Appeal, Portuguese law does not deny the arbitrability of the termination of a lease agreement. In fact, it is quite clear that there is no provision stating that only the courts can rule on the issue.

Therefore the Lisbon Court of Appeal reversed the first instance Court's decision.

COMMENT

According to the majority of Portuguese doctrine, lease disputes are arbitrable, except when it comes to the termination of a lease agreement (especially when such termination is made by the tenant) ⁽³⁾. Portuguese case law in this subject is unclear. Hence the importance of this Decision.

The Lisbon Court of Appeal's Decision is correct. Portuguese law does not state that the termination of a tenancy agreement has to be judged by a court and not by an arbitral tribunal. What the law states is that the decision needs to be taken by a tribunal (including, therefore, arbitral tribunals) The legal provision invoked by the majority of scholars seems to have been misinterpreted, and based on the

wrong concept that arbitral tribunals are not entities performing a jurisdictional function. ⁽⁴⁾ The Lisbon Appeal Court shows here, and once more, that it favors arbitration.

It is also important to notice that in this case the new Portuguese lease law was not yet applicable. Nevertheless, the issue remains, as the relevant provisions in this case are similar between the old and the new tenancy law. ⁽⁵⁾

ENDNOTES

(1) Case 19961/08.5YYLSB.L1-1, December 10 2009.

(2) Articles 63 (2) and 51 of Portuguese tenancy law – RAU.

(3) See, for instance, Luís de Lima Pinheiro, “Arbitragem Transnacional – a Determinação do Estatuto da Arbitragem”, Almedina, 2005, pages 110 and 111; Miguel Teixeira de Sousa, “A Acção de Despejo”, 2.^a edição, 1995, Lisboa, pages 29 and 30; Manuel Januário da Costa Gomes, “Arrendamentos para Habitação”, 2.^a edição, 1996, Coimbra, pages 230 and 278; António Marques dos Santos, “Arrendamento urbano e arbitragem voluntária”, in *Estudos em Homenagem ao Professor Doutor Inocêncio Galvão Telles*, vol. III, Coimbra, pp. 573-589.

(4) See Lisbon Court of Appeal decision of June 5 2007 (Case 1380/2007-1) and Pinto Furtado, “Manual do Arrendamento Urbano”, 3.^o edição, 2001, page 1051 and 1052.

(5) See the referred articles 63 (2) and 51 of the old Portuguese lease law (RAU) and articles 1084 (2) and 1080 of the new Portuguese lease law (Civil Code).