market from ten to six came as a result of difficult negotiations in which the Agency played an instigating role.

Growing competition in the gas market

Competition in the gas market is becoming more intense. Whereas three years ago consumers were unable to change their gas supplier, they can now choose from a large number of suppliers, on average there is a choice of 12 providers in a post code area. Some 382 distribution system operators provide final consumers with gas from two to five alternative suppliers. Some distribution system operators even carry gas from more than 30 suppliers to final consumers. This development is also attributable to the Agency's GeLi and GaBi Gas decisions, as a result of which changing suppliers and trading have been greatly facilitated. The further development of competition depends very much on the consumers' behaviour, and this means that they should take advantage of their new power to change the supplier in order to cut their gas bills.

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FEDERAL SUPREME COURT, ORDER OF JANUARY 20, 2009, REFERENCE VIII ZB 47/08

LT Germany; International commercial arbitration; Publication; Service of foreign process; Statements of claim; Time limits

Facts of the case

The plaintiff claims to be entitled to take over the shares of a company, which operates a gas field, alternatively the plaintiff claims damages. The plaintiff applied for a service by publication at the first instance court (District Court of Berlin) on the grounds that the service upon the defendant abroad would not be possible and a compliance with the request for legal assistance could not be expected within a foreseeable time. The District Court rejected the plaintiff's application. The plaintiff filed an immediate complaint, which was rejected by the Court of Appeal of Berlin. However, the Court of Appeal of Berlin allowed a complaint on points of law to the Federal Supreme Court.

During the procedure of the immediate complaint before the Court of Appeal of Berlin, an attorney at law declared to the Court that he represented the defendant, and he showed his power of attorney to the District Court of Berlin. The plaintiff asked the Federal Supreme Court to serve a certified copy together with a simple copy of the statement of claims upon the defendant including attachments and translations with a certificate of delivery. Subsequently, the plaintiff declared that the complaint on points of law was closed and asked the court to ascertain that this procedure was closed. The defendant objected. He considered that the transmission of the statement of claims upon the application did not constitute an effective formal service of notice.

Held

> "The service by publication of a statement of claims to a foreign defendant, whose address, where the statement of claims may be served, can only be allowed if the service of the statement of claims by means of legal assistance would take such a long period of time that the plaintiff could not reasonably be expected to wait for such a long period which would very likely exceed the time of six to nine months."

The plaintiff's application for the ascertainment that the procedure of the complaint on points of law was closed is unsound, because the complaint on points of law was unsound from its beginning. The declaration that the appeal on points of law was closed could be made unilaterally by the plaintiff if the facts which lead to the closure are not disputed (see Federal Supreme Court of July 5, 2005, reference VII ZB 10/05, WM 2005, 1991). This is the case here. After the service of the statement of claims upon the defendant's attorney there was no longer the need for a public service so that the plaintiff's interest in the carrying out of the procedure for the appeal on points of law lapsed. But the appeal on points of law, which was admissible (see arts 574(1) sentence 1 cl.2 and 575 of the Code of Civil Procedure) was unsound from its beginning.

The requirements, which necessitate a public service in the sense of art.185 of the Code of Civil Procedure, were not met. According to this provision, a public service of a statement of claims to a defendant, whose address abroad is known, requires that the service abroad is not possible or without a chance of success. Both presuppositions are not met.

The plaintiff's argument that—according to experience—Russian assistance would operate so slowly that it would be unreasonable for the plaintiff to wait until the service would be carried out, is not convincing. The question whether there would be delays in the service can only give rise to assumptions, since the request for legal assistance was not even transmitted to the Russian authorities. But the approval of an application for a public service cannot be made on the basis of mere allegations. It rather requires concrete facts according to which it is justified to consider that the request for legal aid would remain impracticable or unsuccessful. Also, the plaintiff cannot rely on the argument that the defendant might bring the defence that the plaintiff's claims are prescribed. The court found that German law as well as Russian law considered that the filing of the statement of claims with the court led to the adjournment of the period of prescription.

The purpose of the public service in the sense of Code of Civil Procedure art.185 clause 3 lies in ensuring the right of access to justice for a party if there is no other way for a service (Stein/Jonas/Roth: "ZPO", art.185 cl.1; Zöller/Stöber: "ZPO", art.185 cl.1). The need to provide an effective access to justice demands that it must take place within a reasonable time (see Federal Supreme Court of January 26, 1989, reference X ZR 23/87, NJW 1989, 1477). But it must also be taken into consideration that the public service endangers the defendant's right to be heard according to art.103(1) of the Basic Law. The decision whether a long duration of the service by means of legal assistance is acceptable to the plaintiff depends upon an evaluation of the individual circumstances of the case. This evaluation is a matter of facts which has to be decided by the lower instance, and the Federal Supreme Court may only examine this decision with regard to legal issues. But the Court of Appeal considered relevant facts without legal mistakes.

The Federal Supreme Court held that the plaintiff's right of access to justice is not affected if the service of the statement of claims needs a period of six to nine months. The Federal Supreme Court conceded that (with reference to art.15(2) of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 14, 1965) parts of German jurisdiction (Court of Appeal of Cologne, NJW-RR 1998, 1683; Geimer, NJW 1989, 2204; Stein/Jonas/Roth: "ZPO", art.185 cl.10; Saenger: "Handkommentar-ZPO", 2nd edn, art.185 cl.6) asserted the view that a time limit exceeding six months would not be acceptable for the plaintiff. However, the Federal Supreme Court indicated that this view would endanger the defendant's right to be heard according to Basic Law art.103(1), so that a public service needed stricter requirements:

> "It can only be justified if another kind of service is not or only with difficulty realizable for factual reasons (Federal Constitutional Court, NJW 1988, 2361; Federal Supreme Court of 06 April 1992, reference II ZR 242/91, NJW 1992, 2280). With this regard it has to be noticed that the time for a service abroad up to one year is not unusual (see Rahm/Künkel/Breuer: Handbuch des Familiengerichtsverfahrens", November 2008, chapter VIII, clause 42). Accordingly, a period of six to nine months does not exceed the limit for legal assistance, as it is applied in international legal cooperation. For this reason it cannot be inferred that such a period could not be reasonably acceptable for the plaintiff (in this sense Linke: "Internationales Zivilprozeßrecht", 4th ed., clause 231; Pfennig: "Die internationale Zustellung in Zivil- und Handelssachen", 1988, p. 122; Fischer, ZZP 107 (1994), 163, 171; Mansel, Iprax 1987, 210)."

The Court rejected the argument that the public service was necessary, because the service by means of legal assistance in Russia might well take two years according to the information gathered by the plaintiff. Such a fact would justify a public service only if the service by means of legal assistance would with certainty require such a long period. But such a verification was not made by the plaintiff who alleged that the service by means of legal assistance might happen within only six or nine months.

Comment

Arbitration becomes more and more necessary for cross-border dispute settlement. Taking into account the fact that international gas contracts involve large investments, it is incredible that courts and authorities involved

in legal assistance should take it as normal that the service of a statement of claims may well take up to 12 months or even more. Such a statement of claims could be sent digitally within seconds. The jurisprudence of the German Supreme Court is a clear challenge for an effective dispute settlement by courts. Proceeding upon the assumption that a simple service of a statement of claims could take one year, it is hardly conceivable with what time periods the court might calculate for the rest of the procedure, not to mention the execution of a judgment. In contrast, arbitral institutions settle most complicated cases in a few months. For example ICC Rules of Arbitration art.24(1) envisages a time limit of six months within which the arbitral tribunal has to render its final award. The avoidance of court jurisdiction and the resort to arbitration seems to be the most efficient way to achieve this aim.

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THE ENVIRONMENTAL AND RENEWABLES REGIME IN OMAN

LT Environmental liability; Environmental permitting; Marine pollution; Oman; Renewable energy

Introduction

In 1982 the Sultanate of Oman became the first country in the Gulf region to pass a comprehensive law on the environment. Environmental law in Oman is now a mix of primary legislation (Sultani Decrees), secondary legislation (Ministerial Decisions), international treaties, conventions and protocols. Most areas of environmental law that one would expect to see covered in highly regulated countries, such as in Western Europe, are covered, albeit briefly and the law has not yet benefited from the high level of development and interpretation as it has in countries where environmental legal regulation has a longer history.

Oman, however, is one of the few jurisdictions in the Gulf region which has a national integrated environmental policy with high-level, cross-cutting bodies under the direct control of the Government. In 1984 it became the first country in the region to establish a specific Ministry for the Environment. Now reconstituted as the Ministry for the Environment and Climate Affairs (MECA) (environmental affairs were previously managed by a Ministry for the Environment), it operates a permitting regime to authorise and regulate activities that may result in damage to the environment. The inclusion of "climate" within the title of the Ministry suggests a renewed focus upon climate and "green energy" projects.

This article sets out an overview of the current principal legislation governing environmental regulation in Oman, and reviews environmental permitting and enforcement for breach of the legal requirements. It also considers renewable energy matters in Oman and how innovative new energy projects in the Sultanate fit with the existing environmental law.

Legislative requirements

Oman's primary environmental law: Sultani Decree 114/2001

The principal environmental legislation in Oman is Sultani Decree Number 114/2001, the Law on Conservation of the Environment and Prevention of Pollution (SD 114/2001), which replaces the previous basic environmental law, Sultani Decree (SD 10/1982).

General prohibition

The law proscribes the disposal into the environment of pollutants in such quantities and types as may adversely affect the intactness of the environment, its natural resources or nature conservation areas and the historical and cultural heritage of the Sultanate of Oman (SD 114/2001 art.7).

Standard of duty

It places duties for minimising the environmental impacts of operations on "the owner" of "a source" or an area of work that may produce environmental pollution. The concept of "owner" is very widely defined as any natural or legal person (public, private, national or foreign) owning or leasing a "source" or being responsible for operation or management of the same. A "source" is defined as "the process or activity which causes environmental pollution.