CA 016/2024 - Korek Telecom Company LLC & Ors v Iraq Telecom Ltd & Anor

In March 2023, an ICC Arbitral Tribunal issued a Final Award for damages against the Appellants. The Tribunal found that the Appellants had corruptly procured a decision of the Communications and Media Commission (CMC) of the Republic of Iraq adverse to the Respondents and caused them to suffer loss and damage recoverable under the common law tort of conspiracy.

Justice Sir Jeremy Cooke made an order for the recognition and enforcement of the Award. An application to set aside the Award was dismissed by His Excellency Justice Shamlan Al Sawalehi on 29 August 2024. The Appellants obtained permission from Justice Al Sawalehi to appeal his decision to the DIFC Court of Appeal.

The principal question before the Court of Appeal was whether the Arbitral Tribunal was precluded from making any finding of tortious conspiracy because it involved a finding that a public authority of a foreign country had made its decision as a result of bribes paid by the Appellants. The Appellants argued that a common law “act of state doctrine” applied, which precluded findings about the conduct of a foreign public authority or government.

The doctrine was said to have the effect that the question whether the Iraqi authority had made its decision as a result of the Appellants’ bribes was not arbitrable by the Tribunal. Further, it was argued, that the Award by contravening the act of state doctrine contravened UAE public policy.

The Court of Appeal rejected these arguments holding that the act of state doctrine, to the extent that it applied in the DIFC, did not preclude a finding that the Appellants’ conduct, by procuring a decision adverse to the Respondents, caused actionable loss to them. This did not involve any inquiry into the legal validity of the CMC decision.

The Court observed that by reason of International Conventions to which it is a party, UAE public policy stands clearly against bribery of foreign officials.

The Court reviewed the common law relating to the act of state doctrine in the United Kingdom, the USA, and other international jurisdictions.

A second ground relating to the use by the Tribunal of allegedly illegally obtained evidence was also dismissed.