



INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

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PROJECTS

Does a Right to a
Physical Hearing Exist
in International
Arbitration?

COLOMBIA

Edna Ferreira

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a. Parties' Right to a Physical Hearing in the *Lex Arbitri*

1. *Does the lex arbitri of your jurisdiction expressly provide for a right to a physical hearing in arbitration? If so, what are its requirements (e.g., can witness testimony be given remotely, etc.)?*

Short answer: No.

The Law 1563 of 2012 – Domestic and International Arbitration Statute (hereinafter the “Arbitration Statute”), does not provide for a right to a physical hearing either in domestic or in international arbitrations seated in Colombia. Said law is divided into two different sections since the Colombian arbitration regime is a dualist system. The domestic arbitration section is closely connected to the General Procedural Code (applicable to litigation proceedings before the courts). The international arbitration section adopted the UNCITRAL Model Law on International Commercial Arbitration (hereinafter “UNCITRAL Model Law”) with some modifications. Under the domestic arbitration’s section, the use of electronic means is feasible throughout the arbitration proceedings without endorsing a right to a physical hearing.¹ However, private parties may agree on their own procedure,² including said right to physical hearings – which is uncommon in practice.³

Within the international arbitration section, Articles 91 (“Equal treatment of parties”), 92 (“Determination of rules of procedure”), 93 (“Place of arbitration”) and 97 (“Hearings and written proceedings”) were adopted with the same wording of Articles 18, 19, 20 and 24 of the UNCITRAL Model Law. Therefore, if the parties do not include a right to a physical hearing, the arbitral tribunal has discretion to decide on that matter with the possibility of conducting the proceedings only based on documents and other

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¹ L. 1563/2012, Diario Oficial No. 48.489 of June 12, 2012 (Colom.) (“Arbitration Statute”), Articles 23 (“Use of electronic means”) and 31 (“Hearings and evidence”).

² Arbitration Statute, Article 58 (“Procedural Rules”). This provision allows the parties to decide the procedure applicable to the arbitration, except if the party is the State or a state-owned entity, in which case the procedure is regulated by statute.

³ In Colombia, domestic arbitration is not confidential. Therefore, arbitral awards are public. Currently, there are no reported cases in which the right to a physical hearing has been expressly included by the parties to an arbitration.

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materials. The aim of said procedure consists in granting the parties their right to a due process.⁴

2. *If not, can a right to a physical hearing in arbitration be inferred or excluded by way of interpretation of other procedural rules of your jurisdiction's lex arbitri (e.g., a rule providing for the arbitration hearings to be "oral"; a rule allowing the tribunal to decide the case solely on the documents submitted by the parties)?*

Short answer: Likely not.

The right to a physical hearing is not included in domestic arbitrations involving State entities, which procedure is regulated by statute.⁵ Regarding domestic arbitrations between private parties,⁶ and international arbitrations,⁷ the parties may decide their procedure including a right to a physical hearing. If the parties do not establish said right, the procedural rules in Colombia's *lex arbitri* are deemed to exclude such right *per se*.

The Colombian regime or *lex arbitri*, regarding international arbitration, is the UNCITRAL Model Law with some modifications. Thus, the law grants the parties due process, which includes the parties' right to present their case, the right to respond to the other side's arguments and evidence, and the right to receive equal treatment.⁸ Concerning the possibility to exclude the right to a physical hearing, Article 97 ("Hearings and written proceeding")⁹ unambiguously states that the arbitral tribunal is in charge of deciding this issue. Alike the UNCITRAL Model Law, the Colombian Arbitration Statute uses the expression "oral hearings" instead of "physical hearings", which means that even if the tribunal decided to hold oral hearings, those hearings could be developed remotely. The exception may be a case in which it is crystal-clear that the denial of a physical hearing amounts to a breach of due process. However, there is no case law reported on this matter.

As a result, the parties' right to a physical hearing is excluded, based (i) on the lack of a legal reference regarding this issue, and (ii) on a systematic interpretation of the Arbitration Statute, which contains a provision in the domestic section endorsing the possibility of using electronic means throughout any stage of the arbitration, despite the

⁴ Arbitration Statute, Articles 91 ("Equal treatment of parties"), 92 ("Determination of rules of procedure"), 93 ("Place of arbitration") and 97 ("Hearings and written proceedings").

⁵ Arbitration Statute, Article 58 ("Procedural Rules").

⁶ *Ibid.*

⁷ Arbitration Statute, Article 92 ("Determination of rules of procedure").

⁸ Arbitration Statute, Article 58 ("Procedural Rules").

⁹ Arbitration Statute, Article 97 ("Hearings and written proceeding").

fact that the domestic arbitration regime provides for a more rigid and traditional arbitration framework than international arbitration.

b. Parties' Right to a Physical Hearing in Litigation and its Potential Application to Arbitration

3. *In case the lex arbitri does not offer a conclusive answer to the question whether a right to a physical hearing in arbitration exists or can be excluded, does your jurisdiction, either expressly or by inference, provide for a right to a physical hearing in the general rules of civil procedure?*

Short answer: No.

Colombian general rules of civil procedure are contained in the General Code of Procedure. Said code contains the traditional trend of conducting the hearings physically, since it regulates how to record hearings within the courthouses.¹⁰ However, it includes a provision allowing the parties and the third parties to request leave from the judge to attend hearings remotely.¹¹ In June 2020, in the middle of the COVID-19 emergency, the national government changed that rule for the next two years,¹² establishing mandatory remote hearings by phone or other remote means for all the court proceedings. Therefore, until June 2022, there is no longer an inferred right to a physical hearing pursuant to the Colombian general rules of civil procedure.

On the other hand, the provisions of the General Code of Procedure do not apply to international arbitrations. Regarding domestic arbitrations, the General Code of Procedure applies directly regarding some topics, such as interim measures or the arbitrators' powers for taking evidence.¹³ However, since both the general rules of civil procedure and the Arbitration Statute exclude the right to a physical hearing, said right is not granted either expressly or impliedly.

4. *If yes, does such right extend to arbitration? To what extent (e.g., does it also bar witness testimony from being given remotely)?*

Short answer: N/A

From now on, general rules of civil procedure require to hold all hearings remotely, by phone or otherwise.

¹⁰ L. 1564/2012, Diario Oficial No. 48.489 of July 12, 2012 (Colom.) ("General Code of Procedure") Article 107, paragraphs 1, 2, 4, 5, 6.

¹¹ General Code of Procedure, Article 107, paragraph 2.

¹² L.D. 806/2020, Diario Oficial No. 51.335, of June 4, 2020 (Colom.).

¹³ Arbitration Statute, Articles 31 ("Hearings and Evidence") and 32 ("Interim Measures").

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c. **Mandatory v. Default Rule and Inherent Powers of the Arbitral Tribunal**

5. *To the extent that a right to a physical hearing in arbitration does exist in your jurisdiction, could the parties waive such right (including by adopting institutional rules that allow remote hearings) and can they do so in advance of the dispute?*

Short answer: N/A

As explained above, there is no such right either in domestic or in international arbitrations. Therefore, it is clear that the parties are free to adopt any rules applicable to this matter. Currently, Articles 58 and 92 of the Arbitration Statute expressly provide for the parties' freedom to determine the procedure applicable to their arbitration.¹⁴

6. *To the extent that a right to a physical hearing in arbitration is not mandatory or does not exist in your jurisdiction, could the arbitral tribunal decide to hold a remote hearing even if the parties had agreed to a physical hearing? What would be the legal consequences of such an order?*

Short answer: Maybe but may raise risks with respect to award enforcement.

If the parties clearly agree to conduct their hearing physically, such provision should be analyzed in the scope of the procedural freedom granted to the parties, since the Arbitration Statute contains the right of the parties to freely determine their own procedure in the arbitration.¹⁵

The arbitration tribunal's decision to deviate from a procedural agreement of this kind, may entail certain consequences.

Pursuant to the Arbitration Statute, both the Supreme Court and the Council of State (*Consejo de Estado*) are empowered to review requests (i) for the annulment of awards in international arbitrations seated in Colombia; or (ii) for the recognition of foreign awards, depending on the identities of the parties involved.¹⁶ Thus, the Supreme Court has jurisdiction regarding awards involving private parties, while the Council of State has jurisdiction over cases involving a State-owned entity or an undertaking performing administrative tasks. The distinction is relevant, since, apparently, the Supreme Court and the Council of State have reached different conclusions as to the consequences stemming from a procedural deviation from the parties' agreement.

¹⁴ Arbitration Statute, Articles 58 ("Procedural rules") and 92 ("Determination of rules of procedure").

¹⁵ Arbitration Statute, Article 92 ("Determination of rules of procedure").

¹⁶ Arbitration Statute, Article 68 ("Judicial authority jurisdiction").

The procedural framework, applicable to international arbitrations seated in Colombia, is subject to the basic guarantees of due process, pursuant to the UNCITRAL Model Law regime.¹⁷ Therefore, in theory, such a procedural deviation should be examined under the due process standards.¹⁸

Indeed, the Supreme Court, in accordance with prevailing international standards, has highlighted that procedural deviations in international arbitration may only lead to the annulment of the arbitration award if the deviation was material.¹⁹ A procedural deviation is material if: (i) it has distorted the outcome of the case as a whole;²⁰; or (ii) it has violated due process.²¹ Thus, a procedural deviation is not *per se* a sufficient ground, under the Supreme Court's case law, for the annulment of awards.

Conversely, the Council of State has applied a literal approach to this matter. In a recent case, said court annulled an award – for the first time ever under the Arbitration Statute – in an international arbitration seated in Bogotá, Colombia.²² In its decision, the Council of State considered, pursuant to the Arbitration Statute, that it should not review the merits of the case, including the arbitrators' reasoning, interpretation or assessment of the relevant issues. Consequently, it concluded that its assessment of a procedural deviation should be circumscribed to a formal review of whether or not the arbitration tribunal had breached the procedural provisions of the case, irrespective of their impact on the decision-making process or on the guarantees of due process.²³

¹⁷ Arbitration Statute, Articles 58 (“Procedural rules”).

¹⁸ See Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Civ. December 19, 2018, M.P: M. Cabello, Expediente 2017-03480-00, p. 29 (Colom.). Regarding the analysis of the ground for requesting the setting aside under Article 108 1.b. of the Arbitration Statute (“the party making the application [...] was otherwise unable to present his case”) the Court indicated that such ground means that “during the arbitral proceeding a party did not obtain: an equal treatment or a fair procedure, which translated into being deprived of the possibility of presenting its case or exercising its due process rights” (free translation by the Author).

¹⁹ *Ibid.* at p. 20: regarding the analysis of the ground for requesting the setting aside under Article 108 1.b. of the Arbitration Statute (“the party making the application [...] was otherwise unable to present his case”) the Court indicated: “It is required that the due process violation be material, which means, the violation is of such relevance that it in fact affected said right, which includes by way of example the rejection of relevant evidence, conducting hearings on different dates than the agreed ones, the lack of notification to the parties about the conduct of hearings, the inability to respond to adverse evidence, among others” (free translation by the Author).

²⁰ See fn. 18 above at p. 28 and 29.

²¹ See fn. 18 and 19 above.

²² Consejo de Estado [C.E.] [Council of State], Sección Tercera, Sala Plena. February 20, 2020, M.P. Marín, M.A, Expediente 2018-00012-00 (Colom.).

²³ *Ibid.* at p.110. The Council of State held that some agreements of the parties regarding procedural matters and included in the first procedural order of the Arbitral Tribunal are real contracts: “When the parties agree on the rules of procedure, that consent is a real

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As a result, a procedural deviation whereby the arbitrators decided to hold a remote hearing even if the parties had agreed to a physical hearing, may entail different legal consequences depending on the competent court reviewing the matter either in setting aside or in recognition proceedings. However, the decision of the Council of State was the first and single decision regarding the analysis of a procedural deviation under the Arbitration Statute, and it contained both a dissenting opinion and a separate opinion. Therefore, this precedent is bound to evolve.²⁴

d. Setting Aside Proceedings

7. *If a party fails to raise a breach of the abovementioned right to a physical hearing during the arbitral proceeding, does that failure prevent that party from using it as a ground for challenging the award in your jurisdiction?*

Short answer: Yes.

Pursuant to Article 66 of the Arbitration Statute,²⁵ should a party consider that its right to a physical hearing has been breached, it must raise its objection without undue delay. The waiver of the right to object should be analyzed on a case-by-case basis.²⁶ However, in the mentioned case scenario it is clear that the party's delay, in objecting to the breach of the abovementioned right to a physical hearing, amounts to a waiver and

contract and, therefore, a legal transaction. Consequently, the arbitrators are temporarily invested with the function of administering justice according to Art. 116 of the Constitution, and, therefore, are completely obliged to guarantee the application of the stipulations of the parties. The contrary would amount to a ground for requesting the setting aside of the decisions. This does not mean that the Council of State adopted the contractual theory of the arbitration, but the acknowledgement of the importance of equal treatment in international arbitration" (free translation by the Author).

²⁴ Both the dissenting opinion and the separate opinion endorsed, under different perspectives, the Supreme Court's approach. See fn. 22 above, Sanchez, G. dissent opinion and Montaña, A. separate opinion.

²⁵ Arbitration Statute, Article 66, which establishes the same provision included in Article 4 of the UNCITRAL Model Law ("Waiver of right to object"): "A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object".

²⁶ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Civ. April 18, 2017, M.P: L. Rico, Expediente 2016-01312-00, p. 34 (Colom.).

precludes said party from obtaining the annulment of the arbitration award based on that violation.

8. *To the extent that your jurisdiction recognizes a right to a physical hearing, does a breach thereof constitute per se a ground for setting aside (e.g., does it constitute per se a violation of public policy or of the due process principle) or must the party prove that such breach has translated into a material violation of the public policy/due process principle, or has otherwise caused actual prejudice?*

Short answer: N.A. but the proof of material violation of the due process is a ground for setting aside the award.

As already explained, there is no right to a physical hearing in Colombia *per se*.²⁷ Thus, the breach of the right to a physical hearing is not a ground for setting aside the award. However, on a case-by-case basis analysis, the failure to grant the parties a physical hearing may lead to the annulment of the award, in so far as such failure deprives a party of its right to due process under the circumstances of the case.

The Arbitration Statute, in line with the UNCITRAL Model Law, provides that the award may be set aside when the party making the application was unable to present its case,²⁸ or when the award is in conflict with the international public policy of Colombia.²⁹ Consequently, since Colombian courts have unanimously included due process as part of the international public policy of Colombia,³⁰ and due process encompasses the right of a party to present its case, the lack of physical hearing would be a ground for setting aside only if it is intrinsically related to a violation of the right to due process.

Thus, the door indeed may be open for annulment in those cases where the breach of the right to a physical hearing also amounts to a breach of due process. In any case, the decision may be different depending on the competent court reviewing the matter, as

²⁷ See sub-paragraph c.6 above.

²⁸ Arbitration Statute, Art 108, No. 1.b.

²⁹ Arbitration Statute, Art 108, No. 2.b.

³⁰ See, e.g., Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Civ. Decisions: July 27, 2011, Expediente 2007-01956-01; January 15, 2019, Expediente 2016-03020-00. Corte Constitucional [C.C.] [Constitutional Court], August 6, 2019, Sentencia T-354/19.

already explained. The Supreme Court applies a higher threshold for the annulment of awards due to procedural deviations³¹ than the Council of State.³²

It is important to highlight that the burden of proof differs depending on the applicable annulment ground. The party alleging that it was unable to present its case must prove it, while the breach of public policy may be declared *ex officio* by the competent court.³³ However, from a practical standpoint, the party seeking annulment usually provides evidence regarding the breach of public policy.³⁴

The Arbitration Statute provides that the exclusive recourse for challenging an arbitral award is the setting aside proceedings.³⁵ Nonetheless, the Constitutional Court, based on the hierarchical supremacy of the Colombian Constitution, has endorsed the possibility of challenging arbitration awards in international arbitrations seated in Colombia based on constitutional rights violations.³⁶ In its recent decision T-354/2019, the Colombian Constitutional Court held that arbitration awards, issued in international arbitrations seated in Colombia, may be subject to constitutional challenges by means of the so-called *acción de tutela*.³⁷ It also included a specific methodology for determining the admissibility and the merits of such an action. A “*tutela*” judge has broad powers against an arbitral award. In fact, recently, the Constitutional Court annulled a domestic

³¹ Arbitration Statute, Article 66, which establishes the same provision included in Article 4 of the UNCITRAL Model Law (“Waiver of right to object”): “A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object”.

³² See sub-paragraph c.6 and fn. 22 above.

³³ See fn. 18 above at p. 21 and Arbitration Statute, Article 108 (“Grounds for annulment”).

³⁴ See fn. 30 above.

³⁵ See Arbitration Statute, Article 107: “Recourse to a court against an arbitral award may be made only by an application for setting aside based on the grounds expressly provided under this section [i.e., the Arbitration Statute’s International Arbitration section]. As a consequence, the Judicial Authority cannot assess the merits of the case or qualify the evidentiary analysis, the reasoning or the interpretation carried out by the arbitral tribunal” (free translation by the Author).

³⁶ Corte Constitucional [C.C.] [Constitutional Court], August 6, 2015, Sentencia SU-500/15 MP Guerrero, L.G. (Colom.).

³⁷ Santiago TALERO-RUEDA, “Salient Features of the Colombian Constitutional Court’s Review of Awards in International Arbitrations”, Kluwer Arbitration Blog (28 November 2019) at <<http://arbitrationblog.kluwerarbitration.com/2019/11/28/salient-features-of-the-colombian-constitutional-courts-review-of-awards-in-international-arbitrations/>> (last accessed 23 November 2020).

award acting as “*tutela*” judge.³⁸ Thus, since due process is a fundamental right under the Colombian Constitution,³⁹ a party may seek the annulment of the award based on the breach of the constitutional right of due process for failure to conduct physical hearings. In any case, the Constitutional Court has not annulled any international arbitration award seated in Colombia, and has declared that this outcome would be “highly exceptional” in practice.⁴⁰

9. *In case a right to a physical hearing in arbitration is not provided for in your jurisdiction, could the failure to conduct a physical hearing by the arbitral tribunal nevertheless constitute a basis for setting aside the award?*

Short answer: Yes, if such failure amounted to a material violation of the due process.

Please refer to the previous answer, regarding the applicable annulment grounds.

e. Recognition/Enforcement

10. *Would a breach of a right to a physical hearing (irrespective of whether the breach is assessed pursuant to the law of your jurisdiction or otherwise) constitute in your jurisdiction a ground for refusing recognition and enforcement of a foreign award under Articles V(1)(b) (right of the party to present its case), V(1)(d) (irregularity in the procedure) and/or V(2)(b) (violation of public policy of the country where enforcement is sought) of the New York Convention?*

Short answer: It depends.

The Arbitration Statute, being based on the UNCITRAL Model Law, includes the same grounds for the setting aside of arbitral awards as for the denial of recognition of foreign awards. Therefore, the answer to questions 6 and 8 are applicable to this question as well, since the same courts⁴¹ have jurisdiction over action for the annulment and the

³⁸ Corte Constitucional [C.C.] [Constitutional Court], October 13, 2016, Sentencia SU-556/16, M.P.: Calle M.V (Colom.). The Court decided: “Overrule the award dated November 12, 2014 between Banco de la República and Seguros Generales Suramericana S.A. y Allianz Seguros S.A” (free translation by the Author).

³⁹ Constitución Política de Colombia [C.P.], Article 29.

⁴⁰ One of the admissibility grounds, applicable to the *tutela* claims against awards, is the so-called principle of subsidiarity (*principio de subsidiariedad*), according to which setting aside proceedings must be exhausted prior to the *tutela* claim. This was, in fact, the rationale of the Decision T-354 of 2019, since the Constitutional Court rejected the *tutela* because setting aside proceedings were still pending before the Council of State.

⁴¹ The Arbitration Statute provides that the *Corte Suprema de Justicia* [C.S.J.] (“Supreme Court”), Sala. Civ. has jurisdiction over cases between private parties, and

recognition of arbitral awards under the New York Convention – to which Colombia is a party.⁴²

The Supreme Court of Justice also reached the same conclusions included in the answer to questions 6 and 8 above when applying Articles V(1)(b) and V(2)(b) of the New York Convention.

In 2011, regarding the recognition of an award under the International Centre for Dispute Resolution (“ICDR”) Rules in an arbitration seated in New York, the Supreme Court of Justice characterized the right of the party to present its case as part of the international public policy of Colombia. The Court “reasoned that as the New York Convention does not specifically provide in this respect [i.e., procedural issues], enforcement courts frequently decide the due process issue under the procedural principles of their own legal system”,⁴³ and considering fundamental procedural guarantees as crucial protections: “In Colombia, these fundamental guarantees have been defined on the basis of the constitutional principle of the protection of fundamental rights”.⁴⁴

Later, in 2012, the same Court decided an issue of due process under Colombian law. The Court again considered that the standards of the New York Convention are vague, and that therefore the case should be analyzed not under the specific procedural principles of Colombian law but rather under its fundamental procedural guarantees.⁴⁵ The Court specifically ruled:

“The minimum guarantees that must be available in any proceeding in Colombia are defined obviously in the jurisprudence on fundamental rights: decision C-641 of 2002, for instance, indicates that Art. 29 of the Political Constitution lists among the minimum guarantees that are protected: (i) the right of access to the administration of justice before a natural judge; (ii) the right to be informed of the acts that lead to the creation, modification or extinction of a right or to the imposition of an obligation or sanction; (iii) the right to express freely and openly one's opinions; (iv) the right to contradict or discuss claims or objections raised; (v) the right to the conclusion of the proceedings within a reasonable time and without unjustified delays and, of

the *Consejo de Estado* [C.E.] (“Council of State”), Sección Tercera, Sala Plena has jurisdiction regarding cases involving State-owned parties.

⁴² L. 39/90 Diario Oficial No. 39.587 OF November 23, 1990 (Colom.).

⁴³ “Colombia No. 7, Petrotesting Colombia S.A. et al. v. Ross Energy S.A., Supreme Court of Justice of Colombia, 11001-0203-000-2007-01956-00, 27 July 2011”, ICCA *Yearbook Commercial Arbitration* XXXVII (2012) (henceforth *Yearbook*) p. 200.

⁴⁴ *Ibid.*

⁴⁵ “Colombia No. 8, Drummond Ltd. v. Instituto Nacional de Concesiones – INCO et al., Corte Suprema de Justicia, Civil Cassation Chamber, December 19, 2011 and May 3, 2012”, *Yearbook* XXXVII (2012) p. 205.

course, (vi) the right to submit evidence and discuss the evidence supplied [by the other party]’ (Constitutional Court, decision of 13 August 2002)”.⁴⁶

In the same case, the Court also ruled about the definition of Colombia’s notion of “public policy”; and stated:

“This Chamber holds today that the concept of ‘public policy’ that prevents recognition and enforcement of a ‘foreign award’ under the said New York Convention in the courts of the State is limited to basic or fundamental principles, such as: prohibition of an abuse of rights, good faith, impartiality of the arbitral tribunal and compliance with due process. Thus, in principle, the disregard of a mandatory provision of the ‘forum’ of the enforcement court is not *per se* a violation of [public policy]; it is [such a violation only] if it breaches higher level guarantees, such as the ones mentioned above”⁴⁷.

Hence, if the case is analyzed by the Supreme Court of Justice, the breach of a right to a physical hearing would be considered under a materiality standard focusing on the assessment of a possible violation of the fundamental procedural guarantees as defined under Colombian law. On the other hand, the Council of State may follow, for recognition purposes, the Supreme Court’s case law. However, as occurred in annulment proceedings, the Council of State’s case law is still unpredictable and could apply a lower threshold when denying recognition of a foreign arbitration award.⁴⁸

f. COVID-Specific Initiatives

11. To the extent not otherwise addressed above, how has your jurisdiction addressed the challenges presented to holding physical hearings during the COVID pandemic? Are there any interesting initiatives or innovations in the legal order that stand out?

Short answer: Not at all.

Regarding domestic arbitration, the proceedings are now conducted remotely in accordance with the applicable institutional rules.⁴⁹ Deadlines were extended. No changes were introduced in relation to international arbitration.

Regarding ordinary justice, there is a well-known crisis in Colombia. “The Colombian judicial system faces one of its most profound crises, confronting corruption

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ See fn. 22 above.

⁴⁹ In Colombia, *ad-hoc* arbitrations are extremely rare in practice. Therefore, arbitrations are mostly carried out under the institutional rules of the Chambers of Commerce.

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scandals, delays and in general a credibility crisis”.⁵⁰ The COVID-19 pandemic was not the exception to this rule. From March 16 to June 30, 2020, most of the judicial venues, including civil courts, were closed and the Superior Council of the Judicial Branch suspended procedural terms and deadlines with certain limited exceptions, such as constitutional actions and criminal proceedings, and the issuance of certain limited decisions in civil matters, among others. From July 1, 2020 onwards (and prior to that in connection with the allowed exceptions), certain new procedural rules provided for the implementation of online services.

The National Government issued Decree 806 of June the 4, 2020,⁵¹ which adopted measures for two years, in the implementation of communications and technology in judicial proceedings, to expedite judicial processes that had been suspended for months. The Decree was innovative in Colombia, but the provisions are common to many countries. Those are:

- (i) Technology was implemented to expedite all kinds of proceedings.
 - (ii) When it is not possible or necessary to use electronic technologies, the personal service of process will be provided according to protocols. There must be evidence in the file of the reason why the electronic technologies were not used.
 - (iii) Authorities must report details about proceedings and decisions on their website.
 - (iv) Municipalities and “*personerías*” (Municipalities’ control entities), if possible, shall guarantee remote hearings and online filing.
 - (v) Mandatory remote or telephonic hearings.
 - (vi) Digital channels to proceed in the judicial proceedings.
 - (vii) Electronic court filing.
 - (viii) Electronic submission of files.
 - (ix) Power of attorney granted through a data message.
 - (x) Personal service of process made by a data message without sending a prior summons or notice.
 - (xi) Notifications through electronic “lists of formal notice”.
- Decree 806 has not yet been completely implemented.

⁵⁰ See Arnaldo MENDOZA TORRES, “La justicia en Colombia. ¿Una crisis ética?”, *Revista de la Academia Colombiana de Jurisprudencia* (2018) p. 123, Abstract.

⁵¹ See fn. 12 above.