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**AWARD NOTIFICATIONS  
SHOULD EXPLAIN HOW TO  
SEEK ANNULMENT**



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The CEPANI Secretariat will from now on, when notifying an award to the parties and their counsel, explain in its cover letter how and by when an action for annulment of the award may be filed. This will be done by quoting Article 1717, §§1, 2 and 4 of the Judicial Code.

This new practice is a consequence of the Constitutional Court's judgment 23/2022 of 10 February 2022. The judgment deals with a preliminary reference from the Mons Court of Appeal, where an appellant had missed the deadline for filing its appeal. The appellant pleaded that the deed of service (*signification / betekening*) of the first instance judgment was defective in that it did not state that it constituted the starting point of the time period after which an appeal would no longer be admissible. The Court of Appeal referred the argument to the Constitutional Court. Technically, the Court of Appeal noted a difference in treatment between notifications of certain judgments by the court's clerk under Article 792 of the Judicial Code, where details of the available legal remedies (*voies de recours / rechtsmiddelen*) must be indicated, and deeds of service by bailiffs where they need not be. This was the "discrimination" hook on which the Court of Appeal hung its preliminary reference.

The Constitutional Court built a reasoning based entirely on the right of access to a court, as enshrined in Article 6 of the European Convention on Human Rights. The Court stated that, in order for the right of access to a court to be guaranteed, the rules regarding legal remedies and their time limits must be clearly defined and, furthermore, these rules must be explicitly brought to the attention of the parties. The Court referred to the caselaw of the ECtHR which, in certain particular circumstances, has required that an express explanation about available remedies be included

with the notification of the judgment. That caselaw is highly fact-specific and relates for instance to criminal convictions ordered against a defaulting defendant or civil judgments involving a litigant in person without legal representation. The Constitutional Court, however, considered that the requirement applies generally for the benefit of all litigants: "*ces exigences essentielles relatives au droit d'accès au juge, qui constitue un aspect du droit à un procès équitable, valent de manière générale à l'égard de tout justiciable / gelden die wezenlijke vereisten inzake het recht op toegang tot de rechter, dat een aspect van het recht op een eerlijk proces vormt, op algemene wijze ten aanzien van iedere rechtzoekende*". The Court stated that a mention, in the deed of service of a judicial decision, of the availability of legal remedies is an essential aspect of the general principle of the proper administration of justice and of the right of access to a court.

The Court concluded that Article 43 of the Judicial Code, which lists the mandatory statements that must appear in any deed of service of a judgment, is invalid to the extent that it fails to include in the list a statement about the availability of legal remedies, the applicable time limits and the designation and the address of the competent appellate court. The Court, however, deferred until 31 December 2022 the effectiveness of its judgment so as to protect legal certainty in respect of non-compliant deeds of service. This can only mean that the Court considered that a deed of service that does not include a description of the available remedies is ineffective, so that the calculation of the time limit for filing an appeal does not start. The Court expressly referred to Article 47*bis* of the Judicial Code, pursuant to which a deed of service that misses a mandatory statement does not start the clock running.

The judgment only deals with Article 43 of the Judicial Code and the service of State court judgments. It says nothing about arbitration and the communication of awards. Given its reasons, however, and the sweeping statement by the Court about the general application of the information requirement it imposes, it seems inevitable that the communication of arbitral awards must also comply. The CEPANI Secretariat wisely decided to do so with immediate effect.