PARISBABYARBITRATION

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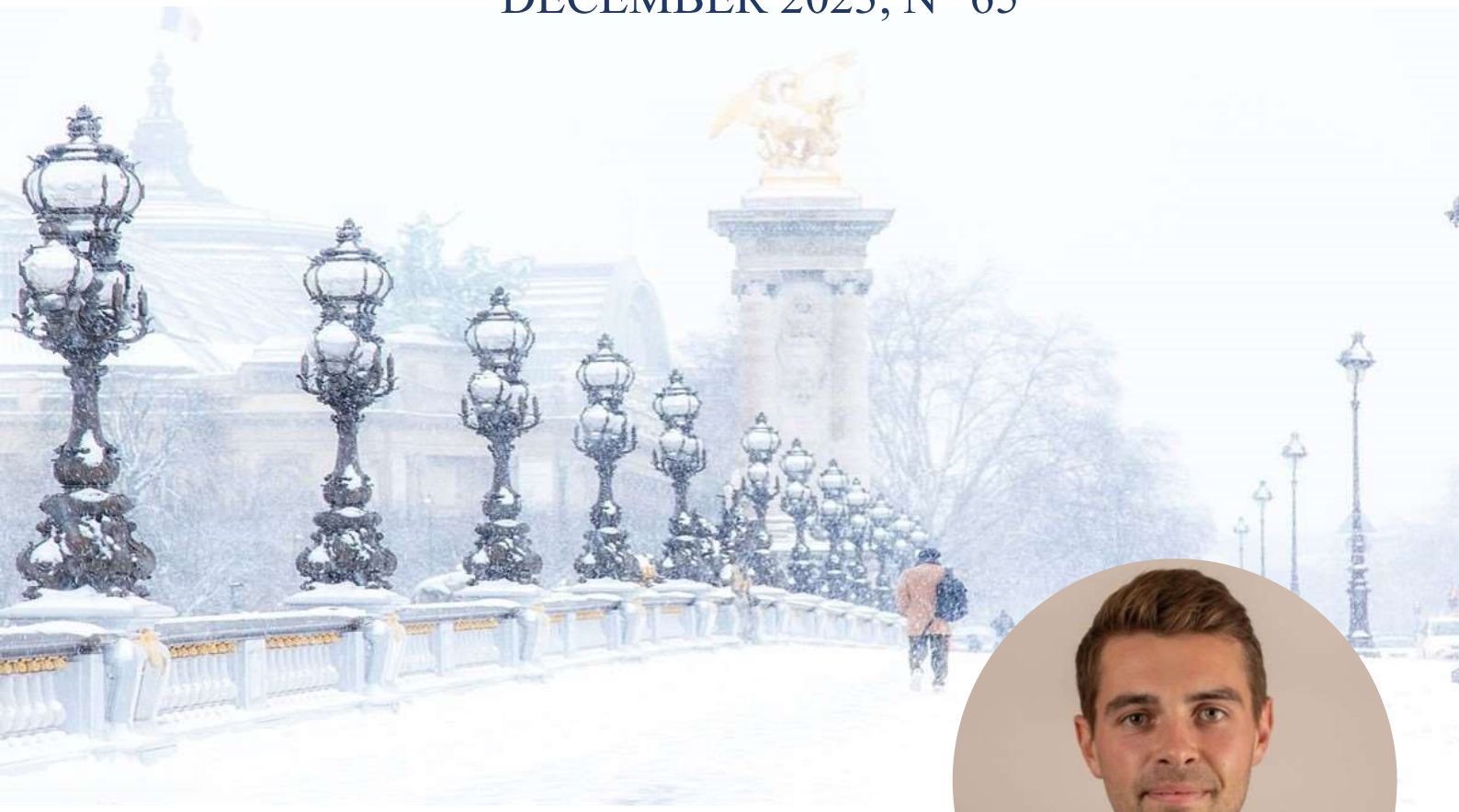

French and foreign courts' decisions

International arbitral awards and decisions

Interview with Alexandre Rempp

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Founded in 2019, Law Profiler is an organisation aiming to grant an easier access to the legal employment market. Law Profiler lists over 80,000 members and assists thousands of lawyers and aspiring practitioners to find jobs free of charge.

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Founded in 2004, Teynier Pic is an independent law firm based in Paris, dedicated to international and domestic dispute resolution, more specifically with a focus on litigation, arbitration and amicable dispute resolution.

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Founded in 1943, Foley Hoag is a business law firm specialised in the resolution of national and international disputes. The Paris office has a particular expertise in arbitration and international commercial litigation, environmental and energy law, as well as public law and corporate M&A.

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Paris Baby Arbitration is a Paris-based society and a networking group of students and young practitioners in international arbitration. Our aim is to promote accessibility and knowledge of this somewhat lesser-known field of law and industry within the student sphere.

Every month, our team publishes the Biberon. The Biberon is our newsletter in both English and French, designed to review and facilitate comprehension of the latest decisions and awards rendered by national and international courts, as well as arbitral tribunals.

In doing so, we hope to participate in keeping our community informed on the latest hot topics in international arbitration from our French perspective.

Dedicated to our primary goal, we also encourage students and young practitioners to actively contribute to the field by joining our team of writers. As such, Paris Baby Arbitration is proud to provide a platform for its members and wider community to share their enthusiasm for international arbitration.

To explore previously published editions of the Biberon and to subscribe for monthly updates, kindly visit our website: parisbabyarbitration.com (currently undergoing maintenance).

We also extend an invitation to connect with us on LinkedIn, and we welcome you to follow/share our latest news on LinkedIn and beyond.

Enjoy your reading!

Sincerely yours,
The Paris Baby Arbitration team

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FRENCH COURTS

CONSEIL D'ETAT

Council of State, 17 October 2023, n° 465761, *SMAC*

On 17 October 2023, the *Conseil d'État*, the highest administrative court in France, reaffirmed the exclusive jurisdiction of French administrative courts to hear applications for the annulment of arbitral awards involving a French public entity, and confirmed the non-arbitrability of disputes involving them.

On 8 February 2008, *Ryanair Designated Activity Company* and one of its subsidiaries, *Airport Marketing Services Limited* (hereinafter "Ryanair" or "Claimants"), entered into two agreements with a French public entity, *Syndicat Mixte des Aéroports de Charente* (hereinafter "SMAC"), for the purpose of developing a scheduled flight path between London and Angoulême. These agreements were expressly subject to French law and included an arbitration clause appointing an arbitral tribunal constituted under the auspices of the London Court of International Arbitration (LCIA), for any dispute not resolved amicably "*arising out of or in connection with the Agreement, including any question concerning its existence, validity or termination*". In 2010, Ryanair notified SMAC of its decision to terminate the flight path and the airline brought the dispute before the LCIA.

In a preliminary award rendered on 22 July 2011, the tribunal declared that it had jurisdiction to hear the dispute and consequently refused to stay the proceedings until the Poitiers Administrative Court, to which SMAC had referred the matter, had ruled on the same case. Then, in an award on the merits, dated 18 June 2012, the arbitral tribunal ruled that the contract had been validly terminated and awarded the companies the costs of the arbitration. Subsequently, Ryanair went through a series of setbacks before the French administrative courts, which refused to enforce the award, and the proceedings ended up before the *Tribunal des Conflits* (*Ed. : the French court specialised in settling conflicts of jurisdiction between France's two jurisdictional orders, i.e. the judicial and administrative orders*). More recently, both the Poitiers Administrative Court and the Bordeaux Administrative Court of Appeal refused to grant enforcement of the award. Ryanair appealed the latter decision to the *Conseil d'État*.

France's highest administrative court started by pointing out that "*the enforcement of an arbitral award which pertained to a contract concluded between a French public law entity and a foreign law entity, performed on the French territory but involving the interests of international trade, cannot be authorised by the administrative court if it is contrary to public policy*". It then rejected the arguments put forward by the Claimants one by one.

First, with regard to the Claimants' argument hereby the contract concluded with the public entity had been entered into for the needs of international trade, the *Conseil d'État* stated that this circumstance "[...] *did not allow for circumvent the principle whereby* [French] *public entities are prohibited from resorting to arbitration*".

Second, with regard to the application of the 1958 New York Convention, and more specifically to Article V thereof, the Claimants argued that the administrative court of appeal had disregarded the principle whereby public entities are prohibited from resorting to arbitration "*unless an exception is created by express legislative provisions or stipulations contained in international conventions duly incorporated into the domestic legal order*".

However, according to the *Conseil d'État*, these exceptions "[...] *do not bar the administrative court from refusing to enforce an arbitration award relating to a dispute that was not arbitrable*".

Third, Ryanair claimed that the lower administrative courts failed to apply the European Convention on International Commercial Arbitration, signed in Geneva in 1961, Article II of which stipulates that "[...] *legal persons qualified, under the law applicable to them, as 'legal persons governed by public law' may validly conclude arbitration agreements*". Here again, after noting that the Claimants had their registered offices in Ireland, a country which is not party to the Convention, and that "[...] *the arbitration agreement concluded between SMAC and the companies Ryanair and Airport Marketing did not fall within the scope of the provisions of that Convention*", the *Conseil d'État* stated that "[...] *the European Convention on International Commercial Arbitration is applicable only to arbitration agreements concluded between parties who have their domicile or registered office in different States that are parties to the European Convention on International Commercial Arbitration*".

Finally, the Claimant argued that, by refusing to enforce the arbitral award, there was a breach of Article 6 of the European Convention on Human Rights. On this ground, the *Conseil d'État* concluded that the dispute was not arbitrable, so that, in any case, the Claimants had no grounds to assert that the court had disregarded their rights.

Consequently, the *Conseil d'État* dismissed the appeal lodged by Ryanair and ordered them to pay the Syndicat Mixte des Aéroports de Charente the sum of €1,500 under article L. 761-1 of the Code of Administrative Justice. As such, the *Conseil d'État* put an end to the *SMAC saga*, which has lasted more than ten years.

Contribution by Ghaïs Ghedjati

Paris Court of Appeal, 13 June 2023, n° 21/07296, *MCB*

On 13 June 2023, the International Commercial Chamber of the Paris Court of Appeal ("ICCP-CA") dismissed an application to set aside a partial award rendered in Paris on 13 January 2021, under the aegis of the International Court of Arbitration of the International Chamber of Commerce ("ICC").

The dispute arose out of the performance of a project relating to the construction, operation and maintenance of a seawater desalination plant in Algeria ("the Project").

In order to define the scope of the Project, MCB and Hyflux entered into an Association Agreement with AEC. This agreement included an arbitration clause and provided for the creation of two companies, TDIC and AAS, responsible for the operational implementation of the Project. Subsequently, AEC entered into four operational contracts with TDIC, AAS and other parties, including a contract for the sale and purchase of water produced by the plant ("CVAE contract"), a Framework agreement defining the consequences of improper performance of the CVAE contract (including the possibility of a transfer of shares), a Direct agreement regulating the financial aspects of the Project and a Protocol relating to the resolution of disputes arising from these contracts.

The construction, operation and maintenance of the Project's plant encountered significant difficulties impacting the production of drinking water. As a result, on 5 February 2019, AEC filed a request for arbitration to the ICC against TDIC, Hyflux and MCB, seeking to hold them liable for the plant's malfunctions and to obtain the transfer of TDIC's shares in AAS.

In a partial award dated 13 January 2021, the arbitral tribunal asserted jurisdiction to rule on the liability claim under the Association agreement and the share transfer claim under the Framework agreement in a single arbitration proceeding.

On 9 April 2021, MCB and TDIC lodged an application to set aside the partial award with the Paris Court of Appeal. They argued that the arbitral tribunal lacked jurisdiction on the grounds that it could not extend the arbitration clauses without the agreement of the parties, nor consolidate the disputes into a single arbitration. They also claimed that the arbitral tribunal had failed to comply with its mandate by refusing to answer a question regarding its jurisdiction.

The Paris Court of Appeal rejected the argument whereby the arbitral tribunal violated its mandate, holding that it is not the role of the annulment judge to call into question the opinion of the arbitrator, who exercised their discretion and considered that one of the claims could not be dealt with at the stage of the partial award on jurisdiction, but had to be decided when the substantive issues were to be addressed.

Regarding the claim that the arbitral tribunal lacked jurisdiction, the ICCP-CA noted that, subject to the mandatory rules under French law and French international public policy, an arbitration clause must be examined in light of the parties' common intention, of all the circumstances of the case, and in accordance with the principles of interpretation in good faith and useful effect. The Court of Appeal then analysed the parties' intentions with regard to the consolidation proceedings first, and then to the extension of the arbitration clause to third parties.

With regard to consolidation, the Court found that the arbitration clauses included in the contracts showed that they all referred to the Project as a whole as well as to disputes arising under the related contracts, and that they all contained, either directly or by reference, a consolidation clause.

It therefore concluded that the intention of the parties was to be able to consolidate the disputes relating to the agreements entered into in connection with the implementation of the Project into a single arbitration process, should the conditions for consolidation be met.

With regard to the extension, the Court of Appeal noted that the intention of the parties to the Association agreement was clearly to include any third party concerned by a dispute relating to the Project, and thus to allow the arbitration clause to be extended to third parties. It highlighted that it was clear from the contractual state of affairs, the content of the contracts and the relationship between the various parties that they were in fact aware of all the obligations contained in the contracts, including the arbitration clauses, and that they were involved in the overall contractual framework.

The Paris Court of Appeal therefore dismissed the annulment application, confirmed the partial award rendered on 13 January 2021, and ordered MCB and TDIC to pay the sum of 100,000 euros under Article 700 of the French Code of civil procedure, as well as all legal costs.

Contribution by Valentine Menou

Paris Court of Appeal, International Commercial Chamber, 26 September 2023, n° 21/20965, *Bolivarian Republic of Venezuela*

On 26 September 2023, the International Commercial Chamber of the Paris Court of Appeal (ICCP-CA) dismissed two setting aside applications filed against an arbitral award and an rectification award, both issued in ICSID Case No. ARB(AF)/17/1 between *Air Canada* (hereinafter "Air Canada" or "the Investor") and the *Bolivarian Republic of Venezuela* (hereinafter "the State" or "Venezuela"). In that case, the Court was concerned with the question of the arbitral tribunal's jurisdiction and to whether it had exceeded the terms of reference. As the dispute related to an investment, the first question was examined in particular with regard to the time limit for bringing the dispute before the tribunal, the condition of waiver of any other proceedings and the notion of investor and investment within the meaning of a bilateral investment treaty (hereinafter "BIT"), in this case the one concluded between the Government of Canada and the Government of the Republic of Venezuela in 1996, which entered into force in 1998.

Air Canada is a Canadian company specialised in international flight transport. In 1989, the company established a branch in Venezuela to promote its commercial flights. In 2003, the Venezuelan government introduced an exchange control regime subjecting the distribution, purchase and sale of foreign currency to administrative authorisations. While between 2004 and 2012, more than 91 requests made by Air Canada were approved by the local authorities, around 15 requests made between 2013 and 2014 went unanswered by Caracas.

These authorisation requests were the subject of the dispute that led the investor to initiate arbitration proceedings before the ICSID on 16 December 2016. In an award rendered in Paris on 13 September 2021, the arbitral tribunal found that the host State of the investment had breached its obligations and therefore ordered it to pay the investor the sum of USD 20,790,574, plus interest from 17 March 2014 until the sum was paid in full. Following a request by Venezuela to rectify an error in the award, the arbitral tribunal amended the starting date to calculate the interest to 26 May 2014 in an rectification award dated 27 October 2021. On 29 November 2021, the Venezuelan State lodged an application with the Paris Court of Appeal to set aside the award and the rectification decision.

In support of its application, Venezuela first relied upon Article 1520 1° of the French Code of Civil Procedure, to argue that the arbitral tribunal wrongly upheld jurisdiction. This argument was sub-divided into five parts. First, according to the State, Air Canada failed to comply with two conditions set out in Article XII(3) of the BIT, namely that the arbitration be initiated before the expiry of a three-year time limit and that all other proceedings started to resolve the dispute be waived. Furthermore, Air Canada had not established that it had made an "investment" or that it was an "investor" within the meaning of the BIT. Finally, the claimant considered that the application of the principle *lex specialis derogant lex generalis* should have led the arbitral tribunal to decline jurisdiction.

In its decision, the Paris Court of Appeal began by recalling the principle laid down in *Oschadbank* (*see Biberon no. 58, January 2023*), which reads as follows: "[w]*here the arbitral tribunal's jurisdiction arises from a bilateral investment treaty, its jurisdiction and the scope of its jurisdictional power depend upon that treaty, the State's consent to arbitration flowing from the standing offer to arbitrate made to a category of investors defined in that treaty for the settlement of investment disputes*". The Court then rejected each of the arguments put forward by the Venezuelan State.

As regards the condition relating to the time limit for bringing the case before the arbitral tribunal, the Court noted that this obligation "[...] *imposes on the investor an obligation to bring the case promptly before the arbitral tribunal, which is a condition, not of the tribunal's jurisdiction to hear the claim, but of the claim's admissibility*". Consequently, non-compliance with the time limit could not fall within the scope of Article 1520 1°.

As regards the waiver requirement, the Paris Court of Appeal similarly found that "[...] *the waiver obligation thus set out is incumbent upon the investor and conditions the investor's ability to submit their claim to the arbitral tribunal to complying with that requirement, irrespective of the tribunal's jurisdiction over that claim*", and consequently concluded that the waiver constituted a condition for the admissibility of the claim that it was not entitled to ascertain.

As regards the argument relating to the concept of "investment", the Court noted that the BIT gives a broad definition of investment, since it refers to "*any type of asset owned or controlled directly or indirectly by an investor of one of the Contracting Parties*", and further observed that the list of assets given in the BIT is more illustrative than exhaustive. As such, the right to payment, resulting from the declarations made by Air Canada, can be analysed as claims for sums of money that did indeed qualify as an investment under the BIT.

With regard to the concept of "investor", it also recalled the definition given by the BIT, *i.e.* "*an company duly incorporated in accordance with the laws applicable in Canada which makes an investment in the territory of Venezuela without holding Venezuelan nationality*". In this case, the money claims were held by the Canadian company in a bank account opened in Venezuela. According to the court, the airline was therefore an investor within the meaning of the BIT.

Finally, while Venezuela argued that an agreement on air transport signed between the States, which did not give jurisdiction to any arbitral tribunals, took precedence over the BIT as a *lex specialis* and therefore denied jurisdiction to the arbitral tribunal, the Court noted that this agreement could only be implemented by the States parties and had "*neither the object nor the effect of permitting an investor to be compensated*". As a result, the ICCP-CA rejected in its entirety the claimant's application for annulment on the basis that the arbitral tribunal lacked jurisdiction of the arbitral tribunal's.

Second, the Bolivarian Republic of Venezuela submitted, on the basis of Article 1520 3° of the French Code of Civil Procedure, that the arbitral tribunal ruled without complying with the terms of reference. Indeed, the arbitral tribunal arguably ruled *ex aequo et bono* even though the parties had not given it the power to do so. According to the State, the arbitral tribunal should have complied with the rules of Venezuelan public law on, which provide that if the administration fails to respond within four months, the request is deemed to have been rejected. However, the arbitral tribunal supposedly failed to take those rules into account.

Here again, the argument put forward by the claimant did not convince the Court. After pointing out that "[t]*he arbitrator does not depart from his mission if he makes use of the freedom enjoyed by him granted by the law applicable to the dispute* [...]", it noted that the aforementioned provisions "*do not fall within the scope of the rules made applicable by the BIT for the settlement of disputes between an investor and a contracting party, since they are not concern with the ownership or control of investments, nor do they fall within the list of laws referred to in the aforementioned Article VIII(4), so that it cannot be said that the arbitral tribunal departed from them*" and, consequently, "[i]*t cannot be inferred from this reasoning that the arbitrators acted as* amiables compositeurs*, nor that they disregarded the law applicable to the dispute in order to rule ex aequo et bono, since the arbitral tribunal, who at no time referred to equity in their award, whether explicitly or implicitly, on the contrary endeavoured to identify the rules applicable to the dispute under the BIT and to apply them taking into account the circumstances of the case*". The Court therefore rejected the second ground for annulment put forward by the claimant.

As such, International Commercial Chamber of the Paris Court of Appeal dismissed the application to set aside brought by the Venezuelan State against the awards in ICSID Case No. ARB(AF)/17/1. At the same time, the Court took the opportunity to remind that that the dismissal of an annulment application implies that exequatur be automatically grants to the award on the basis of article 1527 paragraph 2 of the French Code of Civil Procedure.

Contribution by Ghaïs Ghedjati

Paris Court of Appeal, 28 September 2023, n° 21/18611, *CCCC*

In a decision dated 28 September 2023, the Paris Court of Appeal shed light upon the way French courts handle applications for a stay of proceedings in the context of annulment proceedings, in the event of pending civil and criminal proceedings, both in France and abroad.

A shareholders' agreement was signed in Beijing by the shareholders of CCCC Algeria to conduct the activities of CCCC Ltd, a company incorporated under Chinese law, in Algeria. The agreement included an arbitration clause. A dispute arose between Chinese and Algerian shareholders, and the latter started proceedings before Algerian courts, which held that they had jurisdiction to hear the case. However, the Alger Court of Appeal overturned the first instance decision and ruled that Algerian courts lacked jurisdiction, as they had been seised in contravention of the arbitration clause. In the meantime, CCCC Ltd had initiated arbitration proceedings on the basis of the arbitration clause included in the shareholders' agreement. The arbitral tribunal held that it had jurisdiction to hear the case.

An application to set aside this award was filed before the Paris Court of Appeal by the Algerian shareholders, who were requesting a stay of proceedings for two reasons:

- Criminal proceedings were pending both before French courts for forgery and attempt to obtain a judgment by fraud on the one hand, and before Algerian courts for forgery and use of a forged document on the other, namely, of minutes of a board meeting that CCCC Algeria was relying upon to establish its consent to arbitration; and
- Civil proceedings were pending before Algerian courts on the merits, as the court of appeal decision was itself subjected to a number of challenges, including an appeal before the Algerian Supreme Court.

As such, the question was whether pending civil and criminal proceedings, both in France and abroad, and whose outcomes are likely to hold sway over the annulment proceedings before French courts, could justify the decision to stay said annulment proceedings.

Both arguments were rejected by the Paris Court of Appeal:

- **As regards the pending criminal proceedings**, it recalled that, save cases where the law compels to do so, the decision to stay proceedings is to be taken based upon the court's discretion, which must take into account the interest of the proper administration of justice. Similarly, Article 4 of the French Code of Criminal Procedure provides that it does not follow from the initiation of criminal proceedings that civil proceedings must be stayed, even when the decision by the criminal court is likely to have a direct or indirect influence over the outcome of the civil proceedings. Considering that the arbitral tribunal had not relied upon the litigious minutes to decide upon whether it had jurisdiction or not, the Paris Court of Appeal concluded that it was not in the interest of proper administration of justice to stay the annulment proceedings; and

- **As regards the pending civil proceedings**, it asserted that "*arbitral awards, while they are not deemed to be decisions belonging any State's legal order, rather correspond to international decisions whose legality must be ascertained by reference to the applicable rules of law of the State where recognition and enforcement are sought"* ("[l]*a sentence arbitrale internationale, qui n'est rattachée à aucun ordre juridique étatique, constitue en effet une décision de justice internationale dont la régularité est examinée au regard des règles applicables dans le pays où sa reconnaissance et son exécution sont demandées*". By doing so, it recalled the legal principle laid down in *Putrabali* (Court of Cassation, First Civil Chamber, 29 June 2007, n° 05-18.053), before holding that "*the Algerian courts' decisions, none of which are enforceable in France, do not, as a result, have any influence whatsoever over the challenge filed before the court in the present proceedings* ("[l]*es décisions des juridictions algériennes, dont aucune n'est revêtue de l'exequatur en France, sont dès lors sans incidence sur le recours dont la cour est saisie dans la présente instance*"). In other words, the way that foreign courts deal with arbitration agreements and arbitral awards do not, in any way, hold sway over the way that French courts are to adjudicate, as the latter can only be influenced by decisions belonging to the French legal order. This is not the case for international arbitral awards, which are by definition decisions not belonging to any State's legal order, save the case they have been granted exequatur therein.

As such, the Paris Court of Appeal refused to grant a stay of proceedings to the shareholders of CCCC Algeria.

Contribution by Romi Grumberg

Paris Court of Appeal, 17 October 2023, n° 21/20796, *Industrial Company*

On 17 October 2023, the International Commercial Chamber of the Paris Court of Appeal dismissed the application for annulment of an award on the grounds of procedural fraud.

The dispute arose from the termination of the exclusive distribution contracts by the supplier. In 2018, the distributor brought two ICC arbitration proceedings (consolidated by the institution) for wrongful termination of the contracts. In its award dated 19 October 2021, the arbitral tribunal found that the termination was wrongful and ordered the supplier to compensate the distributor.

On 26 October 2021, the supplier brought an application for annulment of the award, claiming that the documents which were essential to the resolution of the dispute had been concealed by the distributor, despite requests for their production. The claimant produced those documents before the Court of Appeal, after obtaining them from the distributor's former director, without the distributor's permission, once the award had been rendered.

The Court of Appeal refused to reject the documents submitted by the claimant on the grounds that, although the documents had been obtained unfairly, this unfairness had to be weighed against the aim pursued, which in this case was to prove procedural fraud. It held that this constituted an overriding interest, which could justify the admissibility of the documents.

The claimant relied upon Article 1520 3°, 4°, 5° of the French Code of Civil Procedure, *i.e.* the tribunal had ruled without complying with the mandate conferred upon it, due process was violated, and enforcement of the award would be contrary to international public policy respectively.

The Court of Appeal first dismissed the defendant's argument under Article 1466 of the French Code of Civil Procedure in respect of the various grounds for dismissal. The Court emphasised that the supplier had raised the objections relating to irregularities in the production of evidence in good time before the arbitral tribunal. Further, the Court of Appeal dismissed the claim on all three grounds.

As for the first ground for annulment (contravention of international public policy), the claimant alleged procedural fraud and failure to comply with the principle of equality of arms.

Regarding procedural fraud, the claimant argued that the distributor had been dishonesty in the production of documents, concealing information that was essential to the resolution of the dispute, and that the award was therefore obtained by way of a breach of French international public policy.

The Court of Appeal began by highlighting that procedural fraud can qualify as a breach of international public policy, but that it supposed that the production of false documents, misleading testimony, or documents relevant to the resolution of the dispute had been fraudulently concealed. In addition, the Court pointed out that fraud could only serve as the basis of annulment if it was decisive. Finally, the Court of Appeal concluded by saying that, when comparing the parties' written submissions during the arbitration and the arbitral tribunal's conclusion on that matter, the latter did have knowledge of the alleged elements of fraud and had made its own assessment of the fraudulent nature of the documents submitted to it, which the Court refused to review. Accordingly, the arbitral tribunal's decision was not obtained by procedural fraud.

Regarding the issue of equality of arms, the claimant argued that they had been placed at a disadvantage due to their opponent's failure to produce documents and the arbitral tribunal's inertia in the face of this.

The Court of Appeal recalled that the principle of equality of arms implied the obligation to offer each party a reasonable opportunity to present their case, including evidence, in such a way as not to place one party at a substantial disadvantage compared to the other. The Court concluded that there had been no breach of this principle on the facts, as the claimant had merely replicated the argument of procedural fraud.

As for the second ground for annulment (failure to comply with due process, and in particular the adversarial process), the claimant argued that by failing to produce the documents, they were prevented from defending themselves against the claim whereby the termination was abusive and the quantum of the damage. The Court of Appeal, after recalling the substance of the principles flowing from an adversarial process, concluded that there had been no breach of the principle in this case, for the same reasons mentioned as above. Also, the Court noted that this argument, which in reality sought to review of the merits of the award, could only be dismissed.

As for the last ground for annulment (the arbitral tribunal's failure to comply with the mandate conferred upon it), the claimant argued that the compensatory interest awarded to the distributor was higher than that requested by the distributor. The distributor had supposedly requested that interest be calculated up to the date of the hearing and not up to the date of the award.

The Court of Appeal recalled that the arbitrator's mission is limited by the subject-matter of the dispute, as determined by the parties' claims. It relied upon the terminology used by both parties ("*pre-judgment interest*") to conclude that the arbitrators, in fixing the interest at the date of the award, had not adjudicated *ultra petita*, and therefore dismissed the argument.

Lastly, the defendant argued that the claimant's application for annulment was abusive. The Court of Appeal dismissed this claim, holding that the claimant could have been legitimately mistaken as to the extent of their rights and had not committed a wrongdoing nor a blameable casualness in bringing the application for annulment.

Contribution by Iulian Chetreanu

England and Wales High Court (Commercial Court), 22 September 2023, *G v. R* [2023] EWHC 2365 (Comm)

On 22 September 2023, the Commercial Court of England and Wales rendered a decision in which it ruled that it lacked jurisdiction to issue an anti-suit injunction prohibiting a party from bringing an claim before Russian courts, so as to give effect to an ICC arbitration clause whose seat would have been in Paris.

In this case, company G ("G") and company R ("R") had concluded contracts which included, on the one hand, an arbitration clause providing for ICC arbitration seated in Paris and, on the other hand, a choice-of-law clause providing for English law as the governing law of the contract.

Subsequently, R brought an action before Russian courts. G in turn applied to the English courts for an anti-suit injunction prohibiting R from continuing with the Russian proceedings, invoking the arbitration clause contained in their contracts. R then objected to the jurisdiction of the English courts.

In determining the law applicable to the arbitration clause, the High Court first adopted the reasoning of the Supreme Court in *Enka v. Chubb* [2020] UKSC 38, which set out the following three principles. Firstly, where the law applicable to the arbitration agreement is not specified, a choice of governing law for the contract will generally apply to an arbitration agreement which forms part of the contract. Secondly, the choice of a different country as the seat of the arbitration is not, in itself, sufficient to negate an inference that a choice of law to govern the contract was intended to apply to the arbitration agreement. Thirdly, the arbitration clause may be governed by the law of the place of the seat if (i) the law of the place of the seat provides that "*any provision of the law of the seat which indicates that where an arbitration is subject to that law, the arbitration [and the parties agree the word 'agreement' should be inserted] will also be treated as governed by that country's law*", or when (ii) the application of the law chosen for the main contract would result in the arbitration clause being ineffective.

The High Court focused on the first point (i) of the third principle, noting that French law, which is the law of the seat of arbitration, would not designate English law as the law chosen by the parties to apply to the arbitration clause, but rather would apply its own substantive rules of international arbitration developed by French courts. Citing the famous cases of *Dallah Real Estate v. Pakistan* [2010] UKSC 46 et *Kabab-Ji v. Kout Food* [2021] UKSC 48 on this point, the High Court went on to say that "*in choosing France as the seat of the arbitration, the parties can fairly be taken as being aware of that aspect of French law and having it in mind and to have intended that the arbitration would be governed by those principles*". It therefore concluded that it was the law of the place of the seat of the arbitration that should apply, the "*French substantive rules*", and not English law.

However, for the sake of completeness, the Court also tackled the case where English law would have been applicable, and considered whether England was the appropriate forum in which to seek an anti-suit injunction. The High Court rejected each of the arguments put forward by the party seeking the injunction. In its view, the fact that English law governed the contract between the parties was not a factor establishing a sufficient connection with the UK. Nor was the Court convinced that the English courts were the only ones empowered to issue anti-suit injunctions, since other appropriate remedies were available before the French courts.

Lastly, Russia's departure from the New York Convention as a result of its new legislation allowing Russian courts to rule on a dispute normally submitted to arbitration was also not an argument enabling the English court to say it was the *forum conveniens*. *In fine*, the High Court declared it could not grant the anti-suit injunction sought by G.

Contribution by Maxime Villeneuve

High Court of Justice (King's Bench Division) of England and Wales, 23 August 2023, *The Federal Republic of Nigeria v. P&I Developments* [2023] EWHC 2145 (Comm)

In a decision dated 23 August 2023, the English High Court welcomed a challenge filed against an arbitral award on the grounds that it was obtained by fraud and that the award was procured in a way contrary to public policy pursuant to section 68 of the Arbitration Act 1996 (the "Act").

In 2010, the Federal Republic of Nigeria ("Nigeria") concluded a 20-year contract with P&I Developments, whereby the former would supply gas and the latter would process it in its processing facilities so as to be used by the former to generate power. This contract contained an arbitration clause. Following non-performance by both parties of their respective contractual obligations, P&I Developments initiated arbitral proceedings against Nigeria in 2012.

The arbitral tribunal found in favour of P&I Developments, holding that Nigeria had committed a repudiatory breach of the contract and was liable for a substantial amount of damages.

Nigeria sought to challenge the award in England alleging the existence of substantial injustice stemming from a serious irregularity affecting the tribunal (other than lack of substantive jurisdiction) caused by fraud and the procurement of the award in a way contrary to public policy pursuant to section 68(2)(g) of the Act. It argued that, in obtaining the arbitral award, there was evidence of (i) corruption and bribery by P&I Developments of the Nigerian Ministry of Petroleum Resources' Legal Director on the one hand, and of Nigeria's two lead counsels on the other, of (ii) dishonesty in the evidence obtained, adduced and relied upon but not communicated to Nigeria, and of (iii) perjury by P&I Developments' factual witness.

Bribery, corruption and dishonest misrepresentation under section 68(2)(g)

Knowles J first considered the allegations of bribery, and evidentiary dishonesty:

- On the allegations of bribery, he first gave three definitions of bribery under English law implying the payment of a secret commission - or the conferring of any benefit - by a person to a principal's agent, with the knowledge that they are the principal's agent, and without disclosing to the principal that such payment has been made (at [164]). He then emphasised that the existence of fraud or conduct contrary to public policy under section 68(2)(g) of the Act is broader than those definitions, so that a conduct not strictly amounting to a bribe may nonetheless meet the requirement to challenge an arbitral award on this ground (at [165]); and

- On the allegations of evidentiary dishonesty, in ascertaining whether there was dishonesty, he recalled Lord Hughes' test in Ivey v. Genting Casinos (UK) Ltd [2017] UKSC 67, whereby the court must find that (i) a person must genuinely hold a belief (subjective standard), and (ii) must do so in a way that an ordinary decent person would find dishonest (objective standard) (at [24]).

On the facts, he found that:

- The fact that the Nigerian Ministry of Petroleum Resources' Legal Director received payments just before and after the conclusion of the contract so as to secure the public procurement contract with favourable terms for P&I Developments was strong evidence of bribery for the purpose of section 68(2)(g) (at [170], [177] and [178]);

- The fact that P&I Developments' counsels received Nigeria's internal legal documents about the latter's strategy, knew as legal professionals that they were protected by legal professional privilege, yet failed to return them and inform Nigeria of their coming to be in their possession - probably due to "life-changing" success fees for P&I Developments' counsels - was "indefensible" and evidence of dishonesty (at [208], [214], [215], and [217]; see also [317] and [400] at other stages of the proceedings); and

- The fact that P&I Developments' factual witness not only lied about the project finance (at [244] and [317]) and the engineering design (at [246] and [317]), but also tried to deceive as to the way the contract came about by purposely not mentioning bribes made to the Nigerian Ministry of Petroleum Resources' Legal Director (at [253], [254] and [316]; see also [401] and [405] at other stages of the proceedings) was evidence of dishonesty.

Standard of proof for fraud and a contravention to public policy under section 68(2)(g)

He stated that section 68(2)(g) of the Act mainly pertains to an award obtained by fraud, or to an award obtained in a way contrary to public policy, irrespective of whether the claim on which the award is based or the cause of action on which the claim is based is contrary to public policy itself (at [474]). Citing several authorities, he added that the standard of proof is very high, as fraud implies a "dishonest, reprehensible or unconscionable conduct" (at [477]), while "considerations of public policy (...) should be approached with extreme caution" and necessarily implies that "there is some illegality or that the enforcement of the award would be clearly injurious to the public good or, possibly, that enforcement would be wholly offensive to the ordinary reasonable and fully informed member of the public on whose behalf the powers of the state are exercised" (at [478]).

Based upon these factual elements and bearing in mind this standard of proof for Nigeria, he ruled that the award had been obtained by fraud and procured in a way contrary to public policy, as resulting from an "overall fraudulent enterprise or plan from the start to procure an award" (at [488] and [492]) in the form of corruption, bribery and dishonest misrepresentation by P&I Developments (from [493] to [496]).

Serious irregularity causing substantial injustice under section 68

While a 'serious irregularity' is needed, he explained that a challenge under section 68 of the Act can only be successful if it also caused substantial injustice to the claimant (at [498]). Applying the principles set out in the Privy Council case of RAV Bahamas v. Therapy Beach Club [2021] UKPC 8, the test to ascertain whether the irregularity was serious enough to cause substantial injustice is whether it can be said that "what has happened is so far removed from what could reasonably be expected of the arbitral process that we would expect the court to take action", though does not include to look at "what would have happened had the matter been litigated" before domestic courts in the first place (at [500]).

As such, this test imposes a "high threshold", and its "focus is on due process, not the correctness of the decision reached" (at [500]). While some irregularities are so serious that substantial justice is inferred to be "inherently likely" (e.g. irregularities affecting central issues between the parties, like when the arbitral tribunal makes an ambiguous finding, or when it does not address an important issue), the applicant must normally establish it by showing that (i) their position was "reasonably arguable", and that (ii) "had the irregularity not occurred, the outcome of the arbitration might well have been different" (at [500]).

In light of those principles, Knowles J ruled that the bribery, corruption and dishonest misrepresentation as to the evidence in P&I Developments' possession were serious enough to cause Nigeria substantial injustice (at [511], [515] and [516]), thereby satisfying the requirements to challenge the award.

Section 73 of the Act

Importantly, he addressed the interplay that section 73 of the Act has on the applicant's right to challenge an award under section 68, i.e. the applicant is deemed to be estopped from challenging it under section 68 if they have taken part or continued to take part in the proceedings without making any objection as to the irregularity affecting the tribunal or proceedings - either forthwith or within such time as allowed by the arbitration agreement or the tribunal - before the tribunal or the court, save the case where they can show that they did not know or could not with reasonable diligence have discovered the grounds for the objection at the time they took part or continued to took part in said proceedings (from [518] to [522]).

He re-emphasised, as authorities already have, that the test is not whether the applicant "should" have known (completely objective standard) the grounds for objection, but rather whether they "could" have known with reasonable diligence (attenuated objective standard) (and not whether they could have known "by any means" as Nigeria though suggested) (at [533] and [534]).

In the present case, Knowles J was satisfied that Nigeria did not know or could not have known with reasonable diligence the grounds for its objection at the relevant time under section 68(2)(g) of the Act, and as such was admissible to do so (at [573]).

Comments on arbitration as an ADR method in that case

Last but not least, he made several obiter dicta, highlighting how the outcome of the case could have been much different and how much wherewithal it required Nigeria to make good its challenge (at [581]). He also questioned the suitability of arbitration in high value cases and when a State is a party thereto, by especially raising concerns over the fact that even with an experienced arbitral tribunal (at [583]), the arbitration process - as an alternative dispute resolution method - is particularly vulnerable to fraud (at [583]), due to:

- The parties' imbalance in terms of experience, expertise or resources, which makes it easier for the stronger party to obtain contractual stipulations in their favour, whether it be by way of bribery or not (at [585]);
- The necessity for court intervention, as disclosure orders made by courts from different States - and not the arbitral tribunal - were essential to establishing evidence of fraud (at [586]);
- The risk of having civil servants be corrupted in arbitrations involving a State (at [587]);
- The absence of public or press scrutiny owing to the often confidential nature of arbitration, even more so when a State is involved in the proceedings on behalf of its people (at [589]); and
- Counsels' generally high contingent success fees, as a drive for greed and last-ditch efforts to win cases at all costs (at [207] and [592]).

Contribution by Yoann Lin

English High Court, *Yukos Universal and others v. The Russian Federation* [2023] EWHC 2704 (Comm)

The Yukos v. Russian Federation saga is still in full swing, seventeen years after an *ad hoc* arbitral tribunal issued two awards ordering the Russian state to provide a €50 billion compensation to the majority shareholders of the Russian oil company Yukos, for its breach of the Energy Charter Treaty. The second award had ordered Russia to pay €2.5 billion in damages. On 1 November 2023 , the High Court issued a decision rejecting the Russian state's preliminary requests invoking state immunities to defend against the seizure of assets in the context of the enforcement of arbitral awards.

On 30 January 2015, Yukos (one of the claimants), sought to enforce both awards. Leggatt J decided to stay the proceedings pending a decision by the Dutch Supreme Court, hearing the case after a challenge filed against a Dutch Court of Appeal decision, in the context of a request by the Russian state to set aside the award in the Netherlands. In October 2022 and upon the partial annulment of the Dutch Court of Appeal decision, Butcher J decided to partially lift the stay solely for the purpose of ruling on the question of the English courts' jurisdiction in this matter. As such, he authorised claimants to have use of legal expertise as evidence on the question of jurisdiction before any claims on the merits. Following expert reports and in the context of the present proceedings before Cockerill J, the Russian State (defendant), asserted that the Dutch decisions judgments were not final and binding, as a way to argue once again that the arbitral tribunal did not have jurisdiction due to the defendant's state immunity from jurisdiction. On the other hand, the claimants sought to obtain recognition and enforcement of the award.

In particular, the Russian state argued once again that the arbitral tribunal lacked jurisdiction, on the grounds that the Dutch decisions were not final and binding, and lacked the authority of re*s judicata*. It provided expert evidence that, under the doctrine of issue estoppel, English courts must ascertain whether there are sovereign immunities applicable to the case and then have their own interpretation of the arbitration agreement. As such, it suggested that Cockerill J was not bound by decisions handed down by foreign courts. The defendant also argued that the foreign decisions were not final, especially because there remained the possibility of requesting a preliminary ruling by the Court of Justice of the European Union regarding the interpretation of the Energy Charter Treaty, which has not been ratified by Russia.

As a result, the question was whether, under English law, English courts could, based upon the doctrine of issue estoppel, disregard rules applicable to sovereign immunities, in the context of enforcement proceedings concerning an arbitral award that ordered a state to pay compensation for having illegally expropriated an investor in its territory in breach of Article 26 of the Energy Charter Treaty?

Cockerill J ruled that issue estoppel, which in principle bars parties from re-arguing similar claims that have already been decided by English courts, is also applicable to claims decided foreign courts. As such, the Russian Federation was estopped from raising once again the claim whereby the arbitral tribunal lacked jurisdiction, nor could it rely upon its sovereign immunities to defend against the enforcement of the arbitral awards. . Regarding the argument based upon the Dutch decisions' lack of finality, Cockerill J held that, under Dutch law, a decision that has been partially annulled by the Dutch Supreme Court is to still be deemed final and binding on issues that have not been overturned thereby.

Given that the Dutch Supreme Court had only annulled the Dutch Court of Appeal decision on its findings regarding fraud, it was still considered final and binding when it came to its finding on jurisdiction. In addition, she ruled that under Article 267 of the Treaty on the Functioning of the European Union, the possibility to request a preliminary ruling by the Court of Justice of the European Union does not prevent a decision from being final and binding, and from enjoying the authority of *res judicata*.

The Court then reaffirmed the principle laid down in *Dallah v. Pakistan* [2010] UKSC 46, whereby the doctrine of issue estoppel applies only if the claimant or defendant is privy to the arbitration agreement. This nth decision, which rejected the argument based upon the arbitral tribunal's lack of jurisdiction, resurrected questions decided by the arbitral awards concerning the unenforceability of the arbitration agreement in light of Article 26 of the ECT, as Yukos did not satisfy the conditions to be deemed an investor as a result of its corporate structure and nationality.

All in all, this decision's ruling echoes those made by other foreign courts. It is highly probable that the UK Supreme Court will have to rule on the validity of the award. In the meantime, this present decision is boding well for the claimants.

Contribution by Adel Al Beldjilali-Bekkairi

High Court of Hong Kong, *Song Lihua v. Lee Chee Hon* (former name: Que Wenbin), n° HCCT 111/2022 [2023] HKCFI 2540, 5 October 2023

The Court of First Instance of the High Court of Hong Kong welcomed the Respondent's ("Lee") application to annul the order authorising the enforcement of the arbitration award ("Enforcement Order") rendered by the Chengdu Arbitration Commission ("Commission") in the Mainland China ("Arbitration") for the payment of the sum of RMB 337,222,219.90 on 24 August 2023.

On 9 December 2022, the Applicant ("Song"), sought permission to enforce an arbitral award dated 11 October 2021, rendered by the Commission. The award had ordered Lee to pay a sum totalling RMB 337,222,219.90, pursuant to a contract dated 7 July 2014 ("Contract").

On 12 December 2022, Song obtained an injunction from the Court ("Mareva Injunction"), preventing Lee from removing assets from Hong Kong or diminishing their value, so as to safeguard a total asset value of HK $38,400,000. Following the Enforcement Order dated 12 January 2023 authorising Song to enforce the award, the Court decided on 16 January 2023 to extend the Mareva Injunction, allowing Lee's release upon payment of HK $38,400,000. Lee complied on 23 December 2022 with Order, and the Mareva Injunction was lifted.

However, on 26 January 2023, Lee applied to set aside the Enforcement Order before the Hong Kong Court of First instance ("Court") and raised several objections in relation to the arbitration proceedings.

First, he alleged that Song breached her duty of good faith by not disclosing his contact information to the tribunal, leading to improper notice and denying Lee the opportunity to participate effectively in the arbitration. The Court dismissed this complaint, since she had provided the Commission with Lee's contact methods, *i.e.* Lee's known address and his assistant's contact details, so that the Commission was ultimately able to communicate with him through his assistant.

Secondly, Lee claimed he was not properly served with notice of the arbitration, preventing him from nominating an arbitrator, since he was only notified after the first hearing had been conducted and the arbitral tribunal's constitution confirmed. However, the Court found that Lee effectively waived the right to raise any objections concerning the notice of arbitration, the documents and the constitution of the tribunal, because Lee had failed to do so before the arbitral tribunal, as was confirmed by his lawyer at the second hearing, despite Lee's knowledge of the composition of the tribunal.

Thirdly, and most significantly for the Court, Lee asserted that the conduct of one arbitrator ("Q"), during the Arbitration had undermined his chance to properly present his case, in violation of his right to a fair hearing and of public policy. While the absence of communication of the documents and the improper service created delay and disruption when participating in the second hearing, Lee in particular argued that Q did not meaningfully engage in the proceedings, by frequently moving around, going offline, and even being in a vehicle during crucial parts of the hearing. The Court confirmed that Q's conduct did not meet the high standards expected for a fair and impartial hearing. Despite Lee having waived his rights to raise those objections, the Court nevertheless concluded that enforcing the award in Hong Kong would violate basic principles of justice, so that the award could not be enforced and the Enforcement order had to be annulled.

Additionally, Lee contended that he was not provided with supplemental submissions filed by Song after the arbitration hearing, hindering his ability to address the raised issues. According to the Court, the decision to set aside the Enforcement Order based upon public policy concerns rendered unnecessary any additional inquiries into whether Lee encountered obstacles in presenting his case on the supplemental submissions or the alleged illegality of the Contract.

Lastly, Lee argued that the Contract and the arbitration agreement were invalid and unenforceable under Mainland law, due to the Contract's illegality. Nonetheless, the Court found that a Mainland Court, under Mainland law, had already confirmed the Contract's validity.

Therefore, the Court welcomed Lee's application to set aside the Enforcement Order on the only ground that Q's behaviour during the second hearing was deemed so far below of the high standards expected for a fair and equitable hearing, so that the enforcement of the award would be contrary to the principles of public policy.

Contribution by Meily Lam-Khounborind

Swiss Federal Supreme Court, 4 September 2023, No. 4A148/2023

In a ruling dated 4 September 2023, the Swiss Federal Supreme Court dismissed the appeal lodged against an arbitral award on jurisdiction rendered on 31 January 2023 by an arbitral tribunal with its seat in Geneva, and reiterated the scope of its reviewing powers concerning challenges made against arbitral awards.

A.a. founded a group of companies ("the group") consisting of various legal entities, in particular companies H, F, U, Y and Z. Under a first loan agreement signed on 18 June 2010, F (managed by A.a.) undertook to lend U the sum of €80,000,000. Under a fourth loan agreement signed on 28 September 2011, H (administered by A.d.) who is the son of A.a., undertook to lend U the sum of €60,000,000. As U was unable to repay its loans from F and H, and by an agreement dated 14 January 2021 ("the debt assumption agreement"), Y and Z undertook, alongside U, to be jointly and severally liable for U's debts towards F under the first loan agreement and towards H under the fourth loan agreement. A.a. signed said contract on behalf of all the parties to it. Said contract was governed by Swiss law and contained an arbitration clause identical to those contained in the two aforementioned loan agreements. It was communicated to F and H on 2 February 2021 and presented to A.a. for signature in January 2021. At the same time, A.a. had placed under guardianship since 2 September 2021. On 4 February 2021, F and H initiated arbitration proceedings against A.a and the companies Y and Z, seeking repayment of the amounts advanced under the said loan agreements. F and H relied upon arbitration clauses inserted in the first and fourth loan agreements ("the disputed loans or loan agreements") and in the debt assumption agreement. On 31 January 2023, the arbitral tribunal constituted under the auspices of the Swiss Arbitration Centre issued an award on jurisdiction in which it held it had jurisdiction to hear the claims brought against all the defendants. On 6 March 2023, Y and Z ("the appellants") lodged the present challenge against this award.

Regarding their first argument, the claimants argued that the arbitral tribunal wrongly upheld despite the fact that A.a was incapable of discernment when he signed the debt assumption contract and could therefore not validly be bound by them.

The Swiss Federal Supreme Court first recalled that the principle of material separability of arbitration clauses can suffer from exceptions, in particular in case of *Felheridentität* (*e.g.* lack of contractual capacity or lack of power to represent a third party), where such defect can be said to avoid both the contract and the arbitration clause contained therein. It then confirmed that its reviewing powers do not go so far as to determining whether the party to the arbitration agreement lacked contractual capacity or not, but rather were concerned with examining the arbitral tribunal's assessment of said person's capacity of discernment in relation to the arbitration clause in the contract.

In addition, the Swiss Court rejected the argument backed upon the arbitral tribunal's lack of jurisdiction, stating that the burden of proof was on the claimants. According to the Court, they had not rebutted the presumption of capacity of discernment by demonstrating that A.a was permanently in a state of mental incapacity within the meaning of Article 16 of the Swiss Civil Code. Secondly, in the Court's view, the claimants had confused the issue of capacity of discernment with that of vitiating factors, and in particular misrepresentation and essential error. As such, it said that there was no need to examine that issue, insofar as the claimants had not raised those grounds before the arbitral tribunal. The Court concluded that the appellants had not shown that A.a lacked the necessary discernment to enter into the arbitration clause inserted in the contract.

Regarding their second argument, the appellants put forward that the award was incompatible with Swiss substantive public policy, claiming that its effects were to "*protect a manoeuvre by which interested parties made an old man suffering from Alzheimer's disease sign a deed*", for profit-making purposes. However, the Court rejected this argument, holding that the complaint was unfounded insofar as it was based "*on the unproven factual premise that A.a was not capable of appreciating the scope of the disputed arbitration clause that he signed in January 2021*".

It also added that its reviewing powers did not extend to assessing the validity of the assignment of receivables and the debt assumption agreement.

Concluding that it was "*clear that the arbitrators considered that the arbitration clause inserted in the debt assumption agreement also covered disputes relating to the debts assumed*", the Court dismissed the challenge. It ordered the claimants to pay jointly and severally for the legal costs totalling CHF 160,000 and to pay compensation of CHF 200,000 to the defendants, who were joint and several creditors, and compensation of CHF 200,000 to each of two of the defendants.

Contribution by Louise Nicot

INTERVIEW WITH ALEXANDRE REMPP

1. To begin with, could you tell us a little bit about your background and why you chose arbitration as a career option?

Owing to my Franco-German culture (and dual nationality), I quite naturally chose to read a dual degree in French and German law at the University of Paris Nanterre and the University of Potsdam. At the end of this degree, and after a work placement in GfK group's legal department in Nuremberg, I pursued my studies with a Franco-German Master's degree, at the end of which I obtained a *Master 2* in French and German business law.

It was during my *Master 1* and while preparing for the French bar exam that I discovered arbitration. I was immediately attracted by it, in particular because of its eminently international nature. In order to deepen my understanding of arbitration, I chose to read the *Master 2* in International Business Law at the University of Paris II Panthéon-Assas. The modules taught by its director, Professor Daniel Cohen, only strengthened my interest in the subject. Alongside this *Master 2*, I took part in the Willem C. Vis Moot competition as a member of the team representing the University of Paris II, which gave me the opportunity to write memoranda in commercial arbitration and to plead in English. This experience confirmed my intention to work in international arbitration.

For this reason, and in order to gain experience in French and international law firms, I interned in the arbitration teams of Cleary Gottlieb in Frankfurt and Gide Loyrette Nouel in Paris. It was at the end of this last internship in Paris, and of my training as a trainee lawyer at the *HEDAC* (during which I also coached teams from the *HEDAC* and the University of Paris II for the Vis Moot), that I joined Gide's arbitration department as an associate.

2. You joined Gide Loyrette Nouel as an associate in the international arbitration department about 2 years ago. What is your day-to-day life like at the firm? Could you tell us more about Gide Loyrette Nouel's arbitration team?

Gide's international arbitration team in Paris comprises around fifteen lawyers. The department handles commercial and investment arbitration cases, as well as litigation relating to arbitration before French courts (applications for annulment, exequatur and *juge d'appui*). The team also deals pre-litigation negotiations and international litigation before national courts.

As an associate, I work at all stages of an arbitration procedure, from drafting the request for arbitration to the hearings and, when applicable, post-arbitral litigation (annulment proceedings, enforcement of the award, etc.). The tasks given to an associate in our team are varied, but include reviewing the factual documents in a case, drafting submissions (request for arbitration, memoranda, briefs, etc.), and preparing for the hearings (draft pleadings, questions for witnesses and experts, etc.).

3. To his date, what has been a particularly memorable case in your career and what skills have you developed from it?

I had the opportunity to work on a dispute between a group of companies operating in the oil & gas sector on the one hand, and a state and a state-owned company on the other. The company owned several oil assets in the state in question. The company initiated arbitration proceedings against the state and the state-owned company, namely for unpaid oil sales and the non-renewal of several oil concessions. The case involved both commercial arbitration (ICC) and investment arbitration (ICSID), which gave me the opportunity to work simultaneously on both types of arbitration proceedings, to apply a foreign law while dealing with the related factual issues. This case allowed me to take part in the drafting of several requests for arbitration and memoranda (in both ICC and ICSID proceedings), as well as in the preparation of hearings.

4. You have worked for Gide as a intern before joining them as a non-licensed lawyer and then as an associate. What recommendations would you give to interns hoping to be hired at the end of their internships?

The phase leading up to becoming an associate (which includes the *stage final* in a law firm) can be stressful, and being recruited in arbitration is not always easy. The first piece of advice I would give to interns hoping to be hired at the end of their internships would be to focus on what you can control, *i.e.* the work that you deliver and your relationships with the team. It is possible that some other interns or your acquaintances will be hired before you are, but you should not let that affect you or be a source of stress. What matters all in all is your involvement in the tasks that have been assigned to you during your placement, and the skills that you will be developing during it.

I would like to share another piece of advice I was given during my final placement: your internship will be what you decide to make of it. As such, be proactive, do not be afraid to ask for work, and show them your willingness to learn, work and connect with the different members of the team.

Also, as far as it is possible, do not hesitate to work with several members of the team, so that you can (i) be exposed to several different ways of working, (ii) become more adaptable, and (iii) allow the team's lawyers to form an opinion about how you work and your personality.

Finally, I would advise interns to communicate their wish to be recruited as an associate relatively early on (*e.g.* in the middle of the traineeship).

5. What advice would you give to someone hesitating to start teaching international arbitration as a lecturer, as you were at the University of Paris Nanterre?

I think that the most important thing when you envisage teaching (whether in international arbitration or else) is that you should have the willingness to pass on your knowledge. If you like the idea of sharing what you know with students, answering their questions and helping them define their career plans, then there is no reason that teaching should not work for you. As far as becoming a lecturer is concerned, I would like to highlight that it is a quite time-consuming activity (especially as one has to prepare for tutorials, and mark assignments and exams). As such, you need to have time to devote to it, which I think is essential if you want to enjoy the process.

6. You have studied and worked in Paris and Germany. Could you tell us about this dual training and how it influences your work today?

Spending several years in France and Germany during my studies and work placements has enabled me (i) to acquire a solid understanding of both legal systems, (ii) to get to know how universities, companies and law firms work in both countries, and (ii) to meet plenty of students, professors and practitioners.

I would have no hesitation in recommending the dual degree offered by the University of Potsdam and the University of Paris Nanterre to any students wishing to study both French and German law. The quality of teaching is of a high standard, and the degrees obtained allow you to be able to then freely choose between sitting the French bar exam or the *Staatsexamen*.

Since I am now a lawyer admitted at the Paris Bar, I naturally tend to make more use of French law than German law. Nonetheless, this dual training has enabled me to understand aspects of German law that I may have come across in cases, and to develop certain reflexes when it comes to comparative law.

7. Do you think that having been trained abroad is essential in order to apprehend how international arbitration lawyers work? What advice would you give to our readers who are thinking of going on an international adventure?

I do not think that it is absolutely essential to having been trained outside of France to become an international arbitration lawyer. Many practitioners have studied and interned exclusively in France. Nevertheless, given the international and multicultural nature of arbitration, doing so is bound to be useful and would entail being trained abroad as a way to expand on your education in French law. On the other hand, I believe that an excellent command of the English language is essential.

I would advise any student or intern in arbitration to have at least one international experience. Generally speaking, one has a very enriching and formative experience, but also creates lasting memories.

NEXT MONTH'S EVENTS

5 December: Diner and debate "Arbitration and the Sea" (in French)

Organised by the Comité français de l'arbitrage CFA40

Where ? At Restaurant Les Tourteaux - 86 rue de la Boétie, 75008 Paris

Website: https://www.helloasso.com/associations/cfa40/evenements/diner-debat-cfa40-5-decembre-2023 (75€ sign-up fee)

12 December: Webinar "Arbitration and State Immunities – Transatlantic Perspectives"

Organised by the Comité français de l'arbitrage CFA40 and Young Canadian Arbitration Practitioners (YCPA)

Where ? Online webinar hosted by the Arbitration Place

Sign-up link to follow

13 December: Conference "The International Commercial Chamber of the Paris Court of Appeal, five years on: assessment and prospects"

Organised by the International Commercial Chamber of the Paris Court of Appeal

Where ? At the First Chamber of the Paris Court of Appeal – 10 Boulevard du Palais, 75001 Paris

Website: https://www.cours-appel.justice.fr/paris/la-chambre-commerciale-internationale-de-la-cour-dappel-de-paris-cinq-ans-apres-bilan-et (mandatory sign-up by e-mail to colloque.ca-paris@justice.fr)

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ALEM & ASSOCIATES

LITIGATION AND ARBITRATION
Start date: January 2024
Duration: 6 months
Location: Abu Dhabi

LUSOPHONE INTERN
HERBERT SMITH FREEHILLS

LITIGATION AND ARBITRATION
Start date: January 2024
Duration: 6 months
Location: Paris
Brazilian law diploma required

INTERN
M2/TRAINEE-LAWYER
FAIRWAY AARPI

LITIGATION
Start date: July 2024
Duration: 6 months
Location: Paris

INTERN
HERBERT SMITH FREEHILLS

LITIGATION AND ARBITRATION
Start date: July 2024
Duration: 6 months
Location: Paris

INTERN
NORTON ROSE FULBRIGHT

LITIGATION AND ARBITRATION
Start date: July 2024
Duration: 6 months
Location: Paris

INTERN
DECHERT LLP

TRIAL, INVESTIGATIONS & SECURITIES
Start date: July 2024
Duration: 6 months
Location: Paris