PARISBABYARBITRATION

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Monthly Arbitration Newsletter – English Version

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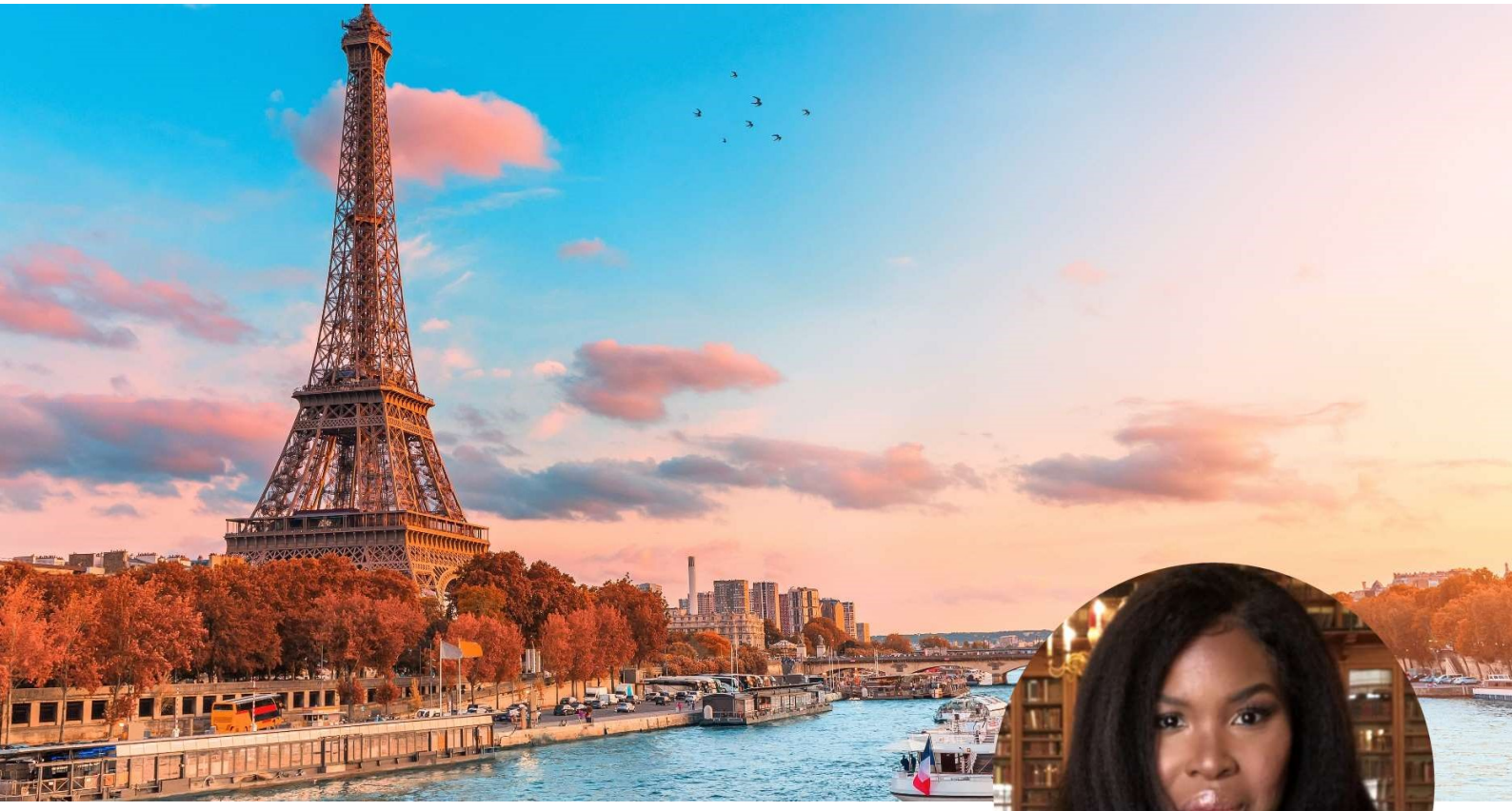

French and foreign courts' decisions

International arbitral awards and decisions

Interview with Ghislaine Eponou

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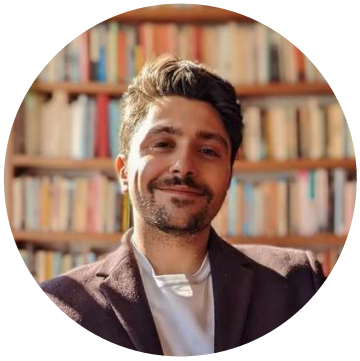

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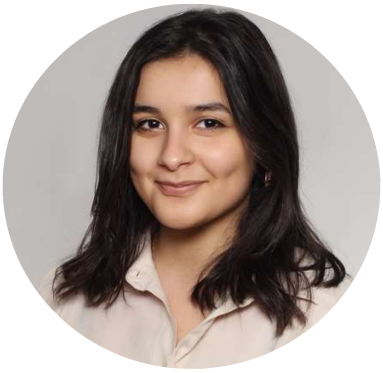

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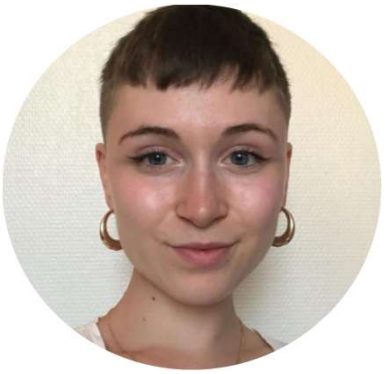

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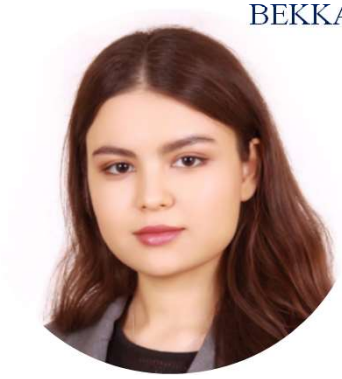

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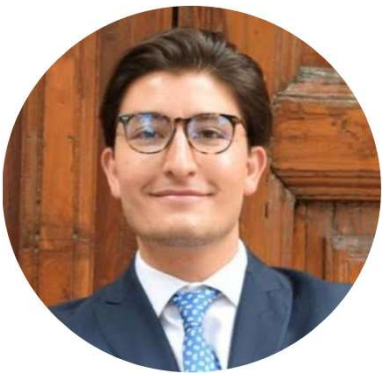

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Founded in 2019, Law Profiler is an organisation aiming to grant an easier access to the legal employment market. Law Profiler lists over 80,000 members and assists thousands of lawyers and aspiring practitioners to find jobs free of charge.

Teynier Pic

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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Paris Baby Arbitration is a Parisian society and a networking group of students and young practitioners aiming the promotion of International Arbitration practice, as well as the accessibility of this field of law, still little known.

Each month, its team works on editing the Biberon, an English and French newsletter, intended to facilitate the understanding of the latest and the most prominent decisions given by states and international jurisdictions, and the arbitral awards.

By doing so, Paris Baby Arbitration hopes to encourage the contribution of students and junior lawyers.

Paris Baby Arbitration believes in work, goodwill and openness values, which explains its willingness to permit younger jurists and students to express themselves and to communicate their passion for arbitration. The values that drive Paris Baby Arbitration are openness and goodwill, which is why we want to allow students and junior lawyers to express their passion for the practice of International Arbitration.

You can find all the previously published editions of the Biberon and subscribe to receive a new issue each month on our website: parisbabyarbitration.com

We also invite you to follow us on LinkedIn and Facebook and become a member of our Facebook group.

Enjoy your reading!

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- Cass. First Civ. Ch., 27 September 2023, n° 22/19859, *OB Lavau* **(impecuniosity of a party to the arbitration; effectiveness of the arbitration agreement)**

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FRENCH COURTS

COURT OF CASSATION

Court of Cassation, First Civil Chamber, 7 June 2023, n° 22/12757, *Lucas*

On June 7, 2023, the First Civil Chamber of the French Court of Cassation established, in Case n°22/12757, that the rejection of an action for annulment does not automatically confer exequatur on the arbitral award, under the terms of article 1498 paragraph 2 of the French Code of Civil Procedure.

In this case, on November 15, 2013, an arbitral award was rendered in a dispute between Monsieur D and the company Edifices de France. On February 3, 2022, Monsieur D filed an action for the annulment of this award with the Douai Court of Appeal, which accepted his challenge and declared the action receivable, resulting in the annulment of the award.

However, on September 26, 2019, the Second Civil Chamber of the French Court of Cassation overturned the decision of the Douai Court of Appeal, declaring inadmissible Monsieur D's request for annulment. On the basis of this decision, the company Edifices de France promptly served Monsieur D with a notice to pay for the purposes of seizure and sale under the arbitral award.

In response, Monsieur D sued Edifices before the enforcement judge, contesting the seizure and sale on the basis of a two-part plea. According to the first part, Monsieur D claimed that it was a misinterpretation of Article 1498, paragraph 2 of the Civil Procedure Code to infer authorization of the exequatur of the arbitral award from the Court of Cassation's September 26, 2019 judgment. According to Mr. D, only the rejection of the appeal or of the action for annulment confers exequatur on the arbitral award, so even if the decision of the Court of Cassation overturned the decision of the Court of Appeal, declaring the action for annulment admissible, it did not automatically confer exequatur on the arbitral award. Furthermore, according to the second part of the plea, under article 1487 of the French Code of Civil Procedure, an arbitral award can only be enforced by an exequatur order issued by the competent court.

In its judgment, the French Court of Cassation overturned the February 3, 2022 decision of the Douai Court of Appeal, ruling that the sole fact that an action for annulment has been declared inadmissible does not automatically confer exequatur on the arbitral award. The Court pointed out that in order to obtain enforcement of the award, it is necessary to obtain an exequatur order from the judicial court, after verifying the existence of the arbitration agreement and the absence of any clear violation of public policy, in accordance with articles 1487 and 1488 of the French Code of Civil Procedure.

Contribution by Sarah Lazar

Court of Cassation, First Civil Chamber, 27 September 2023, n° 22/19859, *OB Lavau*

In a decision dated 27 September 2023, the French Court of Cassation approved a Court of Appeal, which held that the impecuniosity of a party to an arbitration agreement is, in principle, indifferent to its efficacy, but explained that there exists an exception.

In the case at hand, the director of a licensor company concluded several license agreements with a licensee company - each containing an arbitration agreement under the aegis of the ICC rules - for the use of a trademark, so that the latter could provide certain services and run a dedicated software. Following a breach of contract, the director and its licensor company started legal proceedings before French courts to recover damages from the licensee company, which counterclaimed by raising objections as to its jurisdiction arguing that the arbitral tribunal should have jurisdiction instead. Later on, the licensor company went into a court-ordered liquidation.

The Commercial Court first held that it did indeed lack jurisdiction, and that the arbitral tribunal should have jurisdiction over the matter to hear the case. After an appeal filed by the director and the licensor company, the Court of Appeal confirmed the Commercial Court's decision, thereby denying the appeal.

The licensor company's court-appointed liquidator then challenged the Court of Appeal's decision before the Court of Cassation, arguing that the Court of Appeal had failed to ascertain whether or not the likely costs of arbitration were so manifestly disproportionate to the claimant's financial wherewithal, that they were deprived of their right to an effective access to a tribunal pursuant to Article 6 paragraph 1 of the ECHR.

The Court of Cassation rejected the challenge. After quoting Article 1448 of the French Code of Civil Procedure which provides for the negative effect of the principle of competence-competence in French law, it ruled that "from the moment that one has not established that a prior attempt to initiate arbitration proceedings has failed, due to the absence of solution to the financial difficulties alleged by [the director] and [the licensor company's court-appointed liquidator], the Court of Appeal, which was, as a result, not under the obligation to conduct such ascertainment, correctly held, without violating the right to access to a tribunal, that the impecuniosity alleged by the claimants could not, in and of itself, deprive arbitration agreements of their efficacy and has, as such, justified its decision in law". In other words, the impecuniosity of a party to an arbitration agreement cannot, in principle, render arbitration agreements ineffective, save the case where a party has established that arbitration proceedings had been started but failed due to the lack of financial resources (in which case, French courts will be bound to determine whether giving effect to the arbitration agreement is likely to violate the impecunious party's right to an effective access to a tribunal following Article 6 paragraph 1 of the ECHR). As a result, in the absence of a prior attempt to initiate arbitration proceedings, the Court of Appeal was not under the obligation to ascertain whether the likely costs of arbitration were so manifestly disproportionate to the claimant's financial resources.

Contribution by Yoann Lin

Paris Court of Appeal, 6 June 2023, n° 21/21386, *Sultan de Sulu*

On 6 June 2023, the International Chamber of the Paris Court of Appeal overturned the exequatur order granted to a partial award rendered in Madrid on 25 May 2020, in an ad hoc arbitration, finding that the arbitrator lacked jurisdiction.

The dispute arose from the interpretation and performance of a contract concluded in 1878 between the Sultan of Sulu and two individuals, concerning territories on the island of Borneo and providing for the annual payment of a sum of money to the Sultan and his descendants. In the event of a dispute, the contract stipulated that the matter would be submitted to the British Consul General in Borneo. Malaysia - which entered into the rights of the original signatories when it became independent from the British Empire - had made payments to the Sultan's descendants until 2013.

The Sultan's descendants complained that Malaysia had stopped the payments, which had been made since 1878, and alleged a change in circumstances that had disrupted the economic balance of the contract. They therefore applied to the High Court of Justice in Madrid, as supporting judge, for the appointment of a sole arbitrator. On 29 March 2019, the Spanish court granted their request, and a sole arbitrator was appointed on 22 May 2019.

The State of Malaysia did not participate in the arbitration, but notified in October 2019 that it was opposing both the principle of arbitration and the arbitrator's jurisdiction.

In a partial award rendered on 25 May 2020, the sole arbitrator confirmed their jurisdiction to rule on the compensation claims brought against Malaysia and ordered the latter to bear all the costs of the proceedings.

Following an application made by the Sultan's descendants, the Paris judicial court issued an order on 29 September 2021 declaring the partial award enforceable in France. The State of Malaysia filed an appeal against this decision on 10 December 2021.

The Paris Court of Appeal declared Malaysia's claims admissible, holding that article 1525 of the French Code of Civil Procedure, which allows an appeal against a decision ruling on an application for exequatur of an international arbitral award rendered abroad, does not exempt the court from examining the admissibility issues raised by the exequatur application.

On the merits, the Paris Court of Appeal found, after recalling the principles of good faith interpretation of agreements and of useful effect (‘effet direct’), that the parties wished to designate a third party to the contract to hear any dispute arising from the agreement between them or their successors. It considered that the dispute resolution clause in the 1878 contract could be interpreted as an arbitration clause. However, the Court held that it was clear from the context in which the agreement was concluded that the appointment of the Consul General of Borneo to hear any dispute was a determining factor in the parties' consent to arbitration. However, as the function of Consul General no longer existed, the arbitration clause became null and void and therefore inapplicable.

The Court therefore concluded that recourse to arbitration required a new agreement between the parties, which the intervention of the supporting judge could not replace. Failing such agreement, the sole arbitrator could not validly uphold jurisdiction.

The Paris Court of Appeal therefore overturned the order issued by the Paris judicial court on 29 September 2021, and refused to grant exequatur to the partial award dated 25 May 2020.

Contribution by Valentine Menou

Paris Court of Appeal, 8 June 2023, n° 22/12481, *Prosper River*

On June 8, 2023, a decision by the Paris Court of Appeal confirmed the judgment handed down by the Enforcement Judge of the Paris Judicial Court concerning the challenge to the exequatur of an award that had not been properly served on the plaintiff, and to the request to sequestrate rent payments collected by means of a seizure that had become null and void. The latter was carried out on an undivided property in payment of a debt, even though the undivided third-party owner is not the debtor. In this case, M (D), stood surety for Prosper River Limited and Grand Logistics Limited under a loan agreement with United Cargo Fleet.

On March 21, 2017, the arbitral tribunal under the auspices of the International Court of Arbitration of the Paris International Chamber of Commerce ordered M (D) to pay certain sums to the opposing party (Logistics and Prosper River). On September 13, 2018, by an order, the judge of the Paris High Court granted exequatur to this award, giving rise to a seizure procedure for rent payments received by Mr (D) on a property jointly owned by himself and his ex-wife, the undivided part of which was given to his daughter by notarial deed dated July 4, 2019. Mr. (D) and his ex-wife jointly appealed to the High Court against these payment measures. On June 2, 2022, the court rejected the plaintiffs' claims concerning the nullity of the writ of execution in the absence of service, the annulment of the seizures and allocations, the sequestration of the sums recovered and the request for rent control. On July 4, 2022, the plaintiffs appealed against this judgment.

The petitioners raised the nullity of the enforcement procedures contained in the minutes, which are themselves null and void, due to the fact that the enforceable titles have not been validly served. The claimant argued that he had never received such a document at his address, even though it is mentioned in the arbitration award and in the judgment dismissing his appeal to the Swiss Federal Court. They also considered that a seizure attribution of rents, half of which was paid to a third party who was not the debtor, and the gift of the undivided part of the debtor's assets to his daughter should be declared null and void. The rejection of the request for seizure of assets had to be declared null and void.

The respondents argued that the seizures were notified and served in accordance with the Civil procedure Code by bailiff and at the domicile indicated in the arbitration award, with proof of a certificate of transmission from the federal authorities of the state in which the debtor has his usual residence. They relied on statements made by the janitor of the claimant's building, which she designates as the debtor's place of residence. Finally, the application for the action of sequestering of the sums received in payment of the claim cannot be accepted on the basis that the exequatur judgment is founded on a "fin de non-recevoir".

The appeal judges thus had to determine whether an "exequaturée" award giving legal entitlement to a writ of execution seizing all the rents of an undivided property had been validly served on the debtor of a claim residing abroad, when transmission of this writ of enforcement by the state authorities of the debtor's state had remained unsuccessful.

The Court of Appeal answered in the affirmative. Its argument proceeded in several steps. It confirmed the judgment of the High Court in that it recognized the validity of the notification of the enforcement of the arbitral award to the appellants by means of a transmission in accordance with the civil procedure Code for enforcement documents.

The Court based its decision on article 687-2 of the French civil procedure Code, which specifies that service of a document is deemed to have been effected on the date of posting in cases where no certificate of enforcement could be transmitted by the competent authorities. The Court based its decision on the International Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. As a result, the State must serve the document on the debtor. The Court found that the transmission procedure by the authority of the requesting State had been validly carried out. However, it overturns the High Court's judgement insofar as it recognized as legally valid the seizure by the defendant companies of the full amount of the rent in payment of the debt on an undivided property owned by a third party who is not the debtor. As a result, the writ of execution is only valid in respect of the debtor's share of the rent. Furthermore, the principle of enforceability of a writ of execution does not prevent a charitable donation of the debtor's undivided share to his daughter, insofar as there is no judgment rendering such a writ null and void. Lastly, the respondents were justified only in ordering the seizure of the rent amounts relating to the debtor's undivided share. The High Court's judgment was overturned insofar as it rejects the claim for the seizure of rents and condemns the appellants to pay a penalty pursuant to article 700 of the French civil procedure Code.

The Court of Appeal therefore dismissed the appellant's claims for annulment of the judgment of the Paris High Court, but overturned the judgment which did not grant the appellant's request for confinement of the rents received.

Contribution by Adel Al Beldjilali-Bekkairi

Paris Court of Appeal, 27 June 2023, n° 22/02752, *Garcia*

In this case, the Court considered an annulment application regarding a partial Permanent Court of Arbitration award on jurisdiction issued in Paris on December 15, 2014, under the UNCITRAL arbitration rules. The dispute involved Mr. [Y] [C] [E] and his daughter, Mrs. [D] [C] [U] (referred to as " Claimants"), against the Bolivarian Republic of Venezuela.

Mr. [C] [E] was born in Spain in 1944 and acquired Venezuelan citizenship in 1972. He later regained Spanish citizenship in 2004 when Spain and Venezuela lifted the prohibition of dual citizenship. His daughter was born in Venezuela in 1980 and obtained Spanish citizenship in 2003. Claimants claimed to have acquired ownership stakes in Venezuelan companies engaged in food distribution, Alimentos Frisa C.A. and Transporte Dole C.A., in 2001 and 2006. However, in 2010, these companies were subject to administrative detention and confiscation measures taken by Venezuelan authorities following inspections and controls.

On October 9, 2012, Claimants initiated arbitral proceedings against Venezuela, alleging violations of a bilateral investment treaty between Spain and Venezuela. Venezuela challenged the jurisdiction of the arbitral tribunal, contending that the Claimants did not qualify for treaty protection due to their dual nationality and the late acquisition of Spanish nationality.

On December 15, 2014, the arbitral tribunal rendered a partial award on jurisdiction. This award confirmed the Claimants as "investors" eligible for protection under the treaty and dismissed Venezuela's objections to jurisdiction. Venezuela filed an action to set aside this partial award on January 14, 2015. With a decision issued on April 25, 2017, the Paris Court of Appeal partially annulled the award and granted it exequatur.

However, on February 13, 2019, the French Court of Cassation annulled the Paris Court of Appeal's decision, emphasizing that the applicability of the arbitration clause was contingent on specific conditions related to investor nationality and the existence of an investment.

On June 3, 2020, another composition of the Paris Court of Appeal annulled the award entirely, highlighting that the competence criteria specified in the treaty were cumulative and indivisible. However, this decision was also annulled by the French Court of Cassation on 1 December 2021, as it found that the Court of Appeal had added a condition to the treaty that it does not provide for. Venezuela again referred the matter to the Paris Court of Appeal.

As such, the Court of Appeal decided to :

i. Declare admissible the grounds for annulment put forward by the Bolivarian Republic of Venezuela.
ii. Reject the annulment application filed by the Bolivarian Republic of Venezuela against the arbitral award on jurisdiction rendered on December 15, 2014.
iii. Recall that, according to Article 1527, paragraph 2, of the French Code of Civil Procedure, the rejection of the annulment application grants exequatur to the arbitral award.
iv. Reject the request for a condemnation made by Claimants for abusive proceedings.
v. v. Condemn the Bolivarian Republic of Venezuela to pay the Claimants the total amount of one hundred fifty thousand euros (€150,000) under Article 700 of the Code of Civil Procedure.
vi. Condemn the Bolivarian Republic of Venezuela to the costs.

Contribution by Soukaina El Mouden

Paris Court of Appeal, 4 July 2023, n° 21/19249, *Sogea-Satom*

In a decision dated 4 July 2023, the International Commercial Chamber of the Paris Court of Appeal dismissed the application for annulment filed by the State of Cameroon against a final arbitral award rendered on 20 May 2021, under the aegis of the International Court of Arbitration of the International Chamber of Commerce (hereinafter "ICC"), in a dispute between the State of Cameroon and French companies Sogea-Satom and Soletanche Bachy International.

In this case, for the purpose of constructing a bridge in Douala, Cameroon, the Cameroonian government initiated a company selection process in 2010. A consortium of several companies, including Sogea-Satom, Eiffel, Matière, Soletanche Bachy, Greisch, and Lavigne-Chéron, responded to the tender in 2011. After negotiations, the consortium submitted a second offer on 13 November 2012, which was accepted by Cameroonian authorities. A contract was signed on 4 March 2013. However, disputes arose during performance of the contract, leading two of the companies, Sogea-Satom and Soletanche Bachy International, to rely on the arbitration clause contained within the contract to start arbitration proceedings.

In its award dated 20 May 2021, the tribunal dismissed objections to its jurisdiction and ruled in favor of the claimants. The tribunal's decision awarded substantial damages to the claimants, covering various aspects of the project, including extension costs, payment delays, price revisions, and financial damages. The tribunal also established the claimants' property rights over the causeway in question. Additionally, defense fees and legal interest on the amounts owed were awarded to the claimants. This decision came with a provisional execution and rejected all other claims from the parties. In summary, the tribunal ruled in favor of the claimants, ordering the State of Cameroon to pay substantial damages to them, thereby ending a lengthy and intricate dispute related to the construction of the Douala bridge.

Before the Paris Court of Appeal, the State of Cameroon raised a first objection regarding the lack of jurisdiction of the arbitration tribunal. On this point, the Court deemed that the State of Cameroon failed to raise such irregularity in a timely manner before the arbitral tribunal and was therefore estopped from doing so before the Court.

The State of Cameroon also argued that the tribunal did not comply with the mandate conferred by the parties, by adjudicating without taking into account the fact that a compulsory conciliation phase prior to the arbitration should have taken place. According to the Court, while the arbitral tribunal decided that the companies' claims were admissible, the court hearing the application for annulment, which is only concerned with the validity of the award, cannot question the arbitration tribunal's assessment of the claims' admissibility, especially given that "the argument of alleged failure to implement an amicable settlement prerequisite provided by an arbitration clause does not fall within the grounds for annulment set out in Article 1520 of the Code of Civil Procedure.". In other words, the Court of Appeal reaffirms the principle that the arbitral tribunal may declare claims inadmissible as a result of the violation of a clause imposing a compulsory amicable settlement phase prior arbitration, but that the court may not rely upon such violation to set the award aside pursuant to Article 1520 of the Code of Civil Procedure.

The State of Cameroon raised a third objection alleging that the award was violating French international public policy, as the recognition of the award would facilitate the fraudulent substitution of individuals leading to embezzlement of public funds or corrupt pacts.

Indeed, it argued that Soletanche Bachy International had replaced the original member "Soletanche Bachy France" in the consortium that had bid for the contract. According to the Court, the State of Cameroon could not adduce evidence of fraud or corruption in the awarding of the contract and was primarily relying on unsupported claims.

The State of Cameroon then argued that the arbitration proceedings were abusive in nature, with a view to claiming additional damages. The Court recalled that this argument had already been declared inadmissible by the pre-trial judge. Furthermore, this argument is specifically based upon the assertion that the recourse to arbitration is abusive and fraudulent. However, it emphasized that this kind of argument does not fall within the Court's jurisdiction when hearing an application for annulment under Article 1520 of the Code of Civil Procedure. Indeed, pursuant to Article 1518, the Court is limited to examining the application for annulment of the award and does not have jurisdiction to rule on issues related to the abusive or fraudulent nature of a recourse to arbitration.

After rejecting all of these arguments, the Court dismissed the State of Cameroon's claim and denied its application for annulment of the final award issued on 20 May 2021 before ordering the State of Cameroon to pay the legal costs and the sum of €50,000 to Sogea-Satom and Soletanche Bachy International under Article 700 of the French Code of Civil Procedure.

Contribution by Meily Lam-Khounborind

High Court of Justice (King's Bench Division) of England and Wales, July 14, 2023, *Payward Inc. and Others v. Chechetkin*, No. EWHC 1780 (Comm)

In a decision dated 14 July 2023, the English Commercial Court declined to enforce in England a foreign arbitral award on public policy grounds, due to the fact that the arbitrator had not duly taken into account or applied English consumer rights and financial services laws.

Mr. Chechetkin, the Defendant, was a lawyer domiciled in England, who had concluded a contract with Payward Ltd. ("Payward"), which offers a digital currency exchange and trading platform. In 2020, he opened an account at Payward and disclosed some personal information about himself, including the fact that he was a lawyer, but excluding any information that evidenced any kind of other professional activities or any experience in trading cryptocurrencies. Mr. Chechetkin explicitly agreed to Payward's terms and conditions (the "Terms"), so that his application was approved. The Terms included inter alia an arbitration clause stipulating that any disputes shall be resolved by way of arbitration seated in San Francisco, California under the JAMS arbitration rules. In addition, the Terms provided (i) that the state or federal courts of San Francisco, California, would have exclusive jurisdiction over any appeals lodged against the would-be arbitration award, as well as over (ii) any disputes falling outside of scope of the arbitration agreement between the parties, and (iii) chose California law as governing law for the arbitration.

After concluding the contract, Mr. Chechetkin started to actively conduct trading activities through his Payward account and incurred more than £600,000 in losses on the platform. In light of this, he attempted to recover his funds by starting, on the one hand, legal proceedings before English courts, claiming that the operations conducted by Payward were illegal in the UK, resulting in the contract being unenforceable under the Financial Services and Markets Act 2000 ("FSMA"). In light of this, he argued that he was entitled to recover the sums that he lost.

Payward, on the other, commenced arbitration proceedings based upon the arbitration agreement contained in the Terms, arguing that it was not liable to Mr. Chechetkin. In the award, the arbitrator denied jurisdictional objections put forward by Mr. Chechetkin, and ruled that Payward was not liable to him. The arbitrator also issued an anti-suit injunction to preclude Mr. Chechetkin from submitting any potential future claims before English courts.

Payward then sought to enforce the arbitral award in England contending that its courts were bound to recognize and enforce it pursuant to the New York Convention,. Mr. Chechetkin objected to the enforcement proceedings by relying upon section 103(3) of the Arbitration Act 1996 ("AA 1996"), which gives English courts the authority to refuse enforcement on "public policy" grounds. He argued that the Consumer Rights Act 2015 ("CRA") and the FSMA enshrined public policy provisions that the award apparently had not observed.

In his decision Bright J refused to enforce the arbitral award on the ground that Mr. Chechetkin was acting in the capacity of a consumer when he entered into the contract with Payward, so that enforcing the final award would be contrary to public policy.

First, Bright J unequivocally held that Mr. Chechetkin qualified as a consumer under the CRA 2015 due to the fact that, at the date of submission of the application to open the account at Payward, Mr. Chechetkin was a lawyer and clearly stated that he had no relevant experience of cryptocurrency trading. As such, Bright J disregarded Payward's argument whereby Mr. Chechetkin had conducted his trading activities in a knowledgeable, experienced and sophisticated manner, while accessing his account regularly and investing substantial sums of money.

Second, Bright J rejected the argument whereby Mr. Chechetkin should be deprived of his right to pursue claims under the FSMA before English courts, merely because he had failed to bring them during the arbitration proceedings. The court held that since California law was the governing law on the merits in the arbitration, it would have been unreasonable to estop Mr. Chechetkin from raising claims under the FSMA before English courts, merely because he had failed to do so during the arbitration. It added that the arbitral tribunal's decision on its own jurisdiction does not bind English courts under the AA 1996 when it comes to ascertaining whether the award may be enforced in England or not. Referring to Dallah Co v. Ministry of Religious Affairs of Pakistan [2010] UKSC 46, Bright J concluded that the arbitrator's decision with regard to jurisdiction was not binding on him/

Third, the court then examined the CRA and the FSMA in detail and ruled that both Acts constitute the expression of English public policy. As a result, since the arbitrator applied California law to matters which should have been dealt with by English law - notably the CRA 2015 -, the award could not be enforced as being contrary to English public policy.

In particular, Bright J applied the "fairness test" under the CRA 2015 (a contractual term is deemed fair only if it does not create a significant imbalance in the rights of the parties, to the consumer's detriment), to rule that while it would have been fairfor Mr. Chechtkin to consent to arbitration under the AA 1996, it would not have been fair for a consumer to do so with California law as the governing law on the merits, since it does not offer the same level of consumer protection as English law.

Lastly, Bright J noted section 103(3) of the AA 1996 provides that enforcement of the arbitral award contravening English public policy "may be refused". He explained that this wording gives discretion - but no obligation - to English courts to refuse enforcing an award contrary to public policy. As such, while a contravention to English public policy prima facia precludes the court to enforce the award, it may reconsider this refusal in case of "fresh circumstance". In absence of additional circumstances in the present case, Bright J refused to enforce the award.

Contribution by Nadina Akhmedova

High Court of Justice (King's Bench Division) of England and Wales 21 August, 2023, *SQD v. QYP* [2023] EWHC 2145 (Comm)

In the case of SQD v QYP, the English Commercial Court declined a request for an anti-suit injunction (ASI) aimed at preventing legal proceedings initiated in violation of an arbitration agreement. The agreement specified that the arbitration should take place in Paris, and the court determined that, since French law doesn't acknowledge ASIs, it was deemed inappropriate for the English court to interfere in order to protect the arbitration process.

A dispute arose between two corporate entities, SQD ("Claimant') and QYP ("Respondent"), stemming from a contract related to an international venture. Respondent sought to terminate the contract and claim payment from Claimant, while Claimant contended that they were legally constrained from fulfilling this payment. Despite the presence of an arbitration provision in the agreement directing disputes to ICC arbitration held in Paris, Respondent initiated legal proceedings in its own jurisdiction.

Respondent contended that the arbitration agreement couldn't be enforced because it denied them access to justice and proper legal representation. Respondent insisted that it could only safeguard its rights in its home jurisdiction, which contradicted the terms of the dispute resolution clause. Consequently, Respondent made an application to the Commercial Court in London, invoking s44 of the English Arbitration Act (the Act) and alternatively, s37(1) of the Senior Courts Act 1981 (SCA), to request both an anti-suit injunction (ASI) and an injunction preventing the enforcement of the foreign legal proceedings.

Bright J observed that the arbitration agreement was probably breached by the current procedures. Additionally, he noted that English courts typically apply their authority in favor of arbitration when they have jurisdiction in order to protect the integrity of arbitration agreements.

But considering that the parties had not chosen England as the seat of the arbitration, he raised concerns about whether it would be appropriate to grant an injunction in this particular case. Respondent's claim that it would be denied access to justice in a Paris-seated arbitration did not convince the judge. He stated that Respondent had the option to retain local legal counsel, obtain the required licenses, and perform the arbitration remotely.

The judge's key points for rejecting the relief were twofold. First, even though the agreement was governed by English law, English courts won't automatically intervene in all English law cases. They must use discretion, considering the parties' foreign arbitration choice and the risk of conflicts, as seen in prior legal reports. Second, since obtaining an Anti-Suit Injunction (ASI) in France was impossible, issuing one would conflict with the French court's stance as the chosen arbitration location. This would contradict the parties' intentions and comity principles. Additionally, it might trigger a counter Anti-Suit Injunction (anti-ASI) by the French courts, reinforcing the objection to ASIs in France.

In conclusion, the judgment emphasized the crucial link between the seat of the arbitration and the national courts' ability to impose injunctions barring further legal action. It also emphasized the significant differences between the respective legal systems of French and English law, which may have a significant influence on the seat chosen by parties in their arbitration agreements.

Contribution by Marilena Tsiantou

High Court of England and Wales, October 6, 2023, *The London Steam-ship Owner's Mutual Insurance Association Limited v. The Kingdom of Spain*, No [2023] EWHC 2473 (Comm)

On October 6, 2023, the Commercial Court of the England and Wales High Court of Justice rendered a new decision in the Prestige saga.

The dispute arose in November 2002 when the Prestige sank off the Spanish coast and caused significant pollution. The Kingdom of Spain (hereinafter "Spain") compensated the losses and was subrogated to the claims of the victims. However, it could not claim for damages. In fact, London P&I Club (hereinafter "the Club")'s Rules included two clauses: an arbitration clause and the "pay to be paid" clause. The Club initiated arbitration in London asking for negative declaratory relief. In its award dated February 13, 2013, the tribunal upheld the Club's claims. The award was further enforced pursuant to Section 66(1) Arbitration Act 1996 (hereinafter "AA 1996").

In parallel, Spanish Courts found the Club liable and issued a judgement on quantum. On March 26, 2019, Spain issued an application seeking to enforce its judgement in the United Kingdom pursuant to Article 43 of Brussels I Regulation (hereinafter "Regulation"). To this regard, the High Court of Justice made a preliminary reference to the Court of Justice of the European Union (hereinafter "CJEU") on whether the decision under Section 66(1) AA 1996 is a "judgement" for the purposes of Article 34(3) of the Regulation.

On June 20, 2022, the CJEU held that a judicial decision resulting in an outcome equivalent to the outcome of that award cannot be regarded as a "judgement" for the purposes of Article 34(3) of the Regulation as it infringes two fundamental principles: the relative effect of an arbitration clause included in the insurance contract and the rule of lis pendens contained in the Regulation.

In the meantime, in 2019, the Club commenced fresh arbitration proceedings against Spain. The Club sought a declaration that Spain was in breach of her obligation not to pursue the claims made in Spain other than by way of London arbitration.

Moreover, the Club sought a declaration that the tribunal had jurisdiction to grant an anti-suit injunction. On January 6, 2023, the tribunal issued its First Partial Award. The arbitrator stated that he had jurisdiction in respect of the dispute, regardless of the CJEU judgement. Furthermore, the arbitrator considered having jurisdiction to grant an injunction against Spain. On February 3, 2023, Spain brought several challenges against the First Partial Award.

First, the Club appealed that the Spanish judgement should not be enforced by reason of irreconcilability within Article 34(3) of the Regulation, and otherwise that the Spanish Judgement should not be enforced by reason of public policy under Article 34(1) of the Regulation. After discussing the meaning of the CJEU judgement, Justice Butcher declined to follow CJEU decision and concluded that English and Spanish judgments are irreconcilable within the meaning of Article 34 (3) of the Regulation. Club's appeal succeeds.

Second, Spain filed an application under Section 67 AA 1996 to set aside in its entirety the First Partial Award. Spain argued that, in the light of the CJEU judgement, the arbitral tribunal was precluded from having jurisdiction. Justice Butcher gave permission to appeal and dismissed the appeal. Firstly, the CJEU judgement did not decide anything to do with whether Spain was bound to arbitrate. Secondly, arbitration clauses are outside the scope of the Regulation and cannot be assimilated with jurisdiction clauses. Lastly, Justice Butcher said that CJEU exceeded its jurisdiction by going outside the questions which had been referred and consequently, an answer to a question falling outside those referred to cannot bind a national court.

Third, Spain filed an appeal relating to equitable compensation under Section 69 AA 1996. In fact, Spain challenged that equitable compensation was available as a remedy. Justice Butcher dismissed the appeal.

The judge agreed with the arbitrator that this is a case of the breach by Spain of an equitable obligation "equivalent" to the contractual obligation she owed to the Club. Breach of such an obligation gives rise to a remedy in damages. Justice Butcher adds that the availability of a monetary remedy as such is independent from the availability of an injunction.

Fourth, Spain challenged the jurisdiction/power of the arbitrator to grant an injunction without its written consent under Section 69 AA 1996. On one side, Section 48(5) AA 1996 allows an arbitral tribunal to order a party to do or to refrain from doing something similarly to a state court. On another hand, Section 13(2) State Immunity Act (hereinafter "SIA") states that an injunction shall not be given against a State without its written consent.

The arbitrator found that the limitation of Section 13(2) SIA applies only to courts due to the general nature of the court's power and the respect of the par in parem principle. The arbitrator concluded that Section 13(2) SIA does not preclude the arbitral tribunal from injuncting a State.

Justice Butcher disagreed and deferred the decision on that subject until the determination of the Court of Appeal in the Resolute case. In fact, the judge finds that Section 13(2) State Immunity Act should not be regarded as simply constraining the exercise of such a "power", but clearly withdrawing jurisdiction. Thus, a court lacks jurisdiction and in that sense, has no "power" to grant an injunction against a State in the absence of its consent.

Contribution by Iulian Chetreanu

High Court of England and Wales, October 6, 2023, *The London Steam-ship Owners' Mutual Insurance Association Limited v. The French State*, No [2023] EWHC 2474 (Comm)

On October 6th 2023, the Commercial Division of the England and Wales High Court of Justice rendered another decision in the *Prestige* saga, this time on the French side.

In line with what has been previously said *(see previous contribution)*, the French State was one of the claimants in the Spanish proceedings and was entitled by Spanish courts to seek enforcement against the Club. However, as in the "Spanish proceedings", an arbitral tribunal had already held that France had an obligation to pursue its claims only in a London arbitration. Thus, after Spanish courts delivered their final judgement sentencing the Club, the Club initiated a new arbitration against the French State, as it had for the Spanish State, and sought declaration that the French State was in breach of its obligation not to pursue its claims other than by way of arbitration, injunctive relief, and an order that France pay the Club such sums as the Club is ordered to pay to France in any jurisdiction in which the Spanish judgement is recognized or enforced.

On February 8, 2023, the arbitral tribunal issued its First Partial Award, in which the sole arbitrator held that: (1) she should exercise her discretion to grant declaratory relief to the effect that the French State was in breach of its obligation not to pursue such claims other than by way of London arbitration; (2) the tribunal had the power to award equitable compensation to the Club; and that (3) the tribunal had jurisdiction to grant an anti-suit injunction against France. On May 2, 2023, the sole arbitrator issued its Second Partial Award in which it held that: (a) the French State was in breach of its equitable obligations; (b) that the French State is enjoined from taking any steps to have the Execution Order in a country other than Spain; and that (c) the French State should indemnify the Club for the damage suffered.

On May 30, 2023, the French State issued an Arbitration Claim Form, within 28 days of the Second Partial award, but not within 28 days of the First Partial Award.

First, the French State contended that the First Partial Award was not an "award" for the purposes of Section 69 of the Arbitration Act 1996 (hereinafter "AA 1996") capable of being challenged. In fact, the French State alleged that the sole arbitrator merely indicated the relief which she proposed to grant, and that the decision was not complete. Justice Butcher disagreed because it complies with the formal requirements of an award, it deals with substantive rights and liabilities of the parties and sets out the reasoning of the arbitrator in detail, that the arbitrator decided the issues at hand and will not revisit them, and last, left limited issues for later determination.

Second, the French State sought an extension of time to bring its application regarding the First Partial Award. Justice Butcher agreed to extend the time available for the French State, but only on two grounds: the power of the tribunal to grant an injunction and the power of the arbitral tribunal to award equitable compensation. One of the key arguments of the extension was that an English-seated arbitral tribunal has granted an injunction against a foreign State, without its written consent. The other key factor was the hypothetical unfairness of Spain's ability to raise arguments on those grounds while France could not.

Third, the French State contended that the arbitrator had been wrong in relation to her decision on her power to grant an injunction against a State without its written consent. Justice Butcher agreed for the same reasons as in the previous decision under review and deferred the decision on that point until the determination of the Court of Appeal in the Resolute case. Justice Butcher noted that Section 13(2) of the State Immunity Act is to be regarded as a restriction on the power of the Court for the purposes of Section 48(5) AA 1996.

He disagreed with the general affirmation of the sole arbitrator that in international arbitration, injunctions have frequently been ordered against States, where the latter simply agreed to arbitrate, when neither the arbitrator, nor the parties, could not identify a case to refer to.

Fourth, the French State challenged that the arbitral tribunal had jurisdiction to grant equitable compensation in a case such as this. In addition to the arguments presented in the previous decision under review, Justice Butcher rejected the two main arguments of the French State and dismissed the French State's appeal on that ground.

One argument was that such an interpretation might have undesirable consequences as it opens the door to the same solution being adopted towards individuals and consumers who may be ignorant of the arbitration clause. Justice Butcher found that this argument is erroneous and, in any case, not relevant in the present case. Another argument was that a distinction should be made between injured third parties, whose rights derive directly from the law, and assignees and subrogees, for whom the insurer should not be entitled to equitable compensation. Justice Butcher agreed with the sole arbitrator who already noted in the award that there is no logical, principled argument to support that distinction.

Contribution by Iulian Chetreanu

UK Supreme Court, 20 September 2023, *Republic of Mozambique v Privinvest* [2023] UKSC 32

On 20 September 2023, the UK Supreme Court rendered a judgment reiterating reminded that corruption allegations and claims of similar nature may fall outside the scope of an arbitration agreement and a court may therefore reject a request to stay the proceedings pursuant to section 9 of the Arbitration Act 1996 (the "Act").

In this case, three companies wholly owned by Mozambique (the "SPVs") entered into supply contracts (the "Contracts") with three of the respondents (the "Privinvest companies"). To finance these Contracts, the SPVs entered into loan agreements (the "Agreements"), for which Mozambique provided sovereign guarantees. The Agreements provided for the exclusive jurisdiction of the English courts while the Contracts provided for a Swiss-seated arbitration. Mozambique brought proceedings in England and Wales accusing the Privinvest companies of paying significant bribes to corrupt Mozambique officials, exposing it to a potential liability of around 2 billion USD under the Agreements. The Privinvest companies applied for a stay of the proceedings under section 9 of the Act, asserting that all of the claims were matters falling within the arbitration agreements.

Initially, the High Court determined that the claims did not fall under the purview of section 9 because they lacked a substantial connection to the supply contracts. However, the Court of Appeal subsequently overturned this ruling, asserting that the accusations pertained to the validity of the supply contracts, which constituted "matters" falling within the scope of the arbitration agreements.

The case arrives before the Supreme Court, which proceeds in applying a two-stage test. First, the Court identifies the matter or matters which the parties have raised or foreseeably will raise in the court proceedings. In the present case, the Supreme Court considered that the claims brought by Mozambique were whether the Contracts and the Agreements were obtained through bribery and whether the Privinterest companies had knowledge of such bribery. Second, the Court determines in relation to each matter, whether it falls within the scope of the arbitration agreement. Here, the Court finds that said claims and their relevant defenses do not relate to the validity or the commerciality of the Contracts, and are therefore not "matters" for the purposes of section 9 of the Act which fall within the scope of the arbitration agreements. The Supreme Court also finds that Privinterest's partial defense on quantum is outside the scope of the arbitration, the opposite leading to a fragmentation of the dispute which could not have been intended by rational businesspeople.

Ultimately, the Supreme Court overturns the Court of Appeal's decision and refuses to stay the proceedings under section 9 of the Act as requested by the Privinterest companies. The merits of the bribery allegations made by Mozambique will consequently be examined by English courts at the end of October 2023.

Contribution by Maxime Villeneuve

CEDH, 11 July 2023, *Semenya v. Switzerland*, No. 10934/21

On 11 July 2023, the European Court of Human Rights ("ECHR") handed down a judgment regarding an appeal lodged by professional athlete Caster Semenya, following the rejection of her appeals by the Swiss Federal Court and, before it, the Court of Arbitration for Sport ("CAS"). The Court found that the Federal Court had violated articles 13 and 14 in conjunction with article 8 of the Convention.

The "Regulations Governing Qualification in the Women's Category (for Athletes with Differences in Sex Development)" (DSD Regulations) of the International Association of Athletics Federations (IAAF, now World Athletics) required the applicant, an international runner with a naturally high level of testosterone, to reduce that level through hormone treatment in order to be able to take part in international competitions in the women's category. The applicant's refusal to undergo this treatment led to her absence from international competitions, and to her lodging appeals against the DSD Regulations on the grounds of discrimination before the CAS and the Federal Court. CAS, in a award dated 30 April 2019, rejected the athlete's request for arbitration and justified the discriminatory nature of the regulation in that it constituted a "necessary, reasonable and proportionate means of achieving the aims pursued by the IAAF, namely to ensure fair competition." A civil action was brought by the applicant on 28 May 2019, alleging discrimination based on her gender and infringement of her human dignity and personality rights, which the Federal Court dismissed in a ruling dated 25 August 2020.

The Federal Court found that the IAAF regulations constituted a measure that was appropriate, necessary and proportionate to the legitimate aims of sporting fairness and the maintenance of the "protected class". It concluded that the CAS award was not incompatible with substantive public policy within the meaning of article 190 paragraph 2 [of the Federal Law on Private International Law, "the LDIP"]. The applicant lodged a final appeal with the ECHR, relying on articles 3, 6, 8, 13 and 14 of the Convention.

On the issue of jurisdiction, the Court rejects Switzerland's preliminary objection of incompatibility ratione personae and ratione loci, on the grounds that a declaration stating that the Court did not have jurisdiction to hear this type of application would be tantamount to denying professional sportswomen access to state courts, given the context of a "forced arbitration". In the Court's view, this does not align with the spirit, object or purpose of the Convention. On the basis of its own case-law, the Court further considers that, as a result of the Federal Court's examination of the application, and regardless of the fact that the Federal Court did not refer to the provisions of the Convention in its decision, the applicant's case fell within "Swiss jurisdiction" within the meaning of Article 1 of the Convention. The Court therefore asserts its jurisdiction to hear the action.

On the merits, the Court declares Articles 8 and 14 of the Convention applicable, extending the protection of Article 8 to professional activities, insofar as, in the Court's view, the "motives" behind the adoption of the disputed regulation fell within the applicant's private life.

The Court concludes that there had been a breach of these two articles following a three-stage reasoning. First, it finds that there was a ground for discrimination prohibited by Article 14, namely based on the applicant's "sex". In the second, the Court relies on the tacit admission by the CAS and the Federal Court that the situation of female athletes and that of the applicant, as an intersex athlete, were equivalent, to assert that their situations were comparable.

Drawing the consequences of this comparison, the Court considers it likely that there is a difference in treatment between persons placed in analogous or comparable situations.

Thirdly, as regards the nature of the obligation imposed on Switzerland and the margin of appreciation which it enjoyed in the present case, the Court is of the view that the Federal Court exceeded the limited margin of appreciation which it enjoyed in the present case and did not carry out a sufficiently thorough institutional and procedural review of the application. In the Court's view, the Federal Court's power to review the compatibility of the award with public policy within the meaning of the law is too limited. While it is justified in commercial arbitration, the scope of this power is not suited to sports arbitration because of the asymmetry of power between the parties. After recalling the scientific doubts that exist as to the justification for the disputed Rules, the Court also observes and regrets the absence of an in-depth examination of that justification by the CAS and the Tribunal. The Court then turns to the weighing of interests and the consideration of the side effects caused by the required drug treatment, and states that the applicant had a "false" choice which implied for the applicant "in any event" a waiver of certain rights guaranteed by Article 8. Lastly, the Court regrets that the Federal Court had failed to satisfy the requirements of its case-law by not subjecting the contested Regulation to scrutiny for conformity with the Constitution or the Convention in order to assess the horizontal effect of the discrimination suffered by the applicant.

Again on the merits, the Court also finds a violation of the right to an effective remedy under Article 13 of the Convention in the light of Article 14 in conjunction with Article 8. In the Court's view, the applicant had not been able to benefit from sufficient institutional and procedural guarantees in Switzerland. According to the Court, the limitation on the powers of review of the Federal Court and the CAS prevented them from satisfying the requirements of effectiveness of the remedies available to the applicant under Article 13.

Finally, as the applicant had not claimed compensation for material or non-material damage, the Court does not award any sum in that respect. However, it orders Switzerland to pay the applicant EUR 60,000 for costs and expenses.

Contribution by Louise Nicot

International Centre for Settlement of Investment Disputes, October 6, 2023, *Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3

On October 6, 2023, an ICSID Tribunal composed of Prof. Diego P. Fernández Arroyo (President), Mr. Chistian Leathley (Claimant's appointee), and Prof. Marcelo Kohen (Respondent's Appointee) rendered a final award in favour of Jamaican investor Michael Anthony Lee-Chin ("Claimant") against the Dominican Republic ("Respondent") in a dispute based on the Agreement on Reciprocal Promotion and Protection of Investments in Annex III of the Agreement Establishing the Free Trade Area between the Caribbean Community and the Dominican Republic ("Treaty"), and the 1976 UNCITRAL Arbitration Rules. A dissenting opinion by Prof. Marcelo Kohen accompanied the final award. This final award was preceded on July 15, 2020, by a Partial Award on Jurisdiction, which was also accompanied by a dissenting opinion by Prof. Kohen.

In 2013, Claimant allegedly invested in indirect ownership of 90% of the shares in a Dominican company named Lajun Corporation, S.R.L. ("Lajun"), which had a concession agreement with the Municipality of Santo Domingo for administrating and operating a landfill in Santo Domingo ("Duqesa Landfill") (the "Concession Agreement"). The Parties disagreed on whether the Concession Agreement gave Lajun the right, and not only the possibility, to build a waste-to-energy plant ("WTE Plant") in additional land to the landfill.

The subject of the dispute arose in 2017 when Respondent rescinded the Concession Agreement, took military possession of the Duqesa Landfill, and ejected Lajun and their employees from the property due to an alleged environmental emergency and Lajun's supposed failure to comply with environmental regulations.

Consequently, in 2018, Claimant initiated arbitration against Respondent for its behavior, which he argued was expropriatory, unfair and inequitable, arbitrary and discriminatory, and violated the Treaty's umbrella clause and international law. As a result, Claimant sought damages of no less than USD 632.5 million and moral damages of no less than USD 5 million.

While Claimant alleged that Respondent failed to comply with the Treaty requirements for a lawful expropriation - that it must be carried out in a non-discriminatory fashion, for reasons of public interest, after payment of prompt, adequate and effective compensation, and in accordance with due process of law - Respondent argued that there was no direct or indirect expropriation - either through a single act or in a creeping manner - of Claimant's investments. Claimant also submitted that Respondent's conduct breached the Fair and Equitable Treatment (FET) standard, as it i) violated its legitimate expectation; ii) behaved inconsistently, iii) failed to act in a transparent manner, and iv) engaged in arbitrary and discriminatory conduct. However, Respondent argued that it did not violate the applicable FET standard, as the FET obligation under the Treaty is limited to the minimum treatment under customary international law, as opposed to an independent standard with autonomous meaning.

In addition, Claimant contended that Respondent's actions impaired his investment through arbitrary and discriminatory measures violating a "general blanket" prohibition under the Treaty.

Among those actions, he allegedly included Respondent's rescission of the Concession Agreement, the takeover of the landfill operations, the imposition of environmental fines, and Respondent's failure to adjust tipping fees charged by Lajun. Respondent countered that its conduct was not arbitrary, as Lajun received various notices for breach of contract and did nothing to cure them, and that its conduct was not discriminatory, as Claimant did not identify any other investor receiving the same treatment as Claimant and to which Respondent had accorded different or more favorable treatment.

Finally, Claimant submitted that Respondent violated the Treaty's umbrella clause, as Respondent's failure to abide by its obligations and commitments under the Concession Agreement violated Claimant's rights under the Treaty and international law. Respondent argued that the Treaty's umbrella clause did not apply to the case, as there was no contractual relationship between the Parties.

In its award, the Tribunal first established that the requirements for a lawful expropriation under the Treaty are cumulative. While the Tribunal found that Respondent had no discriminatory intent based on Claimant's nationality, it considered that Respondent's actions failed to meet specific due process requirements and did not provide sufficiently convincing justifications behind its action to serve a public interest. The Tribunal also acknowledged that the Parties agreed that no compensation had been offered to Claimant. The Tribunal thus concluded that there had been an unlawful indirect expropriation of Claimant's investment by Respondent in breach of the Treaty.

Second, the Tribunal recalled that the applicable FET standard is limited by the contemporary requirements of the minimum standard of treatment, which include i) legitimate expectations; ii) the obligation to act in a non-discriminatory fashion; iii) the obligation to act transparently; and iv) the obligation to act consistently. The Tribunal considered that Respondent violated conditions (i) and (iv), as it did not provide sufficient justification for its measures frustrating Claimant's legitimate expectations and engaged in a series of contradictory actions, which, on the one hand, sought to reassure Claimant regarding the successful operation of his investment, and, on the other hand, intended to terminate its operation. However, the Tribunal did not find violations of the transparency (iii) and the non-discrimination (ii) criteria.

Third, the Tribunal established that while it was unable to find any discriminatory conduct, it did detect a certain degree of arbitrariness in Respondent's conduct. Finally, the Tribunal held that the aforementioned contractual breaches regarding FET and expropriation also constituted violations of the Treaty's umbrella clause.

Accordingly, the Tribunal decided i) to find that Respondent violated its obligations of expropriation, fair and equitable treatment, and the umbrella clause; ii) to order Respondent to pay compensation for the damage caused to Claimant amounting to USD 43,590,090 million plus interest, iii) to reject all other claims of the Parties; and iv) to order that each Party bear its costs and 50% of the arbitration costs.

In his dissenting opinion, Professor Kohen departed from the majority's decisions analyzing the applicable law and the facts, and in his assessment of the evidence. He stated that his only common ground with the majority is that the municipalities breached their obligation to renegotiate tipping fees with Lajun and that Claimant cannot invoke an exclusive right and a guarantee to build a WTE Plant under the Concession Agreement. Professor Kohen felt that Claimant failed to prove his capacity as Jamaican investor or that the investment was made by him and that the majority failed to properly analyse the legal and factual matrixes of the dispute when finding a violation to the Treaty's obligations. Finally, Kohen criticized the majority's disregard of a situation affecting national security (e.g. health and environmental situation that required urgent measures).

Contribution by Jorge Escalona Gálvez

INTERVIEW WITH T. GHISLAINE EPONOU

1. To start, could you tell us a bit about your background and what initially interested you in international arbitration?

After getting a master's degree in diplomatic and consular relations in Cote d'Ivoire, I decided to continue my studies in France, where I did two master's degrees, one in international private law and the other in international public law. It was during my master's in international private law that I took my first steps into international arbitration. Then, as part of my training at the Paris Bar School, I did an LLM at American University in Washington, DC. The professors there were leading American international arbitration lawyers, so the courses were geared toward both theory and practice. Each year the LLM program organizes an international arbitration moot court for LLM students from American universities who didn't have the opportunity to participate in Vis Moot. This was a very enriching experience that permitted me to try out oral advocacy and I won the "Best Speaker" award. Following this, I completed several internships in multiple Anglo-Saxon law firms in Paris before joining Clifford Chance. Having studied in Africa, Europe, and the US, and as a member of both the New York and Paris bars, I appreciate the fact that in international arbitration we see cases with both national and international legal arguments. I can work on a case that requires knowledge of OHADA law, civil law, or common law.

2. Around 5 years ago you joined Clifford Chance as an Associate in their International Arbitration Department. Could you tell us a little bit about the firm and what your work typically looks like?

There are a dozen members in the International Arbitration department at Clifford Chance. The department mainly works on international commercial arbitration cases, but also on investment arbitration. I follow my cases from the request for arbitration all the way to the enforcement of the award. As an associate, I participate in the review of documents, as well as the drafting of our memos. The most intense moment of the process is usually preparing for hearings when we must prepare our oral arguments and witness questions.

3. Are there any particularly interesting cases that have stood out to you over your career thus far?

I remember one case where we won, but the opposing party had organized its insolvability, so it was very difficult for us to enforce the award abroad and to get the money back.

4. Leading up to your position at Clifford Chance, you completed several internships. What were the most important things that you learned during these experiences?

One of the most important things that I have learned is to how to work in a team. An international arbitration file is often hundreds of pages and involves working intelligently with others. I also learned that whether we win or lose a case can depend on one detail. You must avoid making an argument when you can't support it with evidence because often that argument will be thrown back at you like a boomerang.

5. Could you tell us a bit about your experience as an arbitrator in moot competitions? What advice would you give to students who are preparing their oral arguments?

I acted as an arbitrator during competitions for the ICC Pre-Vis Moot and Frankfurt Moot Court. I think that the most important thing, even if it's not very easy, is to keep eye contact with the members of the tribunal to be sure that they are following. Additionally, when citing a decision, you must be able to speak a bit about it, otherwise, it gives a very bad impression. Finally, you must understand that the goal of an oral argument is also to respond to the opposing party. You can't just recite your own argument; you must also know how to adapt in order to respond to the arguments of the other side.

6. You have also worked for international organizations like the UN Office of Legal Affairs and the Legal Office of the World Food Programme. What has been your experience going from organizations like this to law firms?

I find that there is more pressure when working in a law firm. In international organizations, you don't necessarily work to win cases, but in a law firm, you are very often in contact with the clients and you must pay a lot of attention to their expectations.

7. What is one piece of advice you'd give to young arbitration professionals just starting their careers?

One of the errors that many young professionals make (me included) is to think that networking and business development are for senior lawyers. I would say that you should begin to think about it as soon as possible.

NEXT MONTH'S EVENTS

8 November: "Existentialism in International Commercial Arbitration"

Organised by Sciences Po and New York University

Where? *Sciences Po– 1 place St Thomas d'Aquin, 75007 Paris*

Website: https://docs.google.com/forms/d/e/1FAIpQLSdOXIYsXOb8iq_quOT_DfSovFIpQ7jyrhejZuhqLG13o0nvpw/viewform

9 November: "Which seat of arbitration to choose? International public policy and challenge of arbitral awards"

Organised by the Franco-British Lawyers Society (AJFB/FBLS)

Where? *Reed Smith – 112 avenue Kléber, 75016 Paris*

Website: https://www.viteinscrit.com/operation/1902-ordre-public-international-et-recours-contre-les-sentences-arbitrales

30 November: "MENA Arbitration Forum"

Organised by Sciences Po and Bredin Prat

Where? *Sciences Po– 1 place St Thomas d'Aquin, 75007 Paris*

details to follow

INTERNSHIP AND JOB OPPORTUNITIES

LAW PROFILER

STAGIAIRE M2/
ÉLÈVE-AVOCAT
FAIRWAY AARPI

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

LUSOPHONE INTERN
HERBERT SMITH FREEHILLS

LITIGATION & ARBITRATION
Start date: January 2024
Duration: 6 months
Location: Paris
Brasilian law
degree required

INTERN
HERBERT SMITH FREEHILLS

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

INTERN
ALEM & ASSOCIATES

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

INTERN
DECHERT LLP

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