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Recent French and foreign court decisions

Arbitral awards

Interview with Max Gino Tintignac

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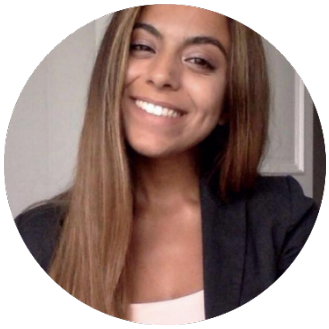

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MARIA EL MAWLA

OUMAIMA GOURZMI

JORGE ESCALONA

TABLE OF CONTENTS

FOREWORD

Paris Baby Arbitration is a Parisian association and an international forum aiming the promotion of young arbitration practice, as well as the accessibility and the popularizing of this field of law, still little known.

Each month, its team has the pleasure to present you the Biberon, an English and French newsletter, intended to facilitate the lecture of the latest and the most prominent decisions given by states and international jurisdictions, and the arbitral awards.

For this purpose, Paris Baby Arbitration encourages the collaboration and the contribution of the younger actors in arbitration.

Paris Baby Arbitration believes in work, goodwill and openness values, which explain its willingness to permit younger jurists and students, to express themselves and to communicate their passion for the arbitration.

Finally, you can find all the previously published editions of the Biberon and subscribe to receive a new issue each month on our website: **https://parisbabyarbitration.com/**

We also kindly invite you to follow us in our **LinkedIn** and **Facebook** pages and to become a new member of our Facebook group.

Enjoy reading!

FRENCH COURTS

COURTS OF APPEAL

Paris Court of appeal, 2 November 2021, no. 20/01980

By Maria El Mawla

On 2 November 2021, the Paris Court of Appeal dismissed the appeal to set aside an arbitral award rendered on 28 September 2019 under the aegis of the International Chamber of Commerce, on the grounds of breach of the adversarial principle and violation of international public policy.

In the present case, on 17 June 2009, Golden Power and Airbus entered into a contract for the provision of consultancy services under which Golden Power undertook to assist Airbus in the context of the signing and implementation by Airbus of a commercial contract with a South Korean company. In 2015 Airbus launched an audit of its anti-corruption procedures. One of the purposes of this audit was to assess the business relationships of each Airbus entity, including its relationship with Golden Power.

On 6 June 2017, Airbus notified the termination of the contract, without compensation, because the audit procedure carried out found that the settlement was contrary to its internal policy and international standards.

Golden Power therefore initiated arbitration proceedings, which nevertheless ruled in favor of Airbus in an award dated 28 September 2019. Golden Power then brought an action for annulment before the Paris Court of Appeal on 20 January 2020.

It claims in particular that (i) the sole arbitrator violated the principle of contradiction and (ii) international public policy.

On the plea alleging breach of the principle of adversarial proceedings, the Court pointed out that, since, during the document production phase, the parties were able to discuss the production of certain documents, covered by attorney-client privilege, and whereas Golden Power did not contest the refusal to submit these documents, the arbitrator fully respected the principle of adversarial proceedings with regard to the parties to the proceedings.

On the plea based on the violation of international public policy, Golden Power argued that by not respecting the principle of adversarial proceedings, the execution of the award violated the principle of equality of arms, as a component of international public policy; moreover, the representative of Golden Power had difficulties in understanding English.

The Court observed in this respect that since the arbitrator had not violated the principle of adversarial proceedings, Golden Power could not rely on this argument to challenge international public policy. With regard to the alleged difficulties in understanding the representative of Golden Power, the Court pointed out that the extensive hearings of the said representative during the arbitration proceedings had no effect on his ability to present his case, as an interpreter assisted him during the arbitration proceedings and by counsel who spoke English.

In view of all these elements, the Court dismissed the action for annulment brought by Golden Power.

Versailles Court of appeal, 4 November 2021, no. 21/04943

By Ellen Treilhes

On 4 November 2021, the Versailles Court of Appeal dismissed an appeal seeking to establish the jurisdiction of the Versailles Court and to set aside an arbitration clause in the name of the principle of imparity.

In the context of a partners' agreement of 29 January 2015, the partners of a company specializing in the practice of architecture and expertise on behalf of third parties, including insurance companies, had agreed on an exclusion clause and an arbitration clause providing for recourse to arbitration in the event of a dispute. The clause provides for the election of two arbitrators, who may elect a third if they see fit. On 16 June 2020, following internal problems, the extraordinary general meeting decided to exclude one of the partners from the company.

The excluded partner, the appellant, contested this decision and brought an action against the company before the Versailles court in order to obtain the cancellation of the arbitration clause and the exclusion clause. He also wanted to obtain an order against the company to reimburse him for the remuneration lost during his exclusion, his current account, and to pay him damages.

The company's co-managers, respondents to the proceedings, raised an objection that the Versailles court lacked jurisdiction in favor of the arbitral tribunal provided for in the arbitration clause.

The pre-trial judge issued an order on 31 May 2020, holding that the Versailles court lacked jurisdiction.

The Versailles Court of Appeal rejects the appeal, explaining that the jurisdiction of the judicial court is residual and that an arbitration clause must be manifestly null and void or unenforceable in order to be able to base the jurisdiction of the state courts. In this case, the court rejected the appellant's arguments, in particular on the grounds (i) that the excluded partner had himself signed the agreement providing for the arbitration clause and that consequently no manifest inapplicability could be demonstrated and (ii) that the principle of imparity is not a matter of public policy and is not at issue in this case because the two arbitrators can elect a third if they consider it useful. There is therefore no obvious irregularity in the clause.

Paris Court of appeal, 16 November 2021, no. 19/20295

By Sarah Lazar

In a decision of 16 November 2021, the Paris Court of Appeal dismissed the action for annulment brought by Afcons Infrastructure Limited (hereinafter «Afcons») against an arbitral award rendered on 23 September 2019.

In this case, on 20 April 2010, Jordan Phosphate Mines Company Plc (hereinafter «JPMC») and Afcons entered into a construction contract for a construction project in Jordan which included an arbitration clause.

A dispute arose in the performance of the contract, for which reason Afcons filed a request for arbitration on 21 November 2016. It believes that it has suffered damages in the execution of the projects and that it has assumed the timely completion. JPMC contests this and complains that Afcons did not perform its obligations properly.

On 23 September 2019, an arbitral tribunal rendered an arbitration award in which it ordered Afcons to pay JPMC damages under a penalty clause. On 29 October 2010, Afcons filed an appeal to the Paris Court of Appeal to set aside the award.

Afcons raised three grounds for annulment of the arbitration award.

In a first claim, Afcons argues that the arbitral tribunal raised ex officio the question relating to «safety standards», ignoring the question put to it by the parties relating to the «modification of the stability of the slopes at the land terminal» and without inviting the parties to present their positions. In addition, Afcons accused the court of violating the principle of contradiction by ignoring its arguments regarding the penalty clause.

The Court of Appeal rejected both complaints, noting Afcons' previous poor performance of the work. The Court explained that the notion of «safety standards» was intrinsically linked to that of «cohesive values». As for the violation of the principle of contradiction, the Court considers that the parties had agreed on the conditions for the applicability of this clause. They had concluded that the penalty clause would be applicable as soon as a contractual breach was established, without taking into consideration the extent of the damage actually caused by this breach.

Under a second plea Afcons claims that JPMC had a decisive advantage, since it claims that it did not have the opportunity to present its position regarding extracts from the calculation notes, since the court had refused its request for the production of the full documents. Afcons believes that the court did not respect the principle of equality between the parties by allowing JPMC to rely on limited extracts.

However, the Court held that Afcons had not been able to present any evidence that the situation actually created a clear disadvantage. This plea is also rejected.

In a third and final plea, based on the failure of the tribunal to comply with its mission, Afcons complains that the arbitral tribunal did not give sufficient reasons for its decision. The Paris Court of Appeal rejected this plea in its entirety and thus dismissed Afcons' action for annulment.

Paris Court of appeal, 23 November 2021, no. 19/15670

By Oumaima Gourzmi

On 23 November 2023, the Paris Court of Appeal ruled on the appeal lodged against the order of 6 May 2019 which granted exequatur to an arbitration award rendered on 12 September 2018 in Lugano (Switzerland) under the aegis of the Swiss Chambers' Arbitration Institution, in a dispute

between the French company SAS ACCESSOIRES COMPANY («Accessoires»), a successor to the CYBER COMPANY, and the Swiss company GUESS EUROPE SAGL («Guess Europe»)

A contract entitled «commercial agent» (the «Contract») was entered into on 20 September 2014 between Guess Europe and CYBER COMPANY and concluded for an exclusive fixed term subject to Swiss law and relating to the marketing of GUESS brand products on French territory.

Considering that Accessoires had not reached the minimum amount of net sales provided for in the contract, Guess Europe notified it of the partial termination of the contract, without payment of compensation. Subsequently, Guess Europe notified Accessoires of the termination of the contract for one of its segments.

On 11 October 2016, Guess Europe filed a request for arbitration before the Swiss Chambers' Arbitration Institution to have it recognized that, under Swiss law, Accessoires could not rely on any claim arising from the termination of the Contract.

The award rendered on 12 September 2018 by the Arbitral Tribunal of the International Chamber of Commerce of LUGANO decides, on the one hand, to order Guess Europe to pay Accessoires the sum of 72,666.23 as outstanding commissions with interest at 5% per annum, and on the other hand, to charge Accessoires with 2/3 of the costs incurred by Guess Europe in these proceedings, i.e. the sum of CHF 236,905.33 with interest at 5% per annum, from the date of the award until full payment.

Two rulings handed down by the Aix en Provence Court of Appeal on 1 June 2017 and 27 June 2019 dismissed Accessoires' claims for an interim injunction ordering GUESS FRANCE and Guess Europe to pay provisions on commissions and to produce documents to enable it to determine its entitlement to compensation and, on the merits, its claim for recognition of GUESS FRANCE as the real principal in a commercial agency contract.

At the request of Guess Europe, the arbitration award was granted enforcement in France on 6 May 2019. Seven months later, Accessoires appealed against the enforcement order.

In its pleadings, Accessoires asks the Court, under Articles 1520 and 1525 of the Code of Civil Procedure, to consider that the arbitration award is contrary to international public policy, and in particular to the right of access to a judge because of its order to cover the defense costs of Guess Europe, the amount of which exceeds the amount of the disputed claim. Thus, Accessoires asks the Court to overturn the order of the President of the Paris TGI of 6 May 2019 declaring the award enforceable on French territory.

In its defense, Guess Europe argues that the grievances formulated by the appellant aiming at obtaining a review of the merits of the arbitral award exceed the power of the exequatur judge. The Respondent invokes the absence of proof of the manifest, effective and concrete nature of the alleged violation of international public policy. Finally, it argues that the fixing of the quantum of the arbitration costs is within the discretionary power of the Arbitral Tribunal and, moreover, was done ex post facto, so that it cannot characterize a violation of the right of access to a judge.

The Court of Appeal starts by declaring the appeal against the exequatur order admissible but rejects the application of Article 1520 of the Code of Civil Procedure, recalling the prohibition for the annulment judge to revise the arbitral award.

In ruling on whether the recognition or enforcement of the award is contrary to international public policy, the Court noted that a domestic statute could only fall under the French concept of international public policy if its disregard is contrary to all the rules and values that the French legal system cannot tolerate, even in international matters. Thus, the Court follows the reasoning of the arbitral tribunal in considering that French case law still does not accept that the provisions of the Commercial Code relating to the commercial agent regime can fall within the French concept of international public policy. Consequently, the Court did not find any conflict with international public policy resulting from the choice of Swiss law.

Secondly, with regard to the right of access to the court, the Court emphasized that the annulment judge could not review the arbitrator's assessment of the cost and the amount of the fees.

The Court dismisses the appeal against the order of 6 May 2019 granting the exequatur to the award rendered on 12 September 2018 in Lugano, and orders Accessoires to pay the costs.

FOREIGN COURTS

High Court of Justice of England and Wales [2021] EWHC 2949, 4 November 2021

By Victoria Muntean

On 4 November 2021, the London Commercial Court led by Justice Baker granted permission to two Malaysian entities to challenge an LCIA arbitration award, which had been filed outside the 28-day time limitation required under sections 67 and 68 of the Arbitration Act 1996. The background of the ruling relates to a multi-billion-dollar fraud that was perpetuated on 1MDB a Malaysian state-owned investment fund by the defendants - International Petroleum Investment Company ("IPIC"), a sovereign investment corporation of Abu Dhabi, and Aabar PJS, a related company.

1MDB, together with their co-claimants Minister of Finance Incorporated, averred that two of the defendants passed employees misappropriated some $3,5 billion from the claimants. The claimants relied on Section 68(2)(g) of the 1996 Act to argue that extension time in challenging the LCIA award should be granted for it was obtained by fraud or in a manner contrary to public policy. The parties had previously entered into various contracts, one having led to arbitration proceedings which was later settled as the tribunal had been asked by way of a joint request dated 24 April 2017 to issue a Consent Award and permission to withdraw the claimants' respective counterclaims (§95). Therefore, the tribunal, in applying the provisions found in Article 26.9 of the 2014 LCIA Arbitration Rules, issued such an award in May 2017 ruling that Malaysian parties shall be liable to pay the defendants $1.2 billion.

In light of the above, counsel for the claimants argued that the tribunal lacked jurisdiction to issue such an award because the consent itself was "tainted" (§100). The challenge as to the tribunal's jurisdiction to issue the Consent Award was ruled out by Justice Baker; it had been duly requested by parties 'solicitors and the tribunal has no remote reason to harness concerns over solicitors' authority to act on behalf of their clients (§103). Thus, as no challenge had been brought as to the validity of arbitration proceedings, the Consent Award was within the tribunal's jurisdiction conferred upon them by virtue of Section 51(2) of the 1996 Act and Article 26.9 of the LCIA Rules 2014 (Ibid).

Justice Baker went on to state that the present claim shall be treated as one raised under Section 68(2)(g) of the 1996 Act in that the Consent Award were sought and concluded in bad faith with the intent to conceal Mr Najib's – a former director of the Malaysian Ministry of Finance - fraudulent and dishonest dealings(§104). The Court was asked to consider the extension of time application with reference to the guidance set in Aoot Kalmneft v Glencore International AG [2002] 1 Lloyd's Rep 128 (§124).

Thus, the Justices need to consider the length of the delay, the reasonableness of the conduct of the party seeking the extension, whether respondent to the application or the tribunal caused or contributed to the delay, whether an extension of time shall cause irremediable prejudice for the respondent, the effect of an extension upon ongoing arbitration proceedings, in the case of an ongoing arbitration, the apparent strength of the challenge of the award provisionally, and whether

it would be unfair the applicant to be denied the chance to have its challenge to the award determined on its merits. To this end, each case shall turn on its own facts.

Justice Baker stated that the relevant delay for consideration was one of 173 days from the day when the new Malaysian Prime Minister was installed (§130), which albeit exceptionally long, ought not to be taken such as to prevent the applicant from seeking a challenge to the award, for in the circumstances the applicant's failure to submit an application in due time and them permitting the delay to occur could not be regarded as unreasonable (§139). His Lordship, thus stated, that it would be a mere injustice to treat the claimant's conduct as unreasonable during Mr Najib's control for they could have not been reasonably expected to be able to pursue a challenge to the award while he was still Prime Minister. Moreover, Justice Baker found that following Mr Najib's demise, the parties acted diligently in preparing their case to challenge the award and no prejudice had been caused to the respondents. Finally, in light of the strong allegations of fraud and the sensitive public interest implicated, permission to challenge the award was granted.

Singapore Court of appeal, [2021] SGCA 102, 11 November 2021

By Nadina Akhmedova

On 11 November 2021 the Court of Appeal of Singapore ("Court of Appeal") set aside the Award rendered by the Tribunal on 11 March 2019 (CAI and Claimant B v. CAJ and CAK) on the grounds of (i) "*classic case of a breach of natural justice*" and (ii) excess of jurisdiction by the Tribunal. As emphasized by the Court of Appeal, the number of set aside awards under Singapore law amounts to circa 20%, since the courts are allowed to do so only on the basis of limited statutory-established grounds including the mentioned above. The Court of Appeal separately addresses appeals on the merits of the High Court of Singapore ("High Court") decision and on the awarded costs.

In the present case, CAI ("Respondent") an owner of polycrystalline silicon plant ("Plant") entered into a construction agreement, containing General Condition 40 ("GC 40") with two contractors, CAJ and CAK ("Appellants"). In course of construction of the Plant, it was discovered that some of its compressors were experiencing excessive vibrations and the issue remained unsolved up to the date of mechanical completion. Later, Respondent approved instructions ("Instruction") for rectification works in a piecemeal manner.

The subsidiary of Respondent later commenced arbitration proceedings ("Arbitration") under the 2012 International Chamber of Commerce Rules ("ICC Rules") claiming liquidated damages from Appellants referring to 144-day prolongation of completion of the Plant resulted by excessive vibrations in the compressors. Appellants contended that the vibrations did not materially affect mechanical completion, which was achieved on time, and even if delay was in place, it was authorized by the Instruction. Appellants invoked the estoppel defense arguing that by admitting the Instruction, Respondent had waived its right to claim for liquidated damages. The Court observes that Appellants had not expressly referred to extension of time defense ("EOT") at the 8-day arbitration hearings but had raised it for the first time only in their written closing submissions. Respondent, on its turn, objected this defense in its written closing statement asserting that recognizing this new argument would have been contrary to procedural fairness.

The three-member Tribunal in its final award ("Award") found that appellants failed to perform mechanical completion of the Plant on time, while the estoppel defense was rejected. At the same time, the Tribunal admitted the EOT defense noting that Respondent had been provided a chance to make submissions in response to this defense in its written closing statements. As the substantial basis of EOT defense was examined by the Tribunal, it decided to provide an extension for mechanical completion by a period of 25 days, thereby entitling Respondent to obtain liquidated damages for 74 days instead of 99 days.

Eventually, Respondent filed appeal to the High Court claiming to set aside the Award referring to excess of jurisdiction by the Tribunal with regard to EOT defense and arguing that the Award was in violation of natural justice. The High Court fulfilled Respondent's claim on setting aside application finding absence of reasonable opportunity for Respondent to address the EOT defense on the basis that it was a completely new defense completely different from initially invoked estoppel defense. Secondly, while relying on professional experience, the Tribunal did not elaborate specifically on the nature of such experience and the parties were deprived from adequately arguing before the Tribunal on this matter, resulting the prejudice to Respondent. Thirdly, the High Court established that the EOT defense was out of scope of submission to arbitration filed by the parties, not to say it was not explicitly referred to in the relevant arbitration documents, including the request for arbitration, the Terms of Reference, the oral hearings, etc., i.e. the issues submitted to the Tribunal had not encompassed the EOT. On the above grounds, the decision on granting an extension of 25 days period was set aside and the High Court held that the liquidated damages were payable for 99 days.

Subsequently, Appellants commenced appeal proceedings at the Court of Appeal submitting that the High Court erred in finding that the EOT defense fell out of scope of the Tribunal jurisdiction as too narrow approach was applied. In addition, Appellants argued that no breach of jurisdiction occurred while rendering the Award as respondent had been provided "*a fair and reasonable opportunity*" to respond to the EOT defense.

On the first issue of excess of jurisdiction, the Court of Appeal establishes that by ruling on the EOT defense the Tribunal exceeded its jurisdiction as this defense was out of scope of arbitration, since Appellants had not invoked this defense until up until their written submission. The Court of Appeal reiterates the utmost importance of determining the scope of issues submitted to the arbitral tribunal. While the EOT is a contractual provision, the Court of Appeal notes that this defense must be pleaded. This position aligns with GC 40, which required Appellants to send express notice on their claim to Respondent at the relevant time. The Court of Appeal observes that according to Respondent, the EOT defense "was never pleaded, nor raised at any point during the 8-day hearing, until it appeared in the Written Closing". In its examination of the issue the Court of Appeal refers to Art. 23(4) of the ICC rules which provides that "*no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances*". The Court of Appeal arrives at the conclusion that the EOT defense remained unpleaded. The Court of Appeal further upholds the ruling of the High Court on excess of the Tribunal's jurisdiction since the EOT defense was not referred to anywhere except written closing submissions of Applicant, while Respondent had not received a prior notice on EOT defense. The Court of Appeal notes that EOT would fall under the scope of submission only provided its proper introduction my means of amendment to the pleadings approved by the Tribunal.

Regarding the second issue, the Court of Appeal determines that there was a breach of natural justice, since EOT constituted a completely new defense distinct from the initially raised Estoppel Defense. Bing directly linked to the Award rendering, the breach of natural justice prejudiced rights of Respondent, which was deprived from opportunity to submit respective evidence on this defense.

Consequently, the Court of Appeal set aside the Award and dismisses the motions raised by Applicants. While the Court of Appeal does not question the calculation of costs, it rules that the liquidation damages are payable to Respondent for 99 days of delay of the Plant construction.

Brussels Court of appeal, 16 November 2021, n° 2020/AR/252

By Sarah Tajmout

In the Belgian segment of the Stati v. Kazakhstan case, the Brussels Court of Appeal rejected the enforcement of the SCC award on 16 November 2021 finding that it was obtained through fraud.

Claimants Stati brothers Anatolie and Gabriel had undertaken investments related to the oil and energy sector in Kazakhstan ("the RoK"). In 2008, an alleged campaign of harassment by the RoK culminated with the sudden cancellation of Claimants oil and gas exploration contracts as well as the seizure of their Kazakh assets. In 2010, the Stati brothers and their companies Terra Raf Trans Trading Ltd. And Ascom Group S.A. (the "Stati Parties") brought an investor-state arbitration under the Energy Charter Treaty against the RoK which resulted in an SCC arbitral award of 19 December 2013 (modified on 17 January 2014) granting the Stati Parties damages of approximately $497 million.

After the Brussels Court of First Instance ruled in favor of the enforcement of the award on 11 December 2017, the RoK appealed the judgment on the ground that the award was obtained by fraud. The subsequent decision of the Brussels Court of Appeal, rendered on 16 November 2021, is the subject of this contribution.

The Court recalls that if the award was based on evidence declared false by a court decision that has become res judicata or on evidence that has been proven false, it may be set aside pursuant Article 1704.3 b) of the (old) Judiciary Code. Furthermore, according to Article 1704.3, a) of the (old) Judiciary Code, the Judge refuses to enforce the award if it is established that the award was obtained by fraud. This last notion is the core of the Court's analysis.

The Court explains that fraud occurs when the arbitral tribunal is misled, deceived by misrepresentation or by concealment of a material fact so that the arbitral tribunal is not properly informed. In other words, these actions must have a definite impact on the arbitration award, which, in the absence of the alleged fraud, would not have been rendered in the same way.

In this regard, the Court finds that the Stati Parties did engage in fraudulent acts to conceal their true financial situation, in particular by producing financial documents advertised as reliable in that they had been audited by highly reputable auditor's part of the famous "big four". These statements were later declared as worthless as Stati Parties had deceived these same auditing firms. Their financial situation being vital for the resolution of the case, the Court thus concludes that the RoK was deprived of its right to be heard on the question of the bad faith of the Stati's investment.

Consequently, the Arbitral Tribunal was necessarily not able to examine whether the Stati's behavior was conform to the principle of good faith.

The Court rules that it is clear that if the Arbitral Tribunal had not been able to examine the case on the basis of correct information. If it had been aware that the produced financial statements were later found to be valueless, they would never have reached the same conclusion on the issue of causation. Therefore, they would not have decided that Kazakhstan failed to prove that Stati itself had caused or contributed to the damage suffered by the Stati's investment.

On this basis alone, the Court considers that there is no need to examine the other pleas and declares the appeal well-founded on the grounds that the arbitral award was obtained by fraud and reforms the judgment of 11 December 2017 ordering enforcement of the award.

Singapore International Commercial Court [2021] SGHC(I) 15, 26 November 2021

By Juan Pablo Gómez

On 26 November 2021, the Singapore International Commercial Court ("SICC") issued an award in favor of a company from the British Virgin Islands dedicated to the development of tourism ventures. The dispute was brought by Plaintiff under s 10(3) of the International Arbitration Act ("IAA") according to which a party to an arbitration may challenge the ruling of the arbitral tribunal on jurisdiction. The underlying dispute was an arbitration before the Singapore International Arbitration Centre ("SIAC"), under the rules of the same institution. The dispute was to be decided following English law.

The main parties of the arbitration are the government of the Maldives ("Plaintiff") and Prime Capital Maldives Pvt Ltd. ("Defendant"). On 18 January 2013, the parties engaged in a joint venture agreement ("JVA") under which Defendant would reclaim and develop a site in the territory of Plaintiff. Pursuant to clauses 2.1 and 5.1 of the JVA, parties would cause a joint venture company ("JVC") for managing the project and enter into a master lease agreement ("MLA") with the JVC for the lease of the site to the JVC for an initial period of 50 years.

After signing the JVA, Defendant applied to register the JVC, but domestic authorities did not accept the application. As a consequence, the MLA was not entered into between the parties and the JVC. Defendant initiated proceedings before the administrative authorities of Plaintiff. On 15 July 2014, judgment was delivered in this litigation, ordering Plaintiff to fulfill all of its obligations under the JVA. While the JVC was incorporated, the MLA was not signed and the project did not commence. Seeking relief for such actions, Defendant initiated the SIAC arbitration on 18 December 2019.

In the SIAC arbitration, Defendant argued that Plaintiff repudiated the JVA and claimed lost profits and wasted expenses. Plaintiff raised a jurisdictional defense arguing that, by bringing actions before domestic courts, Defendant had repudiated the arbitration agreement in the JVA. The SIAC tribunal decision was that it had jurisdiction to hear the case on the merits because Defendant's conduct leading up to the domestic judgment could not objectively be viewed as a clear demonstration that it had abandoned the arbitration agreement. This led to the SICC case.

The main issue that arises then for consideration of the Court is whether Defendant's commencement and continuation of domestic proceedings amounted to a repudiation of the arbitration agreement. At the outset, the Court establishes that under both English and Singapore law this matter requires decision-making bodies to assess the same inquiry. This is, whether the conduct of a party, objectively considered, shows an unambiguous intention to repudiate the arbitration agreement and abandon the obligation to submit disputes arising out of a contract to arbitration.

Also, the Court points out that parties' arguments in this regard relied heavily on their experts and criticizes the latter for limiting their analysis to the documents filed in the arbitration. On the contrary, the Court considers that the appropriate approach is to consider the factual framework against which the domestic proceedings were commenced and pursued. On the one hand, the Court considers that Defendant started the proceedings only to jumpstart the JVA and not because it considered that Plaintiff had breached the contract, which limited the process to a mere administrative relief.

On the other hand, the Court highlights the fact that Defendant's domestic plaint was directed against Plaintiff's Ministries, but not the government itself. In its view, this suggests that the claim was brought solely for administrative relief and not seeking specific performance of the JVA. The Court reads this consistently with Defendant arguing the proceedings under domestic law despite clause 20.1 of the JVA stating that English law applies to any dispute related to the contract. Additionally, the Court notes that the plaint did not forego the rights in the arbitration agreement.

The Court adds that the response of Plaintiff to the domestic proceeding is significant for the analysis and demonstrates that it also viewed the process as an administrative matter. While it could have pursued a stay of the dispute or pointed out that its commencement implied Defendant's repudiation to the arbitration agreement, it did not state its position clearly and unequivocally. Likewise, the Court underscores that the responses of Plaintiff in the proceeding were purely administrative or regulatory in nature, without any reference to the JVA.

The Court also notes other issues in the statements of the parties that show the administrative nature of the domestic proceedings. Notably, it refers to the fact that Defendant did not make any request for damages, which shows that it was not pursuing contractual relief. Also, it points out that contractual issues such as the terms of the MLA were not substantive in the process and the focus of the judgment was largely on administrative matters like the registration of the JVC and the actions of Plaintiff's Ministries as domestic authorities on affairs of a regulatory nature.

Lastly, the Court provides a brief analysis of the value of the arbitration agreement. In its view, this mechanism of the JVA was of the utmost importance for both parties as it intended to protect them in the event of disputes arising over a 50-year relationship about to start as a consequence of the joint venture. Hence, the Court argues that it would be difficult to accept that, by commencing the domestic proceedings, Defendant was willing to abandon this protection before the JVA even got off the ground. Particularly, considering that proceedings were initiated precisely to jumpstart the project.

Against this backdrop, the Court concludes that the scope of the domestic proceedings was focused on the registration of the JVC and the performance of Plaintiff's authorities as regulators. This context, it says, does not support an unequivocal view that the plaint was brought by Defendant

against Plaintiff for a breach of contract. Therefore, the Court dismisses Plaintiff's challenge to the decision of the SIAC arbitral tribunal on jurisdiction and proceeds to hear the parties on the costs of the proceedings, which are to be addressed separately.

ARBITRAL AWARDS

ICSID No. ARB/17/11, 1 November 2021, Pawlowski AG and Project Sever s.r.o. v. Czech Republic.

By Jorge Escalona

On 1 November 2021, the Tribunal in the ICSID Case No. ARB/17/11 ("Tribunal") between Pawlowski AG and Projekt Sever s.r.o. ("Claimants") v. Czech Republic ("Respondent") rendered its award. Claimants requested arbitration against Respondent under the Agreement between the Czech and Slovak Federal Republic and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments signed on 5 October 1990, which entered into force on 7 August 1991 ("BIT"), and the ICSID Convention of 1965. The case dealt with a real estate project development in Prague, Czech Republic.

The award decided over Claimants' claims regarding alleged breaches by Respondent to Arts. 3, 4, and 6 of the BIT, (1) by failing to grant the necessary permits in connection with its investments, (2) by failing to treat its investments fairly and equitably, (3) by impairing its investments through unreasonable and discriminatory measures, and (4) that Respondent's actions constituted an indirect expropriation of its investments. The dispute involved claims derived from Respondent's alleged frustration of Claimants' real estate development project through administrative and legal proceedings related to a zoning plan change that had successfully approved Claimants' land for residential purposes ("Zoning Plan Change").

Pawlowski AG is a Swiss company owned 100% by Mr. Sebastian Pawlowski ("Mr. Pawlowski"), a citizen of Switzerland. Mr. Pawlowski is also the executive director of Projekt Sever s.r.o, owned 100% by Pawlowski AG. Mr. Pawlowski began investing in real estate construction projects in the Czech Republic in the early 1990s. Notably, in 2007, Mr. Pawlowski, who was actively looking for investment opportunities, was introduced to government officials, who convinced him to develop and construct a residential project located in the Municipal District of Benice ("Project").

For such purposes, Pawlowski AG acquired the shelf company Projekt Sever s.r.o. in 2007 to realize the Project by purchasing all relevant land located in a specific place zoned for recreation and agricultural land ("Project Area"). Consequently, zoning plan changes had to be executed to obtain authorization from all relevant authorities to approve it for residential use.

Attempts to re-zone the Project Area were initiated before the respective municipal authorities in 2002. On 26 March 2010, Prague's City Assembly approved the Zoning Plan Change relating to the Project Area (270,000 m2). The Zoning Plan Change entered into force on 16 April 2010 – eight years after the competent municipal authority of Benice had first reviewed and approved the proposal for the re-zoning of the Project Area. Nonetheless, the approval was still subject to judicial review, which could lead to the annulment of the Zoning Plan Change at the request of any district

or any other affected party. The process for zoning plan changes requires decision-making from the Prague City Assembly at all relevant stages.

Despite everything was proceeding as planned for Claimants, on 28 June 2012, the Benice District Assembly filed an annulment request against the Zoning Plan Change ("Annulment Request"), based on substantive and procedural shortcomings. Claimants were invited to take part in the proceedings. However, by the time Projekt Sever s.r.o attempted to do so in March 2013, the deadline had already passed, and the Court denied Projekt Sever's request to participate. On 26 April 2013, the Municipal Court annulled the Zoning Plan Change ("Annulment Judgment") since (1) it had been issued in contravention of the law, and (2) it lacked proper reasoning.

The respondent in such proceedings (the City of Prague) brought a cassation complaint against the Annulment Judgment. Still, it was dismissed by the Supreme Administrative Court one year later (on 26 February 2014). Thus, confirming the annulment of the Zoning Plan Change, and as a consequence of the cassation judgment, the Annulment Judgment became res judicata. Claimants' action before the Constitutional Court in an effort to undo the annulment of the Zoning Plan Change was dismissed as well.

The Annulment Judgment had devastating effects on the Project since the use of the land reverted to the previous category (agriculture, forest, and recreation), making any residential development impossible. Despite the Annulment Judgment, Czech applicable laws (Building Sec. 55(3)) established principles that the municipal authority must follow in case of a zoning plan's partial or total annulment. It provides that upon annulment of a zoning plan change, the matter must be submitted to the relevant Municipal Assembly, which is obliged to assess the situation and adopt a reasoned decision. Either (1) to re-procure the Zoning Plan Change (which would require amending the shortcomings established in the Annulment Judgment) or (2) to confirm the annulment, in which case the previous zoning rules would apply.

Nonetheless, on 14 April 2015 - 13 years after the initial idea for the re-zoning, five years after the Zoning Plan Change had been approved, and 14 months after the Supreme Court's dismissal – the Prague City Assembly terminated the procurement of the re-zoning of the Project Area. Thus, the land purchased by Projekt Sever s.r.o to develop the Project, reverted to its original use as agricultural, forest, and recreational land, making it unfeasible to create a residential housing project at such times and conditions.

In this context, on 3 May 2017, Claimants requested arbitration against Respondent, claiming that its actions and omissions at issue, including those of its instrumentalities, had breached the BIT. Claimants sought damages for around 5 billion CZK, costs, and interest.

Claimants argued that the conduct of Benice's Municipal District and of the City of Prague – which is directly attributable to the Czech Republic– was unreasonable, arbitrary, and lacking in good faith. Claimants alleged that Respondent breached the BIT's prohibition against discriminatory measures and less favorable treatment, because it approved (and re-procured) zoning changes for other projects while simultaneously terminating Claimants' Project. Claimants further contended the existence of clear legal framework for supporting changes to the Prague zoning plan, which the authorities followed during the initial stages and up to the approval of the Zoning Plan Change in 2010.

Finally, Claimants exposed that the City of Prague violated the obligation to grant the necessary permits under Article 3(2) of the BIT by failing to cure the defects in the substantiation for the Zoning Plan Change. Moreover, they averted that the City of Prague's Assembly termination of the re-procurement of the Zoning Plan Change amounted to indirect expropriation in violation of Article 6(1) of the BIT.

Respondent denied that Benice or the City of Prague acted arbitrarily, unreasonably, or in bad faith. Additionally, it rejected Claimants' allegations and averted it did not discriminate against Claimants or treated their investments less favorably than Czech investors. Furthermore, it asserted that its conduct did not frustrate Claimants' legitimate expectations. Respondent argued that under international law, an investor's expectations are protected only when they satisfy specific requirements, which Claimants did not meet.

In addition, Respondent argued that the allegations made by Claimants do not relate to "permits" but a zoning plan change and that the claim is therefore outside the scope of Article 3(2) of the BIT. Finally, Respondent argued that its actions did not amount to an indirect expropriation. Respondent emphasizes that Claimants purchase of land took place before the land was zoned for residential development. This is vital because it meant that Claimants alleged the expropriation of rights that they had never actually received.

The Tribunal observes that the requests made to Projekt Sever s.r.o. on behalf of Benice District do not meet the standard of reasonableness mandated by Article 4(1) and fall short of the standard of FET under Article 4(2). However, the Tribunal finds that the decision of Prague's City Assembly to dismiss the proposal to re-procure the Zoning Plan Change was substantiated. Consequently, it was a reasoned decision, which did not breach the prohibition of unreasonable measures provided for in Article 4 of the BIT.

The Tribunal finds that Respondent did not treat Claimants differently than other investors for any reason other than disparities between their projects.

The tribunal next emphasizes that Respondent did not violate Claimants' right to FET by infringing their legitimate expectations since from "A careful review of the facts shows that neither the Czech Republic, nor any of its territorial divisions (including the Districts of Uhříněves and Benice and the City of Prague) made any specific and unambiguous representations, assurances, or promises to Claimants that the procurement of the Zoning Plan Change would be authorized or that the development of the Project would be successful…" (cited from the award – para. 628)

In regards to the breach of granting the necessary permits, the Tribunal observes that "…even if it is accepted arguendo that the re-procurement of a zoning plan change can be equated with the issuance of a permit (quod non), the only obligation which Article 3(2) puts on the shoulders of the host State is to grant such permits in accordance with its laws and regulations. If, in accordance with municipal law, the investor is not entitled to the permit, no breach of the BIT obligation is committed." (cited from the award – para. 668). Consequently, the Tribunal reasons that Respondent did adhere to the obligations imposed by Article 3(2): the issuance, challenge, and annulment of the Zoning Plan Change, and the termination of its procurement, were materialized in full conformity with Czech law.

Finally, the Tribunal remarks that the Annulment Request nor the decision of Prague's City Assembly to terminate the procurement provoked an indirect expropriation of Claimants'

investments. It distinguishes that "*even if Claimants had acquired a specific right for the Project Area to be zoned for residential use* (*quod non*), *Claimants have still failed to prove any interference with their property rights that would be sufficiently restrictive, permanent and irreversible to justify a finding of indirect expropriation.*" (cited from the award – para 705)

In short, the Tribunal finds one violation of the BIT attributable to the Czech Republic: the payment requests made to Projekt Sever s.r.o. on behalf of Benice District. For this reason, the Tribunal agrees to issue a declaration that the Czech Republic committed "an internationally wrongful act" consisting of a violation of Article 4 of the BIT.

Ultimately, the Tribunal does not find any causal link between the internationally wrongful conduct attributable to Respondent and the damages claimed by Claimants; in this sense, the Tribunal dismisses Claimants' claims for compensation due to a lack of substantiation and the absence of causation. The Tribunal considers since each party succeeded in part and failed in part in the arbitration, as Claimants won on the jurisdictional objections but lost on the merits, it orders that each party shall bear its attorney fees and half of the arbitration costs, which amounted to US $617,413.86.

Given all the above, the Tribunal decides to (1) dismiss the jurisdictional objections submitted by the Czech Republic and declares that the present dispute falls within the jurisdiction of the ICSID and the competence of the Tribunal, (2) declares that the Czech Republic has violated Article 4 of the BIT by failing to treat Claimants' investments fairly and equitably and by impairing Claimants' investments through unreasonable measures, (3) declares that each party shall bear, in equal parts, the costs of the proceeding and that each party shall be responsible for its legal fees and expenses and (4) dismisses all other claims and requests.

ICSID No. ARB/14/32, Award, 5 November 2021, Casinos Austria v. Argentina

By Alexander Mironov

On 5 November 2021, the ICSID Tribunal decided that the Argentine Republic is liable for an unlawful expropriation through the revocation of an exclusive gaming license, whose beneficiaries were two Austrian companies.

In 2013, Argentine authorities revoked an exclusive gaming license of the Argentine company Entretenimientos y Juegos de Azar S.A. ("ENJASA"), that was majority owned and controlled by Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft ("Claimants") via Leisure & Entertainment S.A. ("L&E"), a stock corporation under Argentine law.

After the revocation of ENJASA's license, the Argentine authorities transferred its gaming and lottery operations to new local gaming operators. According to the Claimants' allegations, the revocation was politically motivated in order to benefit local gaming operators and to increase state revenues from gaming, and effectively destroyed Claimants' investment in Argentina.

In 2014, Claimants have brought an ICSID claim against the Argentine Republic ("Respondent") for breach of specific provisions of the Argentina - Austria BIT (1992), namely of Article 4 (addressing expropriation) and of Article 2 (addressing fair and equitable treatment).

First, the Tribunal qualifies the revocation as an indirect expropriation. Claimants were unable to make use of their investment in any meaningful way: 98.8% of the value of L&E, controlled by the Claimants, consisted of the revoked ENJASA's license. The Tribunal decides that the revocation of ENJASA's license therefore permanently and substantially deprived Claimants of their investment. Tribunal does not find a breach of due process, but it states that its findings on arbitrariness of the authorities and the lack of proportionality are sufficient to conclude that Respondent is liable for breach of Article 4(1) and (2) of the BIT.

Second, the Tribunal considers that it is not necessary to make a formal finding on Claimants' claim for breach of Article 2(1) of the BIT. Even if the revocation of ENJASA's license does not constitute a lawful exercise of the host State's powers, but is arbitrary and disproportionate, the claim for a breach of the fair and equitable treatment standard contained in Article 2(1) of the BIT, is consumed by the Tribunal's findings on Respondent's liability under Article 4(1) and (2) of the BIT. As a consequence, the Tribunal makes no formal finding as to a breach of Article 2(1) of the BIT.

Thus, the Tribunal finds that Respondent is internationally responsible for the breach of Article 4(1) and (2) of the Argentina - Austria BIT because the revocation of ENJASA's operating license and the subsequent transfer of ENJASA's business to new operators constitutes an unlawful expropriation of Claimants' investment under the BIT. As a consequence, the Tribunal rules that Claimants are entitled to full reparation and that the Respondent has to pay compensation to the Claimants in the amount of USD 21,660,000 plus interest as well as pay to Claimants for all the costs incurred in connection with the proceedings plus interest.

ICSID No. ARB(AF)/18/3, 5 November 2021, Kimberly-Clark v. Venezuela

By Juan Pablo Gómez

On 5 November 2021, an arbitral tribunal constituted under the auspices of the International Centre for the Settlement of Investment Disputes («ICSID») issued an award in favor of the Bolivarian Republic of Venezuela stating that it lacked jurisdiction to hear the claims before it. The dispute was brought by Claimants under the bilateral investment treaties ("BIT") entered into between Respondent and (i) the Belgo-Luxemburg Economic Union ("Belgian BIT")"; (ii) the Kingdom of the Netherlands ("Dutch BIT"); and (iii) the Kingdom of Spain ("Spanish BIT"). The dispute was to be resolved following the ICSID Arbitration Additional Facility Rules («AF Rules»).

The main parties to the arbitration were (i) Kimberly-Clark BVBA, (ii) Kimberly-Clark Dutch Holdings, B.V., and (iii) Kimberly-Clark S.L.U. ("Claimants"), three companies of the Kimberly Clark group ("KC"), a multinational dedicated to manufacturing, importing, and selling personal care and hygiene products, and the Bolivarian Republic of Venezuela ("Respondent"). Complainants owned investments in the local subsidiary of KC, which they alleged were affected by three sets of measures, adopted by Respondent, in particular a series of currency controls, a maximum retail price of certain goods, and the reimbursement of the value-added tax («VAT»).

Claimants' notice of dispute was presented on 19 June 2017 and referred to several claims including discriminatory treatment and expropriation. Nonetheless, the decision of the tribunal was on a jurisdictional issue raised by Respondent in its Reply on Jurisdiction. According to Respondent,

the tribunal lacked jurisdiction to hear the case for five separate reasons. Notably, it argued that the Spanish and Dutch BITs contained a time-limited offer to arbitrate under the AF Rules that expired when it became a party to the ICSID Convention. Additionally, Respondent considered that the Belgian BIT did not incorporate any such offer to arbitrate under the AF rules.

On the issue of absence of jurisdiction *ratione voluntatis* for the Spanish and Dutch BITs, Claimants replied that the time-bar raised by Respondent did not exist and what mattered under the BITs is whether Respondent was a party or not to the ICSID Convention. If it was, then the claim had to be brought under the ICSID Convention, but in the negative, it had to be referred to arbitration under the AF Rules. Since Respondent had denounced the ICSID Convention, then the AF Rules applied and Claimants had correctly submitted their dispute. As to the issue under the Belgian BIT, Claimants argued that the agreement expressed Respondent's consent to arbitrate under either arbitration rules.

Both for the Spanish and Dutch BITs, the tribunal, pursuant to Article 31(1) of the Vienna Convention on the Law of Treaties ("VCLT"), focuses on the ordinary meaning of the BIT provisions referring to the possibility to arbitrate under the AF Rules. Accordingly, it concludes, contrary to the interpretation of Claimants, that the offer to arbitrate under the AF Rules in both BITs was in force only as long as Respondent did not accede first to the ICSID Convention, not if it was a party to the treaty at the time Claimants initiated the arbitration. Therefore, as the ICSID Convention entered into force for Respondent on 1 June 1995, the offer to arbitrate under the AF Rules expired on that date.

As to the Belgian BIT, the tribunal points out that Article 9(3) of the treaty provides that an investor could bring a dispute under the ICSID or an ad hoc tribunal under the UNCITRAL Rules. Claimants argued that the term "ICSID" in the BIT does not refer to the ICSID Convention, but ICSID as an institution, which means an offer to arbitrate under either the ICSID Convention or the AF Rules. However, the tribunal disagrees with this line of reasoning, in particular, because the Belgian BIT does not refer at all to the AF Rules, and given the difference of these rules with arbitration under the ICSID Convention, consent to them should be manifested as such.

Lastly, Claimants also argued that, even if the tribunal found that it lacked jurisdiction, it could rely on the Most Favored Nation ("MFN)" clause in the BITs to import a rule from the BIT between Respondent and the UK ("UK BIT") that included an offer to arbitrate under AF Rules without restriction. The tribunal concludes that it cannot import the rule of the UK BIT because, as it lacks jurisdiction, it is barred from applying the substantive guarantees of the treaties in dispute. Additionally, the tribunal finds that Claimants could not get better dispute settlement terms through the MFN clause because such protection was restricted in the BITs to matters of physical protection.

Against this backdrop, the tribunal concludes that it does not have jurisdiction to hear the case on the merits because the offer to arbitrate under the AF Rules in the Spanish and Dutch BITs was limited to the period before Respondent acceded to the ICSID Convention and there was no such offer under the Belgian BIT. Further, the tribunal finds that Claimants' proposal to apply the MFN clauses in the BITs as to import an offer to arbitrate under AF Rules without limitation in other Respondent's BIT is not feasible. Thus, the tribunal proceeds to its decision on costs and decides that each party shall bear its costs and Claimants must bear the costs of the arbitration for US $523,819.

INTERVIEW WITH MAX GINO TINTIGNAC

1. Hi Max, thank you for agreeing to answer our questions this month. Could you briefly recall your background?

In 2012, I started studying Law at the University of Aix-Marseille, where I completed the first two years of my bachelor's degree before flying overseas to the University College London as part of an Erasmus exchange program. In 2015, back in Aix, I completed a Master 1 in Business Law and then, came to the Paris to complete the Master in Arbitration and International Trade Law (MACI), directed by Professors Sandrine Clavel and Thomas Clay (now in the hands of Fabienne Jault and Maximin de Fontmichel).

Thanks to multiple seminars and practical workshops in several Paris law firms, I attained an internship at Freshfields Bruckhaus Deringer. Alongside this first experience in arbitration, I passed the CRFPA and entered the French Bar School (EFB) in January 2018. I chose to start with my PPI which I completed at the ICC in Paris, and later continued with a part-time internship at Teynier Pic alongside my legal studies. This internship was ultimately extended for two additional full-time sessions, which resulted in my leaving 18 months later, CAPA in hand, in December 2019.

After a few months of research (equally unsuccessful as it was draining) for a junior Associate position, during which I had returned to working as a waiter in a restaurant, an internship opportunity opened up at White & Case in Paris. There, I met a multitude of talented, open-minded and welcoming people, who offered me the opportunity to join their team permanently. I am now an Associate since January, after three consecutive years as an Intern.

2. What attracted you to becoming an arbitration lawyer?

In 2013, at the University of Aix-en-Provence, I joined the Portalis Institute, a so-called "elitist" training course that recruited its members among students who obtained honors following their first year of bachelor. This program offered, twice a week, seminars by various practitioners with extremely varied backgrounds (from Admiral of the Navy to State Councilor). I discovered very different and unusual profiles, both among students and the academic staff, but also fascinating individuals able to dismantle prejudices of the rebellious student that I was at the time.

Professor Denis Mouralis was one of the speakers. He introduced the characteristics of international arbitration to us as a cross-border discipline; a field of the most diverse and constantly renewed battles (juggling between Polish arbitration law, the French conception of corruption, and the procedure for awarding public contracts in Tanzania), led by some of the most brilliant lawyers

of their respective bars. This discipline cultivates excellence and attention to detail through state-of-the-art capitalist means (flexible hours and fees, over-the-top remuneration, overworked trainees, and so on), all forming a mechanism that seems to be to justice what democracy is to politics: "*the worst form of government, except for all the others*"[1].

I was immediately seduced by the world of arbitration, and have since sought to join the practice.

3. Before joining White & Case's arbitration team in Paris, you worked as an intern for the ICC? Do you think this experience was useful for the rest of your career and now as an Associate?

To be perfectly honest, I was not particularly excited about the idea of "locking myself up into an administrative institution for 6 months" but, once again, I was well advised and I do not regret this decision at all, quite the opposite.

An internship at the ICC allows you to "understand how an arbitration center operates and become familiar with the Rules" - this is what students often hear, and I can confirm that. In fact, this experience provides a multitude of answers to questions that were previously unsuspected by students: understanding the role of each (what does the Secretariat do and what does the Court do), but also what can the lawyer expect from the counsels in charge of the case, what are the conditions to be met to exclude a non-signatory from the proceedings even before the case is entrusted to the arbitral tribunal (cf. Article 6(3) of the ICC Rules), what are the sources of authoritative information for the members of the Court and of the Secretariat, and many other problems.

But this is far from the most important. The ICC is probably one of the most international and diverse institutions in Paris. Beyond arbitration itself, the human and cultural contribution is invaluable. Of course, many of the members of the Secretariat go on to join law firms or remain "useful contacts" for a young lawyer, but limiting the ICC to its professional aspect only would be far too reductive. There, one can find traditional Greek food, geopolitical problems in Egypt, the unique complex of adults who have grown up living in so many countries that it renders a feeling of statelessness, the challenge of integration in France for Honduras's graduates, and so on.

In short, although the pay is very low and the tasks are far from being always rewarding, the experience is ultimately worth it. And the view of the Eiffel Tower is breathtaking. I highly recommend it.

4. Can you tell us more about your work at White & Case and the cases you deal with on a day-to-day basis but also the work environment within the firm as a newly qualified?

My answer (which is my personal opinion) will probably sound watered down, but it is in fact absolutely honest: I don't know any better place to practice arbitration in Paris. There are many positive points and I could talk about it all day, so I will just highlight here what I believe are the most relevant.

[1] To avoid any misunderstanding, I have supplemented Professor Mouralis' definition with my own experience before dressing it up with sarcasm.

First of all, the general working atmosphere. We are lucky to have a team which, despite being very big (over 60 people), is also young, united and lively. This is grounded, in particular, by a workforce that is numerically in line with the amount of work (which makes it possible to avoid, as far as possible, maintaining difficult working hours for long periods), on the recruitment process of trainees tested and approved by the rest of the team, but also on numerous events promoting group cohesion (monthly team meetings, afterworks, extra-professional weekends, etc.).

Secondly, the relationship with Partners. Partners are not chosen randomly. Most of them come from internal promotions, and both their personal and professional qualities are obvious. They produce great examples worthy of being shown in cross-examination courses, are dedicated lawyers involved in each of the cases they are in charge of, are experienced tutors, demanding and tolerant at the same time, but also very accessible, and their doors remain open at all times.

Finally, the career development. The annual review ensures complete transparency regarding everyone opportunities and its future within the firm. Internal promotions to Partner are probably more frequent than any other arbitration firm (five in the last seven years), and remuneration evolves to remain in line with the prestige of this American structure.

I am not saying that everything is perfect, but great efforts are made to ensure that we can all grow and progress. So, as you can see, I am very happy at White & Case.

5. Tell us about the biggest challenge that you faced in your career so far and how you overcame it?

It's a question worthy of an American job interview and my career is way too short to call it a "big challenge".

However, I do have a story to share: during a hearing, while I was still a Trainee, we had to interrupt the cross-examination of an opposing witness due to lack of time. As the next session was not due until the following day, the Partner in charge of the case asked me to collect the folder containing all the documents needed for the cross-examination which had been given to the opposing party, in order to avoid any risk of anticipating questions. Counsel for the opposing party objected, telling me that they did not intend to review the folder and would leave it in the courtroom for the night. My Partner insisted, so I went back to retrieve the binder but the opposing counsel saw me and was so offended that he requested a meeting with the two Partners I was working for on this case to discuss 'my behavior'. At the end of the meeting, he promised to raise a procedural incident in front of the arbitration tribunal the next day, referring to a breach of ethical principles, which should be referred to the disciplinary board of the Paris Bar.

In the end, he never took the slightest action, and this event was quickly forgotten. For my part, after worrying about it all night, I was finally relieved since it did not affect the cross-examination at all the next day. As soon as it was over, I apologized to the opposing counsel himself.

6. What tip would you give to younger arbitration practitioners?

First of all, it is important to know that arbitration is increasingly competitive. Opportunities are becoming rare, especially in Paris, and obtaining a junior associate position is becoming excessively complicated. You almost have to be born in California (for the English), have lived in Colombia (for the Spanish) but also have an LLM from Harvard and three honors from the Sorbonne University. I would therefore advise not to make arbitration a fixed idea. Litigation or compliance, for example, are some of many sectors that remain open with great opportunities.

Secondly, I think it's important to point out that it's not for everyone, and that there's no point in making ourselves believe that we can do it if it's not in our nature. I'm talking in particular about managing stress and sleep deprivation during periods of intense activity (filings or hearings). Being a lawyer is a very broad profession, with many opportunities. Stubbornly pursuing arbitration to the breaking point will not always lead to a career change with your feet in the hot sand, running a rum bar in Havana.

Finally, I would say that it is extremely important to do your research about the firm you want to apply to. Before accepting an internship or an Associate position, you should learn as much as possible about the atmosphere and the functioning of the firm. The case of Jean Georges Betto, who was recently punished by the "*Conseil de l'Ordre*" for having created a "*sexualized climate*" in his office following a complaint from a former Associate, is a particularly striking example. But this is only one aspect of the different types of physical or psychological abuse that can occur in practice. Lack of respect and appreciation from superiors, unbearable pace, constant criticism and reprimands: many things can affect your mental health, especially when we are new to the practice, when we want to prove ourselves and when we don't know yet who to trust, what we can or cannot say and how to put boundaries. This is a vulnerable situation and I would therefore urge caution and prior communication with former Trainees or Associates of the firm.

To conclude on a more positive note, remember to be happy and true to your values despite the adversity. I hope you will continue to move forward through this tunnel, even if you don't see the light at the end, because it's not the end that counts, it's the path that's key. Your path is your story.

NEXT MONTHS' EVENTS

December 7th, ICC YAF: Meet your ICC Case Management Team

ONLINE

Online event gathering the case management team members of the Secretariat of the ICC International Court of Arbitration in charge of cases in connection with Eastern Europe.

Website: https://2go.iccwbo.org/icc-yaf-meet-your-icc-case-management-team.html

December 8th & 9th, ICC-ESCWA Regional Economic Forum

ONLINE

Webinar co-hosted by the ICC and the United Nations Economic and Social Commission for West Asia (ESCWA), where international development experts and practitioners will share their sector expertise in the Arab region.

Website: https://2go.iccwbo.org/icc-escwa-regional-economic-forum.html

December 8th, ICC YAF: Reducing the Environmental Impact of International Arbitrations

ONLINE

Interactive discussion on "greener arbitrations", where panelists will focus on ideas and best practices for stakeholders across the arbitration community to minimize environmental impacts and reduce the carbon footprint of arbitrations.

Website: https://2go.iccwbo.org/icc-yaf-reducing-the-environmental-impact-of-international-arbitrations.html

December 10th, ICC Friday eChaikhana: ICC Arbitration Series for Central Asia

ONLINE

3rd webinar of this series where hosts will be focusing on the choice of the dispute resolution method and ICC procedures.

Website: https://2go.iccwbo.org/icc-friday-echaikhana-icc-arbitration-series-for-central-asia.html

December 16th, ICC YAF: Holiday Season Meet & Greet – Unwrapping the Eastern European potential

ONLINE

Virtual "pre-Christmas" chat and drinks on career opportunities and challenges in international arbitration in the Eastern European region.

Website: https://2go.iccwbo.org/icc-yaf-holiday-season-meet-greet-unwrapping-the-eastern-european-potential.html

December 16th, ICC YAF: New Solutions to Old Problems with the Next Generation of Arbitrators

ONLINE

Online panel discussion spotlighting and hearing from a new generation of emerging arbitrators in North America.

Website: https://2go.iccwbo.org/icc-yaf-new-solutions-to-old-problems-with-the-next-generation-of-arbitrators.html