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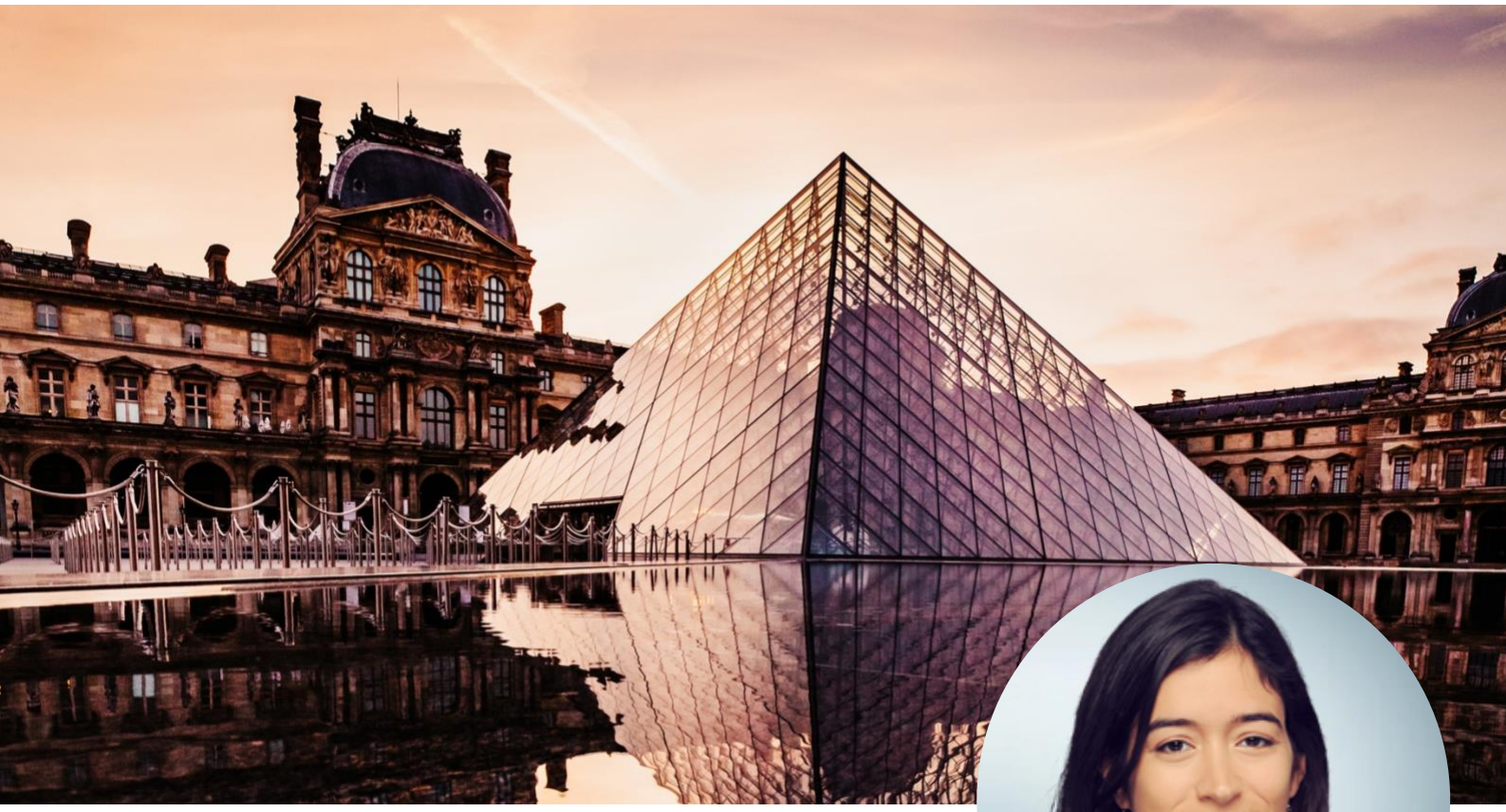

French and foreign court decisions

European and International court decisions

Interview with Clara Bianchi Ferran

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

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FOREWORD

Paris Baby Arbitration is a Parisian society and a networking group of students and young practitioners. Our aim is to promote and encourage the practice of International Arbitration, still little known amongst students.

Each month, our editorial team elaborates the Biberon, an English and French newsletter. The Biberon intends to facilitate the understanding of the latest and the most prominent decisions and awards rendered by states and international jurisdictions, as well as arbitral awards.

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

Paris Baby Arbitration believes in hard work, goodwill and open-minded visions, which explains why the Biberon sees contributors from all walks of life write a piece and communicate their understanding and passion for arbitration each month.

You can find all the previously published editions of the Biberon and subscribe to receive the newest issues each month on our website: parisbabyarbitration.com/

We also invite you to follow us on LinkedIn and Facebook.

Enjoy your reading!

FRENCH COURTS

COURT OF CASSATION

Court of Cassation, First Civil Chamber, September 28, 2022, no. 21/21738

Contribution by Lina Ettabouti

On September 28, 2022, the French *Court of Cassation* rendered a decision ruling that a party's impecuniosity or financial difficulties regarding the cost of an arbitration procedure cannot defeat an arbitral tribunal's power to decide on its jurisdiction before any national jurisdiction, especially if the party has not made a prior attempt to initiate arbitral proceedings.

The decision arose out as the claimant, CPP Le Mans Distribution company (hereafter "CPP") and its manager alleged that Carrefour Proximité France (hereafter "CPF") and company CSF France (hereafter "CSF"), conducted anti-competitive practices and restrictive business practices. In fact, CPP concluded a franchise contract with CPF and it had also concluded a supply contract with another company, CSF. Both contracts contained an arbitration clause.

CPP summoned her co-contractors before the Rennes Commercial Court. The defendants objected to the jurisdiction of French national courts by invoking the arbitration clauses contained both in the franchise agreement and in the supply contract.

The Court of appeal rendered a decision confirming that French courts hold no jurisdiction or competence over the dispute in question. Claimants challenged the Court of appeal's decision before the *Court of Cassation.*

Three main arguments were raised by the claimants:

Firstly, claimants alleged that the Court of appeal did not recognize the manifestly unenforceable nature of this clause because of the appellants' impecuniosity. The Court of appeal had indeed raised the claimant's inability to pay more than EUR 100,000 for arbitration costs, and the risk of a suspension of payments for the CPP company because of the cost of arbitration. Therefore, the claimants alleged a violation of article 1448 of the French Code of Civil Procedure and article 6 §1 of the European Convention on Human Rights, resulting in a violation of their right to be granted access to a judge.

Secondly, claimants argue that, in order to guarantee effective access to a judge without means, their impecuniosity should have defeated the Competence-Competence principle, on the basis of article 6 §1 of the European Convention on Human Rights.

Thirdly, claimants argued that the contractual framework of this case would inevitably lead them to undertake multiple arbitration proceedings (each arbitration clause contained in a contract resulting in an arbitration proceeding). Therefore, claimants asserted that this particular situation will lead them to denial of justice, which is another argument that should be taken into consideration so as to declare the arbitration clause unfair and thus manifestly unenforceable. The French *Court of cassation*'s judges did not take into consideration this argument when deciding.

The French *Court of Cassation* dismissed the claimants' appeal. It outlined that the impecuniosity of a given party to an arbitration proceeding must not constitute grounds for manifest inapplicability. Furthermore, without prior attempt to initiate arbitral proceedings, a party cannot be granted its request for a national jurisdiction to consider and decide on the arbitral tribunal's jurisdiction first and foremost. As such, an arbitral tribunal shall always decide, first and foremost, on its own jurisdiction.

The French *Court of Cassation* also clarified that the right to access to court invoked by the claimants in appeal was not infringed, given that there was no prior attempt to initiate arbitral proceedings. The Court seems to suggest that parties should try at least to find alternatives to mitigate their impecuniosity.

Court of Cassation, First Civil Chamber, September 28, 2022, no. 20/20260

Contribution by Manon Guillon

On September 28, 2022, the French *Court of Cassation* ruled on the applicable law to the arbitration agreement.

In this case, on July 16, 2001, the Lebanese company Kabab-Ji concluded a ten-year franchise agreement with the Kuwaiti company Al-Homaizi Foodstuff Co (hereinafter 'AHFC'). The franchise contract provided for English law as the governing law, and contained an arbitration clause according to the rules of the International Chamber of Commerce (hereinafter 'ICC'). In 2004, AHFC notified the Lebanese company of the group's restructuring through the creation of a holding company Kout Food Group (hereinafter 'KFG'). On July 16, 2011, the contracts ended. Subsequently, on March 27, 2015, Kabab-Ji initiated arbitration proceedings before the ICC against KFG in order to claim payment of unpaid licenses between 2008 and 2011. The arbitral tribunal, in an award issued in Paris on September 11, 2017, held that it had jurisdiction over KFG, extending the arbitration agreement to the latter because of its involvement in the performance of the contract. KFG was ordered to pay Kabab-Ji the unpaid monthly license fees. English courts refused to enforce the award in England on the grounds that English law had been expressly designated by the parties as the governing law to the arbitration agreement, and that English law did not provide for the extension of the arbitration agreement to KFG.

In a decision from June 23, 2020, the Paris Court of Appeal, hearing an appeal for annulment brought by KFG, dismissed the appeal on the grounds that the arbitration agreement was governed by the substantive rules of the seat of arbitration, and therefore the substantive rules of French law. Moreover, it held that KFG did not provide any evidence of a common intention of the parties to submit the agreement to English law. KFG then appealed to the Supreme Court.

In its appeal, KFG argued that the existence and effectiveness of the arbitration agreement should be assessed in the light of the law chosen by the parties, in this case the English law governing the contract, and that arbitrators were prohibited from applying rules that would contradict contracts. The question was whether to apply English law (the law governing the franchise agreement) or the substantive rules of French law (the seat of the arbitration being in France) to the arbitration agreement.

The Court of Cassation supported the reasoning of the Paris Court of Appeal and upheld the ruling on the grounds that the choice of English law as the law governing the contracts was not sufficient to establish a common intention of the parties to submit the effectiveness of the arbitration

agreement to English law, which was not unequivocally proven, by derogation from the substantive rules of the seat of arbitration expressly designated by the contracts. Under a substantive rule of international arbitration law, the arbitration agreement is legally independent of the main contract.

Court of Cassation, First Civil Chamber, September 7, 2022, no. 19/21964

Contribution by Abdoulaye Dia

On September 7, 2022, the Hight court of Paris dismissed the appeal lodged by the company [H] [X] [M] et Fils, a Kuwaiti company, against the judgment of the Versailles Court of Appeal in the dispute with the Libyan Investment Authority (L.I.A).

In this case, after having obtained the exequatur of an arbitration award against the Libyan State, the company [H] [X] [M] et Fils, had an attachment of sums held in the name of the Libyan State or the Libyan Investment Authority, as well as an attachment of shareholder rights or securities, which the Libyan Investment Authority (LIA) requested to be lifted. On January 9, 2018, the enforcement judge of the Nanterre district court granted its request by ordering the release of the seizure carried out on March 11, 2016 at Société Générale Option Europe by the company [H] [X] [M] et Fils against the Libyan Investment Authority. The company [H] [X] [M] et Fils then appealed. By a judgment of June 9, 2021, the Versailles Court of Appeal dismissed its claim on the grounds that the assets relating to the disputed seizures were covered by immunity from execution, and consequently the judgment ordering their release was confirmed. The company [H][X][M] et Fils appealed to the Hight Court of Paris, complaining that the judgment had been rendered in violation of the principles of international law governing the immunities of foreign States and in particular immunity from execution.

On the merits, in a single plea, the Company [H] [X] [M] et Fils argued firstly that, by virtue of the principles of international law governing immunity from execution of foreign States, immunity from execution must be set aside when the property apprehended is specifically used or intended to be used for investment purposes, and that to this end the Court of Appeal could not, on the one hand, conclude that all the property belonging to the Libyan Investment Authority, whatever the financial product, was covered by immunity from execution, without taking into consideration the purpose for which it was intended, conclude that all the property belonging to the Libyan Investment Authority, whatever the financial product of the investment, was covered by immunity from execution, without taking into consideration the purpose for which it was intended (the financial product "Euro Medium Term Note"), and on the other hand, the reference to resolution 1973 of March 17, 2011 of the UN Security Council to justify that the investment operations carried out by L.I.A. were in the interest of the Libyan people was insufficient, as it did not allow for an investigation of whether these assets are "specifically used or to be used otherwise than for non-commercial public service purposes", to draw such a conclusion.

Secondly, the Company [H] [X] [M] et Fils, in the alternative, claims that the Libyan State cannot claim immunity from execution. It also considers that it has waived its immunity on three occasions. Firstly, the Libyan State adhered to the Unified Convention for Arab Capital Investment in Arab Countries signed on November 26, 1980, to which the contract referred, providing that "conciliation and arbitration shall be conducted in accordance with the rules and procedures set forth in the Annex to this Convention" and that "this Annex constitutes an integral part thereof". Secondly, by signing the arbitration clause of the contract relating to this agreement, the Libyan State is bound by the provisions of article 2-8 of the annex to the said agreement, which provides that "the arbitral award rendered in accordance with the provisions of this article shall be final and

binding on the parties who shall be bound by it and shall carry it out forthwith. Finally, the company [H] [X] [M] et fils considers that the acceptance by the foreign State, in this case Libya, of the rules of procedure of the Regional Centre for International Commercial Arbitration of [Location 3], which is expressly referred to in the arbitral award, constitutes a waiver of its immunity from execution.

Thus, the last claim made by the company [H] [X] [M] et Fils is based on the fact that the judges of the court of first instance relied exclusively on legal autonomy in order to refuse to qualify the L.I.A as an emanation of the Libyan State, without investigating in concrete terms whether the L.I.A had functional autonomy and whether its assets were not merged with those of the State.
Faced with these claims, the Court sets out its observations in turn. With regard to the contested seizure of the assets in question (the financial product known as EMTN, Euro Medium Term Note), the Court notes first of all that the L.I.A. was created in 2006 to manage the sovereign wealth funds held by Libya, and also recalls that the Appellant itself acknowledged on page 20 of its submissions that the assets in question are "used or intended to be used to carry out an investment or reinvestment activity by the L.I.A. to carry out an investment or reinvestment activity in accordance with the mission entrusted to it by law", and paragraph 20 of Security Council Resolution 1973, to which the Appellant refers, provides for the frozen assets to be made available to the people of the Libyan Arab Jamahiriya and used for their benefit. Therefore, the assets held by the L.I.A. were used or intended to be used, whatever the proceeds of investment, for public purposes, which consequently excludes any possibility of their seizure in accordance with the principles of international law governing State immunity.

On the question of the waiver of the Libyan State's immunity from execution, the Court declares, on the one hand, that the waiver by Libya of its immunity from execution cannot be directly deduced from its accession to the Unified Convention for Arab Capital Investment in Arab Countries signed on November 26, 1980. On the other hand, it is not alleged or established that the arbitral award itself refers to a waiver. Similarly, there is no mention in the provisions of Article 2-8 of the Annex to the said Convention that the arbitration clause is intended to that effect. In the same vein, the Court does not find in the provisions of article 34-2 of the rules of procedure of the Regional Centre for International Commercial Arbitration of [Location 3]: "all awards shall be made in writing; they shall be final and binding on the parties; the parties shall enforce all awards without delay", any evidence of a commitment by the State to enforce the arbitral award. The signature by the Libyan State of the arbitration clause is therefore not an act of waiver of its immunity from enforcement. Consequently, in the absence of an express waiver by the Libyan State of its immunity from execution, no seizure can be carried out on the property concerned.

As for the financial and patrimonial autonomy of the Libyan Investment Authority, the Court specified that the L.I.A is a sovereign fund whose vocation is to be under the supervision of the State, controlled and fed largely by State resources. However, in accordance with its legal status, it is not entirely and directly under the total control of the government. These resources are not only composed of sums allocated by the State, the L.I.A. is also allocated by loans it can obtain from monetary funds and assets in kind. According to the Court, the LIA has its own legal personality, distinct from that of the government or the central bank, and comprises a management body, which is certainly appointed by the government, but is complemented in its management by experts and members with academic and professional experience in financial matters. To this end, the Court considers that the fact that the funds are mainly allocated to the State is not in itself an element proving that the LIA is an emanation of the Libyan State. The Company [H] [X] [M] et Fils, Sons has not therefore demonstrated that the L.I.A. is functionally dependent on the Libyan State, which prevents it from having any de jure or de facto organic, patrimonial, and financial autonomy. Consequently, it is appropriate to order the release of the seizure.

According to its reasoning, the Court rejects the appeal and orders the company [H] [X] [M] et Fils to pay the costs, pursuant to article 700 of the French Code of Civil Procedure.

Paris Court of Appeal, June 28, 2022, no. 21/03765

Contribution by Oumaima Gourzmi

On June 28, 2022, the Paris Court of Appeal ruled on the enforcement of an arbitral award acknowledging a credit claim after the opening of insolvency proceedings with regard to the principle of the suspension of individual proceedings in bankruptcy cases.

On December 11, 2011, a company under French law (hereafter "Vergnet") entered into a subcontract with a company under Ethiopian law ("Hydro") in the framework of a project for the construction of a wind farm in Ethiopia. Hydro received an advance payment of 40% of the contract price, in return for which it was required to provide a bank guarantee covering the amount of the advance payment.

Vergnet unilaterally terminated the contract, and a dispute arose between the parties following Hydro's unwillingness to repay the advance payment and the difficulties encountered by Vergnet in enforcing its guarantee.

Hydro filed a request for arbitration before the International Chamber of Commerce (ICC). The proceedings were suspended on May 6, 2014 so that, as agreed between the parties, the dispute could first be submitted to an adjudicator appointed by the International Federation of Consulting Engineers. The adjudicator ordered Vergnet to pay EUR 1,680,826.06 in a decision which Vergnet contested a few days later.

By a decision from August 30, 2017, the Orléans Commercial Court opened recovery proceedings against Vergnet and appointed a judicial representative and a judicial administrator to assist. A ten-year recovery plan was adopted.

In a letter dated from November 16, 2017, Hydro declared an unsecured claim of EUR 3,811,706.25, as a principal claim, or EUR 1,680,826.06, as a subsidiary claim, to the judicial representative.

The official receiver ordered a suspension of proceedings on this claim pending a decision by a competent judge.

On October 10, 2018, Hydro requested the resumption of the ICC arbitration proceedings and a sole arbitrator was appointed.

At the same time, the bankruptcy judge pronounced the foreclosure of Hydro in regard to its claim declared as a liability of Vergnet.

The Orléans Court of Appeal overruled the official receiver's order of October 2, 2019 and dismissed Vergnet and the judicial representative's request for a ruling on the foreclosure and referred the parties back to the official receiver for the purpose of continuing the procedure for establishing Hydro's claim.

By an award dated July 27, 2020, the sole arbitrator confirmed the amount of Hydro's claim against Vergnet and ordered the latter to pay a principal amount of USD 1,060,643.76, as well as USD 475,476 in interest, in addition to costs and fees.

Hydro requested an enforcement order limited to the recognition of the claim resulting from the arbitration award and requested the delivery of a copy of the award bearing this recognition.
By an order dated January 15, 2021, the Paris Court of First Instance granted enforcement to this award, declaring it enforceable only inasmuch as it recognizes the claim arising from the arbitral award.

Relying on this order, Hydro applied to the official receiver for the resumption of the procedure for fixing its claim as a liability of Vergnet's insolvency proceedings. Subsequently, Vergnet appealed against the exequatur order.

In the appeal, Vergnet asked the court to dismiss all of Hydro's requests for a declaration that the appellant's statement of appeal did not contain any of the contested points of the order and to relinquish jurisdiction over the application in the absence of the devolving effect of the appeal. In addition, the appellant asks the court to reverse the enforcement order issued on January 21, 2021 and to declare itself seized of the application for the reversal or annulment of the enforcement order that rendered the final arbitration award of July 27, 2021 enforceable.

In addition to their application for voluntary intervention based on article 554 of the Code of Civil Procedure, the representatives and the court-appointed administrator formulated requests similar to those of the appellant. They also argue that Hydro's request concerning the absence of devolutive effect is inadmissible under article 910-4 of the Code of Civil Procedure, on the grounds that Hydro is thereby asserting a new claim and is therefore in violation of the principle of concentration of claims in the appeal proceedings. They then claim that the operative part of the enforcement order contains only one head, so that the subject matter of the dispute is unique and therefore indivisible within the meaning of the abovementioned article. They added that when the statement of appeal seeks the reversal of a judgment without mentioning the points criticized, the appeal is more likely to be vitiated by nullity and that it is then up to the applicant for nullity to prove the uncertainty resulting from the vagueness of the points criticized.

Jointly, claimant and the voluntary intervenors argue that an award that orders a debtor to pay a claim after the opening of insolvency proceedings cannot be recognized or enforced in France in accordance with the principle of the stay of individual proceedings set out in article L. 622-21 of the Commercial Code.

In response, Hydro asks the court to consider admissible its request to rule that the declaration of appeal did not have a devolving effect and to declare that the exception relating to the indivisible nature of the dispute, contained in article 901 of the Code of Civil Procedure, is not applicable in the present case.

In addition, it asks the court to confirm the enforcement order made on January 15, 2021 by the Paris Court of First Instance, and in the alternative, to confirm the enforcement order made on January 15, 2021 by the Paris Court of First Instance, but only as regards the recognition of the principal amount of Hydro's claim (i.e., USD 1,060,643.76).

Finally, it considers that the simple recognition of the amount of its claim established by the award, without request for enforcement, respects the principle of the stay of individual proceedings.

Firstly, the Court of Appeal declares the representative and the administrator in the insolvency proceedings opened for Vergnet admissible in their application for voluntary intervention, it being noted that they were neither parties nor respondents in the arbitration proceedings.

Secondly, with regards to the plea concerning the absence of the devolutive effect of the appeal, the Court declares it admissible by virtue of article 901-4 of the Code of Civil Procedure. It then rejected the inadmissibility of the appeal in consideration of the fact that the declaration of appeal against the enforcement order of January 15, 2021, which declared an award of July 27, 2020 enforceable, complies with articles 562 and 901 of the same code.

Thirdly, the Court, after recalling the content of the ground for annulment of an award contained in article 1520,5° of the French Code of Civil Procedure, relating to the violation of international public policy, qualifies the principle of stopping or suspending individual proceedings in matters of bankruptcy as falling within international public policy. Considering that the insolvency proceedings were opened against Vergnet by a judgment prior to the award by which the sole arbitrator ordered Vergnet to pay Hydro various sums which originated before the opening decision and that the recognition of such an award violates the purpose of the above-mentioned principle aiming to guarantee the collective and egalitarian nature of the recovery proceedings, the Court considers the recognition or enforcement of this award to be contrary to French international public policy.

Finally, the Court declares the appeal admissible, overturned the enforcement order of January 15, 2021 and orders Defendant to pay the legal costs.

Paris Court of Appeal, June 7, 2022, no. 21/10427

Contribution by Nadine Fares

On June 7, 2022, the Paris Court of Appeal dismissed Venezuela's action to set aside the award made in Paris under the auspices of the International Centre for Settlement of Investment (ICSID), stating that the prerequisite of attempt to reach an amicable settlement and the limitation period provided for under the Bilateral Investment Treaty (BIT) constitutes conditions for the admissibility of a claim but not for the jurisdiction of the tribunal arbitral.

A Canadian gold mining company (Société Mining Limited [G]), acquired a majority stake in several Venezuelan companies holding mining concessions and contracts for the development and exploitation of gold and other minerals in the South-East of the Bolivarian Republic of Venezuela.

After the acquisition, the value of the assets held by the company decreased as a result of the Venezuelan measures of gold export restrictions and foreign exchange controls in 2009 and 2010. Then, in 2011, Venezuela adopted a decree nationalizing the country's gold industry. This resulted in the transfer of gold mining activities to mixed companies with a majority public holding. On March 15, 2012, the failure of the negotiations and the lack of an agreement on the terms of transfer resulted in extinction by operation of law of the mining rights of the Canadian company [G] and its subsidiaries. As a result, the latter withdrew its activity from the areas of exploitation expropriated in April 2012 by the Republic of Venezuela.

On July 17, 2012, the Company G filed a request for Arbitration with the International Centre for Settlement of Investment Disputes (ICSID) under the bilateral investment treaty signed between Canada and the Bolivarian Republic of Venezuela (BIT) on July 1, 1996.

The Arbitral Tribunal, by an award rendered in Paris on August 22, 2016, found that the claims based on measures taken by the State of Venezuela in 2009 are time barred because the BIT excluded claims based on its violation by the State dating back more than three years, and that Venezuela violated Article VII of the BIT by expropriating the investment of the company [G] without compensation as well as paragraph 6 of the Annex to the BIT because of its 2010 decisions on exchange controls. This award was the subject of an action to set aside brought by the Venezuelan State on October 19, 2016. The award was enforced by an order of the Status Counsellor dated March 16, 2017.

In a decision dated from January 29, 2019, the Paris Court of Appeal partially annulled the arbitral award in respect of the conviction of the Venezuelan State for the payment of USD 966,500,000 to the company [G] for expropriation without compensation on the grounds that the offer of arbitration in the BIT did not confer jurisdiction on the arbitral tribunal for the examination of injurious facts of which the investor was or should have been aware for more than three years on the date the referral under Article XII paragraph 3), d) of the BIT.

An appeal in cassation was filed by the company [G]. On March 31, 2021, the Court of Cassation censored the judgment of the Court of Appeal on the grounds that the limitation period provided for in paragraph 3), d) of article XII of the Agreement does not constitute a plea of lack of jurisdiction, but a question concerning the admissibility of applications, which does not fall under article 1520, 1° of the Code of Civil Procedure. The Court of Cassation then ordered the case to be referred to the Paris Court of appeal sitting with different judges. On June 1, 2021, Venezuela applied to the Paris Court of appeal to set aside the sentence.

On the plea alleging a lack of jurisdiction of the arbitral tribunal, Venezuela argued that the arbitral tribunal does not have jurisdiction over claims of "breach" or "prejudice" under the BIT (paragraph 3 of article XII)" if more than three years have elapsed since the date on which the disputing investor became aware, or should reasonably have become aware of the "breach" or "prejudice" the at the date of submission of the request for arbitration.

Thus, the latter argues that the Tribunal has no jurisdiction over the motion filed on July 17, 2012, for claims arising out of a breach and prejudice, given that the company [G] should have had knowledge of the "breach" or "prejudice" before July 17, 2009. Venezuela also argues that the arbitral tribunal has not complied with the prerequisite of attempt to reach an amicable settlement on the grounds that its jurisdiction is limited to prejudices resulting from breach of the BIT. Therefore, the argument underlines that an estimated indemnity on amounts dating back several years before the expropriation is not related to the breach of the Treaty.

On the plea alleging breach of duty, Venezuela argues that the Arbitral Tribunal violated its duty to assess damaged and to determine the date of assessment, by using methods that do not correspond to those agreed by the parties during the proceedings.

In return, the company G argued that the plea alleging that the Arbitral Tribunal has no jurisdiction *ratione temporis* is inadmissible because only the admissibility of the application is determined by the three-year time bar provided under Article XII.3 d) of the BIT. The Company G also argued that non-compliance to the prerequisite of attempt to reach an amicable settlement invoked by the other party does not affect the jurisdiction of the tribunal arbitral, but the admissibility of the application. Moreover, the company [G] adds that the ground of lack of jurisdiction *ratione materiae* is unfounded and files a request for review on the merits. Moreover, the company [G] finds that the Arbitral Tribunal did not breach its mission but, on the contrary, endeavoured to seek the fair value of the

company's investments [G], without going beyond the limits set by the parties and that there was no consensus on the methods of evaluation between the parties.

The Court of Appeal rejected the plea alleging that the arbitral tribunal had no jurisdiction on the grounds that the condition requiring that the submission of the request for arbitration must be filled within three years from the date on which the disputing investor became aware, or should reasonably have become aware of the breach or prejudice amounts to a limitation period and does not determine the jurisdiction of the arbitral tribunal but the admissibility of the claims.

Moreover, failure to comply with prerequisite of attempt to reach an amicable settlement under the BIT does not constitute a plea of lack of jurisdiction but a question of the admissibility of applications, which does not constitute a ground for an action to set aside listed in article 1520 of the Code of Civil Procedure. Moreover, the requirement of the cumulative condition of breach of the treaty and the existence of a link between the alleged breach and the harm suffered would make the court's jurisdiction dependent on the merits of the application.

The Court of Appeal also rejected the plea alleging a breach of obligation by the arbitrator on the ground that the Tribunal did not depart from its duty to determine the "fair market value" of the company. The Court founds that the Tribunal determined this fair value by choosing to use three combined assessment methods.

Paris Court of Appeal, June 28, 2022, no. 20/17927

Contribution by Rola Makke

On June 28, 2022, the Paris Court of Appeal rejected the annulment procedure brought by Bluestone Resources Inc (hereafter "Bluestone") against the award rendered under the International Chamber of Commerce (ICC) on May 13, 2020 and its addendum of August 12, 2020.

A dispute opposed Bluestone, a company from Delaware specialized in mining, to Caroleng Investments Limited (hereafter "Caroleng") a company from the British Virgin Islands, before the arbitral tribunal. Caroleng had transferred mining assets to Bluestone in return for an amount in execution of the "Transation Agreement" entered on February 12, 2015, the Agreement at the origin of the dispute. Under the terms of the agreement, the parties have agreed that Caroleng will receive royalties "Deferred Royalties" calculated based on the quantity of coal extracted from the mining reserves transferred to Bluestone under the Agreement and "Contingent Payments" if Bluestone would transfer all or part of the assets covered by the "Transaction Agreement" to third parties.

On January 27, 2017, Bluestone sold several assets involved in the transaction to a third-party. Following the conclusion of the 2017 agreement, Bluestone paid Caroleng the amount of USD 7,853,438 as a "Contingent Payment" pursuant to the "Transaction Agreement". During the months that followed, Bluestone sent requests for reimbursement to Caroleng for amounts that it considered to have been paid "in excess". Caroleng contested these requests and considered that the "Transaction Agreement" was violated by Bluestone accusing it of failing to pay the due amount under the "Contingent Payment" as well as an amount of "Deferred Royalties" and for not having communicated the documents ensuring the correct payment of the amounts due.

On May 13, 2020, the Arbitral Tribunal, constituted under the ICC Arbitration Rules, rendered an award in Paris granting the majority of Caroleng's claims and ordering Bluestone to pay USD 6.5

million in damages for breaching the "Transaction Agreement". On June 12, 2020, Bluestone filed a request for clarification and interpretation of the award which was rejected by the Arbitral Tribunal in an award dated August 12, 2020 entitled "Decision and Addendum on Costs".

On December 7, 2020, Bluestone brought an action for annulment against the two awards requesting the Court to reject the plea of inadmissibility raised by Caroleng, to declare admissible the plea alleging that the Arbitral Tribunal ruled without complying with its mission, to annul the arbitral award rendered on May 13, 2020 and its addendum, to order Caroleng to pay EUR 200,000 under article 700 of the French Code of Civil Procedure and to pay all the expenses.

Bluestone invoked the non-compliance of the arbitrator to his mission accompanied by denial of justice claiming that the Arbitral Tribunal failed its obligation to assess the damage, the non-compliance with the principle of contradiction and the disregarding of the international public order.

The Court observed that, regarding the admissibility of the annulment based on the arbitrator's non-compliance with his mission, Bluestone cannot be deemed to have waived raising the alleged irregularity under the terms of article 1466 of the French Code of Civil Procedure given that a debate was carried on the value of the assets during the procedure. On the merits of this same plea, the Court observed that even though the value of the disputed assets was central to the debates, the parties did not at any time maintain that the Arbitral Tribunal had the obligation to assign any value to the sale price of the assets in question.

Concerning the non-respect of the principle of contradiction, the Court observed that the parties were able to debate the sale price of the disputed assets and to discuss the consequences that the Arbitral Tribunal could draw from a possible deficiency in the field of proof. The Court rejected this plea.

Regarding the international public order, the Court found that Bluestone reformulated, on another basis, the same complaints which supported the two other pleas that the Court considered not established and therefore rejected this latter plea.

On the other claims, the Court observed that Bluestone should be ordered to pay the expenses and compensation under article 700 of the French Code of Civil Procedure.

The Court rejected the action for annulment brought by Bluestone against the award and its addendum and ordered Bluestone to pay Caroleng the amount of EUR 100,000 under article 700 of the French Code of Civil Procedure and the expenses.

High Court of Justice of England and Wales, Judgement, May 17, 2022, Eland International (Thailand) Co. Ltd. and Eland International Ghana Limited v. National Investment Bank Ltd [2022] EWHC 1168.

Contribution by Romi Grumberg

On May 17, 2022, the High Court accepts a claim under section 72 of the Arbitration Act 1996 (hereinafter the "Act") and declares the lack of jurisdiction of an arbitrator appointed by the Commercial Court pursuant to section 18 of the Act.

The dispute arose out of two agreements concluded between the National Investment Bank Ltd (hereinafter "NIB") in 2001 and in 2004 and the defendants (Eland Thailand and Eland Ghana, collectively hereinafter "Eland"), the second agreement contains an arbitration clause. Eland Thailand commenced proceedings against NIB in Ghana with claims under the first agreement. It is therefore arguable that the arbitration agreement is applicable to the disputes arising under both agreements. NIB's counterclaim included serving a Third-Party Notice on Eland Ghana.

Eland attempted to arbitrate the dispute, Eland Ghana applied for a stay of the court proceedings and applied to the English High Court for the appointment of an arbitrator under section 18 of the Act because NIB did not engage with the arbitration.

NIB applies to cancel the stay of the proceedings in Ghana and for a declaration on the lack of jurisdiction of the arbitrator for the claims which are the subject of the national jurisdiction's proceedings.

NIB argues that: Eland has irrevocably waived its right to pursue the claims in arbitration because it decided to pursue the claims in front of the national jurisdictions of Ghana.

Eland considers that there is no waiver of these rights and relies on the appointment of an arbitrator pursuant to section 18 of the Act to set aside NIB's use of section 72. Eland's argumentation is that the appointment made under section 18 has the same effects as if it was done with the agreement of the parties. And section 72 is limited to a person who has no role in the proceedings. Therefore, NIB cannot rely on section 72 because of the effects of section 18.

Foxton J rejects the argument. He explains that section 72 provides an important protection to the parties who do not accept the jurisdiction of the arbitral tribunal and take no part in the process. He cites the Department Advisory Committee on Arbitration Law's Report on the Arbitration Bill (from February 1996) which does not indicate that section 18 is intended to preclude reliance on section 72. The protection provided under section 72 would be lost each time the participating party applies to court under section 18 even though the non-participating party takes no part in this process.

He also reasons by analogy with section 17 of the Act. In fact, the protection entailed by section 72 is not neutralised where a contractually designated body appointed an arbitrator as provided for in section 17 (instead of a national court in section 18). Thus, section 17 of the Act addresses a

similar issue to section 18 but with a different language and its formulation shows that section 72 cannot be set aside.

Moreover, he notes that sections 18 and 72 apply to different issues. Section 18, on the one hand, concerns the fact that the effect of an award does not change whether the arbitration is court appointed rather than party-appointed i.e., it deals with the effect of the appointment and not the participation of a non-participating party in the appointment process. On the other hand, section 72 aims at resolving the situation where a person is alleged to be a party in the arbitral proceedings.

With respect to the waiver of the right to submit the claims to arbitration for both Eland entities, the judge considers that Eland Thailand has chosen to pursue the claims in the national courts of Ghana, this constitutes a clear waiver. For Eland Ghana, the fact that it is a sister company of Eland Thailand, as well as its conduct (notably by participating in the national proceedings without directly invoking arbitration) is sufficient to admit a waiver as well.

Foxton J therefore accepted NIB's application and declared the arbitral tribunal, appointed by the judge under section 18 of the Act, to lack jurisdiction over NIB on the basis of section 72 of the Act. Section 72 protects important interests of the party refusing to participate in the arbitral proceedings, and they cannot be set aside by section 18. Moreover, the sections concern different stages of the procedure.

Court of Justice of the European Union, June 20, 2022, Case No. C-700/20, *London Steamship v. Spain*

Contribution by Sarah Lazar

On June 20, 2022, the Court of Justice of the European Union responded to three questions submitted by the High Court of Justice (England Wales) for a preliminary ruling. In its preliminary ruling, the Court ruled on some of the provisions of the Brussels I Regulation and on arbitration provisions, in the context of the recognition of a judgment given by a Spanish court in the United Kingdom.

In November 2022, a vessel, the Prestige, sank off the coast of Spain and the sinking caused significant environmental damage. As a result, a criminal investigation was opened in Spain. In the context of these proceedings, the Spanish State pursued civil actions against the Captain of the Prestige, its owners and its liability insurance company of the liability of the Prestige (hereinafter "The London P&1 Club").

At the same time, the London P&1 Club initiated an arbitration proceeding in London based on the arbitration clause in the insurance contract concluded with the owners of the Prestige. The purpose of these proceedings was to obtain a statement affirming that the Kingdom of Spain was bound to present its claims for damages in the course of the arbitration. The purpose of the arbitration proceedings was also to establish that the insurer could not be held liable to the Kingdom of Spain because the insurance contract provided that, in accordance with the "Pay to be paid" clause, the insured person must first pay the victim the compensation due before being able to recover the amount from the insurer.

The Arbitral Tribunal issued an award on February 13, 2013. It found that the claims for compensation brought by the Kingdom of Spain before the Spanish courts should have been brought in the London arbitration. Furthermore, according to the arbitral tribunal, the London P&I Club could not be held liable to the Kingdom of Spain in the absence of prior payment of damages by the shipowners to the Kingdom of Spain.

In March 2013, the London P&I Club applied to the High Court of Justice (England and Wales) for leave to enforce the award domestically and for a judgment incorporating the terms of the award. By order dated October 22, 2013, the High Court of Justice (England and Wales) granted the London P&I Club leave to enforce the award of February 13, 2013 award. The High Court of Justice (England and Wales) issued a judgment on October 22, 2013, adopting the terms of that award. The Kingdom of Spain appealed this order to the Court of Appeal (England and Wales). This appeal was dismissed by a judgment dated April 1, 2015.

At the same time, and by a judgment rendered on January 14, 2016, the Supreme Court of Spain held the London P&I Club liable in respect of the civil claims. On March 25, 2019, the Kingdom of Spain sought the recognition in the United Kingdom of the enforcement order of March 2019, before the High Court of Justice (England and Wales). The referring court granted this application by order on May 18, 2019.

On June 26, 2019, the London P&I Club appealed against that order on the basis of two arguments. The first argument pointed out that the enforcement order of March 2019 is irreconcilable with

the judgment (the one incorporating the terms of the award). The second argument was that the recognition or enforcement of this order would be manifestly contrary to public policy, in particular with regard to the principle of *res judicata*.

In these circumstances, the High Court of Justice (England and Wales) decided to stay the proceedings and to refer three questions to the Court of Justice of the European Union for a preliminary ruling. The first and second questions concerned whether the recognition and enforcement of a judgment given by another Member State, in this case the Kingdom of Spain, could be refused on the basis of the existence of a judgment given in the United Kingdom under an arbitration award, the effects of which are irreconcilable. And, if not, whether the recognition or enforcement can be refused as contrary to public policy on the ground that it would disregard the *res judicata* effect of the judgment (decision of the United Kingdom) given under an arbitral award (third question).

The Court of Justice of the European Union, first of all, stated that the regulation excludes arbitration from its area of application. Consequently, a judgment rendered by an arbitral award falls under the exclusion of arbitration and cannot benefit from mutual recognition between Member State.

However, it also pointed out that the exclusion of a matter from the field of application of the European Regulation does not prevent a decision relating to that matter from precluding the recognition of a decision given in another Member State with which it is irreconcilable. Thus, a decision of the High Court of Justice (England and Wales) adopting the terms of an arbitral award could be an obstacle to the recognition of a decision of the Supreme Court of the Kingdom of Spain, even if the two decisions are irreconcilable.

However, the situation in the present case is difference, since the arbitral award and therefore the judgment of the High Court of Justice (England and Wales), do not comply with the provisions and objectives of the European Regulation. This UK judgment (using the terms of the arbitral award) could not have been made on the basis of the Brussels I Regulation, as it violates two fundamental rules of the Regulation.

The first violated rule is the one relating to the relative effect of an arbitration clause included in an insurance contract, which does not extend to recourse against a victim of an insured loss who brings a direct action against the insurer. The second rule is that of *lis pendens*, which coordinates parallel proceedings according to the principle of priority in favor of the first court seized (the Spanish courts were seized first).

Finally, the Court of Justice of the European Union answers the third question, by explaining that a decision from another Member State cannot be deemed ineffective on the grounds that it would be contrary to public policy and that it would violate the principle of *res judicata.*

In conclusion, arbitration proceedings brought in the United Kingdom cannot stop the recognition and enforcement of a judgment given by Spanish courts ordering the insurer to pay compensation for the damage caused by the sinking of a vessel.

European Court of Human Rights, June 30, 2022, BTS Holding, A. S. v. Slovakia, No. 55617/17

Contribution by Isabella Alonso de Florida

The European Court of Human Rights held in its June 30, 2022 judgement that the unjustified refusal by domestic jurisdictions to enforce an arbitral award constitutes a violation of the protection of the right to property under article 1 of the Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

A private joint stock company, BTS Holding, interested in purchasing the majority share in Bratislava Airport, concluded in 2006 a share purchase agreement ("the SPA") with the National Property Fund of Slovakia ("NPF), who was responsible for the privatisation of the airport. The contract contained an arbitration clause referring to the ICC Tribunal in case of a dispute arising between the parties.

After the applicant company made a transaction to buy the shares, the NPF rescinded the share-purchase agreement on the grounds that no approval of the transaction had been given in the time-limit set by the contract. The NPF reimbursed the applicant company and by another agreement concluded in 2008, the parties agreed to terminate their mutual obligations concerning the first contract. In 2009, the applicant company received another payment from the NPF to cover the interest generated by the first payment.

In 2010, the applicant company filed a request of arbitration under the aegis of the ICC Tribunal about the nature of the amounts paid by the NPF. In 2012 the ICC issued an award and ordered NPF to make additional payments to the BTS company. The applicant applied for the enforcement of the award in Slovakia, which was refused after the NPF had lodged an objection. According to the domestic court, the 2008 settlement that contained no arbitration clause itself had substituted the initial SPA contract of 2006. Therefore, the enforcement of the award would have been contrary to public policy because, in absence of an arbitration clause, the ICC tribunal has no jurisdiction and the order for payment is unlawful.

The applicant company therefore lodged a constitutional complaint before the Constitutional court of Slovakia. BTS Holding challenged the domestic judgements on the ground that the non-enforcement of the award violated the company's right to a fair trial and constituted a violation of its property rights. However, the action has been declared inadmissible.

As a result, the European Court of Human Rights was seized by the claimant company. In its judgement rendered on June 30, 2022, it held that a debt obligation may constitute a property under article 1 of Protocol No. 1, if it is sufficiently trusted to be enforceable.

The Court reminds that the foreign award made by the ICC tribunal is final and binding, and that it could have been challenged by the parties through the procedures provided at the seat of arbitration. In Slovakia, foreign awards are in principle enforceable. Therefore, the refusal of the enforcement of the award constituted an arbitrary interference in the company's fundamental rights. This interference can, however, be justified if it is proportionate to the aim of general interest. The Court acknowledged that the domestic court did not demonstrate in any way a sense

of consideration for the company's fundamental rights nor advanced arguments justifying that the refusal of the enforcement of the award was proportionate to an aim of general interest.

The European Court of Human Rights concludes that the unjustified refusal by the domestic courts in Slovakia to enforce the arbitral award against the NPF violated the protection of right to property under article 1 of Protocol No. 1 to the ECHR.

Stockholm Chamber of Commerce, *Green Power Partners K/S v. Spain*, June 16, 2022, No. 2016/135, final award

Contribution by Imane Doukkar

The Stockholm Arbitral Tribunal, chaired by Professor Hans Van Houtte, issued an award on June 16, 2022.

In this case, a dispute arose between two Danish investors in the photovoltaic sector and the Kingdom of Spain. The alleged investments were made between 2008 and 2011, and the investors claimed that a series of measures taken by Spain between 2010 and 2014 changed the regulatory framework and violated the respondent's obligations under the Energy Charter Treaty (ECT).

In the arbitration proceedings, the Tribunal proposes a bifurcation of the jurisdictional and venue issues on November 9, 2018. In return, the Respondent raised four objections to the jurisdiction of the Tribunal in accordance with articles 5(1)-i of the Stockholm Chamber of Commerce (SCC) Rules.

Firstly, the defendant focused on the fact that the tribunal has no jurisdiction *rationae personae* because the EU itself is also a "contracting party" to the Energy Charter Treaty and Denmark and Spain are EU Member States. Whereas article 26 (1) ECT excludes any case involving an investor if an EU Member State has a dispute with another EU Member State. The Respondent stated that article 26 applies in a dispute involving two parties from different territories.

The respondent highlighted the fact that article 26 TEC requires a diversity of nationalities in arbitration proceedings. It has also emphasized that the claimants cannot be considered to be foreign investors in Spain, as there is no diversity of nationality, as Denmark and Spain share European nationality under article 20 TFEU.

Secondly, the defendant added the *ratione voluntatis* objection, according to which, the tribunal lacks competence under EU law as the dispute concerned the free movement of capital between Member States, which is one of the four fundamental freedoms of the EU.

According to the *Komstroy* decision, for intra-EU relations, the ECT must be integrated into EU law: the ECT itself is part of EU law, in applying the ECT, the Member States that have signed it must respect the principles and obligations of the EU legal order.

The defendant's argument leads to the conclusion that an arbitral tribunal cannot rule on the rights of a European investor in the internal market, in accordance with the position of the CJEU opinion 1/91 (the agreement to create a European Economic Area), as such interference is incompatible with EU law.

The Tribunal does not have the power to decide the case because the current arbitration procedure would not respect the autonomy of EU law. Furthermore, the ECT would not be able to ensure the full application of EU law and therefore the tribunal's award would not be subject to a sufficient degree of review by a member state court.

The Court disagreed with the defendant on the fact that the dispute between the Danish claimants and the Kingdom of Spain should not be considered as a dispute between a 'contracting party' and an investor from another contracting party'. Then, the Court, on the basis of the *Kruck v. Spain*

decision, ruled that the fact that the EU as a "REIO" is a contracting party to the ECT should not affect the possibility for Denmark and Spain, which are Member States of the European Union, to also be considered as a full contracting party.

The Court reinforced its position by adopting an explanation based on the concept of 'area': it is sensible to distinguish between the area of the European Union and the territory of an EU member state. When a complaint is filed against the EU, it is the area of the EU territory, in other words, the whole territory of the EU, that is the subject of the complaint. The specific national territory of an EU Member State "the area of a Member State" is the area in which a claim is brought against that Member State.

The reasoning of this case supports the application of article 26 (1) TCE, given that the area of Denmark and Spain are clearly separated. Therefore, the Danish claimants shall be regarded as investors from another country as required by article 26(1).

Moreover, the *Achmea* and *Komstroy* decisions form an important part of the court's analysis. There is a narrow distinction between this case and these decisions: the court recognizes that where intra-EU disputes are not related to state aid issues, the interpretation of the EU treaties in a way that is prejudicial to the coherent and uniform interpretation of EU law remains fully relevant.
The Court accorded deference to the interpretation of the CJEU and stand by the court's decision that, both with respect to state aid and the invalidity of the arbitration offer, the court lacked jurisdiction to decide the dispute.

The Tribunal does not consider decisions that reject the application of the *Achmea* jurisprudence are overruled by the court, such as *Infracapital v. Spain* and *Sevilla Beheer v. Spain,* because of their nature as ICSID cases, which did not take into account the relevance to jurisdictional issues of the applicable law attracted by the choice of a seat in an EU Member State.

The Tribunal considers that the two general objections have been sufficiently addressed and therefore the partial objections are not addressed in order for it to rule in favour of its lack of jurisdiction over any of the claims presented by the claimants.

The present decision of the Stockholm Arbitral Tribunal has had a real impact on the text of the ECT since the contracting states have agreed in principle to revise the ECT: the revision focuses mainly on the inclusion of a provision excluding the application of the ECT arbitration clause within the EU. As a result, the ECT will no longer serve as a basis for intra-EU arbitrations.

INTERVIEW WITH CLARA BIANCHI FERRAN

1. Hi Clara, thank you very much for accepting our invitation to partake in this month's interview. Can you briefly recall your background for our readers?

Thank you to PBA for this invitation, and especially to Lina Ettabouti and César Hasson whom I had the pleasure of coaching in the Serge Lazareff Competition (CIAM).

I grew up in Rio de Janeiro as a dual Brazilian and Spanish citizen, whilst studying in a French school. After graduating from high school, I decided to come to Paris for university and thus started my bachelor of laws (with a focus on international law) at the University of Paris I Pantheon Sorbonne.

I naturally turned to international law, a field in which I felt at home. During my Master 1 in international law at the Sorbonne, I became passionate about private international law thanks to my tutor (*chargé de TD*) at the time. At the end of my Master 1, despite what was a difficult choice between public international law and private international law, I thus decided to integrate the Master 2 in private international law and international trade at the Sorbonne.

As I was drawn to research and teaching, I then decided to start a PhD thesis under the supervision of Professor Sylvain Bollée. During the PhD, I also taught tutorials (*travaux dirigés*) and carried out an *ad hoc* research related to my thesis at Cleary Gottlieb Steen & Hamilton Paris. Yet, as I was eager to start practicing, and especially, eager to work in a team, I decided not to go through with the thesis and to start my career as a lawyer.

As I had already passed the French Bar entrance exam, I started the Paris Bar training school. In this context I trained in several structures: the International Chamber of the Court of Appeal of Paris (international arbitration and litigation), Cleary Gottlieb Steen & Hamilton Paris (investment arbitration team), and Herbert Smith Freehills Paris (litigation and arbitration team).

A little more than a year ago, I started my first associate position in the international arbitration team of Freshfields Bruckhaus Deringer Paris.

2. You have joined the Paris office of Freshfields Bruckhaus Deringer, can you tell us more about your daily life in the International Arbitration team, in particular the most stimulating aspects or the challenges that lawyers in this profession face?

My choice to join the international arbitration team at Freshfields Paris was guided by the desire to have a varied practice, both in terms of the nature of the cases and the industries and regions of the world involved. My wishes were fulfilled since I now work on commercial and investment arbitration cases, in industries such as energy, construction and distribution, but also on set-aside proceedings, in cases where Latin American, OHADA or Middle Eastern law is applicable.

If I had to list some of the most exciting aspects of my practice in this team I would say: working in Spanish, Portuguese, French and English, and in the cultures that go with these languages; evolving in a multicultural team where mutual aid is key (and it's not always the case!); and managing complex cases with high stakes for international trade.

In very concrete terms, the tasks I perform on a daily basis include: drafting submissions, legal opinions and procedural communications; research, often together with interns (but yes, we still do research!); addressing clients' comments; interacting with more senior lawyers (discussing case strategy, addressing their comments); communicating with clients (more or less often depending on the size of the case); preparing for and participating in hearings (preparing cross-examinations, for example); and publishing articles or other *business development* activities. Depending on the case, I work with partners, senior or middle associates, which allows me to develop different skills.

The biggest challenge I face, as I think many of us do, is time management. Compared to a litigation lawyer, for example, we have fewer cases, on which we spend much more time. However, it's a way of working that I appreciate and that suits me because it gives me the feeling of being able to get to the bottom of things.

3. You are Brazilian and Spanish, and now a lawyer in Paris, where you studied. Can you explain to us why you decided to move to Paris and why France is attractive to young arbitration students? Do you think that experiences abroad are an added value in the practice of international arbitration?

I am indeed Brazilian and Spanish but having studied in the French system since I was seven, I have been immersed in French culture for a long time. So, my coming to France was more of a personal choice and my experience was, I think, easier than that of my colleagues who studied in Brazil and came when they were already lawyers.

In international arbitration, studying in France is an asset in several respects. First, French law is an inspiration for many legal systems in the world. It is therefore a real plus to be trained in French law when one is required to handle laws of civil law tradition (in collaboration with local counsel). Also, France is a big arbitration hub, Paris being regularly designated as the seat of arbitration. Knowledge of French arbitration law is therefore obviously very useful.

Above all, French education is very Cartesian and produces lawyers who are highly competent in the analysis of complex legal problems requiring a rigorous structuring of ideas. This is a considerable added value, even if the French system also has its flaws.

As far as experience abroad is concerned, I think it is obviously always a good thing, but it is not essential. Doing an LLM for example is mostly a test of your English language skills. It is perhaps more important for your personal experience as you'll be exposed to new ways of thinking, meet new people, and get a taste of what it is like to work in a multicultural environment.

4. You trained in the new International Chamber of the Paris Court of Appeal as part of the Paris Bar Training School. Can you tell us what this experience brought you?

My experience at the International Chamber of the Paris Court of Appeal (5-16) was very enriching. It was the first time I was on the judges' side, which gave me a better understanding of what was really important to a judge.

This is especially useful in international arbitration since one can change from the position of counsel to that of judge more often since lawyers may also serve as arbitrators (or secretaries of an arbitral tribunal).

Moreover, the elevation/detachment mental exercise that a judge must do after having analyzed the positions of the two parties to the dispute is an exercise that we are not used to as lawyers. However, this quest for neutrality and for (what aims to be) a unique solution is a very useful intellectual exercise even for lawyers.

Finally, discovering the approach of the judges of this Chamber to set-aside proceedings, especially in its early days (the Chamber was created in 2018), has subsequently allowed me to turn it into an expertise. Already as a trainee and now as an associate, I have worked on several set-aside proceedings, and this is a part of my practice that I very much enjoy.

5. You participated in the Willem C. Vis International Commercial Arbitration Moot, and you also coached teams afterwards. Can you tell us a little about these experiences and the importance, in your opinion, of participating in international arbitration competitions?

I participated in the Vis Moot during my Master 2 and it was my real introduction to international arbitration. Looking back, I think it's an exercise that gives you a close-up view of the reality of drafting submissions in an international arbitration firm.

I think it's a great opportunity to be able to participate in this competition, as well as others. It's also a great way to meet people in the field – I still run into my team members and other practitioners I met during the competition.

The coaching experience (at the Vis Moot and at the CIAM) was a way for me to pay back what I had been given. Being able to teach was also a great source of happiness for me, just like it was when I taught at the Sorbonne.

6. What advice would you give to our readers who are embarking on a career in arbitration?

I think the advice I would have liked to hear when I was a student is that there is no such thing as a model international arbitration associate. From an outside perspective, doing an LLM and multiple internships in big arbitration firms may seem like the only way to go. However, I believe that an arbitration team, like any team, draws its strength from diverse and complementary talents (it is then up to the partners to balance their teams).

There are, of course, some prerequisites: being bilingual in English, mastering (and enjoying, above all) the law, and having a great capacity for work.

However, there is no single possible path, and while it is obviously necessary to have had internship experiences in arbitration firms, do not neglect, especially when it comes to landing your first internship, other structures such as: arbitration institutions, courts (International Chamber of the Paris Court of Appeal, First Civil Chamber of the French Court of Cassation), independent arbitrators, litigation teams (preferably with international activity), international arbitration teams in other countries (in markets that are sometimes less competitive than Paris and where you will be able to sell your mastery of French law), international organizations, legal departments of multinational companies with arbitration disputes.

We are also fortunate to be in a field where the academia is very important. My research and teaching experience, for example, has been very helpful. Other research activities, such as a dissertation on a current topic, will always be valued.

Another tip would be to develop an expertise as early as possible, so that you can differentiate yourself from other candidates in a recruitment process. Also, and most importantly, it is natural and desirable to pursue your personal interests within international arbitration.

Finally, I think it is essential to have a real passion for the subject and for the law in general. It is a demanding profession, but one in which we have the privilege of reasoning about exciting legal issues.

Good luck and see you soon!

EVENTS OVER THE NEXT MONTHS

December 2, 2022: The Annual Arbitration Conference: The New Practices of ICC Arbitration, organized by the ICC

Organized by the ICC

Where? At *Intercontinental Paris Le Grand – 2 rue Scribe, 75009 Paris*

Website: https://www.icc-france.fr/2022/11/icc-france-organise-la-premiere-edition-de-sa-conference-annuelle-arbitrage/

November 9, 2022: The Review of the Arbitration Act 1996 by the Law Commission. A Comparative Perspective between English and French Arbitration Law

Organized by LLM AWArDS and *Institut de droit comparé - Université Paris Panthéon Assas*

Where? At *Institut de droit comparé*, (Lecture Hall, first floor) - *28 rue Saint-Guillaume, 75007 Paris*

Website: https://llm-awards.u-paris2.fr/en/events/review-arbitration-act-1996-law-commission-comparative-perspective-between-english-and-french

KING & SPALDING PARIS
Master 2 Intern/Student Lawyer (*élève avocat*)
Practice area(s): Business law (general), Litigation and arbitration law
Start Date: Immediate

SQUIRE PATTON BOGGS PARIS
Litigation and Insurance/Arbitration internship
Practice area(s): Litigation and Arbitration Law, Insurance Law
Start date: 03/07/2023

HERBERT SMITH FREEHILS PARIS
Litigation and Arbitration Internship
Practice areas: Litigation and Arbitration Law
Start date: 02/01/2023

PDGB PARIS
Internship in Business Law - Litigation - Arbitration
Start date: Immediate

BERSAY PARIS
Internship in Litigation
Start date: 2nd semester 2023 / 1st semester 2024 / 2nd semester 2024

DLA PIPER LUXEMBOURG
Litigation and Regulatory internship (with internship agreement)
Practice area(s): Litigation and Arbitration law
Start date: 03/07/2023