PARISBABYARBITRATION

BIBERON

Monthly Arbitration Newsletter – English Version

January 2025, N° 74

French and foreign courts' decisions

International arbitral awards and decisions

Interview with Camelia Aknouche

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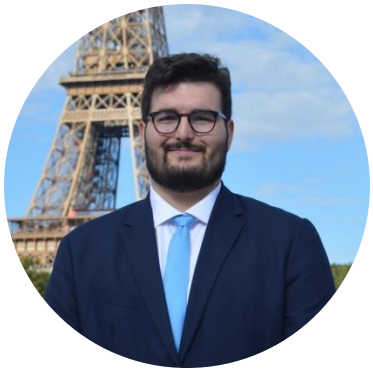

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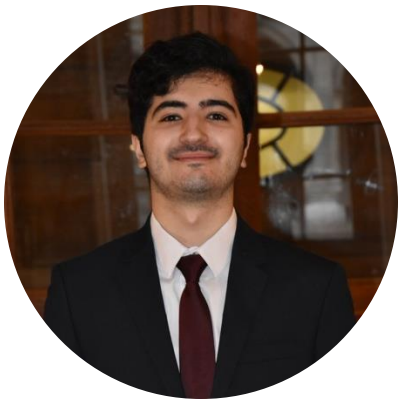

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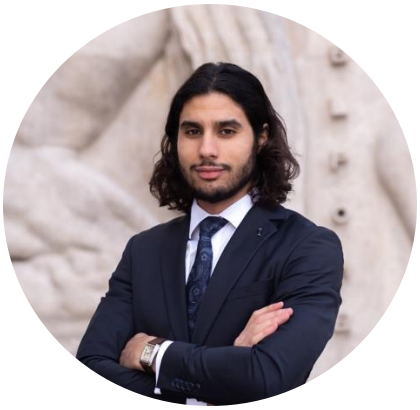

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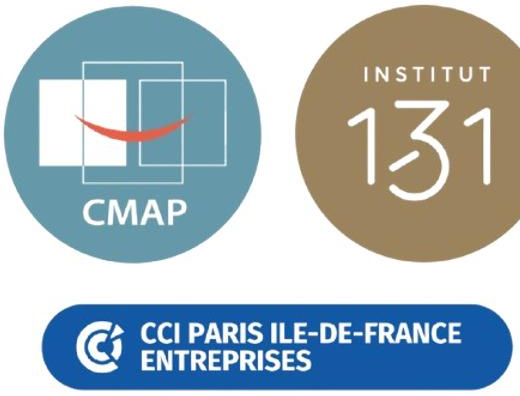

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Founded in 2004, Teynier Pic is an independent law firm based in Paris, dedicated to international and domestic dispute resolution, more specifically with a focus on litigation, arbitration and amicable dispute resolution.

TABLE OF CONTENTS

FOREWORD

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

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

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

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

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

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

Enjoy your reading!

Sincerely yours,
The Paris Baby Arbitration team

- ***Cour de cassation*, 1st Civil Chamber, 18 September 2024, nº 20-21.140, *Alpiq*** (control of the compliance of the award with procedural international public policy; nature and extent of the control by the Court; adversarial principle)
- ***Cour de cassation*, 1st Civil Chamber, 27 November 2024, nº 22-13.596, *DNO Yemen*** (arbitration and EU sanctions; international public policy; setting aside of an award where it would lead to providing funds to sanctioned persons or entities)
- **England & Wales High Court, *Friedhelm Eronat v CPNC International (Chad) Ltd and Clivenden Petroleum Co. Ltd* [2024] EWHC 2880 (Comm)** (time limit to appeal an award; Arbitration Act 1996; starting point for the time limit to challenge or appeal an award)
- **England & Wales Court of Appeal, *Re Renaissance* [2024] EWCA 1843 (Comm)** (anti-suit injunction; possibility to extend the injunction to third parties; extension of the arbitration clause to third parties)
- **England & Wales Court of Appeal, *Spain v London Steam-ship Owners Mutual Insurance Association* [2024] EWCA 1536** (principle of inviolability of arbitration; international public policy; affirmation of the supremacy of the "pay-to-be-paid" principle in maritime insurance; human rights; sovereignty)
- **Hong Kong Court of First Instance, *Tongcheng Travel Holdings Ltd v OOO Securities (HK) Group Ltd* [2024] HKCFI 2710** (jurisdiction; arbital clause not designating an arbitral institution; co-existence of an arbitration clause and an exclusive jurisdiction clause in favour of national courts)
- **Singapore High Court, *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2024] SGHC 244** (set aside proceedings; courts' power to remit awards to the tribunal where setting aside would not be sensible or proportional; award partially in breach of natural justice and with "no nexus" to the pleaded cases)

Court of Cassation, 1st Civil Chamber, 18 September 2024, nº 20-21.140, *Alpiq*

In a decision dated 18 September 2024, the First Civil Chamber of the French Cour de Cassation upheld the decision of the Paris Court of Appeal in a case between the Italian company Green Network SPA (hereinafter "**Green Network**") and the Swiss company Alpiq (hereinafter "**Alpiq**"). This decision provided important clarifications regarding the extent of the control exercised by the judge hearing the case to set aside the arbitral award, in matters of compliance with international procedural public policy.

In this case, a contract for the supply of electricity had been concluded between Green Network and Alpiq, stipulating that the latter was required to supply Green Network with electricity generated from renewable sources. Due to Alpiq's failure to comply with its commitment relating to green energy, Green Network filed a request for arbitration with the International Chamber of Commerce (ICC). During the arbitral proceedings, Green Network asked the arbitral tribunal to order Alpiq to disclose certain documents. The tribunal rejected this request by way of two unreasoned orders. However, in its final award, it stated that the documents in question had been unnecessary for the proceedings. Subsequently, Green Network lodged an application to set aside that award before the French courts. Considering that it had been deprived of essential evidence to support its claims, it argued in particular that there had been a violation of its rights to defend itself properly and of international public policy, in accordance with Article 1520(5) of the French Code of Civil Procedure.

The Paris Court of Appeal dismissed this ground, stating that "*the mere exercise of the discretion granted to the arbitral tribunal to grant or refuse the production of documents requested by a party is not sufficient to establish a violation of the rights of the defence, unless one seeks purely and simply to call into question the arbitral tribunal's power of assessment and its power to decide*". It also stated that "*it is not for the judge hearing the case to set aside the award to rule on whether the tribunal was right or wrong when it considered that the production of those documents was unnecessary for the proceedings*".

Green Network appealed on points of law against this decision, arguing that the Court of Appeal had deprived its decision of any legal basis with regard to Article 1520(5) of the French Code of Civil Procedure.

The Court of Cassation dismissed Green Network's appeal. It confirmed the Court of Appeal's analysis, reiterating that "*the judge hearing the case to set aside the award acts as the judge of the award in order to accept or reject its incorporation into the French legal order*" and that it was not for that judge to assess the arbitral tribunal's decision regarding the usefulness of the documents. The Court emphasised that the mere refusal to order the production of documents did not suffice to constitute a violation of the rights of the defence. It also highlighted that the arbitral tribunal had justified its refusal to order disclosure of the documents by considering them unnecessary for the proceedings, and that Green Network had been able "*to challenge the merits of that refusal […] before the closure of the proceedings ordered on 05/10/2017*". Consequently, it found that nothing in Green Network's arguments was capable of proving an infringement of international public policy or of justifying a refusal to incorporate the award into the French legal order.

dispute. The Court of Appeal had justified its position on the grounds that the agreement was not limited to executing a judicial decision concerning unpaid invoices for construction work carried out in Libya during the 1980s, but also provided for mutual concessions and resolved the prior dispute.

Finally, the Court rejected the allegation of a lack of legal basis, noting that the Court of Appeal had provided a valid justification for its decision by establishing, on the one hand, the reasons given in the arbitral award and, on the other, that Green Network's procedural rights had been respected.

By this decision, the Court of Cassation clarified the nature and extent of the control exercised by the judge hearing the case to set aside the award, reaffirming that the latter is solely "***the judge of the award***" and not the judge of the merits of the arbitral dispute. In parallel, it strengthened the scope of the review of compliance with international public policy, both substantive and procedural, by extending and clarifying the possibility of an examination "***in law and in fact***". This decision thus demonstrated the desire to protect both the autonomy of the arbitration and the respect of fundamental rights: on the one hand, by prohibiting any re-examination on the merits, and on the other, by ensuring that arbitrators provide reasons for their decisions and allow the parties the opportunity to discuss their merits before the proceedings are closed.

Contribution by Sakhavat Yusifov

Court of Cassation, 1st Civil Chamber, 27 November 2024, nº 22-13.596, *DNO Yemen*

While the political situation in Yemen remains marked by persistent instability, the Court of Cassation has been presented with an appeal against a judgment rendered by the Court of Appeal of Paris. In this case, the company DNO Yemen (hereinafter "**the Claimant**") had initiated set-aside proceedings of an Arbitral Award rendered under the auspices of the International Chamber of Commerce (hereinafter "**ICC**"). The Set-Aside was rejected by the Court of Appeal.

The dispute concerns the Norwegian oil company DNO Yemen and the Yemen Oil and Gas Corporation (hereinafter "**YOGC**"), an entity wholly owned by the Ministry of Oil and Minerals of Yemen (hereinafter "**the Respondent**"). In 1997, DNO Yemen, together with other foreign oil companies, entered into production sharing agreements with YOGC. However, following the upheavals of the Arab Spring, DNO Yemen, like other companies, decided to withdraw from these agreements at the beginning of 2015, marking the onset of the civil war in the country.

This withdrawal was contested by the Ministry of Oil and Minerals of Yemen, which initiated arbitration proceedings before the ICC. The arbitral tribunal concluded that DNO Yemen had not validly exercised its right of withdrawal. Following this decision, DNO Yemen filed a Set-Aside proceedings before the Court of Appeal of Paris on 19 September 2019, which was dismissed. An appeal to the Court of Cassation was subsequently lodged by DNO Yemen, which criticises the Court of Appeal's ruling for having disregarded Article 1520 5° of the French Code of Civil Procedure. DNO Yemen argues, in particular, that YOGC is under the control of individuals subject to European restrictive measures. Therefore, the recognition of such an Award would violate international public policy and European rules concerning restrictive measures against a Non-Member State.

It is important to recall that Yemen, as a party to the proceedings, is subject to European economic sanctions, particularly following the takeover of much of the country by the Houthi Movement, which capitalised on the Arab Spring to carry out its actions and is classified as a terrorist organisation by the European Union. Regulation (EU) No. 1352/2014 of 18 December 2014 (hereinafter "the Regulation"), adopted by the Council of the European Union, implements several United Nations Security Council resolutions aimed at addressing the threat posed by the situation in Yemen to international peace and security. This Regulation, notably in its Article 2.2, provides for the freezing of funds, assets, and economic resources that are "directly or indirectly made available to or for the benefit of natural or legal persons, entities or bodies listed in the annex I" which includes, in particular, the Houthi Military Command, Al-Qaeda, and the former Yemeni president Ali Abdullah Saleh, who has since passed away.

The main issue before the Court of Cassation concerns the nature of the control exercised over YOGC, claimed both by the legitimate government of Yemen and by the Houthi rebels based in Sanaa, the former capital. Indeed, the issue arises as to whether an international arbitral award can be annulled if its recognition and enforcement may, even indirectly, make funds available to individuals subject to European sanctions?

In its judgment, the Court of Appeal of Paris had considered that the elements put forward by the Claimant were insufficient to demonstrate that YOGC was effectively controlled by individuals under sanctions. However, the Court of Cassation adopts a more nuanced approach and decides not to rule on the substance of the case. It refers, on the basis of Article 267 of the Treaty on the Functioning of the European Union (TFEU), the following three preliminary questions to the Court of Justice of the European Union (CJEU):

(1) Should Article 2.2 of the EU Regulation be interpreted in light of the Guidelines published by the Council of the European Union (as updated on 4 May 2018)? In other words, should "funds being made available indirectly" (which is a prohibited practice under the EU Regulation) cover a situation where the funds are made available to a public entity (in the present case YOGC) that is not listed but is under influence of listed individuals belonging to the Houthis?

(2) If such influence is proven, should Article 2.2 of the EU Regulation be interpreted as presuming that the public entity (YOGC) receiving the funds is "controlled" by listed individuals?

(3) If the evidence on record before the national judge does not allow to determine whether the public entity (YOGC) is under influence of listed individuals, is the mere "risk" that this may be the case sufficient to prohibit payment to the public entity?

Contribution by Adel Al Beldjilali-Bekkaïri

England & Wales High Court, *Friedhelm Eronat v CPNCInternational (Chad) Ltd and Clivenden Petroleum Co. Ltd* [2024] EWHC 2880 (Comm)

On 16 May 2024, the High Court of Justice of England and Wales, *Friedhelm Eronat v CNPC International (Chad) Ltd and Cliveden Petroleum Co. Ltd*, reaffirmed the importance of strict adherence to contractual and statutory time limits in arbitration appeals. The court ruled that the deadline for filing an appeal begins from the date the award is made, not from the date it is communicated to the parties. In reaching its decision, the court provided significant clarification on the conditions for a reverse summary judgment, calculation of arbitral deadlines, and conditions of award enforcement.

The dispute stems from a Deed of Indemnity involving Friedhelm Eronat, the Claimant, Cliveden Petroleum as the first defendant, CNPC International as the second defendant, and a third party. A Deed of Indemnity is a legal agreement in which one party agrees to compensate the other party for certain losses or liabilities. In this case, the indemnity was tied to a series of transactions concerning oil and gas exploitation rights in Chad.

The Deed was part of a broader transaction in which Eronat sold a portion of its shares in Cliveden, ultimately leading to CNPC becoming the sole owner. In 2006, Eronat and CNPC executed a Deed of Release, aimed at absolving Eronat from any claims arising from its former ownership of shares in Cliveden.

The issue arose when Carlton Energy Group sued Cliveden and CNPC for unpaid sums related to an oil exploration project in Chad, leading to arbitration. Carlton's claim centered on unpaid sums and a dispute over how profits from the project should be calculated. In 2020, the arbitral tribunal issued a Partial Final Award, determining the method for calculating profits and also ruling that the Deed of Release did not absolve Eronat of liability in this case.

In 2021, Cliveden and CNPC sought to recover the amounts they had paid to Carlton, citing the 2003 Deed of Indemnity. The tribunal ruled in favour of the Defendants, ordering Eronat to indemnify Cliveden for the US$324.65 million paid to Carlton.

Dissatisfied with the tribunal's decision, Eronat appealed the ruling under Section 69 of the Arbitration Act 1996, which permits appeals on serious legal issues. On 16 May 2024, Eronat filed his appeal, arguing that the tribunal had made significant legal errors in its ruling.

In response, the Defendants, Cliveden and CNPC, filed an application on 27 June 2024 for a "*reverse summary judgment*", seeking to have Eronat's appeal dismissed. A reverse summary judgment is a legal request asking the court to reject a claim or appeal at an early stage, arguing that it has no reasonable chance of success.

Furthermore, the Second Defendant, CNPC, filed a separate application, requesting permission to enforce the arbitration award. This application sought a court judgment to legally enforce the US$324.65 million payment from Eronat to Cliveden, based on the tribunal's ruling.

The key legal questions before the High Court were twofold: (1) Can a reverse summary judgment dismiss an appeal filed after the deadline? (2) Can a court enforce an arbitration award even when an appeal has been filed?

Ultimately, both questions hinged on one critical issue: when does the deadline for filing an appeal begin? Is it from the date the arbitration award is issued, or from the date it is notified to the parties?

The Defendants argued that Eronat's appeal, filed on 16 May 2024, was outside the statutory 30-day window, which began with the issuance of the Partial Final Award on 11 April 2024. Eronat countered that the time limit should begin from the date it was notified of the award, rather than when it was issued.

However, after a thorough analysis of the contract's language, the Court rejected the Claimant's argument and affirmed that, under the Arbitration Act 1996, the relevant date for the appeal window is the date the award is signed by the tribunal, not the date it is served on the parties.

As a result, the Court granted the Defendants' application for reverse summary judgment, dismissing the applications made on behalf of the Claimant. Additionally, the Court approved the Second Defendant's application under Section 66 of the Arbitration Act, which permits the conversion of an arbitration award into a court judgment for enforcement purposes.

The Court's ruling effectively extinguished the right to appeal due to the procedural error. A key takeaway from this case is the Court's position that the deadline for an appeal begins immediately after the award is issued, thereby setting a clear precedent for arbitration timelines.

This approach, which relies on the explicit terms of the contract to determine when the time for filing an appeal begins, aligns seamlessly with the statutory framework that differentiates between the making of an award and its notification.

Under arbitration laws, such as the Arbitration Act 1996, a clear distinction is made between the finalization and signing of the award (the making) and the formal informing of the parties (the notification), which typically follows the fulfilment of certain conditions, like the payment of fees.

The London Court of International Arbitration Rules reinforce this distinction, stipulating that an award is considered "made" when it is finalized and signed by the arbitrators, with notification occurring later, often depending on the payment of arbitration costs. This promotes consistency and ensures transparency, establishing that deadlines for actions like appeals are tied to the date the award is issued, rather than when it is communicated to the parties.

In this case, a mere four-day delay proved decisive, stripping the claimant of his right to appeal and solidifying the enforcement of a judgment that compelled him to pay hundreds of millions. The court's strict adherence to procedural deadlines, anchored in the statutory and contractual framework, underscores the unforgiving nature of arbitration timelines. This outcome serves as a stark reminder of the critical importance of precision and timeliness in navigating complex legal disputes, where even minor oversights can carry profound financial and legal consequences.

Contribution by Redeat Zewdie

England & Wales Court of Appeal, *Re Renaissance* [2024] EWCA 1843 (Comm)

In its judgment of 6 November 2024, the High Court of England and Wales was called upon to clarify the effects of an anti-suit injunction issued to ensure compliance by the contracting parties with their undertaking to have recourse to arbitration. The central issue is whether such an injunction can be extended to third parties to the contract.

In this case, Renaissance Securities Ltd (hereinafter, 'R'), an investment services company, had as clients several companies: Chlodwig, Adorabella, Gekolina, Dubhe, Owl and Perpecia (hereinafter, the 'defendants'), the beneficial owner of which was a Russian national subject to international economic sanctions. Each of the defendants had entered into an investment services contract (hereinafter, the 'Contract'). These contracts, drafted in identical terms, contained an arbitration agreement.

Following the imposition of economic sanctions, R froze the defendants' funds and refused to transfer the sums it held. In response to this refusal, the defendants each commenced legal proceedings in Russia against R, relying on Article 248.1 of the Arbitral Procedural Code of the Russian Federation, which grants exclusive jurisdiction to Russian courts when a Russian company is subject to international sanctions. This was in breach of their undertaking to submit any dispute to arbitration. In response to these proceedings, R sought an anti-suit injunction to stop them. Dias J granted this application in an earlier decision (*Judgment of the High Court of England and Wales [2023] EWHC 2816*, reported in the *Paris Baby Arbitration Monthly Newsletter* January 2024, issue 66).

The defendants then commenced new legal proceedings in Russia, this time against the Russian Renaissance entities (hereinafter, 'RRE'). They argued before the Russian courts that, despite the apparent legal autonomy of these entities, R and the RREs would in fact constitute a single undertaking, each of which could be held liable for the debts of the other.

In this context, the English court was asked to determine whether the anti-suit injunction previously granted could apply to the RREs, third parties to the contract and to the arbitration clause. The judge responds in the negative.

Pelling J. began with a detailed analysis of the arbitration agreement. He referred to the precedent of *Clearlake Shipping Pte Limited v Wiang Da Marine Patient E Limited [2019] EWHC 2284 (Comm)*, where Burrows J. recognised that, in relation to a jurisdiction clause, an anti-suit injunction could be issued against a third party to the contract, but only if the contract so provided (at [28]). It is therefore an exercise in interpreting the contract in the light of the specific circumstances, in particular the parties' knowledge, at the time it was drafted, that recourse against a third party could reasonably be brought (at [29]). Pelling J. emphasized that the analysis must be more rigorous than in *Clearlake* due to the nature of the arbitration agreement, given the high costs associated with such a procedure (at [30]) and the fact that applying the arbitration agreement would deprive the Russian Renaissance entities of their natural judge (at [31]).

The arbitration agreement reads as follows: "*43.2. If any dispute shall arise in relation to the [contract] and it cannot be resolved within 30 business days by negotiation between the parties, such dispute should be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration […] Any award rendered should be final and binding on both parties […]*". Pelling J. particularly highlights the reference to negotiation "between the parties" and the final, binding nature of the award "on both parties", pointing out that the wording of the arbitration agreement clearly indicates that it applies only to disputes between the parties to the contract, and not between one of the parties and a

third party (at [34]-[37]). Furthermore, as English law governs the contracts, the Contracts (Rights of Third Parties) Act 1999 is excluded, suggesting that the involvement of a third party to the contract is irrelevant. The judge stresses that, had this been the case, the contract would have explicitly referred to this Act (at [38]-[39]). It therefore seems clear that, says Pelling J, at the time the contract was entered into, it was extremely unlikely that claims against third parties to the contract were contemplated (at [40]), and that the anti-suit injunction at issue cannot be extended to third parties on the basis of the contract.

Pelling J. also noted that a pertinent argument for interpreting the effect of the anti-suit clause on third parties could be the possibility of extending the arbitral proceedings to third parties to the contract, under the LCIA Arbitration Rules, although this argument was not raised by the parties (at [46]).

Pelling J. then considered the second basis on which an anti-suit injunction could be granted: the argument that the proceedings brought by the defendants were vexatious or oppressive. R argued that the proceedings initiated in Russia against RREs were an indirect attack on its rights under the arbitration agreement and that they were a procedural strategy to avoid international economic sanctions. Pelling J. rejected this argument, stating that the Russian proceedings were in no way vexatious, and that Russia was the natural forum for such proceedings, involving Russian companies on both sides (at [44]). In other words, the defendants had not abused the exclusive jurisdiction of the Russian courts under Article 248.1 of the Arbitral Procedural Code of the Russian Federation.

Contribution by Iulian Chetreanu

England & Wales Court of Appeal, *Spain v London Steam-ship Owners Mutual Insurance Association* [2024] EWCA 1536

On December 12, 2024, the Court of Appeal of England and Wales issued rulings on multiple appeals involving Spain, France, and the London Steam-Ship Owners' Mutual Insurance Association ("**the Club**") regarding liability, arbitration obligations, and enforcement of a Spanish court judgment related to the 2002 Prestige oil spill.

On November 19, 2002, the oil tanker M/T Prestige sank off the coast of Spain during a voyage from St. Petersburg to the Far East. Carrying 70,000 metric tonnes of fuel oil, the spill caused extensive environmental damage to the Spanish and French coastlines. The vessel's owners and managers were insured by the Club under terms requiring disputes to be arbitrated in London and stipulating that claims could only be paid after the insured parties had first paid their liabilities in full ("pay to be paid" clause).

The case involved five appeals brought before the Court of Appeal, addressing three key issues. The first concerned the registration and enforcement in England of a €855 million judgment obtained by Spain against the Club in Spanish courts under the Brussels I Regulation (pre-Brexit). The second focused on whether the Club was entitled to compensation from Spain and France for breaching their obligations to resolve disputes through arbitration. The third addressed whether enforcing the Spanish judgment infringed upon the Club's rights under the European Convention on Human Rights.

The Court's findings addressed these three key issues.

Firstly, regarding the **registration of the Spanish judgment**, the Court determined that the judge had erred in disregarding significant aspects of the Court of Justice of the European Union's interpretation of the Brussels I Regulation. While registration under the Regulation was appropriate, its enforcement was ultimately barred by English public policy (Article 34(1)) and prior arbitration awards (issue estoppel). Secondly, on the matter of **Equitable Compensation**, the Court concluded it could not be awarded. While an injunction is the appropriate remedy for breaches of arbitration obligations, this was precluded by the State Immunity Act 1978. In the absence of an injunction, neither equitable compensation nor damages were legally viable. Thirdly, for the **Human Rights Appeal**, the Court dismissed the Club's argument that the Spanish judgment violated its human rights. The factual findings of the Spanish courts were upheld, and no manifest breach of English public policy or fair trial rights was identified.

Spain's appeal to enforce the Spanish judgment (CA-2024-000178) was dismissed. The appeals by Spain and France regarding equitable compensation (CA-2024-000180, CA-2024-000182) succeeded, resulting in the rejection of equitable compensation claims. The Club's cross-appeal seeking equitable damages (CA-2024-000597) was dismissed. Similarly, the Club's human rights appeal (CA-2024-000588) was dismissed.

Therefore, the Spanish judgment remains unenforceable in England due to the "pay to be paid" clause and arbitration awards. The decision underscores the importance of honouring arbitration agreements in cross-border disputes. The case also clarifies the limits of equitable remedies and the role of public policy in enforcing foreign judgments.

Contribution by Elena Andary

Hong Kong Court of First Instance, *Tongcheng Travel Holdings Ltd v OOO Securities (HK) Group Ltd* [2024] HKCFI 2710

In the case *Tongcheng Travel Holdings Limited (Claimant) v. OOO Securities (HK) Group Limited (Defendant)*, the High Court of Hong Kong rendered a significant decision on October 8, 2024, concerning a request to set aside a default judgment and refer the dispute to arbitration. The dispute arose from an asset management agreement signed in November 2018, under which Tongcheng Travel Holdings Limited, a leading company in the online travel sector, entrusted OOO Securities (HK) Group Limited, a licensed securities broker in Hong Kong, with the management of USD 30 million derived from its initial public offering. The contract stipulated that the assets would be held in a discretionary account and could not be withdrawn before three years unless agreed in writing by both parties. In 2020, Tongcheng Travel Holdings Limiteed attempted a partial withdrawal, but received no response from the Defendant.

In January 2022, the Claimant terminated the agreement due to breaches of fiduciary duties and demanded the return of the managed assets. Following the Defendant's continued inaction, a default judgment was rendered on January 22, 2024, ordering OOO Securities (HK) Group Limited to pay USD 29.55 million to the Claimant, along with interest and costs. The Defendant subsequently sought to set aside this default judgment and requested that the matter be referred to arbitration, invoking an arbitration clause under Article 11.3 of the agreement that stipulated that any disputes should be submitted to arbitration in Hong Kong.

The Claimant opposed this request, arguing that the arbitration clause was invalid due to a conflict with Article 11.2, which provided for exclusive jurisdiction of the Hong Kong courts, and asserting that the Defendant had waived its right to arbitration by initiating parallel judicial proceedings.

After thorough examination, the Court found the arbitration clause to be fully valid and enforceable, rejecting the argument of a conflict between Articles 11.2 and 11.3 of the agreement. The Court explained that while Article 11.2 conferred a supervisory role on the Hong Kong courts over arbitration, it did not preclude arbitration itself as the primary dispute resolution mechanism. Furthermore, the Court determined that the Defendant's judicial actions did not constitute a waiver of its right to arbitration, as they were procedural in nature and did not address the substance of the dispute. In light of the **Arbitration Ordinance**, which prioritizes party autonomy and mandates arbitration when a valid clause is present, the Court set aside the default judgment and stayed the judicial proceedings to refer the matter to arbitration.

In its decision, the Court (1) set aside the default judgment rendered on January 22, 2024, (2) ordered the referral of the dispute to arbitration in accordance with the terms of the contract, and (3) held that the costs of the proceedings would be determined at a later stage.

Contribution by Soukaina El Mouden

Singapore High Court, *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2024] SGHC 244

On 24 September 2024, the High Court of Singapore (hereinafter the "**Court**") suspended a setting aside procedure initiated by PetroVietnam (hereinafter "**PVN**") against an award rendered under the aegis of the Singapore International Arbitration Centre (SIAC).

In this case, PVN, the project owner of a thermal power plant, entered into an engineering, procurement, and construction contract (hereinafter the "**EPC Contract**") governed by Vietnamese law with a consortium led by Power Machines (hereinafter "**PM**"), a Russian company. The works, which began in January 2015, encountered major obstacles in January 2018 when PM was listed on the US sanctions list. This listing prohibits any transactions involving PM with US persons, leading to the disruption of services from several subcontractors.

In this context, PM issued two termination notices. The first, dated 28 January 2019, cited force majeure with an effective termination date of 18 February 2019. The second notice, dated 8 February 2019, was predicated on PVN's payment defaults, with termination taking effect on 22 February 2019. PVN disputed both notices, arguing, with respect to the first, that the US sanctions did not amount to *force majeure*, and with respect to the second, that it was invalid - partly because the first notice had already effected termination, and partly due to PM's abandonment of the project.

In response, PM commenced arbitral proceedings on 23 August 2019. In an award issued on 23 November 2023, the arbitral tribunal held that the US sanctions did not constitute force majeure and accordingly annulled the first notice. However, it upheld the second notice, determining that it had been issued prior to the effective date of the first notice, namely 18 February 2019. Additionally, the tribunal found that, under Vietnamese law, a termination notice - even if unjustified - is sufficient to release the parties from their contractual obligations. On this basis, PVN was ordered to pay contractual damages pursuant to the provisions of the EPC Contract. PVN subsequently applied to the Court to set aside the arbitral award.

The central legal question in this case was whether the arbitral tribunal's failure to engage with the interaction between the two termination notices in its reasoning, and to allow the parties an opportunity to address this point, constituted a breach of the fundamental principles of natural justice.

The Court found that, although the tribunal had the discretion to depart from the arguments presented by both PM and PVN, it was nevertheless required to provide the parties with an opportunity to comment on the approach it intended to adopt. Its failure to do so constituted a breach of Section 24(b) of the International Arbitration Act (IAA) and Article 34(2)(a)(ii) of the UNCITRAL Model Law (hereinafter the "**Model Law**"). Furthermore, by departing from the parties' cases in the Final Award, the tribunal also violated Article 34(2)(a)(iii) of the Model Law, which prohibits decisions that exceed the scope of the parties' submissions.

Rather than fully setting aside the award, the Court exercised its discretion under Article 34(4) of the Model Law to suspend the setting aside procedure and refer a specific question to the arbitral tribunal for determination. The Court directed the tribunal to clarify the relationship between the two termination notices and their implications for the award.

Based on the Court's analysis, several key arguments were drawn from the cited precedents, which illuminate the foundational principles of natural justice. These principles, as articulated in

Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd [2007] 3 SLR(R) 86 (hereinafter "***Soh Beng Tee***") are twofold: first, the tribunal must be "disinterested and unbiased," encapsulated in the Latin maxim *nemo judex in causa sua*; and second, "the parties must be given adequate notice and opportunity to be heard," reflected in the maxim *audi alteram partem*. The latter principle encompasses sub-branches that require each party to have a fair hearing and a genuine opportunity to present its case, with the overarching notion being that "justice must not only be done but appear to be done." These principles collectively ensure not only substantive fairness but also procedural legitimacy, reinforcing trust in the arbitral process.

Building on this, the Court's emphasis on the necessity of a "sufficient nexus" between the tribunal's reasoning and the parties' submissions, as outlined in BZW another v BZV [2022] 1 SLR 1080 (hereinafter "***BZW***"), is particularly significant. This standard acts as a safeguard, ensuring that arbitrators do not stray beyond the boundaries of the parties' reasonable expectations. Such transparency and predictability are essential for the credibility of the arbitral process. Specifically, *BZW* relies on the reasoning in *Soh Beng Tee* at [65(d)] to argue that procedural breaches occur when a reasonable litigant could not have anticipated the tribunal's reasoning based on the submissions presented. This objective standard is pivotal for distinguishing genuine procedural infractions from mere dissatisfaction with an adverse outcome. In this case, the Court found the tribunal's reasoning to be sufficiently unforeseeable to warrant intervention.

By adopting a targeted correction of the irregularity rather than annulling the entire award, the Court demonstrated a pragmatic approach to addressing procedural irregularities. This measured intervention reflects the Court's commitment to upholding procedural fairness while preserving the stability of the arbitral tribunal's conclusions. By refraining from setting aside the entire award and instead addressing specific procedural irregularities, the Court ensures that the tribunal's decision is respected where it remains unchallenged, maintaining the balance between procedural integrity and the finality of arbitral awards.

Contribution by Meily Lam-Khounborind

INTERVIEW WITH CAMELIA AKNOUCHE

1. To begin with, could you please tell us a bit about your background and the reason that you chose international arbitration as a career option?

I am a French-qualified lawyer. I began my studies in Lille before moving to Paris to complete my master's degree in international business law. Prior to passing the bar, I gained experience through several internships abroad, including in the United States, the United Kingdom, and the Middle East. After qualifying, I had the opportunity to relocate to the Doha office of an international law firm, where I worked as an associate specializing in construction arbitration for three years. In 2024, I joined Three Crowns in Paris to continue developing my career in international arbitration.

My interest in international arbitration emerged during my studies in Paris, where I found the subject, both intellectually stimulating and highly engaging. I was particularly drawn to the field's international dimension and its focus on resolving complex disputes. The ability to work in an area with such global reach, combined with my interest in disputes and my international experiences, made arbitration an ideal career path for me.

2. You have been working as an associate at Three Crowns for a year. Could you tell us a bit about Three Crowns' arbitration team in Paris?

Three Crowns is an international law firm specializing in international arbitration and is recognized as one of the leading firms in the field. With five offices across the globe (in Washington DC, London, Madrid, Paris and Singapore), we operate as a fully integrated team. The firm handles all types of arbitration, including both commercial and investor state disputes, across several industry sectors including aerospace, construction, energy, financial services and telecommunications. This diversity offers members of the team the opportunity to work on a wide range of matters, allowing us to develop expertise across different areas of arbitration including those heard under different arbitration rules such as the ICC, ICSID, LCIA, SIAC AND UNCITRAL.

The Paris team is one of the most internationally diverse arbitration teams in the French market, with over 10 nationalities represented across a team of over 20 lawyers. While this office handles cases involving French law or where French is the arbitration language, our practice extends to international disputes, encompassing various legal systems and languages.

The firm's integrated approach allows us to work beyond the boundaries of Paris. Case teams are staffed based on the specific needs of each matter, considering skills such as legal training (either civil or common law), and languages, in addition to past experience of a particular sector or type of dispute. For example, I am currently working on two cases: one involves colleagues from all five of our offices, while the other is primarily with team members based in our DC office.

This collaborative and cross-border approach is one of the key strengths of Three Crowns, as it ensures clients benefit from a combination of diverse legal perspectives and expertise from around the world.

3. Do you have any tips for looking for and getting an internship abroad?

When looking for a legal internship abroad in arbitration, I recommend focusing on established arbitration hubs such as London and Stockholm in Europe, Dubai in the Middle East, and Singapore or Hong Kong in Asia. These locations are more likely to have opportunities in this specialized field.

Once you have identified your target locations, I suggest narrowing your search to law firms or institutions with a proven track record of hiring foreign interns. Not every organization offers internships to international students due to factors like labour laws, visa requirements, or logistical constraints.

It is also essential to ensure your CV adheres to international standards, following the English format, which is widely recognized. Presentation matters greatly—before anyone reads the content, the layout and clarity of your CV leave a lasting impression. I have been surprised by CVs with unusual formatting, spacing issues, or typos, which can detract from an otherwise strong application. To avoid this, have your CV reviewed by multiple people, and if possible, seek feedback from a lawyer for additional insights.

Finally, plan your application timeline carefully, especially for countries that require visas.

4. You have done internships and held associate positions in a number of countries, including in Dubai and Doha. Could you tell us about these experiences? For example, what drew you to the Middle East, and what you gained from practicing in there? Are there any different challenges when practicing in the Middle East as compared to practicing in Paris and London? Is an internship or junior position in these countries something that you would recommend for a bar student or young practitioner in Paris?

My experiences in the Middle East have been incredibly rewarding and have shaped my practice. I obtained my first internship in Dubai after attending a conference in Paris, where I connected with practitioners based in Dubai. Later, I secured my first associate position in Doha through the Qatar office of the law firm where I was interning in Paris, as they had an open associate position.

In the Middle East, I worked entirely in English, adapted to different working methods, and learned various communication styles. I also collaborated closely with common law lawyers, which was particularly enriching given my civil law background. The arbitration scene in the Middle East is very international, and the teams I worked with were composed of members from all over the world, much like the dynamic at Three Crowns.

As for challenges, I found that they depend more on the firm's culture than its location. The challenges I encountered in the Middle East were not necessarily different from those I might face at an international firm in Paris or London.

Whether pursuing an internship abroad is a good idea ultimately depends on an individual's career ambitions. For anyone interested in arbitration, an internship abroad is always an asset, as it demonstrates adaptability and provides valuable exposure to different legal systems and cultures. When it comes to a junior position, I usually recommend first gaining experience in the jurisdiction where one is qualified before seeking opportunities abroad. That said, the arbitration job market can be highly competitive, with limited openings and a large pool of qualified candidates. Opportunities can sometimes be challenging to secure, particularly for those at the start of their careers and so if an opportunity abroad arises, it can serve as an excellent entry point into the professional world.

5. You focused on construction arbitration in

your practice. Could you please tell us a bit about this type of arbitration and any particularities that set it apart from other types of arbitration?

My experience has shown me that construction arbitration tends to divide opinions—people either enjoy it or they do not. I am among the former. Although it can be technical and occasionally lengthy due to the scale of certain projects, construction arbitration is rewarding because of the distinctive challenges it offers.

One notable aspect is the diversity of projects and issues involved. Cases often require input from experts across various fields, such as engineering, architecture, and project management. Experts play a central role in construction arbitration, helping to clarify technical matters and support or challenge claims, and effective collaboration is critical to managing cases successfully. As a lawyer, working with these experts involves analysing their findings and identifying the key points that will form the basis of the case. This process of simplifying complex technical information into clear arguments is a critical part of the work.

Construction arbitration is also distinct in its fact-heavy nature. Disputes often involve extensive documentation and detailed timelines, requiring careful analysis to focus on the most relevant issues. Developing the ability to filter out less important details is essential in this field.

6. You wrote an article in 2018 titled Artificial Intelligence and International Arbitration: Going Beyond E-mail pertaining to the use of AI in arbitration. Could you tell us a bit about how you see arbitration interacting with AI? Do you see AI having any use in international arbitration and what impact is it having on arbitration that has to be taken into account when practicing?

I believe that AI has significant potential to increase efficiency in the field of arbitration. While I do not think AI can replace lawyers—at least not yet—it already offers tools that can streamline certain processes. For example, AI can assist with document review, legal research, and even the early identification of patterns in case data, which can save considerable time and resources.

However, the adoption of AI in arbitration is not without challenges. One of the primary concerns is confidentiality. Arbitration often involves sensitive information, and the use of AI raises questions about data storage, access, and security. Many parties are understandably cautious about using tools that might compromise the confidentiality that is fundamental to arbitration. The lack of clear regulations and standards around AI in this context creates a grey area, further slowing its integration into the field.

That said, as AI technology continues to evolve and data security measures improve, its role in arbitration is likely to grow. Practitioners will need to be mindful of both the opportunities and the risks it presents. For example, leveraging AI responsibly could lead to greater accuracy and efficiency in procedural matters, but it is equally important to address ethical concerns, such as ensuring fairness and transparency in decision-making processes supported by AI.

Overall, while the current impact of AI on arbitration is still developing, it is a space worth watching closely. For practitioners, staying informed about advancements in AI and understanding how to integrate it responsibly into practice will become increasingly important.

NEXT MONTH'S EVENTS

20 January 2025: Arbitration Academy Winter Lecture on "Mind the Information Gap – The Role of Predictive AI in Arbitrator Challenges"

Organised by The Arbitration Academy

Where ? At *Emile Boutmy Lecture Hall – 27 Rue Saint Guillaume, 75007 Paris*

Website: https://www.linkedin.com/posts/arbitration-academy_registration-activity-7275184980400517120-9hnr

22 January 2025: Dîner-débat on the theme of "*Arbitrage et personnes publiques*"

Organised by Comité français de l'arbitrage

Where ? At *Maison Bès – 31 Boulevard Malesherbes, 75008 Paris*

Website: https://www.helloasso.com/associations/cfa40/evenements/diner-debat-cfa-x-cfa40-2025

27 January 2025: Practical workshop on the theme of "*le contrôle de la constitution et de la révélation*"

Organised by Comité français de l'arbitrage

Where ? At *Salle Gaston Monnerville, Maison du Barreau – 2 Rue de Harlay, 75001 Paris*

Website: https://www.cfa-arbitrage.com/index.php?option=com_jevents&task=icalrepeat.detail&evid=107&Itemid=122&year=2025&month=01&day=27&title=le-controle-de-la-constitution-et-de-la-revelation&uid=d990eba047b019b44626de955fbf797e

INTERNSHIP AND JOB OPPORTUNITIES

LAW PROFILER

INTERNSHIP
DECHERT LLP

TRIAL,
INVESTIGATIONS
& SECURITIES
Start date: July 2025
Duration: 6 months
Location: Paris

INTERNSHIP
WATSON FARLEY
& WILLIAMS

LITIGATION &
ARBITRATION
Start date: January 2026
Duration: 6 months
Location: Paris

INTERNSHIP
LAMY LEXEL
AVOCATS

BUSINESS
LITIGATION
Start date: June 2025
Duration: 6 months
Location: Paris

INTERNSHIP
NORTON ROSE
FULBRIGHT

LITIGATION &
ARBITRATION
Start date: January 2026
Duration: 6 months
Location: Paris