PARISBABYARBITRATION

BIBERON

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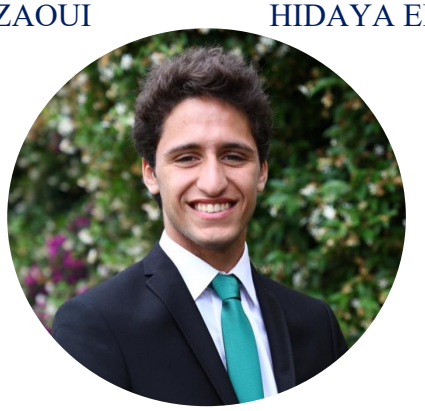

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Founded in 2019 and recognized as a mission-led company, Jus Mundi is a pioneer in the legal technology industry dedicated to powering global justice through artificial intelligence. Headquartered in Paris, with additional offices in New York, London and Singapore, Jus Mundi serves over 150,000 users from law firms, multinational corporations, governmental bodies, and academic institutions in more than 80 countries. Through its proprietary AI technology, Jus Mundi provides global legal intelligence, data-driven arbitration professional selection, and business development services.

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

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

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

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

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

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

Enjoy your reading!

Sincerely yours,

The Paris Baby Arbitration team

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Paris, 9 September 2025, No. 22/15049, *Astaldi*

On 9 September 2025, the Paris Court of Appeal (International Commercial Chamber, Pole 5, Chamber 16) rejected the set-aside application filed by Astaldi S.p.A., an Italian construction company undergoing insolvency proceedings, against an ICC arbitral award rendered in Paris. The case stemmed from works on the East-West Highway in Georgia, and the appeal required the Court to consider the interaction between cross-border insolvency, the principle of equality among creditors, and the limits of public policy review in arbitral award enforcement.

Astaldi had been awarded a major road construction contract by the Roads Department of the Ministry of Regional Development and Infrastructure of Georgia. The contract, governed by Georgian law, provided for ICC arbitration with its seat in Paris. Following disputes over payment, delays, and termination, Astaldi initiated arbitration. During the proceedings, the company entered insolvency in Italy (a "*concordato preventivo*" proceeding under Italian law), placing its assets and liabilities under the authority of the insolvency administrator. In the arbitral award, the arbitral tribunal upheld the Georgian authority's termination of the contract and ordered Astaldi to pay a range of damages, interests, and costs. After the award, Astaldi applied for annulment, arguing that its insolvency should have prevented the tribunal from ruling and that enforcement of the award would breach international public policy and disrupt the equality of creditors.

Before the Court of Appeal, Astaldi contended that Italian insolvency law should have prevented the continuation of the arbitration, that the tribunal had disregarded mandatory insolvency rules, and that enforcement of the award would undermine the collective interests protected in insolvency, particularly the principle of equality among creditors. The Roads Department of Georgia argued that insolvency does not bar arbitration unless expressly provided by statute; that creditor equality governs the distribution of assets but does not prevent adjudication of liabilities; that Astaldi participated fully in the arbitration; and that no violation of international public policy had occurred.

The legal issues centred on whether an arbitral tribunal breaches international public policy by ruling against a party under insolvency protection, whether the principle of equality among creditors limits arbitration or award enforcement, and whether Italian insolvency rules had any extraterritorial effect on an international arbitration seated in France.

The Court rejected all grounds for annulment. It held that insolvency proceedings do not automatically interrupt arbitration unless expressly mandated by the relevant law, which was not the case here. It also held that the principle of equality among creditors applies to the distribution of estate assets, not to the determination of the debtor's liabilities—an arbitral tribunal may therefore rule on claims even when the debtor is insolvent. The Court further observed that setting aside an award requires a "flagrant, effective and concrete" breach of international public policy, which was not evidenced. The tribunal had not exceeded its mandate, nor had it ignored any rule fundamental enough to justify annulment. The Court concluded

that Astaldi could not rely on its own insolvency to evade the effects of the award and accordingly confirmed the award's enforceability in France.

This decision confirms the Paris Court of Appeal's consistent and arbitration-friendly approach to insolvency-related arguments. It reinforces the autonomy and continuity of international arbitration, prevents insolvent debtors from using insolvency strategically to avoid awards, and clarifies that creditor equality concerns the distribution of the estate rather than the adjudication of claims. The ruling also illustrates France's narrow conception of international public policy, emphasising that annulment is reserved for only the most serious and demonstrable violations. Overall, the decision enhances legal certainty and strengthens the reliability of arbitration in cross-border commercial disputes involving distressed companies.

Contribution by Cristian Zannier

Paris, 21 October 2025, nº 24/04967, *Public Works Authority of Qatar (Ashghal)*

By a judgment dated 21 October 2025, the Paris Court of Appeal (Pôle 5, Chamber 16) ruled on an action to set aside an award rendered on 6 December 2023 under the ICC Arbitration Rules. The dispute opposed the Singaporean company Keppel Seghers Engineering Singapore PTE Ltd ("Keppel") to the Public Works Authority of Qatar ("PWA") concerning a contract for the design, construction, operation and maintenance of a wastewater treatment plant in Qatar. The court's decision focused primarily on the existence and validity of an arbitration agreement formed during the parties' pre-contractual exchanges, as well as on the arbitral tribunal's jurisdiction.

In this case, Keppel had participated in 2006 in a tender launched by PWA for the design, construction, operation and maintenance of a wastewater treatment plant. During the pre-contractual negotiations, the parties exchanged several documents, including a "*Resolution Flow Chart*" and "*Points of Talks/Negotiations*" which provided for a multi-tier dispute resolution mechanism culminating in ICC arbitration. On 27 September 2007, PWA issued a Letter of Award to Keppel, and the Contract Agreement was signed on 9 December 2007. The performance of the works subsequently gave rise to various disputes relating to delays, leading to pre-arbitral procedures between 2014 and 2022. Keppel later filed two ICC Requests for Arbitration in 2022 and 2023, which were subsequently consolidated. In a partial and final award dated 6 December 2023, the arbitral tribunal declined jurisdiction on the ground that the clause invoked by Keppel did not constitute a valid arbitration agreement. Keppel therefore brought an action to set aside the award in 2024.

The set-aside application was brought before Chamber 5/16 of the Paris Court of Appeal. Keppel argued that the arbitral tribunal had wrongly declined jurisdiction, as a valid arbitration agreement had been formed during the pre-contractual negotiations and was later confirmed by various documents exchanged between September and December 2007. Keppel contended that several exchanges, particularly the meeting of 26 September 2007, the "*Resolution Flow Chart*", the "*Points of Talks/Negotiations*" the letters of 19 and 27 September 2007, together with the Letter of Award and the Contract Agreement signed on 9 December 2007, demonstrated the parties' clear intention to replace the jurisdiction clause initially set out in the tender documents by amicable settlement followed by arbitration. It further argued that references to ICC arbitration included in the contractual documentation, as well as the parties' conduct in the performance of the contract, such as PWA's repeated participation in mediation proceedings between 2014 and 2021, confirmed both the existence and validity of the clause. Finally, Keppel contended that PWA's objections based on a lack of formality were unfounded, since French arbitration law does not condition the validity of an arbitration agreement on any particular formal requirements.

PWA, on the other hand, disputed the existence of any arbitration agreement. It argued that the tender documents strictly submitted disputes to the jurisdiction of the Qatari courts and that any modification necessarily had to be incorporated into the final contractual documents. In its view, the documents relied upon by Keppel, such as the "Resolution Flow Chart" or the "Points of Talks/Negotiations", were merely informal commercial exchanges that were never validated and did not appear in the final contracts. PWA further maintained that the terms used in those documents suggested, at most, a possible future resort to arbitration, but not a binding commitment. It also disputed that the letters of 19 and 27 September 2007 could not constitute an agreement, arguing that they merely reflected ongoing discussions and did not evidence any clear consent to arbitration. Accordingly, PWA submitted that the arbitral tribunal had correctly declined jurisdiction.

The legal issue before the Court of Appeal was whether, in light of the parties' pre-contractual exchanges and the contractual documents executed in 2007, they had validly concluded an arbitration agreement sufficient to vest the ICC arbitral tribunal with jurisdiction.

The Court of Appeal set aside the award, finding that the arbitral tribunal had wrongly declined jurisdiction. It recalled that, under French law, the validity of an arbitration clause is assessed based on the parties' common intention, without any particular formal requirement. The court found that the pre-contractual exchanges of September 2007, the meetings, the "Resolution Flow Chart," the "Points of Talks/Negotiations" and the letters of 19 and 27 September, demonstrated a clear agreement to resort to a mediation mechanism followed by ICC arbitration. It also noted that these documents had been incorporated into the contractual documentation signed in December 2007, reflecting the parties' intention to replace the jurisdiction clause initially set out in the tender documents. PWA's participation in mediation proceedings between 2014 and 2021, without contesting the clause, further confirmed this intention. Consequently, the court held that a valid arbitration agreement existed between the parties and that the arbitral tribunal should have asserted jurisdiction.

This decision illustrates the flexibility of French arbitration law, which recognises the validity of an arbitration agreement whenever the parties' intention can be inferred from a body of exchanges, even in the absence of a formal clause in the final contract. It also underscores for international actors that negotiation documents, correspondence or internal approvals may suffice to establish consent to arbitration.

Contribution by Lucie Gorlova Sage

By a decision dated 21 October 2025, the International Commercial Chamber of the Paris Court of Appeal recalled the limits of its ability to review awards in which arbitral tribunals declared themselves incompetent. It did so by dismissing the annulment application filed against the award rendered under the auspices of the International Court of the International Chamber of Commerce in the dispute between Mr. [R][S] (hereinafter, "the claimant") and the Republic of Kosovo (hereinafter, "the respondent").

The dispute concerned the claimant's operation, through Kosova Petrol (hereinafter, "KP"), of fuel stations in Kosovo. After the dissolution of the Socialist Federal Republic of Yugoslavia, Kosovo was attached to Serbia within the Federal Republic of Yugoslavia. Following the conflict between Yugoslav forces and the Kosovo Liberation Army and NATO's military intervention, the UN Security Council adopted a resolution on 10 June 1999, and established the United Nations Interim Administration Mission in Kosovo (hereinafter, "UNMIK"). Between 1999 and 2008, UNMIK adopted numerous regulations governing foreign investments.

On 25 January 2000, UNMIK granted the claimant authorisation to operate 61 fuel stations through KP. From 2008, the claimant and his daughter, who became KP's executive director, undertook a programme to modernise existing stations and planned to open around sixty new stations. Kosovo declared independence on 17 February 2008, followed by the adoption of its Constitution on 15 June 2008. A new law on foreign investments (hereinafter, "LIE 2014") was enacted in 2013. On 29 April 2019, citing severe operational difficulties and alleging harassment by the Republic of Kosovo, resulting in the dissipation of his investment, the claimant initiated arbitration proceedings against the respondent under LIE 2014.

By an award dated 01 August 2022, the arbitral tribunal recognised the claimant as a foreign investor but upheld its jurisdiction for claims based on rights still existing after 2008, as well as on acts of the respondent postdating LIE 2014. It declared itself incompetent for claims related to rights extinguished before independence, alleged violations of the UNMIK legal regime, or acts attributable to UNMIK itself. On the merits, it dismissed all claims brought by the claimant against the respondent. The tribunal also ordered the claimant to pay the respondent USD 1,477,165.38 in damages and EUR 71,653.305 in costs and fees, as well as USD 175,000 for the respondent's share of arbitration costs. The claimant then filed an annulment application against this award before the Court on 01 September 2022.

The claimant submitted a single ground for annulment, arguing that the arbitral tribunal had wrongly declared itself incompetent. According to the claimant, the annulment judge's review should have been limited to the arbitration clause provided in LIE 2014 and to the definitions it gave of "investor" and "investment." The claimant alleged that the tribunal had added conditions not provided by LIE 2014, including a post-2008 temporal criterion, the exclusion of investments related to UNMIK, and the requirement of a connection between expenditures and an eligible asset. The claimant argued that the UNMIK authorisation and his modernisation works constituted protected investments, and that the law imposed no temporal limitation on the respondent's consent to arbitration.

In its assessment of the ground, the Court first recalled that Article 1520(1) of the French Code of Civil Procedure allows the challenge and review of an award when the arbitral tribunal wrongly upheld or declined jurisdiction, but that such review could not address the merits of the case.

In matters of foreign investment, jurisdiction stems from the arbitration offer contained in the

applicable law or treaty, assessed solely according to conditions relating to the investor, the investment, and the State's consent. Regarding the conditions applied by the tribunal, the Court noted that it had combined Articles 2.1.4 and 20 of LIE, which set conditions for the lawful holding of the asset and regulated the temporal application of the law. The Court found that the assessment of the temporal scope of LIE concerned the merits and was beyond the annulment judge's control. The Court further held that the criticisms regarding UNMIK's acts or the continuity of the investment's legality related to the application of LIE, not the arbitration offer itself. Finally, regarding the modernization expenditures, the Court noted that their qualification required showing that they related to an eligible asset, which the claimant failed to demonstrate.

Accordingly, the Court found that the claimant was effectively seeking a review on the merits. It dismissed his claim, ordered him to bear the costs, and to pay EUR 120,000 to the respondent. In doing so, the Court reaffirmed that the annulment of an arbitral award for lack of jurisdiction cannot serve as a pretext to re-examine the merits or to challenge the application of substantive law.

Contribution by Louise Nicot

England & Wales High Court, *VXJ v FY & Others* [2025] EWHC 2394 (Comm)

On 22 September 2025, the Commercial Court of the High Court of Justice of England and Wales rendered a judgment concerning an application for the disclosure of documents held by a non-participating third party, in the context of an arbitration proceeding and relating to an investment agreement.

The case concerned an arbitration seated in London, governed by the 2013 UNCITRAL Arbitration Rules, between two anonymised parties: on the one hand, a government or government-related entity as Claimant (hereinafter "Claimant"); and on the other hand, a mining company as Respondent 1 (hereinafter "Respondent 1"), which was a subsidiary of another company (hereinafter "Respondent 3"), itself majority-owned by another company (hereinafter "Respondent 2").

The dispute arose from an investment agreement dated 6 November 2009 concerning a valuable minerals mining project. Following the termination of this investment agreement by Respondent 1, the Claimant issued a "Penalty Notice" to Respondent 1 on 10 January 2018, seeking to impose significant taxes and penalties totalling several hundred million dollars, notwithstanding the existence of a contractual tax stabilisation regime. In response, Respondent 1 sought damages corresponding to the aforementioned sums, alleging a contractual breach attributable to the Claimant.

Subsequently, in connection with this claim for breach of contract, the Claimant filed two counterclaims. First, the Claimant alleged that the investment agreement was tainted by corruption involving nine individuals, eight of whom were former officials of the governmental entity it represented. Second, the Claimant argued that Respondent 1 had failed to exercise due diligence in the management of the mining project, resulting in delays.

These counterclaims gave rise to document production requests before the arbitral tribunal, which issued two procedural orders:

- Procedural Order No. 15 (21 January 2025) recognised that Respondents 2 and 3, as the majority shareholders of Respondent 1, were likely to hold documents relevant to the resolution of the dispute. However, Respondent 1 lacked the legal authority to compel its parent companies and majority shareholders to produce such documents. The arbitral tribunal therefore ordered Respondent 1 to "make best efforts" to obtain the documents.

- Procedural Order No. 16 was issued following the refusal of Respondents 2 and 3 to produce documents on the grounds of commercial confidentiality. Due to Respondent 1's inability to secure production, the arbitral tribunal granted the Claimant the right to seek the assistance of the English courts under sections 43 and 44 of the Arbitration Act 1996.

Consequently, the Claimant brought its application for document production before the Commercial Court of the High Court of Justice.

The Claimant argued that the documents requested had been recognised by the arbitral tribunal as relevant and essential to substantiate its allegations of corruption and mismanagement of the project by Respondent 1. Accordingly, the Claimant sought, pursuant to section 43 of the Arbitration Act, a witness summons or, alternatively, an order for the delivery of copies under section 44(2)(c) of the same Act.

The Respondents opposed the application, arguing that it was inadmissible and emphasizing that neither the arbitral tribunal nor the court had jurisdiction to order disclosure of documents against a non-party. They also contended that the Claimant had failed to identify the documents underpinning its request, which the Respondents described as speculative. Moreover, the requested production would have imposed an excessively burdensome and costly search on Respondents 2 and 3, non-parties to the arbitration, including the restoration of a very large archive, whereas the Claimant had not demonstrated that the documents were necessary for the fair disposal of the dispute. Finally, the Respondents submitted that section 44(2)(c) did not apply, as it pertains only to the delivery or inspection of physical property, not the disclosure of information.

The High Court was required to determine the scope of the powers conferred on English courts in support of arbitration under sections 43 and 44 of the Arbitration Act 1996, that is, the extent to which a national court can compel non-parties to the arbitration agreement to produce specific documents or evidence in support of a pending arbitration.

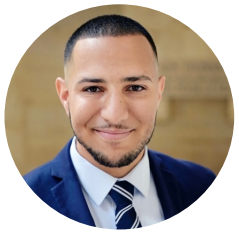
On 22 September 2025, the Commercial Court dismissed the Claimant's application in its entirety.

Regarding section 43 (witness summonses), the judge reaffirmed that the court does not have the power to order general disclosure of documents against a non-party to arbitration. For an order to be made under this section, the Claimant must demonstrate that the documents are specifically identified, necessary, and not merely useful for the fair disposal of issues in arbitration. The judge also considered the excessive burden and cost of compliance for Respondents 2 and 3, including the restoration and search of an inaccessible 2.5-terabyte archive containing investigation documents relating to the alleged corruption.

Regarding section 44(2)(c) (inspection orders), the court rejected this basis, clarifying that the section is intended solely to order the inspection, photographing, or preservation of physical property relevant to the dispute. It does not authorise disclosure of documentary content. Accordingly, the Claimant's request, seeking disclosure of informational content from documents held by a non-party, did not fall within section 44(2)(c).

The Claimant failed to satisfy the strict conditions required to exercise the court's coercive powers against non-parties to arbitration. Although the arbitral tribunal had authorised the request, mere authorisation did not meet the necessity and specificity criteria required by national courts.

This decision serves as a key reminder of the strict framework governing judicial assistance in arbitration, reaffirming that English courts cannot order general document disclosure against non-parties to arbitration. It establishes that assistance is limited to specifically identified documents deemed "necessary" rather than merely "useful" for the fair resolution of the dispute (section 43), and clarifies that section 44(2)(c) covers only inspection of physical property, not disclosure of document contents.



Contribution by Rheda El Hamzaoui

England & Wales High Court, *Kazan Oil Plant v Aves Trade [2025] EWHC 2713 (Comm)*

On 21 October 2025, the Commercial Court of the High Court of England and Wales, led by Mr Justice Bright, ruled on an arbitration appeal concerning the timeliness of an appeal brought under section 69 of the Arbitration Act 1996. The court addressed two conflicting interlocutory applications: the Claimant's request for a declaration that its appeal was commenced in time (or alternatively, an extension under section 80(5)), and the Defendant's application to strike out the appeal as being out of time. The core legal issue revolved around when the 28-day limitation period began to run following an arbitral appeal award rendered under FOSFA rules.

The case arose from a contract for crude sunflower oil concluded on 13 August 2020 between the Claimant (JSC "Kazan Oil Plant"), the Seller, and the Defendant (Aves Trade DMCC), the Buyer. The contract was subject to the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats Association Limited (hereinafter "FOSFA").

A dispute led to FOSFA arbitration, resulting in a first-tier award in favour of the Defendant on 27 March 2024 ("the FTT Award"). The Claimant appealed to the FOSFA Board of Appeal, which issued the Arbitration Appeal Award ("the Appeal Award") dated 26 March 2025.

On 26 March 2025, FOSFA notified the parties that the Appeal Award was available upon payment of outstanding fees, costs, and expenses (an outstanding balance of £20,466.94 was required). The Claimant, a Russian entity, faced difficulties in making this payment due to sanctions. The payment was ultimately made by an intermediary on 8 April 2025, and the Appeal Award was received by the Claimant on 10 April 2025.

The Claimant issued its claim form for the section 69 appeal on 8 May 2025. This date was exactly 28 days after the Claimant received the Appeal Award (10 April 2025), but 43 days after the date of the Appeal Award (26 March 2025).

The Defendant asserted that the section 69 appeal was out of time under section 70(3) of the Arbitration Act 1996 and applied to have the claim struck out. The Claimant filed a counter-application seeking a declaration of timeliness or an extension of time.

The parties' arguments focused on the interpretation of section 70(3) of the Arbitration Act 1996 (pre-2025 amendment):

- The provision states that an appeal must be brought within 28 days of "*the date of the award*" or, if there has been an arbitral process of appeal or review, of the "*date when the applicant or appellant was notified of the result of that process*".
- The Claimant argued that time ran from the date of receipt, 10 April 2025.
- The Defendant argued that time ran from the date of the Appeal Award, 26 March 2025.

The court had to rule on two primary questions:

1. Was the Claimant's claim form issued within time under section 70(3) of the Arbitration Act 1996?
2. If not, should time be extended under section 80(5)?

Interpretation of Section 70(3) (Timeliness)

Mr Justice Bright held that the claim form was not issued within time under section 70(3).

The judge reviewed conflicting or tentative views in previous authorities concerning the application of section 70(3) to appeals arising from two-tier arbitrations like FOSFA and GAFTA. While subsequent case law confirmed that FOSFA/GAFTA appeals *do* constitute an "*arbitral*

process of appeal or review" for the purpose of exhausting recourse under section 70(2), the court found that this did not change how the time limit ran for challenging the final appeal award itself.

The judge explained that any High Court challenge under sections 67, 68, or 69 must relate to an award. The first limb of section 70(3) ("the date of the award") sets out the primary or default position. The second limb (notification of result) applies only when the award being challenged was the subject of an internal arbitral appeal or review, extending the time pending that outcome (e.g., appealing the FTT Award).

Since the Claimant's section 69 appeal related to the Appeal Award (26 March 2025), and there was no available arbitral process of appeal or review in relation to the Appeal Award, only the first limb of section 70(3) applied.

Therefore, time began to run from the date of the Appeal Award, 26 March 2025. This interpretation was consistent with the goal of promoting certainty in time limits, as emphasized by the Advisory Committee of the Department of Industry (DAC). Since the claim was filed 43 days later, it was out of time.

Extension of Time under Section 80(5)

The court refused to grant an extension of time under section 80(5).

The delay of 15 days (from 23 April 2025, 28 days after the award, to 8 May 2025) was judged significant, being over 50% of the entire time allowed.

While the initial delay in receipt (from 26 March to 10 April 2025) caused by sanctions-related payment difficulties was regarded as excusable, the critical factor was whether the Claimant acted reasonably thereafter. The Claimant failed to use the remaining 13 days effectively because its legal advisors mistakenly believed time ran from the date of receipt (10 April 2025).

Mr Justice Bright noted that precedents (*UR Power v Kuok Oils* (2009) and *PEC Ltd v Asia Golden Rice Co Ltd* (2012)) addressing this issue had been adopted by leading textbooks. He distinguished the current case from these precedents, noting that *UR Power* was the first time the issue came before the court, making the mistake potentially excusable then. Given that more than 15 years had passed since *UR Power*, the general professional understanding that time runs from the date of the appeal award in FOSFA/GAFTA cases had become entrenched. The Claimant's error was thus deemed not forgivable.

The Claimant's application failed, and the Defendant's application succeeded. The section 69 claim was struck out.

Contribution by Hidaya El Karamaney

Federal Court of Appeal for the District of Columbia, *Marseille-Kliniken v Equatorial Guinea*, USCA DC Circuit, nº 23-7169

On 23 September 2025, the United States Court of Appeal for the District of Columbia Circuit issued its judgment on an appeal brought by the Republic of Equatorial Guinea against a decision of the United States District Court for the District of Columbia confirming a Swiss arbitral award in favour of Marseille-Kliniken AG. The appeal concerned the scope of subject matter jurisdiction under the Foreign Sovereign Immunities Act (hereinafter the "FSIA") (28 U.S.C. § 1605) and whether the District Court erred in deferring to the arbitral tribunal's interpretation of a contractual requirement to exhaust local remedies before arbitration. The Court of Appeal affirmed jurisdiction under the FSIA but vacated the confirmation of the award and remanded for a *de novo* interpretation of the dispute resolution clause under Article V(1)(c) of the New York Convention.

Marseille-Kliniken AG, a Swiss healthcare company, entered into a contract with the Republic of Equatorial Guinea in 2009 to modernise and eventually operate a medical clinic in the country. After the company invested time and resources in modernising the clinic, Equatorial Guinea refused to permit Marseille-Kliniken to operate it. Marseille-Kliniken initiated arbitration proceedings in Switzerland and obtained an award, which the parties later settled. It then initiated a second arbitration in Switzerland to recover additional damages. In that second arbitration, Equatorial Guinea challenged the jurisdiction of the arbitral tribunal, arguing that the contract's dispute resolution clause, drafted in both Spanish and German, required the exhaustion of local remedies before arbitration could proceed.

More specifically, it argued that the clause first required the parties to attempt amicable settlement, then referred disputes to the courts of Equatorial Guinea, and finally provided for arbitration before the Zurich Chamber of Commerce. Equatorial Guinea argued that this structure codified the customary international law rule requiring exhaustion of local remedies before initiating international arbitration proceedings, relying specifically on *Interhandel* (*Switzerland v. United States*), 1959 I.C.J. 6, at 27 as well as the Restatement (Third) of the Foreign Relations Law of the United States, § 713 comment f.

The arbitral tribunal examined both Spanish and German versions of the dispute resolution clause and found it ambiguous regarding whether exhaustion was mandatory. The tribunal interpreted the clause as allowing arbitration whenever a party objected to submitting the dispute to domestic courts. It reasoned that Equatorial Guinea's interpretation carried risks of producing conflicting enforceable decisions in the same case that could effectively nullify the parties' agreement to arbitrate. The tribunal therefore rejected the jurisdictional objection and awarded Marseille-Kliniken over nine million dollars in damages.

Marseille-Kliniken petitioned the United States District Court for the District of Columbia to confirm the award under the FAA, which requires confirmation of foreign arbitral awards unless a ground for refusal under Article V of the New York Convention applies.

The District Court held that Marseille-Kliniken had established the three jurisdictional elements required by the FSIA (28 U.S.C. § 1605(a)(6)): an arbitration agreement, an arbitral award, and a potentially applicable treaty (here the New York Convention). The District Court treated the local litigation requirement as a procedural condition to arbitration under the Supreme Court's decision in *BG Group, PLC v Republic of Argentina*, 572 U.S. 25 (2014). It therefore deferred to the tribunal's interpretation and confirmed the award.

The Court of Appeal affirmed jurisdiction, holding that Equatorial Guinea's objections concerned the scope, rather than the agreement. Only challenges to the existence or existence of the arbitration

validity of the arbitration agreement can defeat jurisdiction under the FSIA. Furthermore, the Court held that arguments alleging invalidity of the arbitration agreement under domestic law fall within merits defences under Article V(1)(a) of the New York Convention and not jurisdictional defences under the FSIA.

On the merits, the Court of Appeal held that the District Court misapplied the *BG Group* case. It explained that the exhaustion provision in *BG Group* appeared in a bilateral investment treaty where domestic court decisions did not bind the arbitral tribunal and where arbitral awards were expressly "final and binding". The local litigation requirement in *BG Group* was therefore a procedural sequencing rule.

In the present case, the dispute resolution clause appeared in a contract governed by domestic law, either that of Equatorial Guinea or Switzerland. Both parties agreed that any judgment issued by Equatorial Guinea's courts on the contract claims would bind the arbitral tribunal. Arbitration would then be limited to potential denial of justice claims under international law. The clause therefore carried substantive consequences for the scope of arbitrable disputes. Under Article V(1)(c) of the New York Convention, questions concerning the scope of what may be submitted to arbitration fall to courts, not arbitrators.

The Court also rejected the possibility that the parties had delegated arbitrability questions to the arbitral tribunal. Applying *First Options of Chicago Inc. v Kaplan*, 514 U.S. 938 (1995), it held that there was no clear and unmistakable delegation. Although the clause referred to arbitration before the Zurich Chamber of Commerce, it did not incorporate institutional rules granting *Kompetenz-Kompetenz*. Under Article 182 of the Swiss Private International Law Act, procedural rules may be designated case-by-case, and in this arbitration the rules were selected only later by procedural order.

Equatorial Guinea urged the Court of Appeal to interpret the clause itself and find that exhaustion was required, but the Court declined, citing unresolved questions concerning applicable law, interpretive methodology, admissibility of extrinsic evidence, and potential applicability of Equatorial Guinea's Foreign Investment Law. These issues had not been addressed by the District Court.

The Court of Appeals therefore vacated the confirmation of the award and remanded the case for a *de novo* interpretation of the dispute resolution clause and reconsideration of enforceability under the FAA and the New York Convention.

Contribution by Mohamed Hamaima

Supreme Court of the Netherlands, *Federation of Russia v Hulley Enterprises Ltd, Yukos Universal Ltd and Veteran Petroleum Ltd*, 17 October 2025, nº 24/01964

By a judgment dated 17 October 2025, the Supreme Court of the Netherlands dismissed the appeal in cassation lodged by the Russian Federation against the judgment delivered by the Amsterdam Court of Appeal on 5 November 2021.

The Supreme Court held that, in accordance with Article 130 of the Dutch Code of Civil Procedure, no remedy may be brought against a decision based on that provision. Accordingly, it dismissed the claim of fraud relied upon, on the ground of ensuring the proper conduct of the proceedings.

In the present case, companies established in Douglas, on the Isle of Man (hereinafter the "foreign investors") were shareholders in another company, an oil company, established in a State (hereinafter the "host State"). UNCITRAL arbitration proceedings were commenced in 2004 on the basis of Article 26 of the Energy Charter Treaty (hereinafter the "ECT") by the foreign investors against the host State, claiming that, in breach of Article 13(1) of the ECT, they had been expropriated of their investments by the latter.

In its three final awards, the arbitral tribunal dismissed the objections raised by the host State and held that the latter had breached Article 13(1) of the ECT and ordered it to pay more than fifty billion US dollars by way of damages to the foreign investors.

The host State then sought the setting aside of these arbitral proceedings on account of an alleged breach of public policy caused by those proceedings, pursuant to Article 1065(1) of the Dutch Code of Civil Procedure (hereinafter the "DCPC"). The court of first instance upheld that application on the ground of the absence of a valid arbitration agreement.

The investors appealed against that judgment to The Hague Court of Appeal, the host State having in particular put forward elements of fraud committed by the foreign investors during those arbitration proceedings. The Court of Appeal, by a judgment setting aside the initial judgment on 18 February 2020, annulled the first-instance judgment and dismissed the host State's claims.

By a judgment dated 5 November 2021, the Supreme Court of the Netherlands quashed the decision delivered by The Hague Court of Appeal and remitted the case to the Amsterdam Court of Appeal.

In its appeal in cassation and before the Amsterdam Court of Appeal, the host State relied on a ground of fraud during the arbitration proceedings to justify the annulment of the arbitration proceedings.

The Supreme Court had held that, in accordance with Article 1064(5) DCPC, the grounds on which the claimant intends to base its action for annulment must be set out in the originating writ of summons. It had also held that the possibility of developing on appeal the grounds already put forward in the writ of summons, or of presenting new factual allegations, is accepted but is not completely unrestricted.

That possibility is limited by the ordinary rules applicable to appeals, in particular Article 130 DCPC, and by specific provisions which set out the point in time at which a particular ground for annulment must be relied upon for the first time.

Thus, the interest in legal certainty protected by Article 1068(2) is not undermined where a ground based on public policy is subsequently specified, in the course of the annulment proceedings, by a ground based on fraud. The purpose of that Article does not imply that, in annulment proceedings, reliance on fraud must necessarily be made within the period referred to in that provision.

It concluded by stating that, as regards the application of Article 130(1) DCPC, it must be assessed whether the presentation of a new line of argument, intended to substantiate a ground for annulment already relied upon in the originating writ of summons, runs counter to the requirements of proper conduct of the proceedings, where that new line of argument was not put forward earlier. A conflict with the requirements of proper conduct of the proceedings within the meaning of Article 130(1) DCPC may arise, in particular, where the further development occurs after the first pleading or the first document filed after the discovery of the fraud.

The Amsterdam Court of Appeal disagreed with the Supreme Court and set aside the first-instance judgment again by a judgment delivered on 20 February 2024. In that judgment, the Court held that, as the investors had argued, the statement was indeed made well after the disclosure of the fraud, and not in the first document filed after the discovery thereof.

The Court of Appeal held that, according to the host State's own assertions, the alleged fraud, which concerned the filing of false statements, the concealment of documents relevant to crucial points in dispute in the arbitration proceedings, and the making of secret payments to one of the main witnesses, had been discovered in 2015 or 2016, in the course of the first-instance proceedings. The host State confirmed this in its statement of defence on appeal of 28 November 2017.

The Court of Appeal could only find that the alleged fraud was already known to it at first instance. The host State therefore did not rely on that fraud at first instance when it developed the grounds for annulment on which it relied.

It did not put forward anything to suggest that it was unable to do so or that there was, in that regard, a sufficient reason for refraining from doing so. In the Court's view, it is therefore contrary to the requirements of proper conduct of the proceedings to present such a development only at the stage of the statement of defence on appeal, when it was already required to do so at first instance.

As a result, the judgment could only be set aside a second time.

The Supreme Court analysed that line of argument, by which the Court of Appeal held that the ground based on fraud relied on by the host State is contrary to the requirements of proper conduct of the proceedings and must, for that reason, be left out of consideration. It held that, where the ground based on fraud is contrary to the requirements of proper conduct of the proceedings within the meaning of Article 130(1) DCPC, then, in accordance with Article 130(2) DCPC, no remedy lies against a decision of the court based on Article 130(1) DCPC. The Supreme Court therefore had no choice but to dismiss the appeal in cassation brought by the host State, and to order it to pay the costs.

By this judgment, the Supreme Court of the Netherlands clarifies a Dutch procedural requirement to the effect that a ground contrary to the requirements of proper conduct of the proceedings is not amenable to any remedy (Article 130 DCPC).

On the issue of fraud in the field of investment arbitration, reliance will have to be placed on the case-law of the Amsterdam Court of Appeal, which indeed held that it is contrary to the requirements of proper conduct of the proceedings to present a new line of argument intended to substantiate a ground for annulment where the further development occurred after the first pleading or the first document filed after the discovery of the fraud.

Contribution by Fouad El Hage

District Court of The Hague, *Gazprom International Ltd v JSC DTEK Krymenergo and the Russian Federation*, ECLI:NL:RBDHA:2025:16440, 5 September 2025

New episode in the saga of enforcement measures against Gazprom International Ltd (hereinafter, "Gazprom") in the Netherlands

In a judgment dated 5 September 2025, the interim relief judge of the District Court of The Hague (hereinafter, the "interim relief judge") dismissed the appeal against the conservatory attachment of shares held by Gazprom, which is majority-controlled by the Russian Federation (hereinafter, "Russia"), formed by the Ukrainian company JSC DTEK Krymenergo (hereinafter, "DTEK").

On the facts, on 1 November 2023, the Ukrainian company DTEK obtained an award from an arbitral tribunal under the auspices of the Permanent Court of Arbitration (PCA Case No. 2018-41) to order Russia to pay USD 207,800,000 in damages, in addition to the payment of procedural costs and interest, on the basis of the 1998 bilateral investment treaty between Russia and Ukraine (hereinafter, the "award"). As Russia refused to voluntarily comply with the award, DTEK initiated enforcement proceedings in the United States, England and the Netherlands. For its part, Russia initiated annulment proceedings before the Court of Appeal in The Hague on the basis of the alleged lack of jurisdiction of the arbitral tribunal to rule on the dispute.

In the context of the judgment discussed here, DTEK attached Gazprom's shares in the Dutch company Wintershall Noordzee B.V. (hereinafter, "Wintershall") on the basis of Article 435(3) of the Dutch Code of Civil Procedure (hereinafter, the "DCCP"). More specifically, DTEK justified its attachment on the grounds that Gazprom could be equated with Russia, or was abusing the difference in identity between itself and Russia: in other words, Gazprom was an emanation of Russia.

On 22 and 24 July 2025, Gazprom filed an objection to DTEK's attachment of the shares. Before the interim relief judge, Gazprom raised several grounds to challenge the conservatory attachment of its shares in Wintershall. These grounds can be grouped into five main categories: (i) the irregularity of DTEK's notification of the attachment, (ii) the characterization of Gazprom as an emanation of Russia, (iii) the invocation of Russia's sovereign immunity, (iv) the statute of limitations on DTEK's claim, and (v) the damage suffered by Gazprom as a result of the conservatory attachment. We will focus here in detail only on the second and third arguments, which form the main contribution of this decision.

The first ground was quickly dismissed on the grounds that the texts do not sanction the incorrect notification of attachment measures with nullity but with damages. In any event, as the interim relief judge pointed out, it did not appear that Gazprom or Russia suffered any damage, and DTEK justified it having satisfied all the legal requirements for notification of the attachment to all stakeholders.

With regard to the second ground, Gazprom put forward two arguments in support of its appeal: (a) Article 435(3) of the DCCP does not allow attachments against an emanation, (b) Gazprom cannot in any event be classified as an emanation of Russia. Before ruling on these arguments, the interim relief judge began by pointing out that, in accordance with Article 705(2) of the DCCP, the attachment would be lifted if the right of recourse against the attached debtor was manifestly inadmissible or if the attachment was manifestly unnecessary.

This first argument was quickly dismissed by the interim relief judge on the grounds that nothing in the law, parliamentary proceedings or case law allows it to be asserted that Article 435(3) of the DCCP, by way of exception to Article 3:276 of the Dutch Civil Code (hereinafter, the "DCC"),

according to which a creditor may only recover his debt from his debtor, is limited to three specific situations (attachment of immovable property by the tax authorities, attachment by a creditor with a right of retention and attachment where the third party being attached refuses to pay).

With regard to the second argument, the interim relief judge agreed to apply Russian law insofar as it is the State in which the company is incorporated, in accordance with the conflict of laws rules set out in Articles 10:118 and 10:119 of the DCC. However, the argument was rejected insofar as, in view of the expert opinions on Russian law provided by the parties, it had not been demonstrated that the assertion that Gazprom is an emanation of Russia was manifestly unfounded, even though the interim relief judge conceded that Russia, through intermediary companies, only has a very slight majority (50.23% of the shares) in Gazprom.

It is interesting to note that immediately after ruling in this regard, and in an *obiter dictum*, the interim relief judge added that the outcome would have been different under Dutch law ("[...] *assessed in the light of Dutch law, this does not seem conceivable*"). This solution can be explained by the reasoning given later in the decision concerning the question of whether the shares were owned by Russia. In fact, in this reasoning, the interim relief judge emphasised the fact that (1) the parent company was founded by Russia, (2) Russia plays a decisive role in appointing the parent company's directors, and (3) decisions at the parent company's general meeting are taken by simple majority (and Russia owns the majority of the parent company's shares, which indirectly holds 100% of Gazprom).

Next, the third argument based on Russia's sovereign immunity was decided in light of the landmark *Samruk* case (Supreme Court of the Netherlands, 18 December 2020) and Article 19(c) of the United Nations Convention on Jurisdictional Immunities of States and Their Property. The interim relief judge also pointed out that, in interim relief proceedings, the attaching creditor must simply make a plausible case that the disputed shares are owned by Russia and are being used for commercial purposes. As mentioned above, the interim relief judge considered that the shares were owned by Russia in view of the latter's control over Gazprom. With regard to commercial use, the judge relied upon a number of factors: (1) Gazprom, its parent company and Wintershall are all commercial companies whose corporate purpose is to market oil and gas for profit, (2) Russia is not the sole shareholder of Gazprom, (3) Gazprom's parent company had not paid dividends for several years, and (4) in any event, even if dividends were paid, it has not been established that Russia would use them to pursue an objective of public interest.

Next, the fourth argument based on the alleged statute of limitations of the claim was summarily dismissed on the grounds that this assertion was not sufficiently substantiated.

Finally, the fifth and final argument was also quickly dismissed by the interim relief judge on the grounds that Gazprom, which claimed that the seizure would cause it significant harm insofar as the seized shares were to be sold to a third party, had not demonstrate why it would be unable to provide alternative security, in particular by the placing of the proceeds of the sale in escrow.

Having rejected all of Gazprom's arguments, the interim relief judge therefore dismissed the application for the attachment to be lifted and ordered Gazprom to pay the legal costs.

It is probably best not to attach too much general importance to this judgment. Indeed, as the interim relief judge pointed out on several occasions, his reasoning is based on the specific (and more flexible) rules of evidence applicable to interim relief proceedings. In this regard, it is worth noting that in the other cases relating to enforcement measures between Gazprom and Ukrainian companies mentioned in the introduction (see the *Zhyvna* and *Slavutich-Invest* cases), the interim

relief judge initially rejected Gazprom's requests for the attachment to be lifted. However, the trial judge subsequently refused to recognise and enforce the Ukrainian judgments on the grounds of sovereign immunity, ordering the release of the attachments.

Contribution by Adrien Bach

Commercial Court of the District of Moscow, 17 October 2025, nº F05-17361/2025, *Wintershall v Russia*

The German company Wintershall Dea GmbH initiated an investment arbitration against the Russian Federation under the Energy Charter Treaty, in connection with Russian Presidential Decrees No. 965 of 19 December 2023 and No. 966 of 12 December 2023, concerning the adoption of economic measures in the energy and fuel sectors (these decrees constitute Russian countermeasures in response to restrictive measures imposed by the European Union).

The arbitration was conducted under the auspices of the Permanent Court of Arbitration, pursuant to the UNCITRAL Arbitration Rules. The arbitral tribunal was composed of Mr. Hamid Gharavi, Mr. Charles Poncet, and Ms. Olufunke Adekoya.

In response to the initiation of these proceedings, the Prosecutor General of the Russian Federation brought an action before the Russian courts under Article 248.2 of the Russian Code of Commercial Procedure (hereinafter "CCP"; the term "commercial" is used to avoid any confusion with the Russian notion of *arbitrazh*), seeking an injunction requiring the investor to terminate the arbitration. He also requested that the arbitrators be prohibited from continuing the proceedings, including by soliciting submissions from the parties, examining evidence or documents, issuing decisions, holding hearings, or, more generally, undertaking any act in furtherance of the arbitration. Following these developments, one of the arbitrators, Mr. Hamid Gharavi, resigned from his position on the tribunal.

The Commercial Court of the City of Moscow initially issued, on a provisional basis (as a conservatory measure), an anti-suit injunction, before confirming this measure on a definitive basis by Decision No. A40-92702/2025 of 9 September 2025. The court ordered the investor and the arbitrators (jointly and severally) to cease all continuation of the arbitration proceedings, under penalty of a fine of €7.5 billion in the event of non-compliance. This measure, however, did not apply to the Permanent Court of Arbitration, as the Prosecutor General did not seek an injunction against it.

Somewhat surprisingly, it was neither the investor nor the arbitrators who challenged this decision, but the Russian Ministry of Energy, which had been called to participate in the proceedings as a third party. In its appeal, the Ministry of Energy criticised the court's decision, arguing that the judge had failed to provide sufficient reasoning to justify the issuance of the injunction. According to the Ministry, the court did not evaluate the arguments or the evidence submitted in the case file, particularly concerning the alleged close and inseparable ties between the arbitrators and the so-called "hostile States". The Ministry further contended that it had not been demonstrated that the arbitrators possessed personal traits or were subject to obligations that would preclude their ability to render impartial justice with respect to the Russian Federation, nor that the continuation of the arbitration under the auspices of the Permanent Court of Arbitration would be incompatible with international principles of neutrality and impartiality.

By its decision of 17 October 2025, the Commercial Court of the Moscow District dismissed the appeal brought by the Russian Ministry of Energy and confirmed the previously issued anti-suit injunctions.

Several aspects of the court's reasoning merit particular attention.

From a procedural standpoint, the court confirmed that, under the CCP, the Prosecutor General's powers were expanded by Federal Law No. 387-FZ of 7 October 2022. This legislative amendment grants the Prosecutor General the authority to bring an action aimed at protecting the legitimate interests of the Russian Federation, including in the

context of proceedings initiated against it that are deemed contrary to international law, provided that the participants in such proceedings comply with the sanctions regime imposed on Russia.

This represents a novel issue. Indeed, until now, requests for anti-suit injunctions primarily concerned disputes between private entities, whether in judicial proceedings or commercial arbitrations outside of Russia. The decision highlights that the State itself may invoke these legal instruments, as provided under the Lugovoy Law, to defend itself in the context of international proceedings brought against it.

On the merits, the Russian court set out in detail the reasons as to why the ongoing arbitration proceedings allegedly fail to meet the requirements of independence and impartiality.

More generally, the court emphasised that: "*according to the meaning of the aforementioned provision,* [Article 248.1, paragraph 4 of the CCP], *the mere application of restrictive measures already creates obstacles to access to justice for the Russian party, such that a unilateral expression of its will, made in procedural form, is sufficient to transfer the dispute under the jurisdiction of the Russian arbitration courts*". In this context, the court further noted that: *"[t]he imposition by foreign States of restrictive measures (bans and individual sanctions) against the Russian Federation and its residents affects their rights, at least in terms of reputation, and thereby deliberately places them at a disadvantage compared to other persons*".

Notably, even though the Russian Federation is no longer a member of the Council of Europe, and in particular of the European Convention on Human Rights, the court cited the jurisprudence of the European Court of Human Rights to support the view that Russia would be deprived of access to justice in the context of the sanctions imposed upon it.

In this context, the Russian court emphasised that the Permanent Court of Arbitration does not constitute a forum where Russia could effectively assert its rights, on the basis that certain representatives of the PCA openly expressed an anti-Russian stance.

With respect to the arbitrators, the court again referred to the jurisprudence of the European Court of Human Rights, as well as Article 9 of the UNCITRAL Rules and the International Bar Association (hereinafter "IBA") Guidelines on Conflicts of Interest, to support the view that the appointed arbitrators would objectively lack independence. Furthermore, the court cited Swiss and arbitral case law to show that the expression of an opinion against nationals of a country, or participation in the signing of a document accusing a State of aggression, may constitute an indication of a lack of independence and impartiality on the part of the arbitrator.

The court made several observations concerning the arbitrators.

Regarding Mr. Charles Poncet, he was criticised, in particular, for having sat as arbitrator in cases against Russia, including the Yukos case, which was interpreted as indicative of an anti-Russian stance. He was also reproached for having been challenged in a case against Iran on the grounds of purported bias against Muslims, a point deemed relevant given the presence of Muslim populations in Russia. Finally, the court concluded that Mr. Poncet lacked the moral qualities required to sit as an arbitrator, in light of reasoning adopted by the ICSID annulment tribunal in Rockhopper Exploration v. Italy, related to an alleged lack of independence and impartiality.

With respect to Ms. Olufunke Adekoya, the court noted that she is a member of the IBA Online Services Committee. The IBA, it was observed, had adopted numerous resolutions critical of the Russian Federation, which was interpreted as indicative of an anti-Russian stance on the part of the arbitrator, and thus a lack of independence and impartiality.

Commentary: This case is of a truly unprecedented nature, as it directly involves the interests of the Russian Federation – not indirectly due to actions attributable to it that gave rise to contractual disputes arising from economic sanctions, but rather because it concerns a direct challenge to legislative acts adopted by the Russian authorities.

The case gave rise to a particularly elaborate reasoning on the part of the judges, with a decidedly international scope, drawing upon numerous references to both binding sources of international law and soft law instruments, in order to provide a legal foundation for the issuance of the anti-suit injunction.

The judgment also highlights the presence of an absent consideration. Although the court cited a major decision of the Supreme Court of the Russian Federation, which presumes a lack of independence and impartiality on the part of arbitrators from jurisdictions recognised as hostile (Supreme Court of the Russian Federation, decision of 26 July 2024, No. 304-ЭС24-2799), it did not adopt the reasoning of the Constitutional Court of Russia, which had explicitly held that there can be no automatic presumption that any judicial or arbitral proceeding conducted abroad is necessarily tainted by injustice. On the contrary, the Constitutional Court ruled that, in each individual case, the specific circumstances demonstrating that a foreign judge or arbitrator would be unable to administer justice in a fully independent and impartial manner must be carefully established (Constitutional Court of Russia, decision No. 2269/15-01-2025 of 29 April 2025). Whether the omission of this decision was deliberate or not, the highly political nature of the case led the court to develop a particularly sophisticated reasoning compared to other decisions it had rendered in the past, although some of its conclusions appear, in certain respects, arguably stretched.

Contribution by Iulian Chetreanu

Court of Justice of the European Union, *RFC Seraing SA v FIFA*, Case C-600/23

On 01 August 2025, the Court of Justice of the European Union (hereinafter the "CJEU") handed down a significant judgement relating to sports arbitration and specifically arbitral awards of the Court of Arbitration for Sport (hereinafter the "CAS"). This decision is being called the "*Achmea of sports arbitration*" given the significance it may have on CAS awards having effect within the EU since CAS awards are usually seated in Switzerland, i.e. a third country.

The CJEU judgment was a request for a preliminary ruling from the Belgian *Cour de cassation*. In essence the CJEU was asked the following question: should the *res judicata* effect attaching to a CAS award be disregarded because the court which reviewed the award is seated in a third country and cannot make a preliminary reference to the CJEU, therefore depriving the applicant of judicial protection granted under EU Law?

In the case at hand, the football club, RFC Seraing, entered into third-party ownership agreements with Doyen Sports, a Maltese company. These agreements stipulated that Doyen Sports were entitled to a percentage of a football player's economic rights, i.e. a percentage of a future transfer fee. The concept of third-party ownership in football is very similar to third-party funding in arbitration, in that a third party 'invests' and thereafter is entitled to a share of a future sum (here, a transfer fee). However, third-party ownership was banned by FIFA and accordingly, once FIFA became aware of the agreements in place between RFC Seraing and Doyen Sports, it imposed a transfer ban and a fine on the football club.

The football club exhausted all judicial remedies in Switzerland. First, at the FIFA Disciplinary Committee, then at an appeal to the FIFA Appeals Committee, as well as a further appeal to the CAS, and then finally to the Federal Supreme Court of Switzerland. Simultaneously, there were concurrent proceedings in Belgium where the football club is based. However, the Brussels Commercial Court had initially refused jurisdiction, and that decision was appealed to the Brussels Court of Appeal. Once more, the football club lost and as such, appealed to the Belgian *Cour de cassation*.

Before the Belgian courts, the football club alleged infringement of EU law pertaining to fundamental freedoms of the internal market, competition law, and judicial protection. The fundamental freedoms alleged to have been breached by the banning of third-party ownership were the free movement of services, the free movement of workers, and the free movement of capital. The alleged competition law breaches were based on Article 101 TFEU, considering that an agreement between FIFA and UEFA constituted a restriction on competition. It was also based on Article 102 TFEU considering that FIFA holds a dominant position in the market and that it was abusing that dominant position. For clarity, the CJEU did not examine whether or not the FIFA ban on third party ownership was in breach of EU law.

The fact that neither the CAS nor the Federal Supreme Court of Switzerland have the ability to refer preliminary references to the CJEU was seen by the latter as having major implications for the judicial protection and for the application of EU law. Indeed, there is no mechanism for a CAS award involving EU public policy to be reviewed by an EU court capable of making a preliminary reference, which would ensure the uniform interpretation of EU law and maintain judicial dialogue between the CJEU and Member States courts.

As such, because of the nature of the case, the CJEU itself did not rule on the underlying dispute pending before the Belgian courts. Instead, the CJEU answered the questions referred to it by the Belgian *Cour de cassation*. In doing so, the CJEU held that Article 19 TEU, regarding judicial protection, read together with Article 267 TFEU, regarding the preliminary reference procedure, and Article 47 of the EU Charter of Fundamental Rights, regarding the right to an effective remedy and to a fair trial, precludes the application of *res judicata* to CAS awards.

This decision can be seen as yet another chapter in the collision of two legal orders, between international arbitration and EU law. The *Achmea* and *Komstroy* decisions rendered by the CJEU already established that intra-EU investment treaty arbitration is incompatible with EU law. Now, in sports arbitration, this decision, combined with *International Skating Union*, illustrates the friction between CAS arbitration and EU law, as the EU seeks to maintain the primacy of its law. It is noteworthy that since the *European Super League* and *International Skating Union* decisions, UEFA has amended its Authorisation Rules, allowing an alternative seat in Dublin, Ireland, so that the arbitration can be held within the EU. In terms of the football industry this judgment may rank alongside *Bosman*, *European Super League* and *Diarra* as the most significant court decisions affecting the industry.

Looking ahead, one could imagine the emergence of two "categories" of CAS awards: those seated within the EU, which would have access to EU courts for matters touching on EU public policy, and those seated outside it. Such a dual system would inevitably mean that EU-based parties enjoy enhanced judicial protection compared to non-EU parties, creating an uneven playing field and raising serious concerns regarding legal certainty and the finality of arbitral awards.

Contribution by Padraic Mc Cafferty

INTERVIEW WITH AZUL GIMENEZ LOSANO

1. To begin with, can you tell us about your professional journey and what led you to specialise in international arbitration?

My journey began in Buenos Aires, Argentina, where I studied law at the University of Buenos Aires. I intentionally and intently chose that university because it has a strong focus on international law, in particular public international law, and is a public university with enormous prestige in both Argentina and internationally.

From the start of my studies, I was introduced to private international law, which I hadn't even known existed as a separate field, and I was immediately drawn to it. I decided to combine my interest in both public and private international law and started working on research projects, such as the regulatory framework for South America's investments. That is how I secured my first job as a Teaching Assistant in private international law, working alongside with renowned Professors from my university.

While at university, I also worked as a legal researcher at an NGO and began participating in arbitration-related Moots. During my second Moot, I met a coach–who has since become my mentor–who suggested and encouraged me to apply to one of Argentina's leading law firms. As a result, after my second Moot, I started working as an associate in the Arbitration and Complex Litigation department of this law firm, which really set me on this path. I now work at the International Chamber of Commerce in Paris as a Deputy Counsel.

2. Were there any unexpected turning points or influences during your studies at the University of Buenos Aires – or elsewhere – that shaped your interest in international arbitration? If you had any doubts along the way, what ultimately convinced you to pursue this path?

My participation in the *Concours d'Arbitrage International de Paris* (CAIP) Moot was decisive. Prior to the Moot, I did not have any particular connection to arbitration, but I knew that I had a strong interest in research, international law, and learning languages. One of my professors, while discussing career experiences after class, told me there was a French arbitration Moot–the CAIP–that would allow me to explore my interests, while deepening my knowledge of a new field. Because of her encouragement and support, I decided to apply.

The Moot experience changed everything. It introduced me to arbitration, and everything unfolded quite naturally from there: more research, more involvement with international law, and a growing interest in arbitration itself.

My trips to Paris in connection with the Moot, first as a student and later as a coach, were particularly decisive moments. The first time, as an Argentinian student, having the opportunity to travel to Paris and plead in French was truly transformative. The second time, returning as a coach, marked the culmination of years of effort and teamwork. Looking back, those moments

marked the beginning of friendships, collaborations, hard work, and challenges that have shaped my path ever since.

3. What attracted you to the ICC International Court of Arbitration, and how does it align with your professional goals?

Working at the ICC felt like a natural next step for my career. It was a path that I really wanted to pursue for a long time. I had built a solid research foundation through university projects and my work at the NGO and then gained hands-on experience at a law firm. I wanted a role that would combine these experiences with my interest in arbitration.

In a way, the ICC has become the third pillar of my professional development: first, the NGO perspective, then private practice at a law firm, and now working within an international institution. And not just any institution: the International Chamber of Commerce. When I first visited the ICC for a CAIP practice round, I remember thinking, this is where I want to be. Years later, I am very grateful to be here.

I was drawn to the role of Deputy Counsel as it involves overseeing and managing cases, while maintaining constant communication with arbitrators and parties. Our primary responsibility is to lay the foundations for the arbitration and then constitute the arbitral tribunal, subsequently assisting in ensuring the best possible conduct of the proceedings.

4. How does working at the ICC compare to your previous experiences in arbitration or related legal work?

I believe that most skills are transferable, one simply needs to understand how to apply them in different contexts. A simple example comes to mind: I played the clarinet for many years, and learning how to fit your note within an orchestra–knowing when to stand out, when to fade into the background–is actually very similar to being a lawyer. You must understand the situation, the broader structure, and how your contribution should come in.

In practice, being methodical, organized, and open to different arguments and perspectives has helped me in every role, whether at a law firm or at the ICC. I don't think there is one specific skill that only applies to one environment; it's more about adapting those core abilities to each situation. Working with many cases, managing time, and keeping track of different procedural stages were already part of my previous experience, and they remain essential now.

At the ICC, in particular, my current role as Deputy Counsel has exposed me to different jurisdictions, different working styles, and different types of cases. It's been very interesting to learn about jurisdictions that were previously unfamiliar to me, while also deepening my practice with Latin American cases. I can see how arbitration is practised across the world–all in the same institution. It strongly reinforces the international dimension of arbitration.

5. In what ways, if any, has your work at the ICC given you new perspectives on arbitration — for example, regarding specific topics, procedural challenges, or common issues?

Working at the ICC has deepened my appreciation for how essential procedure really is. I had a professor who always emphasized that, even with strong legal arguments, a case may be won or lost on procedure. While the consequences in arbitration may differ from those in litigation, they are still significant. Indeed, different does not mean non-existent. The procedural dimension is still there in arbitration, and it can play a crucial role.

Many procedural issues are aspects you only learn through years and years of practice. But at the ICC, you can learn about many of them in months. The ICC offers a unique perspective and can give you a richer understanding of what to look out for.

6. Drawing on your time as a teaching assistant in private international law and as a moot

coach, what is one piece of practical advice you consistently give students and young professionals?

I am at an early stage of my career, but I can try to pass on what my mentors–and my family–have taught me. I think that the most important thing is to have, know, and respect your pillars. By that, I mean academic pillars, professional pillars, but also personal ones, based on your ethics. They will ultimately be the foundation and serve as your compass while navigating through your personal and professional journey.

Once you identify your pillars, the next step is perseverance. For me, perseverance means working toward your goals while staying true to your values and taking actions that are aligned with them. It also means being open to other opinions and feedback, really listening to mentors, supervisors and co-workers. While being true to your pillars, you can allow your professional path to evolve based on what you learn from others. This piece of advice goes hand in hand with being adaptable.

Another aspect of perseverance, and something I speak about often with students, is learning to cope with frustration. For example, when I participated in the CAIP Moot for the first time, we didn't win. It was extremely frustrating, particularly because it was the middle of the Covid pandemic, and everything felt uncertain. But I applied again the following year. We didn't win then either, although we reached the semi-finals and received the award for Best Memorial on both Claimant and Respondent sides. I participated a third time, this time as Head Coach, and we won the CAIP Moot. These experiences–and the mentors and colleagues who guided me–gave me the ability to appreciate the importance of perseverance, cope with frustration, and helped shape me into the person I am today.

NEXT MONTH'S EVENTS

4th December 2025: CIArb Alexander Lecture on the theme of "Arbitrating in an Age of Legal Fracture: Guarding the Realm and System Recalibration"

Organised by Chartered Institute of Arbitrators

Where? London & Online

Website: https://www.ciarb.org/events/alexander-lecture-2025/

18th December 2025: ICC YAAF: Winter Holiday Arbitration Quiz

Organised by ICC Young Arbitration and ADR Forum

Where? Freshfields, 9 Avenue de Messine, 75008 Paris

Website: https://events2go.iccwbo.org/event/icc-yaaf-winter-holiday-arbitration-quiz#tab-2891

INTERNSHIP AND JOB OPPORTUNITIES

LAW PROFILER

INTERNSHIP
A&O SHEARMAN

INTERNATIONAL ARBITRATION
Start date: January 2027
Duration: 6 months
Location: Paris

INTERNSHIP
WATSON FARLEY & WILLIAMS

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

INTERNSHIP
NORTON ROSE FULBRIGHT

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