Journal of International Arbitration

Wolters Kluwer
Law & Business

Published by *Kluwer Law International*
P.O. Box 316
2400 AH Alphen aan den Rijn
The Netherlands

Sold and distributed in North, Central and South America by *Aspen Publishers, Inc.*
7201 McKinney Circle
Frederick, MD 21704
United States of America

Sold and distributed in all other countries by *Turpin Distribution*
Pegasus Drive
Stratton Business Park, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom

ISSN 0255-8106

This journal should be cited as (2011) 28 *J. Int. Arb.* 3

The *Journal of International Arbitration* is published six times per year.
Subscription prices for 2011 [Volume 28, Numbers 1 through 6] including postage and handling:
Print subscription prices: EUR758/USD1010/GBP557
Online subscription prices: EUR702/USD935/GBP516 (covers two concurrent users)

This journal is also available online at www.kluwerlawonline.com.
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The *Journal of International Arbitration* is indexed/abstracted in the *European Legal Journals Index*.

Printed on acid-free paper

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ISSN 0255-8106 Mode of citation: 28 J.Int.Arb. 4

Journal of International Arbitration **28(4)**: 371–380, 2011.

The New French Law on International Arbitration

Beatrice Castellane★

French international arbitration law achieved a higher pro-arbitration level with the new Decree No. 2011-48 of January 13, 2011. The new provisions come into force after May 1, 2011. This is the first comprehensive reform of French international arbitration law since the adoption of the pre-existing legal framework of 1981. French case law, which provided a well-structured basis for this decree, proposed numerous pragmatic solutions to problems encountered in international arbitration. This new decree codifies previous significant French case law while also providing novelties, innovations such as the possibility for the parties to waive by express agreement the annulment of the award any time they choose; the one-month time period after notification of the award to request annulment; the enforceability of the award notwithstanding an action to set aside or an appeal against an enforcement order.

I. Introduction

French arbitration law underwent a full overhaul in 1980 for domestic arbitration, and 1981 for international arbitration, to make it compatible with the necessities of contemporary arbitration practice, which could no longer be regulated by incomplete and outdated provisions made by the Napoleonic legislator of 1806. Twenty-five years later, the Comité français de l'arbitrage proposed a new regulatory framework[1] to further improve the pro-arbitration policy stance of French arbitration law. The result of this effort is now embodied in the Decree of January 13, 2011,[2] which introduces Articles 1442 to 1527 in the Code of Civil Procedure. These new provisions, which came into force on May 1, 2011, will make the contents of French arbitration law more readily accessible to foreign practitioners.[3]

This note will only focus on the international arbitration provisions of the 2011 Decree (Articles 1504 to 1527) in order to provide information about the major changes which have been introduced.

II. A Gain in Clarity: Codifying Existing Case Law

French international arbitration law traditionally rests on case law with judge-made solutions which are directly applicable irrespective of the solution which would have otherwise resulted from the application of the national law determined by the conflict of

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[1] Jean-Louis Devolvé, *Présentation du texte proposé par le comité français de l'arbitrage pour une réforme du droit de l'arbitrage*, 2006 Rev. Arb. 491.

[2] Decree of January 13, 2011, published on January 14, 2011 *in* Journal Officiel de la République, NOR JUSC1025421D. An official translation of the 2011 Decree is *available at* <www.legifrance.gouv.fr>.

[3] Emmanuel Gaillard, *France Adopts New Law on Arbitration*, N.Y.L.J. 175 (No. 3, 2011).

law rules. Such judge-made rules, which are known as rules of substantive law as opposed to conflict of law rules, are a hallmark of French international arbitration law. Familiarity with the existence and contents of such unwritten rules is, however, reserved to arbitration practitioners who have an exposure to French law. France is one of the preferred situs for international arbitration,[4] and the French arbitration community was strongly motivated to disseminate the existence of these rules and clarify the status of the law.

A. Arbitration agreement: autonomy and structure

The separability of the arbitration agreement from the underlying contract, which aims at protecting the jurisdiction of the arbitral tribunal from referring the validity of the underlying contract, if challenged, to the state courts, is a fundamental tenet of contemporary arbitration law.[5] This has also been a feature of French international arbitration law since 1963 when the Cour de cassation (the highest judicial court in France) issued a ruling to that effect in the *Gosset*[6] case. Article 1447 now codifies prior French case law, stating that even if the underlying contract is deemed void due to avoidance, invalidity, or termination, the arbitration clause will remain unaffected.

The Cour de cassation made an important statement in 2006 in the case of *American Bureau of Shipping (ABS) v. Copropriété Jules Verne*,[7] when it decided that courts are prevented from making any in-depth examination of the validity of an arbitration agreement prior to any decision of the arbitral tribunal on this issue. This is now embodied in Article 1448 which says that a court shall refuse to hear a dispute which is covered by an arbitration agreement unless the arbitral tribunal has not been seized of the dispute (Article 1456 defines this date as the date when the constitution of the arbitral tribunal is complete upon acceptance by the arbitrators of their mandate),[8] and the arbitration agreement is manifestly void or inapplicable. This is, of course, a marked difference from Article II(3) of the 1958 New York Convention according to which courts must examine the validity of the arbitration agreement, if challenged, before referring the parties to arbitration.[9] The Cour de cassation explained in its *ABS* judgment that such priority rule in favor of the arbitral tribunal for deciding the validity or existence of the arbitration agreement rests on the "principle of validity" of the arbitration agreement and on the principle of competence-competence.

The principle of competence-competence is also one of the fundamental guiding principles of modern arbitration law[10] which equally serves to protect the jurisdiction of

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[4] Paris was the seat of 113 ICC arbitrations in 2009 as compared to London (73), Geneva (62), or Zurich (50). 21 ICC Bull. 5 (No. 1, 2010).

[5] UNCITRAL Model Law on International Commercial Arbitration, art. 16(1) [hereinafter "Model Law"].

[6] Ets Gosset v. Maison Freres Carapelli, Cass. 1e civ., May 7, 1963.

[7] American Bureau of Shipping v. Copropriété Jules Verne, Cass. 1e civ., June 7, 2006, 2006 Rev. Arb. 945, commentary by Gaillard.

[8] République de Guinée v. Chambre arbitrale de Paris, TGI Paris, May 30, 1986, 1987 Rev. Arb. 371.

[9] Emmanuel Gaillard, *L'effet Negatif de la Competence*, *in* Etudes de procédure et d'arbitrage en l'honneur de Jean-François Poudret 387 (Jacques Haldry et al. eds., 1999).

[10] Model Law, *supra* note 5, art. 16(1).

the arbitral tribunal in entrusting it with the authority to decide on the validity or existence of the arbitration agreement or on the proper constitution of the tribunal. Such jurisdictional issues are decided by the arbitral tribunal itself and are no longer regarded as preliminary questions which must be submitted for decision to state courts while the arbitration proceedings are held in abeyance. Article 1465 declares that the arbitral tribunal has exclusive jurisdiction to rule on objections regarding its jurisdiction. The Cour de cassation in *Zanzi*[11] defined competence-competence as a principle of French international arbitration law, while former Article 1466, which at the time embodied the competence-competence rule, applied to domestic arbitration. Article 1465, although included in the section on domestic arbitration law, applies to international arbitration by virtue of Article 1506 which states that, unless the parties have otherwise agreed, Article 1465 is one of the provisions of the Decree which automatically applies to international arbitration.

Article 1506 extends to international arbitration a number of the most important provisions of French domestic arbitration law. The parties may, however, agree otherwise in recognition of their autonomy in choosing and organizing international arbitration. Article 1509 acknowledges this by providing that an arbitration agreement may define the procedure to be followed in the arbitral proceedings, directly or by reference to arbitration rules, or otherwise. It is, however, questionable whether the parties may exclude the competence-competence principle if they opt out of Article 1465. The substantive rule on competence-competence of the *Zanzi* judgment is now enunciated in the Decree but the validity principle of the arbitration agreement, which is the other major contribution of the *Zanzi* decision, has not been included.

The validity principle deserves a word of explanation. The principle encapsulates prior decisions of the Cour de cassation starting with *Gosset, Hecht*,[12] and *Dalico*.[13] According to the Cour de cassation in these cases, which are the keystone of the French international arbitration system, an arbitration clause is governed by international rules regardless of the applicable rules of national law. In particular, an arbitration agreement is effective in accordance with the common intention of the parties without any other condition regarding validity which may be imposed in the otherwise applicable national law governing the arbitration agreement. The force of the validity principle is such that, as a consequence, a court is prevented from making any determination on the validity or existence of an arbitration agreement and that an arbitral tribunal has a duty to investigate such matters. In view of this, the principle of competence-competence cannot be overridden by the parties even if they choose to exclude Article 1465, as they are entitled to by Article 1506. This means that the substantive or material rules which have been carved

[11] M. Zanzi v. M. de Coninck et autres, Cass. 1e civ., January 5, 1999, 1999 Rev. Arb. 260, commentary by Fouchard.

[12] Hecht v. C/STE N.V.R. Buisman's, Cass. 1e civ., July 4, 1972, 99 J. Droit Int'l (Clunet) 843 (1972), commentary by Oppetit.

[13] Comité populaire de la Municipalité d'El Mergeb v. société Dalico Contractors, Cass. 1e civ., December 20, 1993.

out by the Cour de cassation for international arbitration still remain effective notwithstanding their contents having been transposed in the provision of the 2011 Decree.

As mentioned above, an international arbitration agreement is governed by specific material rules which have been defined by case law. By no means all of them have been incorporated into the provisions of the new Decree. Issues concerning assignment of an arbitration agreement, extension to non-signatories, and transfer of an arbitration agreement in a chain of contracts[14] have not been included in the Decree and the corresponding situations are still regulated by case law. On deciding upon the validity of an arbitration clause incorporated by reference, the Cour de cassation held in *Bomar*[15] that tacit agreement of the parties on the inclusion of the arbitration clause is sufficient. This decision confirmed that no requirement in the form of the arbitration agreement is laid down in French international arbitration law. This was also deduced from the language of former Articles 1493 and 1494 which made no mention of requirements as to the form of the arbitration agreement. Article 1507 now spells out that an arbitration agreement shall not be subject to any requirements as to its form. However, evidence of the parties' consent to arbitration must still be adduced. A confirmatory transcript (agreed by all parties beforehand) of an oral declaration would probably be accepted as evidence. Article 1515 still requires that the arbitration agreement, or a duly authenticated copy of it, be shown to the enforcement court.

B. The arbitral tribunal

Article 1456(2) specifies that an arbitrator is under a continuous obligation to disclose conflicts of interest that may affect his independence and impartiality. This provision is transposed from case law[16] but was not spelled out before in detail in the Code of Civil Procedure. Arbitrators must carry out their mission until it is completed, as is set out in Article 1457, unless there is a legitimate reason for them to refuse to act or to resign, a rule which was first applied in the case of *Bompard*, a judgment of the Court of Appeal of Paris given in 1991.[17]

Under Article 1468, the arbitral tribunal has jurisdiction to take conservatory and interim measures, with the exception of conservatory seizures and judicial securities over which only state courts have jurisdiction. Any provisional or conservatory measure may be subsequently modified by the arbitrators. This provision should be read in conjunction with Article 1449, which preserves the jurisdiction of state courts to order the taking of provisional or conservatory measures when the arbitral tribunal has not yet been constituted.

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[14] Jean-Louis Delvolve et al., French Arbitration Law and Practice (2009).

[15] Société Bomar Oil v. Entreprise tunisienne d'activités petrolières, Cass. 1e civ., November 9, 1993, 1994 Rev. Arb. 108, commentary by Kessdjian; 121 J. Droit Int'l (Clunet) 690, commentary by Loquin.

[16] S.A. J&P Avax S.A. v. Société Tecnimont Spa, CA Paris, February 12, 2009, 2009 Rev. Arb. 186, commentary by Clay.

[17] Bompard v. Consorts Carcassonne, CA Paris, May 22, 1991, 1996 Rev. Arb. 476.

The provision reproduces earlier case law.[18] The arbitral tribunal may demand a party subject to a penalty to produce any item of evidence which is in its possession.[19]

C. The supporting judge (juge d'appui) in international arbitration

French international arbitration law provides that parties can lay matters before the juge d'appui under limited circumstances, as regards any matter relating to the constitution of the arbitral tribunal, challenge, resignation, or replacement of an arbitrator, as well as extension of time limits for making the award (Articles 1452, 1454, 1456, 1457, 1463(2)). It is interesting to note that Article 1457(2), which provides for submission to the juge d'appui in the case of disagreement on the legitimate materiality of the reasons put forward by the resigning arbitrator, appears to overrule prior case law,[20] which decided that a court could only replace the resigning arbitrator but could not rule on the legitimacy of the resignation.

Article 1452 assumes the hypotheses of one or three arbitrators, but this should not preclude parties from agreeing to another number of arbitrators in the tribunal as permitted before the 2011 reform and still permissible under Article 1508, which merely says that the arbitration agreement may designate the arbitrator(s) or provide for the procedure regarding their appointment.

In the circumstances listed above, the juge d'appui will intervene if help is demanded by one or more parties (or the arbitrator) in order to enforce the parties' intention to arbitrate. The helping hand of the juge d'appui respects the consensual nature of arbitration.[21] Assistance may only be provided if the arbitration agreement is not manifestly void or not applicable (Article 1455). If the parties have recourse to an arbitration institution (such as the International Chamber of Commerce, Association Francaise d'Arbitrage, London Court of International Arbitration, etc.), then they will not need the assistance of the juge d'appui, as the institution will fulfill the same role in accordance with the parties' agreement in the arbitration clause.[22] It is also worth mentioning Article 1453, which sets out the conditions for appointing an arbitral tribunal in a multiparty arbitration. The provision incorporates the decision of the Cour de cassation in the *Dutco* case decided in 1992.[23] If the parties disagree on the procedure for constituting the arbitral tribunal, the tribunal is appointed by the arbitration administering authority or, failing designation of such authority, by the supporting judge.

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[18] Estram v. Ipitrade, Cass. 1e civ., March 20, 1989, 1989 Rev. Arb. 494, commentary by Couchez.

[19] *See* art. 1467(3). *See* Charles Jarrosson, *Reflexions sur l'imperium*, *in* Etudes offertes à Pierre Bellet 245 (1991).

[20] Industrial Export c/K et autres v. B.K. GECI et GFC, TGI Paris, February 15, 1995, 1996 Rev. Arb. 503, commentary by Fouchard.

[21] La Belle Créole v. Gemtel Partnership, TGI Paris, July 12, 1989, 1990 Rev. Arb. 176, commentary by Kahn.

[22] Société Chérifienne des Pétroles v. Société Mannesmann Industria Iberica, Société Mannesmann anlagenbau et Chambre de commerce internationale, TGI Paris, January 18, 1991, 1996 Rev. Arb. 503, commentary by Fouchard.

[23] Société Siemens et autres, BKMI et autres v. Société Dutco Construction, Cass. 1e civ., January 7, 1992, 1992 Rev. Arb. 470, commentary by Bellet.

The Decree confirms that the juge d'appui for international arbitration cases is the President of the Tribunal de Grande Instance of Paris (Paris First Instance Court). The provisions of the Decree of January 13, 2011[24] extend the circumstances under which the parties can refer their disagreements to the juge d'appui, whose jurisdiction was previously envisaged when the arbitration took place in France or when the parties agreed that French procedural law applies to their arbitration. Article 1505 provides that the supporting judge also has jurisdiction when the parties expressly agree to refer their procedural disputes to French courts, or when one of the parties is exposed to a risk of denial of justice. This incorporates prior case law,[25] including the decision of the Cour de cassation in *NIOC*, which admitted denial of justice as a jurisdictional ground for the French supporting judge. Article 1505 refers to the concept of denial of justice, which until today requires in private international law doctrine and case law[26] the existence of some connection between the arbitration and France, such as the seat of the ICC in Paris, whose president had been designated in the *NIOC* case as the appointing authority for the third arbitrator. The existence of some connection should therefore be implicitly read into the text of Article 1505.[27] It is doubtful that an award made in proceedings which necessitated a decision of the French supporting judge in a case which would have no connection with France whatsoever could be considered valid outside of France.

D. The award

Revision of an award was held admissible by the Cour de cassation in *Fougerolle v. Procofrance*.[28] This is now confirmed in Article 1502(1) and (2), which allow for revision by the arbitral tribunal and not by the courts. Revision entails a further examination of the dispute when the original award has been obtained by fraudulent means. The provision therefore stipulates the French view on international arbitration, under which any tampering of the state courts with the merits of the dispute is forbidden.

III. Additions and Modifications

A. Issues of arbitral procedure

Perhaps the most important addition to prior law is Article 1506. It now sets out that unless the parties agree otherwise, provisions included in the Decree for domestic arbitration

[24] Decree No. 2011-48, January 13, 2011, art. 1505.

[25] Etat d'Israël v. Société Nationale Iranian Oil Co. (NIOC), Cass. 1e civ., February 1, 2005, 2005 Rev. Arb. 69, commentary by Muir-Watt.

[26] Dominique Bureau & Horatia Muir-Watt, droit international privé 78–79 (2d ed. 2010); Bernard Audit, Droit international privé 319–20 (6th ed. 2010).

[27] *Contra* Emmanuel Gaillard & Pierre de Lapasse, *Le nouveau droit français de l'arbitrage interne et international*, Dalloz, January 20, 2011; Elie Kleiman & Julie Spinelli, *La réforme du droit de l'arbitrage*, Gaz. Pal. Etude 14528 (2011).

[28] Société Fougerolle v. Société Procofrance, Cass. 1e civ., May 25, 1992, 1992 R.C.D.I.P. 699, commentary by Oppetit; 119 J. Droit Int'l (Clunet) 974 (1992), commentary by Loquin.

will apply. This is a substantial departure from the former Article 1495 which called for a specific agreement of the parties. The general referral of Article 1506 encompasses provisions on the arbitration agreement (Articles 1446, 1447, 1448(1) and (2), 1449), on the constitution of the arbitral tribunal (Articles 1452 to 1458 and 1460), on the arbitral proceedings (Articles 1462, 1463(2), 1464(3), 1465 to 1470 and 1472), on arbitral awards (Articles 1479, 1481, 1482, 1484(1) and (2), 1485(1) and (2), 1486) and on means of recourse (Articles 1502(1) and (2), 1503).

Nothing in these articles, which are incorporated in international arbitration law, would substantially modify the essence of past provisions and practice. The following issues deserve some attention. The Decree now provides under Article 1469 that with the arbitral tribunal's leave, production of evidence held by a third party may be ordered by a court. This provision parallels the Swiss Private International Law.[29] Before the Decree, it was unclear whether such action was permissible. A useful addition, also inspired by Swiss arbitration law[30] and arbitral practice,[31] has led to the adoption in Article 1513 of a provision for the chairperson of the arbitral tribunal to make an award if there is no majority.

Article 1466 includes a waiver of objection rule which is well known in arbitration practice.[32] This rule, which bars a party from raising an irregularity if it has not done so in a timely manner before the arbitral tribunal, also extends to the challenge of the award where a ground for review (other than violation of public policy on substance) is not admissible if no objection has been previously raised before the arbitrators.[33]

Article 1464(4) clarifies the confidentiality of court proceedings for domestic arbitration by stating that the domestic arbitration process must be confidential unless otherwise agreed by parties There is no mention of these provisions in Article 1506 for international arbitration. This absence should not come as a surprise, since only few countries in the world have expressly enforced confidentiality as an arbitral principle, such as New Zealand, Scotland, or Hong Kong.[34] On the other hand, the U.K., U.S., and Swiss legislation have not provided any guidance on this subject.

This absence does not mean that French international arbitration law lacks confidentiality. On the contrary, French case law suggests that there is an implied duty of confidentiality.[35] The Decree appears to avoid regulating the matter so as to conform to the current trend of transparency in investment arbitration.[36]

Regarding commercial matters, one must bear in mind that arbitration is essentially a private dispute resolution system, as opposed to the public nature of a court case

[29] Swiss Private International Law Act (1986), art. 184(2).
[30] Swiss Private International Law Act, art. 189(2).
[31] ICC Rules of Arbitration, art. 25(1).
[32] *See, e.g.*, ICC Rules of Arbitration, art. 33 and UNCITRAL International Arbitration Rules 2010, art. 32.
[33] Golshani v. Iran, Cass. 1e civ., July 6, 2005, 2005 Rev. Arb. 993, commentary by Pinsolle.
[34] New Zealand Arbitration Act 1996, ss. 14A–14I, as amended by the Arbitration Amendment Act 2007; Scottish Arbitration Act 2010, Sch. 1 rule 26(4); Hong Kong Arbitration Ordinance 2010 (cap. 609), s. 18.
[35] Aïta v. OJJEH, CA Paris, February 18, 1986 Rev. Arb. 583.
[36] *See, e.g.*, UNCITRAL Working Group II: A/CN.9/WG.II/WP.162 – Settlement of commercial disputes: Preparation of a legal standard on transparency in treaty-based investor-State arbitration.

adjudicated by state courts financed by public taxes. Therefore its very essence underlines the confidential nature of arbitration. The three much vaunted advantages of arbitration are rapidity, costs, and confidentiality. Discussions regarding confidentiality and discretion may even spark disagreements between parties which have to be ultimately resolved by the parties themselves. Nevertheless, if one of the parties is a public entity, confidentiality becomes an even more challenging issue to resolve. The complexity of this situation explains why French law provides that the parties are not obliged to choose the principle of confidentiality and are not bound by a duty of confidentiality. If they refuse confidentiality, they have to include this refusal in their arbitration agreement.[37] The presence of a confidentiality clause in the new Decree regarding international arbitration would nonetheless have been helpful for solving the "arbitral confidentiality conundrum."[38]

B. Control of the award

Appeal of an enforcement order and setting aside the award are the only permissible actions in state courts to challenge the validity of the award (Articles 1518 and 1525). The Decree has not changed anything in this regard. An order to enforce an award must still be granted by the court unless this would be "manifestly contrary to international public policy" (Article 1514), an occurrence which is rarely met. The Decree codifies the practice followed before the Paris Court of First Instance where enforcement proceedings at the first stage are not adversarial.[39] This should be considered as more advantageous to the beneficiary of the award who has the initiative of starting enforcement proceedings. When an enforcement order is sought in relation to an award which has not been made in France, Article 1516(1) specifies that the action may always be initiated before the Paris Court of First Instance. This provision, which incorporates prior case law,[40] should be seen as an advantage given to the foreign party which is spared the task of seeking the appropriate French court. To gain access to foreign-owned assets in France one only needs to apply to the Paris Court of First Instance.

Article 1520 is now the essential provision which sets out the grounds for setting aside the award or an appeal against the order made by the enforcement court. The matter is heard in both instances before the Court of Appeal in adversarial proceedings (Article 1527(1)). The Decree has made two innovations regarding the procedural framework. First, an action to set aside must now be introduced within one month following notification of the award (Article 1519(2)) and no longer within one month of service of the award which has been declared enforceable by the court at first instance. This is a major change which will result in a likely growth of the number of actions to set aside. The party that is unsatisfied with an award must initiate an action within a very short

[37] *Contra* Gaillard & de Lapasse, *supra* note 27.

[38] J.W. Saress, *Solving the Arbitral Confidentiality Conundrum in International Arbitration*, *in* ADR and the Law (AAA ed., 18th ed. 2004).

[39] *See* art. 1516(2); *see also* Russia v. Noga, Cass. 1e civ., December 9, 2003, 2004 Rev. Arb. 337, commentary by Bollée.

[40] Société Auchan v. Société Puerto Loisirs, Cass. 1e civ., November 3, 2004.

time after the passing of the award. Prior to the 2011 Decree no express time limit existed, unless the award was successfully presented for enforcement to a court. Next, an appeal against an order of the enforcement court or a setting aside action no longer suspends enforcement of the award (Article 1526(1)). However, the Chief Judge of the Court of Appeal or, once the case has been assigned to one of the Judges of the Court, such Judge may suspend or set conditions for enforcement of the award where this would otherwise significantly prejudice the rights of one party (Article 1526(2)).

The five grounds for challenging the validity of an award under Article 1520 are similar to those which existed before the 2011 Decree, that is, (1) the arbitral tribunal wrongly upheld or declined jurisdiction; (2) the arbitral tribunal was not properly constituted; (3) the arbitral tribunal ruled without complying with the mandate conferred upon it; (4) due process was violated; (5) recognition or enforcement of the award is contrary to international public policy. The first ground now addresses the situation where the arbitral tribunal wrongfully declined jurisdiction which had to be dealt with before under the third ground.[41]

It must be remembered that the French courts had held that, because annulment or suspension of the award as mentioned in Article V(1)(e) of the 1958 New York Convention is not one of these five grounds, French law prevails over the New York Convention by virtue of Article VII of the Convention, which does not prevent any interested party availing itself of an arbitral award to the extent allowed by the law of the country where such award is sought to be relied upon.[42] The absence of such ground also has a consequence that an award which has been set aside in the country where it was made can still be enforced in France. The Cour de cassation has explained that an arbitral tribunal is an international tribunal and that its decision cannot be deemed to be attached to the national legal order of the country where it was made.[43] French courts therefore give no international credit to the judgment of the setting aside court.

This policy now appears in Article 1522 which allows the parties by express agreement to waive an action to set aside an award before the French courts. No other condition regarding, for example, the place of business abroad of the parties is required, as in Swiss law, for example.[44] If the parties have waived annulment, Article 1522 provides for an appeal against the order of the enforcement court. In such a case, the issue of the validity of the award may be heard before the French courts as the French legal system can only accept the recognition and enforcement of awards which meet the requirements set out in Article 1520. This is a noticeable exception to the regime of international arbitration awards made in France against which only a setting aside action may otherwise lie.

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[41] Abela, Cass. 1e civ., October 6, 2010, 2010 Rev. Arb. 813, commentary by Train.

[42] Pabalk v. Norsolor, Cass. 1e civ., October 9, 1984, 1985 Rev. Arb. 431, commentary by Goldman.

[43] Société Putrabali Adyamulia v. Société Rena Holding, Cass. 1e civ., June 29, 2007, 2007 Rev. Arb. 507, commentary by Gaillard.

[44] Swiss Private International Law Act, art. 192.

IV. Conclusion

The 2011 reform has left intact the essential features of French arbitration law as defined in 1980 to 1981 including the refusal to incorporate the UNCITRAL Model-Law of 1985. The scope of application of the provisions on international arbitration still hinges upon the broad definition of international arbitration, which is now found in Article 1504: "An arbitration is international when international trade interests are at stake." Party autonomy is preserved and the provisions of the applicable rules of law for the dispute, which are set out at Articles 1511 and 1512 (which reproduce earlier Articles 1496 and 1497) are examples of this continuing policy. The international legal regime of international arbitration is further strengthened, as Article 1522 exemplifies. As a result of the autonomy of international arbitration, no court interference in the arbitration process is permitted. The 2011 Decree should reinforce the role of French arbitration law as a policy-setter in the development of arbitration law and practice.

Guide to Authors

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