

# Kluwer Arbitration Blog

## Paris Court of Appeal Upholds the Supranational Character of Ohada Law in An Action for Annulment of an Arbitral Award

Daniel Barbosa (Shearman & Sterling) · Sunday, April 19th, 2020

A decision by the Paris Court of Appeal rendered in 2018 rejected a request by the state of Cameroon for annulment of an arbitral award that had applied OHADA law over Cameroonian law (CA Paris 16/25484, 20 December 2018).

The action for annulment had been brought by the state of Cameroon against three arbitral awards that had found that the state had wrongfully terminated a lease contract. The issue of the contrast between OHADA law and Cameroonian law related to the identity of the claimant, and accordingly to the existence of an arbitral agreement between the parties and the jurisdiction of the arbitral tribunal.

### OHADA Law

The *Organisation pour l'harmonisation en Afrique du Droit des affaires* (Organization for the Harmonization of Commercial Law in Africa) (“OHADA”) is an international organization composed of seventeen (mostly francophone) African countries, created for the harmonization of business law amongst its state members, with the purpose of ensuring legal and judicial certainty for investors and companies.

OHADA’s uniform rules are created through so-called Uniform Acts, which pertain to various domains of commercial law. To date, OHADA has adopted nine different uniform acts, which cover matters of, among others, general commercial law, insolvency, transport of goods, company law, and arbitration (the OHADA’s arbitration and mediation framework was previously discussed on the [Blog](#)).

Pursuant to OHADA’s constitutive treaty, the Uniform Acts are directly applicable and binding in the member states, notwithstanding any contrary provision of municipal law that either precedes or postdates the act.

### The Dispute

Projet Pilote Garoubé (“Garoubé”) was constituted in 2000 in Yaoundé, Cameroon, pursuant to the

rules of OHADA's Uniform Act on the law of companies and economic interest groups (*Acte uniforme relative au droit des sociétés commerciales et du groupement d'intérêt économique*). The company had its seat in Garoua, Cameroon.

In late 2001, the Cameroonian government and Garoubé entered into a lease agreement over two areas for game ranching and game farming. The agreement was governed by OHADA law and provided for ICC arbitration.

In 2006, the lease agreement was suspended by the Cameroonian authorities.

Following the suspension of the agreement, in 2007, Garoubé moved its seat to Brussels, Belgium as per its shareholders' unanimous decision. All administrative requirements for the move under Cameroonian law and to Belgian law were followed in this transfer.

Later in 2007, Garoubé, now a company governed by the laws of Belgium, initiated arbitration against the state of Cameroon for, *inter alia*, the illegal termination of the lease agreement.

A first partial award was rendered early 2010, but was later annulled by the Paris Court of Appeal on the basis of irregular constitution of the arbitral tribunal.

A new arbitral tribunal was then constituted. Cameroon raised jurisdictional objections based on the argument that Garoubé's seat transfer from Garoua to Brussels was in violation of rules of Cameroonian law governing companies involved in activities of exploitation of wildlife in the country and, in any case, meant that the entity constituted in Cameroon and which was a party to the lease agreement (and thus to the arbitration agreement) had ceased to exist. Therefore, Cameroon contended that there was no arbitration agreement between the Belgian entity and Cameroon and therefore that the arbitral tribunal had no jurisdiction over the dispute.

By late 2014, the tribunal rendered a partial award rejecting Cameroon's jurisdictional objections and awarded damages to Garoubé. In October 2016, the tribunal rendered a second and final award in favor of Garoubé on the merits, and in 2017 it issued an addendum to the second award with two textual rectifications.

In December 2016, the state of Cameroon filed for annulment of the first two arbitral awards, arguing, *inter alia*, that the tribunal had wrongfully found for its jurisdiction. In 2017, it also filed for annulment of the addendum issued by the tribunal.

The requests for annulment of all three awards were dealt with at once by the Paris Court of Appeal.

### **The Paris Court of Appeal's Holding**

The Paris Court of Appeal was confronted with the purported conflict between OHADA law and Cameroonian law in the context of Cameroon's argument that the transfer of Garoubé to Belgium affected the Tribunal's jurisdiction over the dispute. More specifically, the Court was called to analyze whether the decision by the shareholders to transfer the company's seat from Garoua to Belgium – carried out pursuant to OHADA law – was null or did not produce effects vis-à-vis the state of Cameroon because it had been taken in breach of mandatory rules of Cameroonian law

governing companies involved in activities of exploitation of wildlife in the country (to recall, lease agreement between Garoubé and Cameroon concerned game ranching and game farming in Cameroon).

The arbitral tribunal had found, invoking article 10 of the OHADA treaty, that the validity of decisions of a Cameroonian company are governed exclusively by the provisions on the matter found in OHADA law and, more specifically, in OHADA's Uniform Act on the law of companies. Accordingly, the tribunal found that provisions governing other matters, such as Cameroonian law on the exploitation of wildlife – relied upon by Cameroon – would not affect the validity of such decisions, but only the rights granted to a party by the state of Cameroon under such provisions. The arbitral tribunal had also noted that article 2 of the Uniform Act on the law of companies also provided that its provisions amount to public policy and have direct and immediate application in Cameroon. Consequently, as long as the Uniform Act on the law of the companies allowed the decision by the shareholders to transfer the company's seat away from Garoua, Cameroonian law had no bearing on the assessment of the validity of that decision.

In the annulment proceedings, the Paris Court of Appeal found that a different interpretation than the one employed by the arbitral tribunal would ignore the supranational character and the primacy of OHADA law, as well as the mandatory nature and that of international public policy of its provisions.

By doing so, the Paris Court of Appeal gave full effect to the express provisions of OHADA's constitutive treaty and of the uniform act providing for the precedence of OHADA law over municipal law and for their mandatory nature. These are respectively, OHADA's treaty article 10, which reads “the uniform acts are directly applicable and binding within the State Parties, notwithstanding any municipal law provision to the contrary that either precedes or postdates the act” (free translation), and the Uniform Act's article 2, which provides that companies and economic groups cannot derogate from its provisions.

### **The Rule of Primacy of International Treaty Provisions over Municipal Law**

The rule of primacy of its norms over those of municipal law is neither a specificity of nor a novelty brought by OHADA law.

In the international order, this rule has long been accepted as a general principle of international law (*see, e.g.*, Permanent Court of International Justice, [Advisory Opinion on the Greco-Bulgarian “Communities”](#), 1930 ) and has its variants enshrined, for example, in the [Vienna Convention on the Law of the Treaties](#) (Article 27), and the [ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts State Responsibility](#) (Articles 3 and 32).

In national orders, the rules on the interaction between international law and national law naturally vary from country to country. In the case of France, through the lenses of which the Paris Court of Appeal assessed the issue in the case at hand, the general rule is that duly-ratified treaties prevail over national laws (*see* 1958 French Constitution, Article 55).

Against this backdrop, although not expressly addressed by the Court, its decision giving effect to the OHADA treaty's provision asserting its own precedence over the municipal law systems of the OHADA members seems to be rooted in the French legal order's own rule that treaty provisions

prevail over those of municipal law.

## Conclusion

The Paris Court of Appeal's decision does nothing more than give full effect to the text of the OHADA treaty's and Uniform Act's provisions that establish their supranational and public policy character. Nevertheless, by doing so, it helps consolidate OHADA law as a system of law that takes precedence over municipal law of its member states and that, as public policy, such primacy is absolute and should be followed by judges and tribunals that are met with it.

As such, the decision furthers the organization's goals of ensuring a harmonious system of business law amongst its state members, and according, ensuring legal and judicial certainty for investors and companies in the territory of its state members.

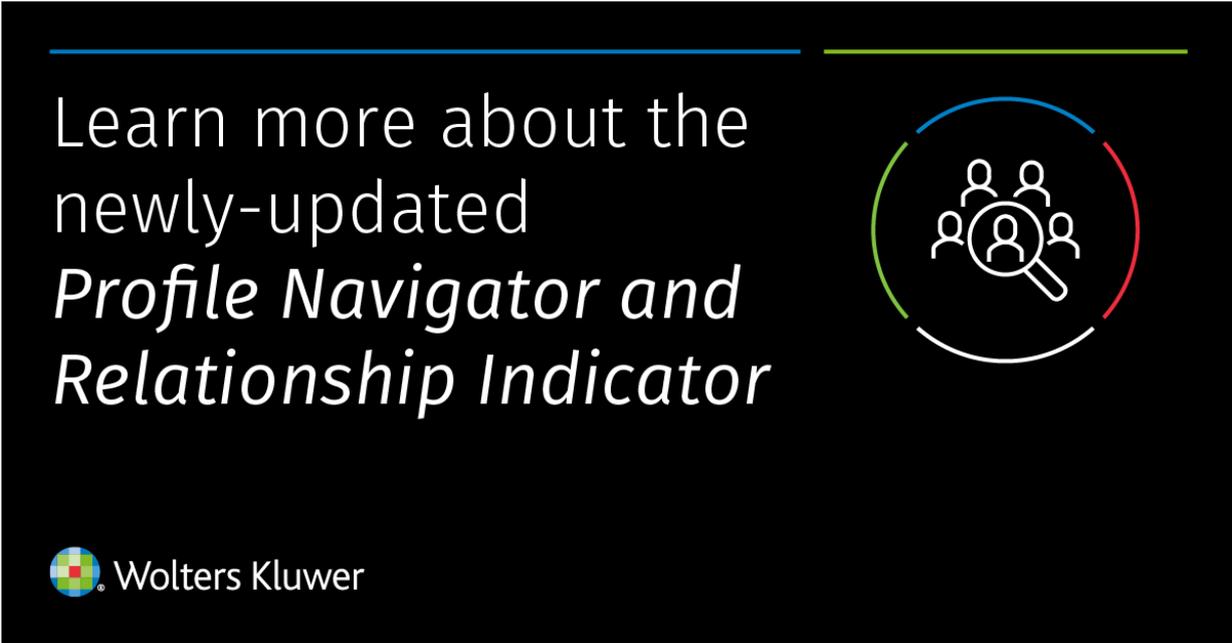
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