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Recognition of Annulled Awards in France: Where Does the Limit Lie?

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The Paris Court of Appeal considers that the arbitral awards annulled at the place of the arbitration do not amount to a valid cause for refusal of enforcement in France. Recently, the Court specified that whether the interests at stake are international or national does not change this position.

Background of the Dispute

On 6 January 1999, National Gas Company ("NATGAS") entered into a contract for the supply of gas with Egyptian General Petroleum Company ("EGPC") to deliver natural gas to two Eastern regions in Egypt, ("Contract"). The Contract contained an arbitration agreement and the place of arbitration was to be Cairo (Egypt).

In January 2008, a change in the Egyptian monetary policy led to a variation of the exchange values of the Egyptian Pound. In accordance with Article 7 of the Contract, NATGAS requested EGPC to readjust the price in accordance with the new value of the Egyptian Pound. Failing an agreement between the parties, NATGAS instituted arbitration proceedings before the Cairo Regional Centre for International Commercial Arbitration (CRCICA).

On 12 September 2009, the Arbitral Tribunal ordered EGPC to pay 253,424,668.31 Egyptian Pounds (equivalent to approximately 30 million Euros). EGPC, as a result, introduced proceedings before the Egyptian courts to have the arbitral award set aside.

On 27 May 2010, the Cairo Court of Appeal annulled the arbitral award on the grounds of public policy due to the fact that the Ministry had not provided the necessary authorizations.

In the meantime, NATGAS sought the enforcement of the award before the French courts in order to obtain enforcement in France. On 19 May 2010, the *Tribunal de grande instance* of Paris granted the enforcement order. Complex and lengthy proceedings before the French Courts followed this decision and ended only in 2019 with a confirmation of the enforcement order. Essentially, the French Courts considered that there was no violation of the French international public policy.

The recognition and enforcement of foreign arbitration awards, previously annulled by the courts of the seat, has always given rise to an extremely divisive debate since the famous *Putrabali* case

(Civ. 1st, 29 June 2007, n°05-18.053) and even prior to this (see in this respect Civ. 1st, 23 mars 1994, n°92-15.137, *Hilmarton* case).

However, the decision taken by the Paris Court of Appeal on 21 May 2019 deals with a slightly different situation, as the arbitration award of 12 September 2009 specifically relates to business involving national Egyptian interests. In fact, both parties in this case were Egyptian entities, the contract was to be performed in Egypt, Egyptian law was applicable to the merits and the place of the arbitration was in Egypt.

Parties' Arguments and Court Reasoning

The decision provides a particularly interesting summary of the parties' arguments on the nature of the arbitration and on what grounds the Paris Court of Appeal legitimates the intervention of French Law namely the international character of the award.

EGPC argued that both the Contract and the arbitration must be regarded as strictly related to Egyptian national interests. Moreover, according to EGPC, the arbitral award was annulled by the Cairo Court of Appeal on the ground of public policy, which, *inter alia*, prevents its enforcement abroad.

NATGAS argued that the arbitral award is to be regarded as an international award. It was annulled, according to NATGAS, on grounds resulting from Egyptian internal law of public policy, which does not correspond with the definition of international public policy. Therefore, the annulment decision of the Cairo Court of Appeal has no bearing on French international public policy.

The reasoning of the Paris Court of Appeal is twofold.

First, as a general principle, the Paris Court of Appeal considered that the rules applicable to the recognition and the enforcement of international awards are also applicable to foreign awards, irrespective of international or purely domestic nature.

Then, confirming the *Putrabali* case law, the Paris Court of Appeal referred to the Convention of 15 March 1982 between France and Egypt in deciding that the annulment of the arbitral award at the seat was not a valid cause of refusal of enforcement in France. The Paris Court of Appeal thus clarified that it is irrelevant whether or not the interests taken into consideration are international or national. This would have been sufficient to recognize the award in France under the established jurisprudence.

But, interestingly, the Court went further, and, even if it was not required to do so, the Court examined whether (and why) the award should be regarded as international. In the opinion of the Court, the fact that the banks financing the project, (which were neither a party to the arbitration nor to the dispute) were Italian, the arbitration and the award should be considered as international in nature.

Assessment

With this decision, the Paris Court of Appeal continues to draw its own roadmap on the recognition of an arbitral award rendered, and thereafter annulled, abroad.

This has the effect that an arbitral award rendered abroad on purely domestic reasons can be recognized in France, if French courts consider that – for whatever reason – the award is international. In other words, French courts are ready to recognize in France any arbitral award, whether it is an international or a foreign award (if the foreign award can be considered an international award).

It can be argued that there is a gap in the French system. In the French Code of Civil Procedure, there are two categories of arbitration proceedings: domestic arbitrations, *i.e.* arbitrations which involve interests related to one jurisdiction, and international arbitrations, *i.e.* arbitrations which involve international trade interests. Probably, a further distinction should be made taking into account the precedent in the *Putrabali* case. Such a third category could be the "foreign arbitration" with respect to the issue of recognition of annulled award.

Most of the authors and commentators agree on the fact that arbitral awards should be regarded as a "*fait juridique*" (and not an "*acte juridique*") before the French courts and that consequently the nature (domestic or international) should not be relevant for the recognition of awards in France. However, it should be noted that the original spirit of the rule applicable to the recognition of annulled awards was grounded on the international nature of the award.

This is likely to be the reason why the Paris Court of Appeal in the present case, even if it is was not required under established jurisprudence, verified the international character of the award.

The question is whether the newly created International Chamber of the Paris Court of Appeal – which is, since 2019, the court deciding on the recognition and enforcement of international arbitral awards – will maintain the same position.

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