

# Kluwer Arbitration Blog

## Signing an Award in Counterparts: The Paris Court of Appeal Adopts a Flexible Stance

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The Paris Court of Appeal has ruled in a Covid-related set aside request that French law does not impose an obligation on arbitrators to sign an award simultaneously on the same page. In a [judgment](#) dated 30 November 2021, the international chamber of the Paris Court of Appeal rejected an application to set aside a French domestic arbitral award rendered under the ICC Rules of Arbitration *inter alia* on the ground that the arbitrators allegedly failed to properly sign and date the award. The tribunal rendered its award on 26 March 2020, at a time when a number of countries, including France, had just entered the first Covid-19 lockdown. This may provide some factual context around the signature process. As the Court of Appeal decision reveals, the co-arbitrators each signed and dated a signature page on 24 and 25 March respectively, while the President signed and dated a third and separate signature page on 26 March 2020. The ICC ultimately collated the 53-page award, which included the three signature pages numbered 51, 51*bis* and 51*ter*.

### The Court of Appeal's Ruling

The applicant sought to set aside the award on the basis of Article 1492-6° of the French Code of Civil Procedure, which provides that annulment may be sought if the domestic arbitral award, among other things, fails to state the date on which it was made, the names or signatures of the arbitrator(s) having made the award or where the award was not made by majority decision. According to the applicant, the fact that the tribunal members each signed a separate page with a different date did not allow the date of the award to be ascertained. The applicant additionally claimed that the parties had not agreed to the signature method used by the tribunal and even though the terms of reference had been signed through a similar process, this did not imply an agreement of the parties to proceed to this effect for the tribunal members' signature of the award. Both these circumstances led the applicant to conclude that the arbitrators had not collegially deliberated and that the award should thus be set aside.

The defendant considered that the different dates on the multiple signature pages did not create any doubt as to the date of the award or lawfulness of the deliberations. According to the defendant, it was clear that the award was dated on the day the president, who was the last to sign the award, signed it. The defendant concluded that the consecutive signatures of the Tribunal complied with the applicable rules.

The Court of Appeal dismissed the application on the ground that the award contained all of the required signatures prescribed by Article 1492-6° of the Code of Civil Procedure. The Court recalled that no provision of the Code of Civil Procedure sets out an obligation for arbitrators to simultaneously sign the award on the same page. The Court of Appeal also recalled that where an award is signed by all arbitrators, there is a presumption that they collegially deliberated ([Court of cassation, 1<sup>st</sup> civil chamber, 1 April 2015, case no. 14-13.202](#)). Additionally, the Court noted that French law does not impose any form as to the organization of deliberations and that the ICC had at the time of signature of the award not yet provided any instructions as to the signature of awards in the context of the applicable health restrictions. The Court observed that a new note covering the topic was issued on 9 April 2020. Applying these legal findings to the facts, the Court held that (i) the fact that the arbitrators had signed three different signature pages did not mean that they had signed three different awards; (ii) there was no doubt as to the collegial character of the deliberations nor as to the fact that the award was decided by majority; (iii) it was manifest that the President had signed the award last on 26 March 2020, *i.e.* the same date as the one figuring on the first page of the award, which was sufficient to ascertain the exact date of the award.

### **The Concepts of “Required Signatures” and Certain Date**

Through its decision of 30 November 2021, the Paris Court of Appeal clearly signaled that as long as an award contains the “*required signatures*”, no other formality is prescribed under French law for the signing of an award. In this regard, [Article 1480 of the Code of Civil Procedure](#) provides that an arbitral award shall be rendered by at least a majority of the arbitral tribunal and that all arbitrators shall sign the award, or in the event that one of them fails to sign, the award shall state that the signature is absent. The Paris Court of Appeal held that there is also no provision under French law requiring all arbitrators to sign the award *simultaneously* on the same page. French arbitral jurisprudence had already made clear that the practice of signing an award by correspondence was admissible ([Société Paprec Réseau v. SA Interseroh, Paris Court of Appeal \(1st Ch. C\), 30 May 2006, in Revue de l’Arbitrage, Volume 2007, Issue 4, pp. 837-840](#)). These findings are uncontroversial as in practice, arbitral awards are almost never signed at the same venue or time. This is in line with Article 32(3) of the ICC Rules, which implicitly accepts that the date and location of rendering of the award may be in a way a legal fiction, as it provides that the award “*shall be deemed to be made at the place of the arbitration and on the date stated therein*” (emphasis added).

Arbitral awards are sometimes not even signed at the seat of the arbitration. Most often, arbitrators will circulate the award amongst themselves by courier and the president will sign and date the award last, with only one date figuring on the signature page. While the couriering procedure seems all the more relevant in the Covid-19 pandemic context, where parties and tribunals may have preferred a contactless procedure, the tribunal’s triple dating of the award is somewhat unusual. The Court nevertheless found that since it was clear that the President signed last on 26 March 2020 and that such date also figured on the first page of the award, the award was dated from the day of the president’s signature. Accordingly, the process of signing the award separately on different dates did not render the date of the award uncertain.

### **Parties’ Consent to Sign the Award in Counterparts**

One of the arguments brought forward by the applicant in support of its application was that the parties had not agreed to the tribunal's signature method. The Court noted that when the award was rendered in March 2020, the ICC had not yet issued instructions regarding the signing of awards in the Covid-19 circumstances (the ICC only published a guidance note, which expressly submits the signature of an award in counterparts to party consent on 9 April 2020, *i.e.* after the award was rendered). However, one should note that the ICC Note to Parties and Arbitral Tribunals in its version applicable at the date of the award already provided that an award may be signed in counterparts, subject to parties' consent and any requirements of mandatory law (§ 164). Notably, this ICC Note was updated on 1 January 2021 and the provision was maintained (§ 199). The Court of Appeal failed to clarify the consequences of the tribunal's failure to seek party consent, as required by the ICC Note then in force. At the same time, the binding nature of the ICC Note is by no means a given. The Note itself mentions that its objective is to provide "*practical guidance*". In other words, the Note provides recommendations, which are generally expected to be followed but do not comprise binding obligations on parties or tribunals.

### **Is Signing an International Arbitration Award Any Different?**

The Court of Appeal's decision was rendered in the context of domestic arbitration where there is a specific ground for setting aside on the basis of a defective signature and/or date. There exists no similar ground applying to international arbitration under French law (see [Article 1520 Code of Civil Procedure](#)). And it is doubtful that the applicant would have succeeded to show that the impugned signature process constituted a violation of the mandate conferred upon the tribunal (1520-3°) or that it constituted a violation of public international order (1520-5°), the three other grounds being excluded for lack of relevance. It may reasonably be expected that the Paris Court of Appeal would equally be as un-formalistic with an international arbitral award, where the Court has shown particular deference to flexibility and party autonomy. In any event, going forward, it is likely that parties will increasingly use e-signature procedures, progressively rendering wet signature issues moot.

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