Kluwer Arbitration Blog

2024 in Review: Arbitration-Related Developments in France

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In a year marked in France by the Paris Olympics and political instability, 2024 proved to be somewhat less eventful in terms of arbitration-related developments than previous ones (see 2023, 2022, 2021, and 2020). New trends and reforms are also on the horizon. This post aims to review some of this year's noteworthy developments.

Investment Arbitration: An Idle Year

While previous years have shown that investment law was an important take of French courts' caseload, this year marks a decline. French courts reviewed fewer investment treaty awards in annulment and enforcement proceedings, and this is the first time since 2018 that the annulment rate is null.

Both Libyan cases reaffirm the French courts' approach (already endorsed last year in *Air Canada*, *Argawal*, and *Etrak*) that the review of the arbitral tribunal's jurisdiction is limited to the parties' consent to arbitrate as set out in the BIT:

- In *Ustay v Libya*, the Paris Court of Appeal (the "CoA") limited its review of the tribunal's jurisdiction to determining whether the dispute post-dated the BIT's entry into force, while refusing to assess (i) the validity of a settlement agreement that constitutes the investment, and the legality requirement under the BIT, as these are not jurisdictional issues, as well as (ii) the existence of an investment under the *Salini* test, absent a specific BIT provision.
- In the not so different factual setting of the *Etrak v Libya* case, the Cour de cassation quashed the CoA contradictory decision. It held that a dispute arising out of a settlement agreement which relates to an investment and a dispute pre-existing the BIT's entry into force could not "directly relate" to an investment and a new dispute that had emerged after the BIT's entry into force.

The CoA also addressed several procedural issues in proceedings relating to investment treaty awards, e.g.:

- In a Crimea case, the CoA reiterated that a procedural order upholding the constitution of a tribunal cannot be annulled under Article 1520 of the French Code of Civil Procedure ("CCP") as it does not constitute an "arbitral award" impacting the jurisdiction or the merits of the case (*Akhmetov v Russia*);

- In one of the numerous Libyan cases, it found that a notice served by the investor to the Libyan Ministry of Foreign Affairs instead of the Ministry of Justice had not been properly served and thus did not trigger the delay to initiate annulment proceedings (one month under Article 1519 CCP), thereby adopting a strict approach leaving room for dilatory tactics (*Olin Holdings v Libya*).

Further, France submitted its verbal notes addressing consequences of their withdrawal from the ECT, noting that it ceased to be bound by the treaty on 8 December 2023, and that no intra-EU claim can be lodged under the ECT sunset clause, in accordance with the rulings of the Court of Justice of the EU ("CJEU") in *Komstroy* and *Opinion 1/20*, as well as the EU Declaration on Article 26 ECT (*see also* here on the Blog's coverage of ECT-related developments).

Finally, in 2024, French investors lodged investment claims against Belgium and Mexico.

Independence and Impartiality: Rare Annulments Despite a Decreased Caseload

Another surprising trend this year is the decline in annulment cases concerning independence and impartiality. Nonetheless, French courts addressed several such challenges and, in a rare occurrence, set aside an award on this ground (*Opportunity v Telitalia*).

In *Telitalia*, the CoA assessed the (indirect) link between the presiding arbitrator's firm and a party's affiliate. Although carefully taking into account (and siding with) the ICC Court's decision to disqualify the chair, the Court conducted its own *de novo* assessment. Noting that the disqualified arbitrator's firm had acted for this affiliate several times before and during the arbitration, the CoA found that the affiliate had a "manifest interest" in the outcome of the proceedings. The relationship between the arbitrator's firm and this affiliate was thus deemed "important and of significant nature," warranting disqualification.

In the landmark *PAD* case, the Cour de cassation, while confirming that professional and academic links between an arbitrator and a counsel may not require disclosure, endorsed the CoA's reliance on "objective facts," i.e., that the eulogy in honour of Emmanuel Gaillard contained personal language "suggesting friendship of an intensity overriding academic sociability" and "establish[ing] a link between the close links and the pending arbitral proceedings."

(An Audacious?) Reform of the French Arbitration Act

Following recent reforms in Germany (*see* here and here) and the UK (*see* here and here), France is now poised to reform its 14-year-old arbitration act. Consultations were formally initiated in September 2024, and a working group was subsequently appointed to present its proposals by March 2025.

Expected to be issued by decree before July 2025, the reform aims at "reinforcing the efficiency of French arbitration law" (*see* here) and promoting the influence and attractiveness of the French legal system. While its new features are unknown, the reform could mark the end of the dualistic regime between domestic and international arbitration.

Enforcement: A Busy Year with High-Profile Cases

Enforcement has been at the centre of debates this year, with several high-profile arbitrations reaching this stage.

Devas Enforcement Battle

As part of the long-lasting *Devas v Antrix/India* enforcement battle, French courts clarified issues relating to the possibility of joining third-parties in the arbitration to enforcement proceedings:

- In *CC/Devas v India*, a pre-trial judge initially allowed third-parties having been assigned rights to the award to intervene, relying on the broad scope of the assignment and the lack of explicit restrictions in the BIT (13 February 2024). However, the CoA overturned this decision based on a strict interpretation of Article 1527 CCP, holding that voluntary intervention by third-parties is not permitted in annulment or enforcement proceedings unless the parties expressly agree otherwise (10 September 2024).
- In the related *Devas v Antrix* dispute, the third-party was a court-appointed liquidator requesting to appear on behalf of the award-creditor after its forced liquidation. The request for enforcement was dismissed by the Cour de cassation on the ground that the Indian court decision appointing the liquidator had not received exequatur in France (6 November 2024). Less than a month later, the Paris Judicial Court granted exequatur to an Indian judgement that placed Devas into liquidation on the basis that the conditions of Article 509 CCP were fulfilled, i.e., Indian courts had "manifest indirect jurisdiction" and no party had alleged fraud or violation of public policy (27 November 2024). This paves the way for the enforcement of the award in France, despite its annulment in India, in keeping with the French stance on the enforceability of awards set aside at the seat.

Enforcement of Two Libyan Cases

In two Libyan cases, French courts were called to ensure the integrity and efficiency of the enforcement process.

In *Ustay v Libya*, the Paris Judicial Court denied the exequatur of a Libyan judgement that annulled a settlement agreement between the State and the investor on the ground that Libya's request was solely aimed at obstructing the enforcement of awards, making it "illegitimate."

In *Siba Plast* (covered here in detail), the CoA allowed Libya's appeal to proceed, even though it was lodged not by Libya itself, but by the state's litigation department. This was because the investor had not suffered any prejudice from this alleged procedural irregularity (20 February 2024).

The CoA however showed less flexibility when it later quashed the exequatur order on the grounds that the state had not been properly notified of the arbitration. While the investor had sent communications in accordance with the contract, the CoA found that the emails in the contract were intended solely for correspondence "relating to the contracts," that the *lex arbitri* (Tunisian law) did not contemplate electronic communications, and that there was no evidence that Libya had actually received them (1 October 2024).

Enforcement Battles Over African Presidential Aircraft

France also has been the scene of legal battles over the seizure of African presidential aircraft. The Paris Judicial Court authorised the interim attachment of three Nigerian presidential aircraft undergoing maintenance in France as security under the *ZFII v Nigeria* award.

This echoes the never-ending enforcement battle in the *Commisimpex* saga, in which Congo-Brazzaville challenged the sale of its presidential aircraft, seized in 2020 in Bordeaux. The Cour de cassation dismissed the state's immunity defence, ruling that it had explicitly waived its immunity from execution and that there was insufficient evidence that the aircraft had a diplomatic function (13 March 2024). Likewise, the CoA later dismissed the State's argument that the presidential office has a legal status distinct from the State based on the principle of "unity of state" (19 September 2024).

The End of the Sulu *Saga*

In *Sulu v Malaysia* (covered in detail here), the Cour de cassation upheld the CoA decision refusing to grant an exequatur to the award on jurisdiction, foreshadowing an end of the saga in France. Because the parties' intent to arbitrate was found to be inseparable from their choice of the long-defunct office of the UK Consul-General for Borneo as the adjudicator, the arbitration agreement lapsed, and the award based on it could not be enforced. While the Cour de cassation's decision is bound to lead to the CoA setting aside the final award issued in Paris after the seat was transferred from Madrid, the saga continues in other jurisdictions with ancillary litigation and an ICSID claim against Spain.

Enforceability of Awards in Favour of Sanctioned Entities

In *DNO v Yemen*, the CoA found that the enforcement of an award in favour of a sanctioned entity would not violate international public policy and consequently dismissed the request to set aside the award. However, the Cour de cassation subsequently stayed the proceedings and referred to the CJEU several questions on the applicability of EU sanctions to public entities subject to the concurrent influence of both sanctioned individuals within those entities and the legitimate Yemeni government not subject to international sanctions.

Stay of Enforcement: Consolidation of the Restrictive Approach

Under French law, international arbitration awards are immediately enforceable. However, enforcement can be stayed under Article 1526(1) if not doing so is "likely to severely prejudice the rights of a party." This provision has been interpreted restrictively, with its requirements found fulfilled only in exceptional circumstances (*see* here). 2024 was no exception. In *Astaldi v Roads Department of Georgia*, the Court recalled that a stay of enforcement remains "exceptional" and requires concrete evidence of significant harm, before ruling that enforcing the award would severely prejudice Astaldi's rights by putting it at risk of violating Italian insolvency law and creditor equality principles, potentially leading to unbearable financial sanctions.

Leading Hearing Centers Reopen in Paris

2024 marked an important year also for the establishment of new hearing venues in Paris, further solidifying France's status as a leading arbitration hub. The ICC inaugurated its highly anticipated new Hearing Centre in Paris's 17th arrondissement (here and here), while Delos launched the "Paris Arbitration Centre" in the 2nd arrondissement (here).

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