THE INTERNATIONAL ARBITRATION REVIEW

NINTH EDITION

Editor
James H Carter

THE LAWREVIEWS

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PREFACE

International arbitration is a fast-moving express train, with new awards and court decisions of significance somewhere in the world rushing past every week. Legislatures, too, constantly tinker with or entirely revamp arbitration statutes in one jurisdiction or another.

The international arbitration community has created a number of electronic and other publications that follow these developments regularly, requiring many more hours of reading from lawyers than was the case a few years ago.

Scholarly arbitration literature follows behind, at a more leisurely pace. However, there is a niche to be filled by an analytical review of what has occurred in each of the important arbitration jurisdictions during the past year, capturing recent developments but putting them in the context of the jurisdiction's legal arbitration structure and selecting the most important matters for comment. This volume, to which leading arbitration practitioners around the world have made valuable contributions, seeks to fill that space.

The arbitration world often debates whether relevant distinctions should be drawn between general international commercial arbitration and international investment arbitration, the procedures and subjects of which are similar but not identical. This volume seeks to provide current information on both of these precincts of international arbitration, treating important investor–state dispute developments in each jurisdiction as a separate but closely related topic.

I thank all of the contributors for their fine work in compiling this volume.

James H Carter
Wilmer Cutler Pickering Hale and Dorr LLP
New York
June 2018

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Chapter 18

FRANCE

Jean-Christophe Honlet, Barton Legum, Anne-Sophie Dufêtre and Annelise Lecompte[1]

I INTRODUCTION

2017 and the beginning of 2018 were first marked by the creation of an 'International Chamber' of the Paris Court of Appeal (CICAP). This Chamber will focus on matters 'where international trade interests are at stake', including international arbitration. It will allow to a certain extent the use of English in the proceedings, in an effort to make French courts more accessible to non-French-speaking users. The year in review has seen other developments. French courts confirmed their tendency to carefully scrutinise the information available to the parties at the time of the arbitration before allowing arbitrator challenges on the ground of lack of independence and impartiality. Due process is still high on the agenda of French judges sitting in annulment proceedings. French case law still appears to be evolving – at the level of the Paris Court of Appeal at least – when it comes to the criteria establishing a violation of international public policy. Practitioners and parties should also take note of a recent decision establishing that parties to an international arbitration are jointly and severally liable for the costs of the arbitration, to the effect that a winning party may have to pay the share of costs due by the other party, which failed to do so while the arbitration was pending. The Tribunal des Conflits has also rendered new decisions delineating the competence of judicial versus administrative courts in international arbitrations involving a French public entity.

II THE YEAR IN REVIEW

i Developments affecting international arbitration

New International Chamber of the Paris Court of Appeal

The President of the Paris Court of Appeal and the Paris Bar, in the presence of the Minister of Justice, signed a Protocol establishing an 'International Chamber' of the CICAP on 7 February 2018.[2] The Protocol is said to apply to proceedings initiated before the Paris Court of Appeal as from 1 March 2018. According to Article 1, the CICAP has jurisdiction over cases related to international trade. Article 1.2 provides that the CICAP also has jurisdiction pursuant to a contractual clause attributing jurisdiction to the courts within the Paris Court

1 Jean-Christophe Honlet and Barton Legum are partners, Anne-Sophie Dufêtre is of counsel and Annelise Lecompte is an associate at Dentons.

2 Protocol related to the procedure before the International Chamber of the Paris Court of Appeal, available at http://www.avocatparis.org/system/files/editos/protocoles_signes_creation_juridiction_commerciale_internationale_1.pdf.

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of Appeal's jurisdiction. The CICAP in addition has jurisdiction over appeals of disputes decided by the International Chamber of the Paris Commercial Court in first instance. According to Article 2.1, written pleadings will be in French but exhibits in English may be submitted without any French translations. Hearings will be held in French in accordance with Article 2.3. Nevertheless, pursuant to Article 2.4, foreign lawyers authorised to plead in their country may plead in English. Similarly, parties, witnesses and experts may testify in English. Pursuant to Article 7, decisions of the CICAP will be rendered in French and will be accompanied by a certified English translation. While Article 1.1 states that the CICAP will have jurisdiction over cases related to proceedings brought against decisions rendered in the matter of international arbitration, which would *prima facie* appear to include actions to set aside international awards and enforcement actions, it is not more specific. It does not appear, in particular, that since 1 March 2018, new international arbitration cases were distributed to this new Chamber, as opposed to the Paris Court of Appeal Chamber traditionally hearing such cases (Pole 1 Chamber 1). How the two will interact remains to be seen.

ii Arbitration developments in local courts

Independence and impartiality of arbitrators

The question of independence and impartiality of arbitrators is a recurring theme before French courts. In last year's edition, we mentioned a May 2016 decision issued by the Court of Cassation, which confirmed that the parties to arbitral proceedings have a duty to investigate in order to identify relevant information about the arbitrators.[3] New decisions rendered by the Paris Court of Appeal, the Montpellier Court of Appeal and the Court of Cassation show that the issue of independence and impartiality of arbitrators is still high on the agenda of French courts.

The first decision deals with a dispute which arose following three contracts entered into between the Yemenite Republic, the Yemenite Ministry of Oil and Minerals (together 'Yemen') and three Indian companies (Alkor Petroo Ltd, Gujarat State Petroleum Corporation Ltd and Western Drilling Contractors Private Ltd). The contracts dealt with sharing of subsoil exploration and oil production rights and entered into force in 2009 following ratification by the Yemenite President. From April 2011, the three companies started to explain that their delay in the performance of their obligations was due to the degradation of public safety in the country, and thus should be characterised as *force majeure*. The three companies terminated the contracts in 2013 and initiated arbitration proceedings under the ICC rules of arbitration against Yemen. The arbitral tribunal issued an award in 2015 concluding that the termination was lawful. Yemen then challenged the award before the Paris Court of Appeal. One of the grounds advanced was that the arbitral tribunal was irregularly constituted. Yemen based its claim on a declaration made by one of the arbitrators during the arbitration proceedings, that his wife was going to become a partner during the summer in a law firm representing the three Indian companies, and that the parties could challenge the arbitrator within one month from his declaration. Yemen responded that given the declaration and the advanced stage of the arbitration proceedings, it did not have any objections at this time. The Paris Court of Appeal rejected Yemen's action. The Paris Court of Appeal noted that Yemen was in possession of all necessary elements to challenge the arbitrator during the arbitration proceedings but chose not to proceed. The Paris Court of Appeal reiterated that a party which

3 Civ 1, 25 May 2016, Case No. 14-20532.

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decided not to challenge an arbitrator's independence and impartiality during the course of the arbitration proceedings in accordance with the time limits mentioned in the arbitration rules can no longer raise such claim before the annulment court.[4]

In last year's edition, we explained in detail the facts of the dispute between the Republic of Equatorial Guinea and a French telecommunication company, Orange.[5] In a decision of 22 September 2015, the Paris Court of Appeal rejected the challenge against the award based on Article 1520-2 CCP. The Paris Court of Appeal considered that the Republic of Equatorial Guinea had received enough information during the course of the arbitration proceedings about the arbitrator whose independence and impartiality was challenged and ruled that additional information was easily accessible for the Republic of Equatorial Guinea. In addition, the Court of Appeal emphasised that the Republic of Equatorial Guinea had not raised the issue during the arbitral proceedings, and therefore, could not raise it before French courts.[6] The Republic of Equatorial Guinea appealed the decision. The Court of Cassation rejected the appeal and confirmed the decision rendered by the Court of Appeal.[7] The Court of Cassation observed that despite the information received during the arbitration proceedings, the Republic of Equatorial Guinea signed the terms of references of the arbitral tribunal and recognised that the arbitral tribunal was duly constituted. The Republic of Equatorial Guinea did not make any objections against the arbitrators' appointment during the arbitral proceedings. The challenge against the award based on the allegedly irregular constitution of the arbitral tribunal thus had to be rejected.

The Montpellier Court of Appeal considered the arbitrators' selection process set out in an arbitration clause in a decision dated 12 October 2017.[8] This case concerned a decision taken by the *juge d'appui*.[9] On 23 October 2013, a French company, SAS Bouygues Travaux Publics Régions de France (Bouygues) and a Swiss company, SA Zwahlen & Mayr (ZM) concluded a contract. The contract contained an arbitration clause providing that in case of a dispute, the arbitrator would have to be chosen from a list of 11 people named in the terms and conditions attached to the contract. On 23 September 2016, ZM seized the President of the Montpellier Tribunal of First Instance – acting as *juge d'appui* – to obtain the annulment of the arbitration clause. The *juge d'appui* avoided the arbitration clause and concluded that he was not competent to nominate an arbitrator. Bouygues decided to appeal the *juge d'appui*'s decision, arguing *inter alia* that the arbitration clause was valid. On the contrary, according to ZM, the arbitration clause was manifestly void and disregarded the principle of equality between the parties. The Montpellier Court of Appeal based its decision on Article 1455 CCP, which provides that the *juge d'appui* should not nominate an arbitrator in a situation where the arbitration clause is manifestly void or unenforceable. The Montpellier Court of Appeal explained that the term 'manifestly' should be understood as 'obviously'. In its reasoning, the Montpellier Court of Appeal stated that the inclusion of a list containing the names of the arbitrators did not contradict the principle of equality between the parties. The Court added that the arbitration clause provided that in case of a dispute, the claimant

4 CA Paris, 21 March 2017, Case No. 15/17234.

5 *The International Arbitration Review*, Seventh Edition, 2016, pp. 209-10.

6 CA Paris, 22 September 2015, Case No. 14/17200.

7 Civ 1, 15 June 2017, Case No. 16-17108.

8 CA Montpellier, 12 October 2017, Case No. 17/00269.

9 The *juge d'appui* is competent, *inter alia*, over issues that might arise in the designation of the members of the arbitral tribunal.

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would choose an arbitrator among the names on the list. Thus, under the arbitration clause, the choice of arbitrator was not in the hands of one party. Rather, it depended on the party initiating the arbitral proceedings, either Bouygues or ZM. Therefore, the Court concluded that the arbitration clause was not manifestly void or unenforceable, and quashed the decision of the *juge d'appui*.

Due process

Due process is one of the five grounds under Article 1520 CCP permitting to set aside an international arbitral award in France. On this basis, French courts consider that an arbitral tribunal cannot decide a case based on legal grounds not invoked and debated by the parties.[10]

The Paris Court of Appeal confirmed this approach in a decision rendered on 13 February 2018.[11] The case concerned a contract signed between a German company, Strube GmbH & Co KG (Strube) and a Belgian company, Société Sesvanderhave SA/NV. The parties were forced to renegotiate their contract following a new policy of the European Union. The parties failed to renegotiate the terms of the contract and Sesvanderhave decided to terminate the contract. They chose to submit their dispute to an arbitral tribunal. Following an award issued in 2015, Sesvanderhave obtained an *exequatur* order from the President of the Paris Tribunal of First Instance. Strube challenged the order before the Paris Court of Appeal. The Court explained that an arbitral tribunal, seized with claims concerning both the performance of certain contractual obligations and the termination of others, had the power to 'rearrange the distribution of contractual rights and obligations' in this specific case. However, it decided that the arbitral tribunal could not do so without inviting the parties to express themselves on arrangements which were not part of the parties' claims before the arbitral tribunal. The Court therefore quashed the *exequatur* order on the basis that the arbitral tribunal had violated due process.

International public policy

Pursuant to Article 1520-5 CCP, French courts may set aside an award rendered in France in international arbitration when the award violates 'international public policy.' In the sixth edition of this publication, we explained in detail the evolution of the approach taken by French courts when checking whether an award is in conformity with international public policy.[12] As summarised in last year's edition,[13] from 2004, French courts considered that an award could be set aside on grounds of public policy only when a 'flagrant, effective and concrete' violation of international public policy had occurred.[14] In several decisions rendered

10 Civ 1, 26 June 2013, Case No. 11-17672.

11 CA Paris, 13 February 2018, Case No. 15-17137.

12 *The International Arbitration Review*, Sixth Edition, 2015, pp. 254–6.

13 *The International Arbitration Review*, Eight Edition, 2017, pp. 188-189.

14 See CA Paris, 18 November 2004, Case No. 02-19606 (*Thales* case). See also Civ 1, 4 June 2008, Case No. 06-15320 (*SNF* case).

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between March and October 2014,[15] the Paris Court of Appeal nuanced its prior position and removed the criterion of 'flagrancy' from its review of alleged violation of international public policy.[16] The Court of Cassation did not follow suit, however.

In 2016, the Paris Court of Appeal introduced a new criterion of 'manifest' violation of international public policy somewhat reminiscent of the 'flagrancy' criterion that appeared to have been abandoned.[17] The case concerned a dispute arising out of a contract between a French company, Bauche, and a Swiss company, Indagro. The dispute was brought before the London Maritime Arbitration Association in September 2008. The sole arbitrator rendered his award in 2015, ordering Bauche to pay damages to Indagro. After Indagro obtained *exequatur* of the award in France, Bauche appealed the order. Bauche notably alleged that recognising or granting enforcement of an award that allegedly gave effect to an agreement obtained by corruption would violate international public policy.

The Court of Appeal held that the judge of *exequatur* should check whether recognition or enforcement of the award would violate international public policy in a 'manifest, effective and concrete' manner. The Court of Appeal also added that it was not bound by the arbitrators' assessment in this respect, nor by the law applicable to the merits chosen by the parties. Significantly, the Court of Appeal decided that the control of 'international public policy' should be performed both in fact and law. The Paris Court of Appeal analysed the facts of the case and concluded that the contract could only have been obtained through corruption. As a result, it quashed the order of the judge granting *exequatur* to the award. In another decision of 15 November 2016 concerning the same dispute, the Paris Court of Appeal quashed the judge's order granting the *exequatur* to the final award concerning the arbitration costs.[18] Indagro appealed the two Court of Appeal decisions before the Court of Cassation.

In a decision rendered on 13 September 2017,[19] the Court of Cassation dismissed Indagro's appeal on the ground that the lower court was not bound by the parties' conduct before the arbitral tribunal when assessing whether recognition or enforcement of an award would violate international public policy. The Court of Cassation also noted that criminal courts had previously established that the contract had unlawfully been obtained, and that therefore, the Paris Court of Appeal was right to conclude that recognition of the award in France would violate French international public policy. By this decision, the Court of Cassation confirmed two important points. First, the decision confirms that the rule – according to which a party that did not raise a procedural issue in the arbitration is barred from raising it before the annulment judge – does not apply in relation to French international public policy and to corruption. In addition, the decision confirms that compliance with international public policy must be assessed at the time of the recognition or enforcement of the award. On these grounds, the Court of Cassation confirmed the Court of Appeal's decision to quash the two *exequatur* orders.

While analysing the approach taken by French courts in relation to breaches of international public policy in last year's edition, we also referred to the *Kyrgyzstan v. Belokon*

15 See CA Paris, 4 March 2014, Case No. 12-17681 and CA Paris, 14 October 2014, Case No. 13-03410, CA Paris, 4 November 2014, Case No. 13-10256, CA Paris, 23 September 2014, Case No. 12-21810, 13-09296, 13-17187.

16 See *The International Arbitration Review*, Sixth Edition, 2015, pp. 255–6.

17 CA Paris, 27 September 2016, Case No. 15-12614.

18 CA Paris, 15 November 2016, Case No. 16-11198.

19 Civ 1, 13 September 2017, Case No. 16-25.657 and 16-26.445.

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case without detailing the case.[20] We provide a more detailed analysis of the case below. The case concerned an alleged expropriation of a Kyrgyz bank, Manas bank, acquired by Mr Belokon, a Latvian citizen. Further to Mr Belokon's claims based on the Kyrgyzstan–Latvia bilateral investment treaty, an arbitral tribunal was established under the UNCITRAL Rules. The arbitral tribunal issued an award in 2014 in favour of Mr Belokon and ordered the Kyrgyz Republic to pay an amount of US$15.2 million to Mr Belokon for the loss of his investment. The Kyrgyz Republic challenged the award before the Paris Court of Appeal on various grounds. It claimed that the arbitral tribunal was irregularly constituted, and that the recognition or enforcement of the award would be contrary to international public policy. The Kyrgyz Republic notably argued that the main activity of the Manas Bank was to devise money laundering schemes. The Paris Court of Appeal noted that the prohibition of money laundering was an objective of the 2003 UN Convention against Corruption and was part of French public international policy. After reopening factual findings of the arbitrators, and in particular drawing inferences of money laundering from certain facts, and considering that the recognition or enforcement of the award would make Mr Belokon benefit from the proceeds of criminal activities, the Paris Court of Appeal declared that the recognition or enforcement of the award would violate international public policy in a 'manifest, effective and concrete' manner. The Paris Court of Appeal set aside the award.[21]

In a decision rendered on 25 April 2017, the Paris Court of Appeal had to decide a challenge against an award on jurisdiction rendered under the UNCITRAL Rules where the question of international public policy was also discussed.[22] This case concerned two investors engaged in the food distribution and marketing industries in Venezuela (Serafín García Armas and Karina García Gruber), and an alleged expropriation of their investment. Following the dispute brought by the investors based on the Spain–Venezuela bilateral investment treaty, the arbitral tribunal rendered an award on jurisdiction in 2014. The arbitral tribunal decided that it had jurisdiction over the investors' claims. Venezuela challenged the award on jurisdiction before the Paris Court of Appeal on four different grounds. Venezuela considered that the arbitral tribunal wrongly upheld its jurisdiction *ratione personae* and *ratione materiae*. Venezuela argued that the arbitral tribunal ruled without complying with its mandate. Venezuela also claimed that due process was violated. Finally, it claimed that, by allowing Venezuelan nationals to sue their own state before an international jurisdiction, the award breached international public policy. The Paris Court of Appeal considered that this principle did not correspond to the French conception of international public policy and refused to set aside the award on that ground. However, the Paris Court of Appeal partially set aside the award on jurisdiction based on the ground that the tribunal wrongly upheld its jurisdiction. According to the Court, based on its reading of the applicable wording in the treaty, the arbitral tribunal failed to analyse whether the investors had Spanish nationality at the time the investments were made in Venezuela, even though it was undisputed that they had Spanish nationality both at the time of the request for arbitration and the award on jurisdiction, the dates traditionally retained for these purposes.

On 16 May 2017, the Paris Court of Appeal rendered a decision in relation to the state's mandatory rules and international public policy.[23] The dispute related to a contract

20 See *The International Arbitration Review*, Eight Edition, 2015, p. 189.

21 CA Paris, 21 February 2017, Case No. 15-01650.

22 CA Paris, 25 April 2017, Case No. 15-01040.

23 CA Paris, 16 May 2017, Case No. 15-17442. Some of the authors were counsel in this case.

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signed in 2008 between the Democratic Republic of Congo (DRC) and a company registered under the laws of Delaware, Customs and Tax Consultancy LLC (CTC). The contract concerned the reorganisation of the Office of Customs and Excise Duties (OFIDA) in the DRC. In 2013, CTC initiated ICC arbitration proceedings against the DRC requesting termination of the contract, damages for unpaid invoices and indemnities for the personnel's demobilisation and repatriation. In an award issued on 22 July 2015, the arbitral tribunal declared the contract terminated and ordered the DRC to pay in excess of US$95 million in compensation, plus interest. The DRC seized the Paris Court of Appeal to request the annulment of the award. Among the grounds for annulment, the DRC notably argued that the award was giving effect to a contract concluded without a public tender, breaching the 2003 UN Convention against Corruption as well as Congolese mandatory rules on public procurements. There was no allegation of corruption, though. The alleged breach of the Congolese public procurement rules was therefore argued for itself by the state. French law was applicable to the merits of the case. In its decision, the Paris Court of Appeal first held that a state could not invoke before the annulment court alleged violations of its own law to be released from its substantive obligations (i.e., if they are characterised as mandatory laws in a domestic context). The Court explained that, under Article 1520-5 CCP, international public policy should be understood as rules and standards that could not be breached under the French legal order even in an international context. Consistent with its case law, the Paris Court of Appeal added that its role was to verify whether the arbitral tribunal's decision violated international public policy in a 'manifest, effective and concrete' manner. The Paris Court of Appeal also considered that the award could only be set aside if there was sufficient, specific and consistent evidence showing that the award would give effect to a corrupt contract. The Paris Court of Appeal found that there was no such evidence. It refused to set aside the award.

Finally, in another decision dated 16 January 2018,[24] the Paris Court of Appeal decided to set aside an ICC award on the ground that the award violated French international public policy. The case concerned a dispute which arose between a Russian company, MK Group, and an Ukrainian company, Onix, in relation to the transfer of shares in a gold mining company in Laos. The law of Laos was applicable to the share transfer. Following the issuance of the award in 2015, MK Group seized the Court of Appeal. In its reasoning, the Court of Appeal referred to the United Nations General Assembly Resolution 1803 (XVII) of 14 December 1962 on the Permanent Sovereignty over Natural Resources. The Court explained that the resolution was to be considered as an 'international consensus' in relation to the right of states to subordinate the exploitation of their resources within their territory to a specific authorisation and to control foreign investments. The Court of Appeal added that the provisions by which the states express their sovereignty over their natural resources were part of international public policy. The Court of Appeal concluded that the investment had been made fraudulently, without the proper administrative authorisation, and that the resulting award violated international public policy. What is also worth mentioning in this case is that the Court of Appeal confirmed the approach taken in its decision of 27 September 2016 according to which a French court should check whether recognition or enforcement of an award would violate international public policy 'manifestly, effectively and concretely'.

24 CA Paris, 16 January 2018, Case No. 15-21703.

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The parties are jointly and severally liable regarding the payment of arbitrators' fees

It is also worth mentioning a decision rendered by the Court of Cassation on 1 February 2017 in relation to payment of the arbitrators' fees.[25] The matter concerned the termination of a harbour concession given by the Republic of Guinea to a French company, Getma. A dispute arose between the parties, and Getma started two arbitration proceedings, one before ICSID and another under the OHADA Arbitration Rules. The decision of the Court of Cassation of February 2017 concerns the award rendered under the OHADA Arbitration Rules. During the arbitration, the parties accepted the total amount of the arbitrators' fees to be paid by the parties. However, Guinea refused to pay its remaining share of the fees after the issuance of the award. The arbitrators seized French courts seeking an order that Getma pay the unpaid share of the arbitrators' fees. The Paris Court of Appeal issued a decision ordering Getma to pay the fees. Getma appealed the decision before the Court of Cassation. It argued that the parties' alleged joint and several liability had to be proven and had to derive from a legal provision or a specific agreement between the parties, which did not exist in this case. The Court of Cassation rejected Getma's arguments. It noted that the arbitration was international and did not refer to any domestic law. It explained that the parties' joint and several liability in relation to the arbitrators' fees resulted from the arbitrators' contract, and confirmed the decision of the Paris Court of Appeal to order Getma to pay the unpaid share of the arbitrators' fees. French courts had already established the principle of the parties' joint and several liability in relation to the arbitral tribunal in domestic arbitrations. The Court of Cassation has now clearly established that the same principle applies in international arbitration.

International arbitration and French administrative courts

As explained in the previous editions, the question of challenge of an award made in relation to a French administrative contract has led to different analyses and different results from the Council of State (the highest French court for administrative matters) and the Court of Cassation (the highest French court for civil and commercial matters).[26] Despite the principle of separation between administrative and judicial courts, in a decision dated 8 July 2015, the Court of Cassation considered that judicial courts should have exclusive jurisdiction to order enforcement in France of awards rendered outside France, even when they involve a French entity subject to French administrative law.[27] However, in a decision rendered on 9 November 2016 in a case between the French company Fosmax LNG and STS, a group of foreign companies,[28] the Council of State took a different position and set aside an award rendered in arbitral proceedings between Fosmax and the foreign private parties.[29] It affirmed the jurisdiction of French administrative courts to rule upon awards rendered in international

25 Civ 1, 1 February, Case No. 15-25687.

26 *The International Arbitration Review*, Seventh Edition, 2016, p. 211, *The International Arbitration Review*, Eight Edition, 2017, pp. 191-92.

27 Civ 1, 8 July 2015, Case No. 13-25846.

28 In 2001, Gaz de France concluded a contract with the STS group, in order to build a LNG terminal on the Fos Cavaou peninsula, in the south of France, close to Marseille. After the conclusion of the contract, Gaz de France became a private company and handed over the contract to its subsidiary, another private company, Fosmax LNG.

29 Council of State, 9 November 2016, Case No. 388806.

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arbitration dealing with administrative contracts in two situations: when the award was rendered in France, and when enforcement of the award was requested in France, regardless of the seat of the arbitration.[30]

At the same time, STS also seized judicial courts of the same issue. On 7 April 2015, the Paris Tribunal of First Instance issued an *exequatur* order to enforce the award. Following the issuance of the *exequatur* order, Fosmax seized the Paris Court of Appeal to request both the award and *exequatur* order to be set aside. In its decision dated 4 July 2017, the Paris Court of Appeal held that the *exequatur* order issued by the judicial judge was rendered in a matter within the jurisdiction of the administrative judge and thus constituted an excess of power. Therefore, the Court of Appeal annulled the *exequatur* order.[31]

In the same dispute, the Tribunal des Conflits issued a decision on 24 April 2017 where it distinguished between the jurisdiction of judicial courts and administrative courts. According to the Tribunal des Conflits, in principle, judicial courts have jurisdiction over challenge of awards related to public contracts concluded between a public entity and a foreign party performed on the French territory, and implicating the interests of international trade. However, administrative courts have jurisdiction over challenges of awards related to a contract subject to mandatory rules of French public law in the field of public procurement or occupation of public domain. In the case at hand, the Tribunal des Conflits confirmed that French administrative courts have jurisdiction to rule on the *exequatur* of an award which related to a dispute involving a contract concerning French mandatory rules on public procurement concluded between a public entity and a foreign party performed on the French territory, and implicating the interests of international trade.[32]

III OUTLOOK AND CONCLUSIONS

The creation of the International Chamber of the Paris Court of Appeal (CICAP) is a welcome development, although the extent to which its procedural novelties (such as the possibility for foreign counsel to plead in English) will be used and how it will itself be used for international arbitration matters remains to be seen. Among the most notable decisions of the past year, the *Belokon*, *Democratic Republic of the Congo* and *MK Group* decisions from the Paris Court of Appeal analysed above show, first, that the Paris Court of Appeal remains at the forefront of arbitration legal developments in France and, second, closely guards international arbitration's integrity. The courts do not hesitate to sanction arbitral awards if they are perceived as encouraging illegal activities.

30 As already explained in last year edition, the fact that both administrative and judicial courts now claim to have jurisdiction over annulment proceedings of awards in certain circumstances adds some unwarranted complexity and uncertainty to French law of international arbitration, which one would hope will be resolved by some legislative intervention.

31 CA Paris, 4 July 2017, Case No. 15-16653.

32 The Tribunal des Conflits is a French court that decides which among the judicial or administrative courts have jurisdiction to hear any given case.

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Appendix 1

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