Recent Significant French Judicial Decisions Involving International Arbitration

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French case law regarding international arbitration is marked by its coherence. This specificity is due to the fact that arbitration cases are centralized by the Paris Court of Appeal in a specialized chamber with the same magistrates sitting all the time. Therefore, this Court’s decisions are not only highly coherent, they are also highly authoritative in France. The significance of French decisions also stems from the fact that, according to the statistics published by the International Chamber of Commerce (ICC), Paris is the most chosen place of arbitration.

The present review of French decisions aims at summarizing the recent evolution of French arbitration law, namely, the recognition of estoppel in the French legal system, the continuing statement of the obligation to raise objections as early as possible and possibly to the arbitral tribunal itself, the statement of the existence of an arbitral legal order, and the new consequences of the impossibility of appealing international arbitral awards. The cases from both the Court of Appeal and from the French Supreme Court (Cour de Cassation) thus generally highlight just how supportive the French courts have been of arbitration, notably in cases rendered in recent years.

GOLSHANI CASE—THE RECOGNITION OF ESTOPPEL IN THE FRENCH LEGAL SYSTEM

The French Cour de Cassation, by a decision delivered on July 6, 2005 (the Golshani case), officially introduced the principle of estoppel into French arbitration law.1 Prior to this formal introduction, the Paris Court of Appeal

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had implicitly recognized the principle of estoppel on several occasions, affirming that a party is “precluded from contradicting itself to the detriment of others” and had rejected several arguments if not directly on this legal basis, always using such formulation and never denying this rule. However, only in the Golshani case was the reference expressly made to the principle of estoppel.

Briefly, the facts of the case were as follows:

Mr. Golshani, a U.S. citizen, went before the Iran-United States Claims Tribunal in 1982 seeking compensation for the expropriation of property that took place at the time of the 1979 Iranian Revolution. The arbitral tribunal rejected his claims in an award in 1993, granting U.S.$50,000 to the Iranian government for the costs of arbitration. The award was granted exequatur (i.e., recognition and enforcement) in France, a decision that Mr. Golshani appealed before the Paris Court of Appeal.

Mr. Golshani claimed that the tribunal ruled in the absence of an arbitration agreement, which is a ground for annulment under Article 1502(1) of the French Code of Civil Procedure. This point was considered inadmissible by the Court of Appeal, which ruled that “[i]ndividuals referring to the Iran-United States Claims Tribunal, accept by so doing the arbitration agreement executed . . . between the United States and Iran to which they become parties.” However, the Court did not expressly state on what legal basis it rejected the claim. There were three possible legal foundations: the waiver by the claimant of his right to invoke the absence of an arbitration agreement (due to his acceptance of the latter when referring the dispute to the tribunal), the necessary consequences of the duty to perform the arbitral agreement in good faith, and the principle of estoppel.

Mr. Golshani brought the issue before the Cour de Cassation, which upheld the decision, clarifying the legal basis on which it was rendered. The Court stated that

Mr. Golshani, who filed the request for arbitration before the Iran-United States Claims Tribunal himself and who took part, for over nine years, in the arbitral proceedings, is precluded, under the rule of

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