

Enforcement of arbitral awards in France – the “French touch” makes it a little easier than elsewhere!

Less is more : September 2016



Detlev Kühner, Avocat au Barreau de Paris | Partner

In France, like in most other jurisdictions¹, there is a double level of limited review of arbitral awards by state courts. At the first instance level, the Court of Appeal at the place of the arbitration may be seized (Article 1519 CPC²), bearing in mind that the award challenge can only be raised on the basis of five limited grounds (Article 1520 CPC). At the second instance level, the French Court of Cassation may be seized. However, the review of that Court is limited to legal aspects. Up to this point, the French procedure is not substantially different from that found in other jurisdictions. However, the following elements show why France deserves to be considered to be particularly arbitration friendly also in the field of enforcement of arbitral awards³:

(i) Waiver of award challenge:

Under French law, the parties have the possibility to waive their right to challenge awards at any time (Article 1522 section 1 CPC). This possibility only exists in a couple of other jurisdictions, e.g. in Switzerland, and the parties' right to waive is normally contingent upon their domicile/seat and/or nationality, which is not the case in France.

It is true that also in the situation of a waiver of the award challenge, the award still needs to be declared enforceable by the French state courts and the decision

¹ In Austria, the number of instances was only quite recently reduced from formerly three to two instances.

² Code de procédure civile (French Code of civil procedure).

³ The present Newsletter only deals with awards rendered in international arbitration proceedings as defined in Article 1504 CPC.

declaring the award enforceable may be challenged on the basis of the five grounds for award challenge (Article 1522 section 2 CPC). The award nevertheless remains intact in that scenario and may well be enforced outside of France, which is normally not possible in case of an award challenge which may annul the award.

- (ii) Limited duration of state court proceedings in relation to award challenges:
In Paris, in which most of the challenges against arbitral awards are raised, specialized judges will be seized with the matter. Both, the procedure before the Court of Appeal and the procedure before the Court of Cassation do normally not exceed 15 months' time. It is true that the state courts of some jurisdictions may even be faster. Nevertheless, objectively speaking, these time periods appear to be satisfactory.
- (iii) Award challenges do not automatically suspend enforcement proceedings:
The general rule is that an award challenge shall not hinder the prevailing party from seeking enforcement of the award. Consequently, award challenges do not suspend enforcement proceedings (Article 1526 section 1). Also, the competent judge may only exceptionally suspend the enforcement proceedings, in case the rights of a party are seriously jeopardized (Article 1526 section 2).
- (iv) The conduct of the second instance procedure may be subject to conditions:
Once the Court of Appeal has rejected the award challenge⁴, the losing party may wish to appeal that decision before the Court of Cassation. However, the prevailing party may request before the Court of Cassation that the matter be kept in abeyance until the losing party has fulfilled its payment obligations under the Court of Appeal's decision (Article 1009-1 CPC). Often times, the prevailing party is awarded a substantial amount of money in reimbursement of its fees and expenses under Article 700 CPC. If the losing party continues to refuse payment of that amount, it risks that its further appeal before the Court of Cassation be suspended or precluded. In cases however, in which the prevailing party has an interest in a speedy cassation procedure, it should normally abstain from using this option, since it will in most cases delay the proceedings before the Court of Cassation.
- (v) The French Courts do enforce awards which were set aside in other jurisdictions
Unlike the four grounds dealt with above, this last ground gives no direct reason to choose Paris as place of the arbitration. However, it is another element which underpins the arbitration friendly attitude of the French state courts, in general, and their concept of international arbitration, in particular. France has made use of

⁴ Even though the number of award challenges has increased over the last decade, the number of awards which were annulled remains very small.

the most-favoured-nation clause enshrined in Article VII section 1 of the New York Convention of 1958 and has decided not to include the annulment of arbitral awards in other jurisdictions in the list of grounds for award challenge. The French courts therefore have at various occasions accepted to enforce awards in France notwithstanding their annulment in other jurisdictions.⁵ These decisions were criticized at many occasions and it is true that the French concept, whereby international arbitral awards are not linked to any judicial order is quite avant-gardist and probably even too avant-gardist, at least for the time being. However, the purpose of adding this fifth ground is to complete the picture of an existing very arbitration friendly environment in France and, in particular, in Paris.

Enforcement of arbitral awards is only one of many other reasons which make Paris one of the most attractive places for arbitration proceedings in the world.

* * *

⁵ *Hilmarton*, Cass. Civ. 1^{re}, 23.3.1994, Rev. arb. 1994, S.327; *Putrabali*, ⁵ Cass. Civ. 1^{re}, 29.6.2007, Rev. arb. 2007, S.507.