Choice of Law In Convention Establishing Louvre Museum in Abu Dhabi

Which law governs the establishment of a Louvre museum in Abu Dhabi? The answer can be found in an international agreement concluded in March 2007 between the French state and the United Arab Emirates to that effect (the Agreement). The French Parliament has ratified the Agreement on 9 October 2007. The French text of the Agreement can be found here.

Although the Agreement was concluded between the two States, more actors are involved. One is the Louvre Museum. The Louvre Museum controls the use of the name *Louvre* and thus granted the United Arab Emirates (UAE) permission to use its name. Another actor is a new French agency established for the occasion, the International Agency for French Museums. The Agreement provides that the agency will advise the UAE on a variety of issues regarding the creation of the museum. Each of these two entities are autonomous and have legal personality under French law.

This background is necessary to understand the provisions of the Agreement dealing with choice of law (articles 17, 18 and 19). These provisions provide for a different choice of law depending on which of these entities is involved.

1) As between the States, article 17 provides that disputes ought to be resolved amicably. No rules of decision are provided.

2) As far as the Louvre is concerned, article 18 provides that any dispute regarding the use of the name *Louvre* shall be decided by French courts pursuant to French law.

3) Finally, article 18 provides that disputes between the agency and the UAE shall be resolved by way of arbitration, and article 19 provides that arbitral tribunals shall decide such disputes pursuant to English law. Interestingly enough, article 19 also provides that the contracting parties (i.e. the States) owe a duty of good faith to each other, and that so do the agency and the UAE.

These provisions raise several issues. First, why did the negotiators choose to distinguish between the Louvre Museum and the newly created agency? One possibility is that the subject matter of the potential dispute (use of the name *Louvre*) was perceived as belonging exclusively to courts and as being unarbitrable, as under the French law of arbitration, intellectual property is regarded as partly unarbitrable. Second, why did the negotiators choose English law, and why did they then add on a duty of good faith? It seems to me that the only reasonable answer to the first part of this second question is that they were looking for a law which was both sophisticated and "neutral". But then they decided to add on a duty of good faith. Were they scared of the consequences of the application of a law which was perceived as not including such a duty? What will it mean, however, from a practical perspective, for the tribunal to apply English law with a duty of good faith? All comments welcome!

Third Issue of 2007's Journal du Droit International

The last issue of the *Journal du Droit International* contains three articles dealing with conflict issues. They are all written in French.

The first is authored by Cecile Legros, who lectures at the Faculty of Law of Rouen. It deals with Conflicts of Norms in the Field of International Contracts for Carriage of Goods ("*Les conflits de normes en matière de contrats de transport internationaux de marchandises*"). The English abstract reads:

> *The originality of the international conventions in the field of international transport contracts comes from their comprising, in addition to rules regarding the international transport contract concerned, provisions on jurisdictional competence, arbitration, and sometimes even on recognition and enforcement. The present study aims at analysing these original provisions as well as their links with other international instruments. Could the existence of competence, enforcement and arbitration rules in different sources turn to a conflict of*

regulations or can such rules coexist? Such are the questions discussed in this study.

The first part of this essay will analyse these orginal rules on competence and enforcement, in order to afterwards be able to consider their relation to European Union instruments. The second part of this article will be published in the next issue of the Journal.

The second article with conflict implications is authored by Professor Manlio Frigo, who teaches at the University of Milan. The article studies The Role of Rules of Conduct Between Art Law and Regulation ("*Le role des règles de déontologie entre droit de l'art et régulation du marché*"). The English abstract reads:

In the field of international protection of cultural property, and of rules applicable to art work trading, beside the norms contained in international agreements, in the last years one can witness a proliferation of spontaneous or quasi-spontaneous rules that may be approximately classified in the category of rules of conduct. Whether we are dealing with rules capable of creating obligations at least of contractual nature, or with rules lacking true binding nature, we can nonetheless acknowledge a meaningfull likeness with the rules having developed in the commercial domain also by means of the lex mercatoria. In both cases indeed we are faced with a group of rules of conduct created by the same subjects to which they are addressed, functionning as instruments by which professionals milieux and categories involved self-regulate themselves. This study takes into account the main codes of conduct drafted by international organisations, international institutions and national institutions, both public and private, federations and associations, in order to attempt a first survey of their influence on international commerce as instruments of art market regulation.

Finally, Professor Yasuhiro Okuda, of Chuo University in Tokyo, offers a survey of the recent reform of international private law in Japan ("*Aspects de la réforme du droit international privé au Japon*"). The English abstract reads:

The Japanese statute on private international law that was well known as the Horei has been largely revised in 2006 and newly retitled as Act on the general

rules on the application of laws. The new Act came into force on January 1st, 2007 and brings major changes in the field of contractual and non contractual obligations. This article deals with the comparison of these revised provisions and European laws, as well as the interpretation to be discussed before Japanese courts in the future. The text of this Act is translated in French as an appendix to this article.

An English translation of the Act by Professor Okuda can be found here.

Articles appearing in the *Journal du droit international* cannot be downloaded.

Christian Schulze, 'The 2005 Hague Convention on Choice of Court Agreements', (2007) 19 SA Merc LJ 140-150

The article discusses the 2005 Hague Convention's rules on jurisdiction (of the chosen and not-chosen courts) and the recognition and enforcement of resulting judgments. It then goes on to examine the role of the new convention in comparison to other conventions and to the Brussels I Regulation. Reference is made to the different objectives of these international instruments and to the more limited scope of the Hague Convention. The article also discusses jurisdiction agreements in general, pointing out that they are common in international commercial contracts and may be regarded as a prudent step for parties to take. The author describes the distinction between exclusive and non-exclusive choice of court agreements. He concludes by stating that this convention makes litigation a more viable alternative to arbitration since it ensures the enforcement of choice of court agreements in the same fashion as the New York Convention (1958) does for arbitration agreements. He then expresses the hope that the new convention would draw as much interest as the New York

Convention.

Conference: PIL and Protection of Foreign Investors

University of Montenegro Faculty of Law in Podgorica, with the support of the GTZ organize the Fifth Annual Conference: “Private International Law and Protection of Foreign Investors” (*Me?unarodno privatno pravo i zaštita stranih investitora*).

The program includes the following speakers and topics:

Maja Stanivukovi?: Clause Concerning the Observation of All Commitments which the State Assumes Towards the Foreign Investor (the Umbrella Clause) in Bilateral Investment Protection Treaties (*Klauzula o ispunjenju svih obaveza koje je država preuzela prema stranom ulaga?u (kišobran klauzula) u dvostranim ugovorima o zaštiti investicija*)

?or?e Krivokapi?: Some Modern Clauses in Investment Agreements (*Neke moderne klauzule u investicionim ugovorima*)

Uglješa Gruši?: Effects of Choice of Court Clauses in European, English and Serbian Law (*Dejstvo prorogacionih sporazuma u evropskom, engleskom i srpskom pravu*)

Mirela Župan: Widening Party Autonomy to Non-State Law (*Širenje strana?ke autonomije na izbor ne državnog prava*)

Ivana Kunda: Internationally Mandatory Rules: Defining their Notion in European Private International Law (*Me?unarodno prisilna pravila: odre?enje pojma u europskom ugovornom me?unarodnom privatnom pravu*)

Bernadet Bordaš: Certain Issues of Resolving Investment Disputes as an Investor Protection Instrument (*Neka pitanja rešavanja investicionih sporova kao*

instrumenta zaštite investitora)

Vesna Lazi?: Suitability of the UNCITRAL Arbitration Rules for the Settlement of Investment Disputes

Michael Wietzorek: Arbitration of Investment Disputes

Toni Deskoski: The Importance of the Right to be Heard in International Arbitration Proceedings

Vladimir Savkovi?: Internet Arbitrations as a Model for Resolving Disputes Arising Out of the Electronic Contracts – Pros and Cons (*Internet arbitraže kao model za rješavanje sporova proizašlih iz elektronskih ugovora – pro et contra*)

Christa Jessel Holst: The Directive 2005/56/EC of 26 October 2005 on Cross-Border Mergers of Limited Liability Companies and Its Implementation in Member-States with Restrictions in the Legal Transactions of the Real Properties

Vlada ?olovi?: The Status of Foreign Investors in Domestic Insolvency Proceedings (*Položaj stranih investitora u ste?ajnom postupku na doma?oj teritoriji*)

Milena Jovanovi?-Zattila: Investor Protection on the Capital Market (*Zaštita investitora na tržištu kapitala*)

Davor Babi?: Law Applicable to Takeover of Joint Stock Companies (*Pravo mjerodavno za preuzimanje dioni?kih društava*)

Predrag Cvetkovi?: International Legal Regime for Foreign Investments: The Role of the World Trade Organisation (*Me?unarodno-pravni režim stranih ulaganja: o ulozi i zna?aju Svetske trgovinske organizacije*)

Valerija Šaula: On the Occasion of a Decision of the Constitutional Court of Bosnia and Herzegovina – The Issue of Service Being Made Abroad as a Condition for Recognition of a Foreign Judgement (*Povodom jedne odluke Ustavnog suda Bosne i Hercegovine-Problem dostavljanja u inostranstvo kao uslov za priznanje presude stranog suda*)

The conference is to be held from 18 to 20 October 2007 in the Hotel Bellevue Iberostar in Be?i?i (Montenegro). The proceeds from the conference will be

published by the Faculty of Law in Podgorica.

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Romanian Journal of Private International Law and Comparative Private Law

A new yearbook devoted to private international law has been recently published in Romania: **Revista de Drept International Privat ?i Drept Privat Comparat** (Journal of Private International Law and Private Comparative Law). Published by Sfera Juridica, the journal is edited by *Dan Andrei Popescu* (Babe?-Bolyai University, Cluj-Napoca) and has an editorial advisory board of both Romanian and foreign scholars.

The first issue (2006) contains a large number of articles and comments, dealing with private international law, comparative law and arbitration. While all the articles are published in Romanian, a translation is provided for most of them (in English, French or German). Here's a short extract of the table of contents (only translated titles are listed: for the full TOC, and the original Romanian titles, please refer to this .pdf file – hosted by the Àrea de Dret Internacional Privat blog):

> *Viviana Onaca, Entraide judiciaire en matière civile et commerciale – le présent et les perspectives;*

Christian von Bar, Ein Raum der Sicherheit, der Freiheit und des Rechts – auch des Privatrechts?;

Private International Law

Maurice N. Andem, Jurisdictional Problems in Private International Law: A Brief Survey of International Co-operation in Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters;

Bertrand Ancel, Horatia Muir Watt, L'intérêt supérieur de l'enfant dans le concert des juridictions : le Règlement Bruxelles II bis;

Andrea Bonomi, The Role of Internationally Mandatory Rules in an European Private International Law System;

Bernard Dutoit, Le droit des contrats face à la globalisation des relations humaines;

Marc Fallon, Lignes de force de l'interaction du droit international privé et du droit de l'Union européenne;

David Hayton, Trusts in EU Private International Law;

Alina Oprea, La Convention européenne des droits de l'homme et l'application des normes étrangères en droit international privé;

International Arbitration

Caixia Yang, Évolution de l'arbitrage commercial international en droit chinois et situation actuelle;

Comparative Private Law

Abbas Karimi, Les modifications du code français de la consommation par la transposition de la directive européenne 93-13 du 5 avril 1993;

Laura Tofana, Mircea Dan Bocsan, Aperçu sur le cadre juridique de l'adoption internationale en Roumanie – une analyse critique de la loi no.273/2004;

Paul Vasilescu, Entre la réforme et les reliques civiles – l'insolite d'un vendeur impayé;

Book Reviews

Stéphanie Francq, L'applicabilité du droit communautaire dérivé au regard des méthodes du droit international privé (Alina Oprea);

Bernard Dutoit, Le droit international privé ou le respect de l'altérité (Alina Oprea);

***In Memoriam Gerhard Kegel (1912 – 2006)**, Heinz-Peter Mansel.*

(Many thanks to Raluca Ionescu – Universidad Autónoma de Barcelona and Àrea de Dret Internacional Privat blog – for the tip-off)

Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" – Annotation on "Color Drack"

Recently, the latest issue of the German legal journal *Praxis des Internationalen Privat- und Verfahrensrecht* ("IPRax") has been published.

I.) Annotation on *Color Drack*

The issue contains *inter alia* an annotation by *Peter Mankowski* (Hamburg) on the ECJ's judgment in *Color Drack GmbH./.Lexx International Vertriebs GmbH* of 3 May 2007 where the Court had to deal with the question of jurisdiction in cases where there are several places of delivery within a single Member State.

Mankowski outlines in his annotation six potential solutions, pointing out, however, that none of them is – due to the complexity of the issue – completely convincing. This is, according to *Mankowski*, also true with regard to the approach adopted by the ECJ, which has developed a two-stage solution for

identifying the competent court in cases where there are several places of delivery within a single Member State: According to the ECJ, "the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of determining factors for establishing the principal place of delivery, the plaintiff may sue the defendant in the court for the place of delivery of its choice."

Mankowski examines this solution critically and points out that determining the main focus of the deliveries, as advocated by the Court, implied uncertainty which contravened the aims of the Regulation. Also the subsidiary solution of the Court which shall be applied in cases where no main focus can be ascertained, the claimant's choice, is regarded sceptically since the Court's premise, in these cases all places of (part) deliveries were equivalent, could not be agreed with.

Due to the uncertainties which are attended with determining the main focus, *Mankowski* asks for further concretizing criteria and suggests to proceed – following choice of law rules which try to designate the law with the closest link to the case – from the assumption that it is decisive where the deliverer's place of business which is in charge of the contract is situated. In cases where nothing is delivered at this place, Art. 5 (1) lit. c Brussels I Regulation referred to Art. 5 (1) lit. a Brussels I Regulation and consequently to national law.

See regarding this case also our previous posts on the Advocate General´s opinion, the judgment and further annotations.

II.) Contents

In addition to this annotation the new issue of the "IPRax" contains *inter alia* the following contributions:

- Article by *Axel Halfmeier* (Bremen) on the action raising an objection to the judgment claim ("Die Vollstreckungsgegenklage im Recht der internationalen Zuständigkeit")
- *Wolf-Georg Ringe* (Oxford) examines the impact of the ECJ's jurisprudence regarding companies' freedom of establishment on international civil procedure law ("Überseering im Verfahrensrecht – Zu den Auswirkungen der EuGH-Rechtsprechung zur Niederlassungsfreiheit von Gesellschaften auf das Internationale Zivilprozessrecht")

- Annotation by *Herbert Roth* (Regensburg) on a decision of the Court of Appeal Düsseldorf concerning the question of whether the debtor's identity has to be clarified – in case of uncertainties – already during the proceedings for a declaration of enforceability ("Der Streit um die Schuldneridentität im Verfahren der Vollstreckbarerklärung nach Art. 41, 43 EuGVVO")
- Annotation by *Urs Peter Gruber* (Halle) on a decision of the Court of Appeal Bamberg dealing with the question of whether proccedings for a declaration of enforceablilty according to Artt. 51, 31 et seq. Brussels Convention are suspended in case insolvency proceedings are opened with regard to the respondent's assets *abroad* ("Inländisches Vollstreckbarerklärungsverfahren und Auslandskonkurs")
- Annotion by *Stefan Kröll* (Cologne) on two decisions of the Court of Appeal Karlsruhe regarding the question of whether procedural irregularities which have allegedly occured at the place of arbitration can be raised in the proceedings for a declaration of enforceability ("Die Präklusion von Versagungsgründen bei der Vollstreckbarerklärung ausländischer Schiedssprüche")
- Annotion by *Marcus Mack* (Heidelberg) on the U.S. Supreme Court decision in *Sinochem* ("Forum Non Conveniens – Abweisung ohne Zuständigkeitsprüfung")
- Article by *Stephan Balthasar* (Munich) on the recognition and enforcement of German judgments on the Channel Islands ("Anerkennung und Vollstreckung deutscher Urteile nach *common law* auf den Kanalinseln und Verbürgung der Gegenseitigkeit")

The full contents as well as news in private international law can be found at the journal's website.

Conflict of Laws in a Globalized

World

Cambridge University Press have published a new book on **Conflict of Laws in a Globalized World**, edited by Eckart Gottschalk (Harvard), Ralf Michaels (Duke), Giesela Ruhl (Max Planck, Hamburg) and Jan von Hein (Max Planck, Hamburg). The book is a tribute to the late Arthur von Mehren; the contributors (see below for a full list) are all former Joseph Story Fellows, who worked with von Mehren during their year at Harvard. Here is the publisher's blurb:

> *This book contains ten contributions that examine current topics in the evolving transatlantic dialogue on the conflict of laws. The first five contributions deal with the design of judgments conventions in general, the recently adopted Hague Convention on Choice of Court Agreements, problems involving negative declaratory actions in international disputes, and recent transatlantic developments relating to service of process and collective proceedings. The remaining five contributions focus on comparative and economic dimensions of party autonomy, choice of law relating to intellectual property rights, the applicable law in antitrust law litigation, international arbitration, and actions for punitive damages.*

The contents:

Editor's preface; Bibliographical note; Part I. ***Remembering Arthur T. von Mehren***: 1. *The last Euro-American legal scholar? Arthur Taylor von Mehren* (1922 – 2006) Jürgen Basedow; 2. *Arthur Taylor von Mehren and the Joseph Story Research Fellowship* Peter L. Murray; 3. *Building bridges between legal systems – the life and work of Arthur T. von Mehren* Michael von Hinden; Part II. ***Transatlantic Litigation and Judicial Cooperation in Civil and Commercial Matters***: 4. *Some fundamental jurisdictional conceptions as applied in judgement conventions* Ralf Michaels; 5. *The Hague Convention on Choice-of-Court Agreements – was it worth the effort?* Christian Thiele; 6. *Lis Pendens, negative declaratory-judgement actions and the first-in-time principle* Martin Gebauer; 7. *Recent German jurisprudence on cooperation with the US in civil and commercial matters: a defense of sovereignty or judicial protectionism?* Jan von Hein; 8. *Collective litigation German style – the act on model proceedings in capital*

market disputes Moritz Balz and Feliz Blobel; Part III. ***Choice of Law in Transatlantic Relationships***: 9. P*arty autonomy in the private international law of contracts: transatlantic convergence and economic efficiency* Gisela Ruhl; 10. *The law applicable to intellectual property rights: is the Lex Loci Protectionis a pertinent choice of law approach?* Eckart Gottschalk; 11. *The extraterritorial reach of antitrust law between legal imperialism and harmonious co-existence: the empagram judgement of the US Supreme Court from a European perpective* Dietmar Baetge; 12. *Mandatory elements of the Choice-of-Law Process in international arbitration – some reflections on Teubnerian and Kelsenian legal theory* Matthias Weller; 13. *Application of foreign law to determine punitive damages- a recent US Court contribution to Choice-of-Law evolution* Oliver Furtak.

The contributors:

- Jürgen Basedow
- Peter L. Murray
- Micahel von Hinden
- Ralf Michaels
- Christian Thiele
- Martin Gebauer
- Jan von Hein
- Moritz Bälz
- Feliz Blobel
- Gisela Rühl
- Eckart Gottschalk
- Dietmar Baetge
- Matthias Weller
- Oliver Furtak

The book can be purchased from CUP (on either their main site, or the US variant.) It is priced at £45.00 (or $85.00) and will be available from October 2007. ISBN: 9780521871303.

Many thanks to Ralf Michaels for the tip-off.

The Grant of an Anti-Suit Injunction in Connection with a Contract Governed by English Law

NIGEL PETER ALBON (T/A N A CARRIAGE CO) v (1) NAZA MOTOR TRADING SDN BHD (A company incorporated with limited liability in Malaysia) (2) TAN SRI DATO NASIMUDDIN AMIN [2007] EWHC 1879 (Ch). *The Lawtel summary*:

The applicant (Y) applied for an injunction restraining the respondent Malaysian company (N) from pursuing arbitration proceedings in Malaysia. Y alleged that the underlying agreement between the parties was an oral agreement made in England subject to English law. N alleged that there was a joint venture agreement signed by the parties in Malaysia governed by Malaysian law and containing a provision for arbitration in Malaysia. N denied concluding the English agreement as alleged by Y. Y contended that his signature on the joint venture agreement had been forged. Y had obtained permission to serve the proceedings out of the jurisdiction and an order for alternative service. N had applied unsuccessfully for a stay of proceedings in favour of arbitration proceedings in Malaysia, the court holding that the issue of the authenticity of the joint venture agreement should be determined by the English court rather than in the arbitration proceedings. Y had obtained on an application without notice an order restraining N from pursuing the arbitration proceedings in Malaysia but that injunction had been discharged as the sanction for failure by Y to comply with a court order. Y then made a further application for an injunction. Y contended that the court had jurisdiction to grant an anti-suit injunction and should grant an injunction barring N from taking any further steps in the arbitration proceedings pending the outcome of the English proceedings. N contended that the relief should be limited to barring N from inviting the arbitrators to rule on the authenticity of the joint venture agreement but should leave it to the arbitrators to decide whether to proceed with the arbitration in the interim without prejudice and subject to any determination by the English court

on the issue of authenticity and accordingly of the arbitrators' jurisdiction.

Lightman J. held that the grant of an anti-suit injunction in connection with a contract governed by English law was a claim made in respect of the latter contract within CPR r.6.20(5)(c), *Youell v Kara Mara Shipping Co Ltd* (2000) 2 Lloyd's Rep 102 applied. If that was wrong, the court had jurisdiction to grant an anti-suit injunction on the basis of N's application for a stay, *Glencore International AG v Metro Trading International Inc* (No3) (2002) EWCA Civ 528, (2002) 2 All ER (Comm) 1 considered. N was a foreign party brought into the jurisdiction by answering a claim within CPR r.6.20: it had not willingly submitted to the jurisdiction without reservation and it had not brought a counterclaim. But it had applied for a stay, and that application was ongoing and required the court to adjudicate on the authenticity of the joint venture agreement.

In those circumstances, the court had power to protect its processes in the course of and for the purposes of determining the claim to the stay, and that included where necessary the power to grant an injunction restraining N from taking steps within or outside the jurisdiction which were unconscionable and which might imperil the just and effective determination of the claim to the stay, *Grupo Torras SA v Al-Sabah (No1)* (1995) 1 Lloyd's Rep 374 considered. The pleaded claim to an injunction fell within the gateway relied on and the necessary permission was granted to serve the amended claim form and amended particulars of claim in Malaysia. (2) The injunction sought was necessary to protect the interests of Y in the instant proceedings. For N to prosecute the arbitration proceedings or to allow the arbitrators to proceed with them pending determination whether N had forged Y's signature on the joint venture agreement was to duplicate the instant proceedings. That was oppressive and unconscionable, *Tonicstar Ltd (t/a Lloyds Syndicate 1861) v American Home Assurance Co* (2004) EWHC 1234 (Comm), (2005) Lloyd's Rep IR 32 considered. Both sets of proceedings would be concerned with exactly the same subject-matter, *Elektrim SA v Vivendi Universal SA* (2007) EWHC 571 (Comm), (2007) 2 Lloyd's Rep 8 considered. The court declined to frame the injunction so as to leave it open to N to proceed with the arbitration inviting the arbitrators to determine what, if any, steps to take in the interim and without prejudice to the determination of authenticity by the English court.

View the full judgment on BAILII. *Source: Lawtel*.

Anti-Suit Injunctions in the EU: A Necessary Mechanism in Resolving Jurisdictional Conflicts?

Nikiforos Sifakis has written an article in the latest issue (Vol. 13, Issue 2, 2007) of the *Journal of International Maritime Law* (current issue's contents not yet on the website) entitled, "Anti-Suit Injunctions in the European Union: A Necessary Mechanism in Resolving Jurisdictional Conflicts?" (*J.I.M.L.* 2007, 13(2), 100-111). A small abstract is available:

> *Discusses the use of anti-suit injunctions in the EU. Considers the categories of cases in which anti-suit injunctions are granted in the UK, including exclusive court jurisdiction clauses, arbitration agreements and no choice of forum cases. Reviews the attitude of the European Court of Justice to anti-suit injunctions. Examines the reasons for antipathy towards anti-suit injunctions in Europe. Comments on the US system of anti-suit injunctions. Proposes a reform of Council Regulation 44/2001.*

There is also a short casenote on the US Supreme Court decision in *Sinochem Int'l Co., Ltd. v. Malaysia International Shipping Corp* by Dennis L. Bryant (*J.I.M.L.* 2007, 13(2), 89-90) in the same issue.

The full article and casenote are only available to those with a subscription to the *J.I.M.L.*

The French Like It Delocalized: Lex Non Facit Arbitrum.

Arbitral awards remain delocalized under the French law of international arbitration. They can be recognised and enforced in France irrespective of the decision of the court of the seat of the arbitration to set them aside. F.A. Mann, and many in England are of the opinion that arbitration only exists if the seat of the arbitration allows it. Lex facit arbitrum. The French disagree and believe that arbitration is a private activity, which can be considered favorably or unfavorably, but certainly does not need to be empowered by any state ex ante. Thus, if the court of the seat nullifies the award, this does not mean that it cannot be recognised in another legal order. Would any court think of nullifying a road accident?

This delocalization doctrine builds on the *Hilmarton* precedent. On June 29, 2007, the French Supreme Court for Private Matters (*Cour de cassation*) confirmed in a case where the award had been set aside by the High Court in London. It held that the arbitral award did not belong to any state legal order, and that, as a consequence, it was an "international decision", the effect of which was a matter for the courts where recognition or enforcement was sought. In other words, it was not an "English award" for the sole reason that it had been made by a tribunal seating in England. As usual, the *Cour de cassation* relied on article VII of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to justify the application of the French law of arbitration when it is more favorable than the NY Convention.

The dispute had arisen between French company Est Epices and Indonesian company PT Putrabali Adyamulia. Putrabali had sold white peper to Est Epices, but the goods were lost during the carriage by sea. Est Epices refused to pay, and Putrabali initiated arbitral proceedings in London under the aegis of the International General Produce Association. In 2001, an arbitral panel found that Est Epices was entitled not to pay the price. Putrabali challenged the award before the English High Court, appealing on a point of law as the 1996 Arbitration Act allowed it to. The challenged was admitted and the award partially set aside. A second award was made in 2003, and found in favor of Putrabali, ordering Est Epices to pay Euro 163,086.

Est Epices sought recognition of the first 2001 award in France. The 2001 award was declared enforceable by the Paris court of appeal in March 2005. Putrabali appealed to the *Cour de cassation*. In a first judgment of June 29, 2007, the Court dismissed the appeal on the grounds given above.

At the same time, Putrabali had sought the recognition of the second 2003 award. In November 2005, the Paris Court of Appeal held that it could not be declared enforceable. In a second judgment of June 29, 2007, the *Cour de cassation* confirmed. It held that the recognition of the first award precluded the recognition of the second, as the first had res judicata. This was already held 13 years ago in *Hilmarton*.

The rationale behind the French solution is to limit the influence of local peculiarities. So, if a local mandatory rule obliges some witnesses to swear in a particular religious form, this should not be let jeopardize the whole arbitral process. In *Putrabali*, the award had been set aside as a consequence of a review of its merits. From France, this certainly looked like a shocking local peculiarity.