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THE IMPACT OF THE FRENCH CONCEPTION OF INTERNATIONAL ARBITRATION ORDER ON RECOGNITION AND ENFORCEMENT OF THE ANNULLED YUKOS ARBITRATION AWARD

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Abstract.
Purpose. The purpose of this article is to analyze how French law in the field of international arbitration addresses the issue of the enforcement in France of an international arbitration award set aside by a state court at the seat of arbitration.
Methodology and Approach. The main content of the study is the analysis of national and international legislation.
Results. According to the French conception of international arbitration, the international award which is not attached to any state legal order is a decision of international justice. As a result of the study, the author draws attention to the fact that setting aside the arbitral award by a state court at the seat of arbitration is not an obstacle to its recognition and enforcement in France. This approach could have unexpected consequences for the Yukos case.
Theoretical and Practical implications. The presented concept defines the recognition and enforcement in France of international arbitral awards.

Keywords: international arbitration, arbitration proceedings, French law, international justice, the setting aside of an arbitral award, Yukos

ВЛИЯНИЕ ФРАНЦУЗСКОЙ КОНЦЕПЦИИ АРБИТРАЖА КАК МЕЖДУНАРОДНОГО ПРАВОСУДИЯ НА ПРИЗНАНИЕ И ИСПОЛНЕНИЕ АННУЛИРОВАННОГО АРБИТРАЖНОГО РЕШЕНИЯ ПО ДЕЛУ ЮКОСА

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Аннотация.

Цель. Цель данной работы – проанализировать, как французское законодательство в области международного арбитража решает вопрос о признании и исполнении во Франции отмены арбитражного решения, вынесенного иностранным государственным судом.

Процедура и методы исследования. Основное содержание исследования составляет анализ национального и международного законодательства.

Результаты проведённого исследования. Согласно французской концепции международного арбитража, арбитражное решение, которое не привязано ни к какому государственному правопорядку, является международным судебным решением. Автор статьи делает акцент на том, что отмена государственным судом арбитражного решения, вынесенного на территории арбитража, не является препятствием для признания и исполнения данного решения во Франции. Этот подход мог бы иметь непредсказуемые последствия для дела ЮКОСа.

Теоретическая/практическая значимость. Представленная концепция определяет признание и исполнение во Франции международных арбитражных решений.

Ключевые слова: международный арбитраж, арбитражное разбирательство, законодательство Франции, международное правосудие, отмена арбитражного решения, ЮКОС

Setting aside an international arbitration award does not preclude its recognition and enforcement in France. This approach could have unexpected consequences for the Yukos case.

As everyone knows, the dispute between the former majority shareholders of Yukos and the Russian Federation has caused numerous legal battles. The latest decision on this issue is the decision of the Hague court of Appeal of February 18, 2020, overturning the decision of the District court of the Hague of April 20, 2016, and thus restoring the original compensation of 50 billion US dollars. This decision leaves Russia no choice but to appeal to the Supreme court of the Netherlands.

However, whatever the twists and turns of this case may have been, according to French Law[1], the setting aside of the final arbitral award by the Court of First Instance in The Hague in the Yukos case had no effect on the rights of the three companies of the former shareholders of Yukos or on the adoption of measures enforceable on the basis of the three final decisions rendered by the arbitral tribunal on July 18, 2014, condemning the Russian Federation to pay the principal amount of $50,020.867798 in favor of Hulley, Yukos Universal and Veteran Petroleum[2].

Whatever the outcome of the setting aside of the action brought in Holland against the arbitral award rendered in this case, this arbitral award, which already received exequatur in France will be enforceable.

It can be concluded that French Law in the field of international arbitration does not recognize any legal force with respect to the setting aside of an international arbitral award by a state court of the seat of the arbitration.

Why is it so?

The reason is that French Law is more favourable to international arbitration as its conception is based on the philosophical idea that an international arbitral award is not part of the legal order in which it was rendered, the arbitral tribunal being an autonomous international jurisdiction.

For more than almost thirty years, French courts have considered that the setting aside of an arbitration award by a foreign state court is not an obstacle to its recognition and enforcement in France. This decision was announced in very clear terms by two main decisions of the court of Cassation from 1994 and 2007 in the cases of Hilmarton and Putrabali[3].

Thus, in the case of Hilmarton (Cass. 1st civ, March 23, 1994) an award set aside by the Swiss federal court obtained the exequatur in

[1] Civil Code of France http://www.legi.france.gouv.fr

[2] International Organization for Arbitration and Dispute Resolution. About the ICC International Chamber of Commerce ICC International Chamber of Commerce. https://iccwbo.org/dispute-resolution-services/icc-international-court-arbitration.

[3] The court of cassation. Première chambre civile. 2000, no.97–22.498.

France since, for the Court of Cassation «the award rendered in Swiss law was an international award that was not integrated into the legal order of that State, so that its existence remained despite its setting aside».

In the case of Putrabali (Cass. 1st Civ, 29 June 2007), the first civil chamber of the Court of Cassation approved the enforcement of an award set aside in England, «An international award that is not attached to any State legal order is a decision of international justice whose regularity is examined in the light of the rules applicable in the country where its recognition and enforcement is sought; whereas pursuant to Article VII of the New York Convention of 10 January 1958[1], the company Rena Holding was receivable to present in France the award rendered in London on 10 April 2001 in accordance with the arbitration agreement and the IGPA rules and founded to avail itself of the provisions of the French Law of international arbitration which does not provide the setting aside of the award in his country of origin as a ground of refusal of recognition and enforcement of the award rendered abroad».

The decision of the court of Cassation in the Putrabali case was the culmination point and a logical continuation of the established and repeated judicial practice of this philosophical approach of international arbitration as international justice. The principle enshrined in this decision can be seen later in many decisions of the court of Cassation and the court of Appeal of Paris.

This French conception is in accordance with the provisions of the New York Convention on the recognition and enforcement of foreign arbitral awards of 1958. Indeed, in accordance with Article VII (1) of the New York Convention, which provides that its provisions «Not depriving any interested party of the right that they could have prevailed of an arbitral penalty in the manner and to the extent permitted by the law or treaties of the country where the penalty is invoked», the French judge cannot refuse to recognize an arbitral award set aside by a state court of the seat[2].

The French courts have drawn the consequences from this, considering that a party can obtain exequatur in France of an international arbitral award set aside by a state court of the seat of the arbitration, French law of arbitration being more favorable than the provisions of the New Convention York. The article 1502 of the Code of Civil Procedure[3] does not consider the cancellation of an award in the state of the place of arbitration as a reason for the refusal of the exequatur.

The French doctrine accepts this decision and welcomes the liberal French approach, which protects international arbitration justice, and gradually leads to the creation of a true international arbitration law.

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ИНФОРМАЦИЯ ОБ АВТОРЕ

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1 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards.

2 Decree N2011-48 of January 13, 2011, Portant Réforme de L'Arbitrage. In: *Journal of officél de République française*,2011, no. 011, text 9.
Rapport with the Prime Minister for Cases N2011-48 of January 13, 2011. Portfolio of arbitration. In: *Journal of officiel de République française*, 2011, no. 0011, text 8.

3 The Code of Civil Procedure of France http://www.legi.france.gouv.fr.

ПРАВИЛЬНАЯ ССЫЛКА НА СТАТЬЮ

Бело Ф. Влияние французской концепции арбитража как международного правосудия на признание и исполнение аннулированного арбитражного решения по делу ЮКОСа // Вестник Московского государственного областного университета. Серия: Юриспруденция. 2020. № 2. С. 77–80.
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