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THE REPUBLIC OF FRANCE
IN THE NAME OF THE PEOPLE OF FRANCE

COURT OF APPEALS OF PARIS
Section 5 - Chamber 16
International Commercial Chamber

RULING OF 5 OCTOBER 2021

(No. /2021, 19 pages)

Case number: **19/16601 - Portalis No. 35L7-V-B7D-CASGV**

Decision on appeal before the Court: The arbitration award dated (ICC Case No.).

CLAIMANTS IN THIS ACTION:

DNO Yemen AS
A Norwegian Company
Registered office address: Dokkveien 1, 0250 Oslo, Norway
Represented by its legal representatives

Represented by , Barrister-at-Law admitted to the Paris Law Society (Paris Law Society Membership #);
Assisted by Barrister-at-Law (Paris Law Society Membership #

Petrolin Trading Limited
A Company incorporated in the British Virgin Islands
Registered office address: Morgan & Morgan, Building Pasea Estate Road Town, British Virgin Islands
Represented by its legal representatives

Represented by Barrister-at-Law admitted to the Paris Law Society (Paris Law Society Membership # ;
Assisted by , and Barristers-at-Law (Paris Law Society Membership #

MOE Oil & Gas Limited
A Company incorporated in the Caymen Islands
Registered office address: Queensgate Bank & Trust Ugland House - South Church Street, GT Grand Cayman, Caymen Islands
Represented by its legal representatives

Represented by Barrister-at-Law admitted to the Paris Law Society of (Paris Law Society Membership #
Assisted by and Barristers-at-Law ((Paris Law Society Membership #)

RESPONDENTS IN THIS ACTION:

The Ministry of Oil and Minerals (of the Republic of Yemen)
Registered office: Zubairi Street, PO Box 81, Sana'a, Yemen
Represented by its legal representatives

Represented by , Barrister-at-Law admitted to the Paris Law Society of (Paris Law Society Membership #
Assisted by Barristers-at-Law (Paris Law Society Membership #

Visé NE VARIETUR sous le n° 2021-2952
Fait à PARIS, le 16 décembre 2021

Yemen Oil & Gas Corporation/The Yemen Company
Registered office: 16 Street, Sana'a, Yemen
Represented by its legal representatives

Represented by , Barrister-at-Law admitted to the Paris Law Society (Paris Law Society Membership #);
Assisted by , Barristers-at-Law (Paris Law Society Membership #)

Dove Energy Limited
An English Company, liquidated
Registered office address: Office of Grant Thornton UK LLIP - 30 Finsbury Squate London EC2P 2YU, England, United Kingdom
Represented by its legal representatives

Represented by Barrister-at-Law admitted to the Paris Law Society (Paris Law Society Membership #).

MEMBERS OF THE BENCH:

Pursuant to the provisions of articles 804 and 907 of France's Civil Procedure Rules, the case was tried on 14 June 2021 at a hearing open to the public, the lawyers not being opposed thereto, before the Lord Justice of Appeal François Ancel, Presiding Justice, charged with the report and the Lord Justice of Appeal Laure Aldebert, Associate Justice.

The following justices reported on the trial hearing during the deliberations of the Court:

Lord Justice of Appeal François Ancel, Presiding Justice
Lord Justice of Appeal Fabienne Schaller, Associate Justice
Lord Justice of Appeal Laure Aldebert, Associate Justice

Clerk: at the appellate trial hearing: Inès Vilbois.

RULING:

The ruling was handed down after adversarial proceedings and made available at the Administrative Office of the Court, the parties having previously been notified as required by virtue of the second paragraph of Article 450 of France's Rules of Civil Procedure. The official copy of the ruling was signed by Lord Justice of Appeal François Ancel, the Presiding Justice and Najma El Farissi, the clerk to whom the official copy of the ruling was given by the justice who signed it.

I. STATEMENT OF FACTS AND PROCEEDINGS

1. DNO Yemen AS (hereinafter "DNO") is a Norwegian company that provides services for oil and gas exploration and production in Yemen.

2. Petrolin Trading Limited and MOE Oil & Gas (hereinafter "Petrolin" and "MEO Oil") are companies incorporated respectively in the British Virgin Islands and in the Cayman Islands and operate in the oil field.

3. Dove Energy Limited (hereinafter "Dove") is an English company went into liquidation proceedings on 1st April 2015 but, despite this, took part in the arbitration proceedings.

4. Yemen Oil and Gas Corporation (hereinafter "YOGC") is a company founded in 1996 as a wholly owned subsidiary of the Ministry of Oil and Minerals of the Republic of Yemen (hereinafter the "Ministry of Oil and Minerals of the Republic of Yemen") for the purpose of hold ing and managing the interests of the Government of Yemen in connection with various production sharing agreements entered into with foreign oil producing companies.

5. On 12 January 1997, the Ministry of Oil and Minerals of the Republic of Yemen and Dove entered into a production sharing agreement (hereinafter the "PSA" which stands for "Production Sharing Agreement") for the exploration, development and production of an oil block in Yemen ("Block 53").

6. After various assignments that occurred with Dove, Petrolin, MOE and DNO became parties to the PSA.

7. Pursuant to the PSA, Dove and YOGC entered into a joint operating agreement (hereinafter referred to as the "JOA") on 12 January 1997 that defined their rights and obligations in connection with operations conducted in Block 53.

8. Petrolin, MEO and DNO subsequently became parties to the JOA.

9. In 2014, Dove wished to pull out of the PSA. As of 31st January 2015, Petrolin, MEO and DNO also pulled out of the project and sold their respective interests to YOGC.

10. On 29 January 2015, the Ministry of Oil and Minerals of the Republic of Yemen brought (ICC) arbitration proceedings against all the parties to the JOA and to the PSA, namely, Dove, DNO, Petrolin, MEO Oil and YOGC disputing the validity of their withdrawals from the PSA and the JOA and seeking compensation for the harm sustained as a result of the breach of their contractual obligations.

11. On 9 March 2015, YOGC filed its Response to the Request for Arbitration initiated by the Ministry of Oil and Minerals of the Republic of Yemen. It also filed a separate Request for Arbitration against the other parties to the JOA.

12. On the arbitrators handed down an arbitration award in which they considered that Petrolin and MEO Oil had properly exercised their right to pull out of the PSA and the JOA. They however ordered Dove, Petrolin and MOE jointly and severally to pay to the Ministry of Oil and Minerals of the Republic of Yemen and to YOGC, without distinction, several sums.

13. On 19 September 2019, DNO filed action for the annulment of the Award (Case number 19/16601).

14. On 7 October 2019, Petrolin and MOE Oil in turn filed an action for the annulment of the Award (Case number 19/18559).

15. On 17 November 2020, the two actions for annulment were joined under the case number 19/16601.

II. CLAIMS OF THE PARTIES:

16. In its latest briefs served electronically on 23 April 2021, DNO is seeking the following remedy from the Court:

- ANNUL the Arbitration Award dated only in that it ordered Dove, DNO Yemen, Petrolin and MOE to pay a total of [...] to the Ministry of Oil and Minerals of the Republic of Yemen and to the Yemen Oil & Gas Company;

- ORDER Yemen and the Yemen Oil & Gas Company to pay to DNO Yemen the sum of no less than EUR 50,000 by virtue of Article 700 of the Rules of Civil Procedure and to pay all costs.

17. In their latest briefs served electronically on 3 May 2021, Petrolin and MOE are seeking the following remedy from the Court, based on Article 1520(3)(4) and (5) of France's Rules of Civil Procedure:

With respect to the violation of public policy:

- RULE that the recognition and the enforcement of the Award violates international public policy in that it ordered Petrolin Trading Limited, MOE Oil & Gas Yemen Limited, DNO Yemen and Dover Energy Limited jointly and severally to pay certain sums to the Ministry of Oil and Minerals (of the Republic of Yemen) and to the Yemen Oil & Gas Corporation/The Yemen Company;

As a consequence:

- ANNUL the Arbitration Award dated handed down in ICC Case No. by which Petrolin Trading Limited, MOE Oil & Gas Yemen Limited, DNO Yemen and Dover Energy Limited were ordered jointly and severally to pay certain sums to the Ministry of Oil and Minerals (of the Republic of Yemen) and to the Yemen Oil & Gas Corporation/The Yemen Company, as indicated in the prayer for relief in their latest brief;

With respect to the violation by the Arbitral Tribunal of its mission:

- RULE that the Arbitral Tribunal filed to comply with the mission that was entrusted to it;

As a consequence:

- ANNUL the part of the Arbitration Award by which Petrolin Trading Limited, MOE Oil & Gas Yemen Limited, DNO Yemen and Dover Energy Limited were ordered jointly and severally to pay certain sums to the Ministry of Oil and Minerals (of the Republic of Yemen) and to the Yemen Oil & Gas Corporation/The Yemen Company in connection with the accountancy claims;

With respect to the violation by the Arbitral Tribunal of the contradiction principle:

- RULE that the Arbitral Tribunal filed to comply with the contradiction principle;

As a consequence:

- ANNUL all the parts of the Arbitration Award by which Petrolin Trading Limited, MOE Oil & Gas Yemen Limited, DNO Yemen and Dover Energy Limited were ordered jointly and severally to pay certain sums to the Ministry of Oil and Minerals (of the Republic of Yemen) and to the Yemen Oil & Gas Corporation/The Yemen Company, as mentioned in the prayer for relief in their latest brief;

- at very least, ANNUL the part of the Arbitration Award by which Petrolin Trading Limited, MOE Oil & Gas Yemen Limited, DNO Yemen and Dover Energy Limited were ordered jointly and severally to pay certain sums to the Ministry of Oil and Minerals (of the Republic of Yemen) and to the Yemen Oil & Gas Corporation/The Yemen Company in connection with the accountancy claims;

In any case:

- ORDER the Ministry of Oil and Minerals (of the Republic of Yemen) and to the Yemen Oil & Gas Corporation/The Yemen Company jointly and severally to pay to Petrolin Trading Limited and to MOE Oil & Gas Yemen Limited the sum of EUR 50,000 by virtue of Article 700 of France's Rules of Civil Procedure, as well as all costs including the fees of Esquire, of and this pursuant to the provisions of Article 699 of France's Rules of Civil Procedure.

18. In their latest briefs served electronically on 5 May 2021, the Ministry of Oil and Minerals (of the Republic of Yemen) and YOGC sought the following relief from the Court:

- DISMISS in its entirety the action for annulment of DNO Yemen AS;

- DISMISS in its entirety the action for annulment of Petrolin Trading Limited and MOE Oil & Gas Yemen Limited;

- DISMISS all the claims of DNO Yemen AS, Petrolin Trading Limited and MOE Oil & Gas Yemen Limited;

- ORDER the DNO Yemen AS, Petrolin Trading Limited and MOE Oil & Gas Yemen Limited jointly and severally to pay to the Ministry of Oil and Minerals (of the Republic of Yemen) and to the Yemen Oil & Gas Corporation the sum of EUR 400,000 by virtue of Article 700 of France's Rules of Civil Procedure, as well as all costs including the fees of Barrister-at-Law, and this pursuant to the provisions of Article 699 of France's Rules of Civil Procedure.

III. GROUNDS FOR THE DECISION:

1. The ground of appeal based on a violation of international public appeal (Article 1520(5) of France's Rules of Civil Procedure)

The claim based on the violation of human rights, international humanitarian law and United Nationals and European Union sanctions

19. DNO argues that there is body of evidence to conclude that the award patently, effectively and specifically violates international public policy in that it provides for the payment of sums to parties controlled by authorities that commit human rights and international humanitarian law violations and who are subject to international and European sanctions.

20. It explains that the award was handed down in favour, on the one hand, of a Ministry of Oil and Minerals of Yemen that belongs to a government condemned by the international community and the European Union and, on the other hand, in favour of YOGC which is controlled by the Houthi rebellion which bears responsibility for numerous violations of human rights, of international humanitarian law and war crimes and whose main leaders are the target of economic sanctions by the U.N. Security Council and the European Union.

21. It contends that human rights, humanitarian law and international sanctions form grounded in international public policy. It bases itself in particular on an expert report by Professor CAJ dated 29 January 2021 according to which France is under obligation to refrain from any act that could foster the commission of violations of international humanitarian law and according to which France and its courts must comply with sanctions against Yemen in that they fall under international law and in that they flow from European regulations directly applicable in the Member States of the European Union and form an integral part of international public policy.

22. It concludes that international public policy has been patently, effectively and specifically violated in that the Ministry of Oil and Minerals of Yemen belongs to the Hadi government, guilty of violations of human rights and international humanitarian law observed by human

rights defence groups as well as by the United Nations Group of Experts; the collaboration between the Hadi government and the Houthis is established in particular by a report from the Sana'a Center for Strategic Studies; the Hadi government collaborates with terrorist groups such as Al-Qaeda in particular by financing them; and this government potentially engaged in acts of corruption and money laundering as reported in an article citing the latest report provided by the United Nations' experts to the U.N. Security Council on 25 January 2021.

23. With respect to YOGC, DNO argues that there is a body of evidence showing that it is controlled by the Houthi rebellion, several leaders of which are directly targeted by both European and international sanctions.

24. Petrolin and MOE Oil explain that an award is contrary to international public policy within the meaning of Article 1520(5) of France's Rules of Civil Procedure when there is serious and specific corroborating evidence that the effect of the award will be to violate a rule or value that is grounded in international public policy.

25. They maintain that an identical treatment by the judge ruling on the action for annulment is therefore required for all rules and values are grounded in international public policy, including the protection of human rights, understood in the broad sense and including humanitarian law and combating war crimes.

26. They add that the European economic sanctions form an integral part of international public policy such that when there is serious and specific corroborating evidence that the recognition and the enforcement of an arbitration award could result in a violation of European sanctions, the award must be annulled. Likewise, they contend that the objectives of safeguarding human rights and fundamental freedoms, as well as humanitarian law, also form an integral part of France's international public policy and it is up to the judge ruling on the action for annulment to ensure that the enforcement of an arbitration award does not violate the objectives of safeguarding human rights and fundamental freedoms, as well as humanitarian law

27. They argue that the award is contrary to international public policy in that it provides for the payment of sums to parties controlled by authorities that commit human rights violations and/or are subject to European sanctions.

28. They recall that there is a significant risk that YOGC be controlled by the Houthis given the body of evidence. They maintain that the main Houthi leaders are the subject of international and European sanctions for they are responsible for numerous violations of human rights, of international humanitarian law and war crimes in Yemen and they contend that any payment that may be made by virtue of the award to the Ministry of Oil and Minerals of Yemen would be in favour of a party associated with the commission of multiple human rights violations and war crimes and could be used to finance the commission of exactions. They add that additionally, even assuming as they claim, the Respondents did not have any ties to the Houthis, the award would nevertheless benefit entities responsible for violations of human rights, international humanitarian law and war crimes, which requires the annulment of all the parts of the award ordering payment to the Respondents.

29. In response, the Ministry of Oil and Minerals of Yemen and YOGC argue that the recognition and enforcement of the award are consistent with international public policy. According to them, the misperception between the legitimate government of Yemen and the Houthi rebellion is not based on any probative evidence.

30. They assert that they have no ties to the Houthis and that they belong to the legitimate government of Yemen recognised by France and the international community. They explain that the legitimate government of Yemen is not the subject of any international sanctions and they point in particular to EUR 11 million in aid granted by France and the debt relief given by the International Monetary Fund.

31. The Ministry of Oil and Minerals of Yemen and YOGC maintain that the review by the judge ruling on the action for annulment can only pertain to the decision handed down by the arbitrators and not the general conduct of the parties outside of the arbitration. They add that the enforcement of the award does not conflict with international public policy for the PSA does not violate any rules and values protected by international public policy and, in any case, a plain, effective and specific violation is not established in the case in point. They consider that proof of a violation of international public policy based on the existence of serious and specific corroborating evidence applies only to cases of corruption and money laundering and are therefore not applicable in the case at bar.

32. They lastly argue that the economic sanctions were taken against five members of the Houthi rebellion and not against the legitimate government of Yemen, so that action for annulment on this basis is not justified and would have dramatic consequences for Yemen. They give the assurance that the payment made by virtue of the award will not contribute to the financing of human rights violations.

WHEREFORE:

33. Based on Article 1520(5) of France's Rules of Civil Procedure, action for annulment is available if the recognition and the enforcement of the award is contrary to international public policy.

34. International public policy in relation to which the judge adjudicating the annulment performs a review means the conception it has in the French legal system, which is to say the values and principles of which it cannot allow the violation, even in an international context.

35. Amongst these principles is combating human rights violations safeguarded in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the International Covenant on Civil and Political Rights of 16 December 1966 as well as the combating of international humanitarian law violations, itself enshrined by the (1949) Geneva Conventions, which came into force in France in 1951, and in particular the (fourth) Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

The claim based on the violation of human rights and international humanitarian law

36. As part of the review performed by the judge adjudicating the annulment of compliance with international public policy, only the recognition or the enforcement of the award is examined by the judge adjudicating the annulment in relation to the compatibility of his or her solution with this public policy, the review of which is limited to the plain, effective and specific nature of the alleged violation.

37. Since the conformity of an arbitration award with international public policy is determined when the judge rules, no future hypothetical circumstances presuming the use by one of the parties to the dispute of sums due by virtue of an order made in the award for actions violating the values and principles protected by international public policy can be taken into account.

38. Such a taking into account, in that it supposes anticipating future events and relates to acts that, however condemnable they may be, are detachable from those that lead to the award and on which the arbitral tribunal ruled, is a review not permitted by the judge adjudicating the annul-

ment of the award.

39. In the case in point, the award handed down on by the arbitral tribunal under the aegis of the ICC International Court of Arbitration relates to a dispute involving, on the one hand, the Ministry of Oil and Minerals of Yemen and YOGC and, on the other hand, DNO, Petrolin and MOE Oil after the latter pulled out of a production sharing agreement (PSA) for the exploration and operation of an oil block concession in Yemen and a joint operating agreement (JOA) entered into by these same parties, the Ministry of Oil and Minerals of Yemen and YOGC having reproached the other parties of having breached their contractual obligations under the PSA and the JOA before 31 January 2015, the effective date of their pull out of the agreements.

40. Under the terms of its award, the arbitral tribunal having notably considered that Dove, DNO, Petrolin and MOE Oil had liability toward the Ministry of Oil and Minerals of Yemen and YOGC for terminating their contractual relations and ordered them jointly and severally to pay to them various amounts as reparation.

41. It is not contested that it was never claimed during the arbitration proceedings, nor has it been so claimed during the action for annulment, that the contracts that the parties entered into, which are the cause of the dispute and of which the award gives effect with various orders to pay on their basis, were obtained on conditions that run counter to the principles referred to above, or even that they permitted any of the parties to disregard these principles or to derive any benefit in a plain, effective and specific violation of them.

42. In the current state of the foregoing, the claim shall be dismissed.

The claim based on the violation of international and European sanctions

43. It should be noted that the international and European sanctions, insofar as they aim to contribute to maintaining and restoring international peace and security and relating to the values of which the French legal system cannot allow the violation, form a part of the French conception of public policy. Therefore, the recognition or the enforcement of an award that violates such sanctions would run counter to French international public policy.

44. In the case in point, the appellants consider, on the one hand, that the enforcement or the recognition of the award is liable to violate sanctions regime in place against Al-Qaeda and the other terrorist organisations instituted by U.N. Security Council Resolution 2083 (2012) of 17 December 2012 the purpose of which is notably to sanction any direct or indirect support of the Al-Qaeda network and to any person associated with it, as well as in violation of Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses.

45. Furthermore, based on paragraph 8(c) of U.N. Security Council Resolution 1333 (2000) (reproduced in Resolution 1822 (2008) of 30 June 2008), the States must "*ensure that neither they nor any other funds or financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly for the benefit of Usama bin Laden, his associates or any entities owned or controlled, directly or indirectly, by Usama bin Laden or individuals and entities associated with him including the Al-Qaeda organization*" and these entities include the Aden-Abyan Islamic Army (since 7 September 2010), the Islamic State of Iraq and the Levant in Yemen (since 4 March 2020) and the organization Al-Qaeda in the Arabian Peninsula (AQAP) since 7 November 2013.

46. The appellants, basing themselves notably on the analysis of Professor [A] in his report dated 29 January 2021 produced in the proceedings, maintain in substance with respect to certain sanctions that the Hadi government "*resorted to and could in the future resort to members of Al-Qaeda or of other groups on the sanctions list established by the U.N. Security Council, to carry out certain operations—which are actually exactions. It is perfectly clear that resorting to such proxies involves payment .... Therefore, it is possible that at least part of the sums that could be remitted to the Hadi government pursuant to the ICC award be made available to Al-Qaeda or other grounds listed....*" (emphasis added by the court).

47. What is more, the appellants consider that the recognition or the enforcement of the dispute award is in contraction with Resolution 2140 (2014) adopted by the U.N. Security Council on 26 February 2014 relating more specifically to the situation in Yemen and that ordered all Member States shall, "*for an initial period of one year*", freeze funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee established pursuant to paragraph 19 of this resolution and "*decides further that all Member States shall ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the individuals or entities.*"

48. In this regard, on 7 November 2014 the aforesaid committee designated [Mr. B and C] respectively as second in command of the Houthis and the Houthi military commander as well as the former president of Yemen, [Mr. D] (now deceased), and any person or entity acting on behalf or on order from these individuals.

49. Furthermore, pursuant to Resolution 2216 (2015) of 14 April 2015, the Security Council imposed an embargo on weapons, encouraging all Member States to take immediate measures to prevent the direct or indirect supply, sale and transfer of any type of arms and related equipment to the aforesaid individuals. It also extended the measures imposed by Resolution 2140 (2014) to [Mr. E] the leader of the Houthi movement of Yemen since 2004, as well as [Mr. F], commander of the Republican Guard and son of the former president [Mr. D].

50. Lastly, by Resolution 2511 (2020) on 25 February 2020, the U.N. Security Council, on the one hand, renewed "*until 26 February 2021*" the measures imposed by Resolution 2140 (2014) (which were renewed until 28 February 2022 by Resolution 2564 (2021) of 25 February 2021) and, on the other hand, added to the criteria for the designation of individuals and entities listed sexual violence in times of armed conflict and the recruitment or use of children in times of armed conflict in violation of international law.

51. It is well-established that these sanctions were endorsed after EU Council Decision 2014/932/CFSP was adopted on 18 December 2014 concerning restrictive measures in view of the situation in Yemen (supplemented on 7 May 2018) and which article 6 specifies that it "*shall be amended or repealed as appropriate, in accordance with determinations made by the Security Council*".

52. This decision was implemented by Regulation (EU) 1352/2014 concerning restrictive measures in view of the situation in Yemen that gives it effect and "*in view of the specific threat to international peace and security in the region posed by the situation in Yemen*".

53. Article 2.1 of this Regulation provides for the freezing of assets of any natural or legal person, entity or body as listed in Annex I, the very same ones targeted by the economic sanctions imposed by the aforesaid U.N. Security Council Resolution 2140 (2014) and who "*engaged in acts and provided support for acts that threaten the peace, security and stability of Yemen, including but not limited to, planning, directing, or committing acts that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations in Yemen*".

54. Article 2.2 of this Regulation further holds that "*No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I*".

55. This Regulation was supplemented by Council Regulation 2015/878 of 8 June 2015 amending Annex I of Regulation (EU) 1352/2014 concerning restrictive measures in view of the situation in Yemen.

56. With respect more particularly to compliance with these sanctions, the argument of DNO as well as Petrolin and MOE Oil, who also rely on the aforementioned report by Professor [A] dated 29 January 2021, is based in substance on the fact that Yemen is a "*territorially fragmented*" country in a state of "*deliquescence and extreme confusion*" and in so doing that:

- the transfer of several dozen millions of euros to the Yemeni government or to YOGC "*could have the effect of making resources directly or indirectly available to listed individuals*" (emphasis added by the court);

- if a doubt persists concerning the current situation of YOGC, and its control by the Houthi authorities, "*a doubt would persist also about the fact that the funds could benefit listed individuals*" such that the "*result would be a probability that the funds in question be used for the benefit of listed individuals, which is prohibited by the sanctions regime*" (emphasis added by the court);

- alliances and oppositions are "*confused, unstable and can at any time be reversed*" so there is "*nothing to guarantee that the remittance of large sums of money to the Hadi government may not, if an alliance with the Houthis were to take shape for the governance of the country, have as an effect to make at least part of the sum in question available to the listed Houthi leaders, which is prohibited by the sanctions regime*" (emphasis added by the court);

57. It is not contested that to date the Ministry of Oil and Minerals of Yemen and YOGC are not on the list of individuals or entities targeted by these international and European sanctions.

58. The Sanctions Guidelines established by the European Union Council updated on 4 May 2018 recall that:

"*15. The listing of targeted persons and entities must respect fundamental rights, as stipulated by the Treaty on European Union. In particular, due process rights of the persons and entities to be listed must be guaranteed in full conformity with the jurisprudence of the Court of Justice of the European Union, inter alia with regard to the rights of defence and the principle of effective judicial protection.*

16. The decision to subject a person or entity to targeted restrictive measures requires clear criteria, tailored to each specific case, for determining which persons and entities may be listed, which should also be applied for the purpose of removal from the list. These clear criteria will be set out in the CFSP legal instrument. This applies in particular with regard to measures freezing funds and economic resources, both where persons are listed in the framework of measures against one or more third states, as well as where measures target individuals and entities in their own right.

17. Proposals for listing must be accompanied by accurate, up-to-date and defendable statements of reasons. A series of recommendations has been included in the Working Methods for EU autonomous sanctions as out in Annex I to the present document, which also covers issues concerning notification and information about the right to make views known as well as practical issues for listings and de-listings".

59. In addition, Annex 1 of the Sanctions Guidelines, entitled *"Recommendations for working methods for EU autonomous sanctions"*, state that *"The measures should target the policies and the means to conduct them and those identified as responsible for the policies or actions that have prompted the EU decision to impose sanctions. Such targeted measures should minimise adverse consequences for those not responsible for such policies and actions, in particular the local civilian population or legitimate activities in or with the country concerned. The political objectives and criteria of the restrictive measures should be clearly defined in the legal acts. This would allow the EU to identify the conditions for amending or lifting the sanctions. The type of measures will vary depending on their objectives and their expected effectiveness in achieving these objectives under the particular circumstances, reflecting the EU's targeted and differentiated approach".*

60. Whilst the judge adjudicating the action for annulment does not have the power, even under cover of the review of compliance with international public policy, to extend these sanctions to individuals who are not on the listed annexed to these sanctions, it is however within the scope of his or her review to verify that the recognition or the enforcement of the award is not liable to violate these sanctions by making funds available *"directly or indirectly"* to natural or legal persons, entities or bodies as listed in Annex I or that these funds be used for their benefit.

61. This review must be done based on the situation as determined on the day when the judge rules and must thus be based on serious and specific corroborating evidence that makes it possible to characterise a disregard for the sanctions imposed due to the enforcement of the arbitration award.

62. In this regard, the Court of Justice of the European Union had occasion to specify that *"the expression 'made available' in that provision has a wide meaning: rather than denoting a specific legal category of act, it encompasses all the acts necessary under the applicable national law if a person is effectively to obtain full power of disposal in relation to the asset concerned* (see, by analogy, Möllendorf and Möllendorf-Niehuus, paragraph 51, and E and F, paragraph 67)." (see §40 Case C-72/11 of 21 December 2011).

63. It recalled however that *"in order for funds to be regarded as being made indirectly available to a person whose name is on the list in Annex III to Regulation No 204/2011, it must be possible for those funds to be passed on to that person or for that person to have the ability to dispose of them, in the light, inter alia, of the existence of financial or legal links between the beneficiary of the funds and such a person"* (§61 in Case C-168/17).

64. If, in considering that the mere *"possibility"* that the assets concerned be used to procure funds liable to contribute to violating the sanctions imposed, the appellants rely on paragraph 46 from the CJEU of 21 December 2011 (§40 Case C-72/11) according to which *"it is clear that the relevant criterion, for the purposes of the application of that concept, particularly in the context of the prohibition laid down in Article 7(3) of Regulation No 423/2007, is whether there is a possibility that the asset in question may be used to obtain funds, goods or services capable of contributing to nuclear proliferation in Iran, which Resolution 1737 (2006), Common Position 2007/140/CFSP and Regulation No 423/2007 seek to combat"* (emphasis added by the court), this paragraph relates more specifically to the interpretation of the notion of *"economic resources"* and not that of *"funds"* which alone is concerned here and aimed at responding to the question of determining whether such as asset (in the case in point, a vitrification furnace) was supposed to be ready immediately to carry out the act in question in order to be likened to an *"economic resource"*.

65. In addition, based on this same decision, with respect to the notion of [something being] "*made indirectly available*", the Court of Justice of the European Union indicates that several elements should be taken in account such as "*the fact that the person or entity in question has acted on behalf, under the control or on the instructions of a person or an entity designated by the Security Council or the Sanctions Committee*" (§51).

66. Such an approach is used in the Sanctions Guidelines established by the European Union Council updated on 4 May 2018, produced in court.

67. In fact, they specify that "*If the ownership or control is established in accordance with the above criteria, the making available of funds or economic resources to non-listed legal persons or entities which are owned or controlled by a listed person or entity will in principle be considered as making them indirectly available to the latter, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, including the criteria below, that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity*" (§55d).

68. In this regard, paragraph 55b of the Sanctions Guidelines specifies that the criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity concerning in particular:

"*(a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;*

(b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;

(c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;

(d) having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision;

(e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;

(f) having the right to use all or part of the assets of a legal person or entity;

(g) managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;

(h) sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.

If any of these criteria are satisfied, it is considered that the legal person or entity is controlled by another person or entity, unless the contrary can be established on a case-by-case basis."

69. Based on all the foregoing, for something to be characterised as being made indirectly available, it would have to be established that the Ministry of Oil and Minerals of Yemen acted effectively "*on behalf, under the control or on the instructions*" of persons listed and that they have the intention of using the disputed funds for their benefit.

70. In this regard, no evidence produced supports the theory that the Ministry of Oil and Minerals of Yemen, which acted in the case in point as the representative of the legitimate government of Yemen placed under the presidency of Mr [G] and that is also recognised by the international community and expressly supported by some of the aforesaid U.N. Security Council resolutions, acted on behalf, under the control or on the instructions of persons on the list of these sanctions when, on the contrary, the exhibits produced tend to establish that Yemen is a country has undergone since 2014 a civil war pitting primarily the government headed by President [G] against the armed Houthi movement and its political wing Ansar Allah.

71. It should be noted in this regard that the aforesaid Resolution 2140 (2014) had paid "*tribute*" to Mr [G] and Resolution 2216 of 14 April 2015 (2015) had reiterated "*its support*" for President [G] as well as for his government. What is more, in a letter dated 21 March 2021 from [Mr. H] , Yemeni Minister of Legal Affairs and Human Rights, he disputes the allegations made by the appellants and further recalled that the legitimate government of Yemen works in close cooperation with the World Bank and the International Monetary Fund (IMF) which granted and extended numerous loans so a payment made to the legitimate government would not fall afoul of international sanctions.

72. Such proof cannot in any case be the result of simple considerations based on future and hypothetical political alliances.

73. Likewise, whilst based on evidence produced in court, control of YOGC is claimed both by the legitimate government and by the Houthi rebellion, it has not at all been establish that these two branches are both acting in concert and that the first is be under the control or is acting on the instructions of the other.

74. On the contrary, based on exhibits produced, and specifically an organisational charge from the official website of the Ministry of Oil and Minerals of Yemen, YOGC, represented during the arbitration case in this appeal, is a state-run company created pursuant to presidential decree number 47/1996 and placed under the control of the Ministry of Oil and Minerals of Yemen whose director-general, appointed by the Minister of the legitimate government by virtue of ministerial decree number 20/2017 of 7 September 2014, is [Mr. I] and which is headquartered in Aden, the same person who hired the law firm to represent the company in the arbitration case.

75. The fact that the appellants maintain that this company is allegedly controlled by the Houthi rebellion inter alia because there is no link accessible on YOGC's website from the official website of the Hadi government based in Aden accessible via the url www.mom-ye.com and that YOGC's website is the one used under the former name of the governmental domain "www.mom-gov.ye", which is used by the Houthis who took over the former governmental website, is not an impediment to the fact that the control of this company is also claimed by the "*legitimate*" government of Yemen and that these two entities dispute this point.

76. On the contrary, the prime minister of the legitimate government of Yemen, [Mr. J] , addressed on 23 August 2015 a letter to foreign oil companies to invite them not only deal with persons placed under the authority of the legitimate government, additionally spelling out in this letter that:

- All decisions and appointments and directives which were issued by the Houthi Militias and the committees affiliated to them from the month of February 2015 at the Ministry of Oil and the authorities and bodies and units affiliated to the Ministry are deemed void and not to be dealt with because of their illegality and for reasons that they were issued by unauthorized entity.

- Not to implement any directives or instructions issued by the Houthi Militias and the committees affiliated to them at the Ministry of Oil and Minerals and the authorities and affiliated units at the Ministry.

- No to remit any monies due to the state until you are notified of the place and time for remittance.

77. It can therefore not be sufficient to characterise such taking of control to base oneself on information contained on the website presented as YOGC's official website, which the Respondents dispute, maintaining that this website was hacked, to consider that the company is controlled by a Houthi minister, [Mr. K], or on the report of the Yemeni press agency Saba that recounts a meeting at which the Houthi prime minister [Mr. L] was in attendance, during which [Mr. M] described as the executive director of YOGC, unveiled to him "a brief presentation...on the activities of the foundation in connection with its plan for the current year, in particular in relation to the programme to ration oil, diesel and domestic gas at the secretariat of the capital and in the free governorates", making reference to the governates controlled by the Houthis.

78. In light of the foregoing and of the scope of review of the judge adjudicating the annulment of an arbitration award, the claim cannot prosper and shall therefore be dismissed.

The violation of international public policy due to the conflicting grounds in the award

79. DNO Yemen AS maintains that the arbitral tribunal handed down two conflicting decisions in the award, rendering in unintelligible, which is, according to it, is a violation of international procedural public policy.

80. It thus argues that the tribunal accepted a claim from the Ministry of Oil and Minerals and YOGC and denied another claim that was related to it, applying two conflicting methods of calculation, to wit the valuation method of a dollar for each dollar of income and, on the other hand, that a production sharing regime, a valuation method that it just rejected. It concludes that the different way that the tribunal treated the claim for the reimbursement of the excess cost recovery, on the one hand, is both contradictory, irreconcilable and arbitrary and results in compensation equal to the double of the actual harm, such elements must be considered together as violating French international public policy.

81. In response, the Ministry of Oil and Minerals of Yemen and YOGC argues that conflicting grounds does not fall under international public policy but the mission of the tribunal within the meaning of Article 1520(3) of France's Rules of Civil Procedure. They add that, in any case, conflicting grounds is not a basis for the annulment of an award within the meaning of Article 1520(3) of France's Rules of Civil Procedure.

WHEREFORE:

82. In the case in point, the claim of the appellants is based on the premise that both claims of the Ministry of Oil and Minerals of Yemen and YOGC, one relating to accounting claims/cost recovery for 2011 and the other to the reimbursement of excess cost recovery were "linked" so, according to them, two different calculation methods could not be applied.

83. For instance, the arbitral tribunal is accused of "*absolutely failing to justify why it went from one calculation method to another when the same calculation method should have been applied*" whereas "*if the tribunal wanted to use the dollar-for-dollar method, it should have applied it consistently and not changed the valuation method along the way.*"

84. However, one the one hand, the claim alleging conflicting grounds of the arbitration award is necessarily a criticism of the award on the merits which is excluded from judicial review, even though it is invoked in support of a ground for annulment based on a violation of international public policy.

85. On the other hand, in light of the foregoing, the appellants intend in actual fact, under cover of this ground, ask the judge adjudicating the annulment to review the merits of the award on this point, by criticising the grounds that gave rise to the rejection of one claim and the acceptance of another one although it failed to show a patent violation of international public policy and this when the disputed grounds apply to two different claims.

86. This claim shall accordingly be dismissed.

87. In light of the foregoing, the ground for annulment based on a violation of international public policy is not founded and shall accordingly be dismissed.

2. The ground of appeal based on the failure by the Arbitral Tribunal to comply with its mission (Article 1520(3) of France's Rules of Civil Procedure)

88. DNO argue, on the basis of Articles 1482 of France's Rules of Criminal Procedure and 32(2) of the ICC Rules, that the arbitral tribunal failed to comply with its mission by failing to state the reasons for its conclusion according to which the Ministry of Oil and Minerals of Yemen had, by virtue of the PSA, the right to a payment in cash for costs recovered improperly and by failing to take into consideration the argument of the contractor according to which the Ministry of Oil and Minerals of Yemen could under the PSA have any right to a cash payment of costs recovered improperly.

89. Petrolin and MOE use in substance the same ground and recall that the review of the judge adjudicating the annulment must relate to the existence of genuine grounds, which must be sufficient to explain the decision of the arbitral tribunal. They maintain that the arbitral tribunal failed to comply with its mission to the extent that it did not state the reason for its decision to brush aside a fundamental argument raised by the claimants and that it used two totally contradictory approaches to assess two claims, although linked, of the Ministry of Oil and Minerals of Yemen and YOGC, without supplying any explanation whatsoever concerning its reasons to achieve such an outcome.

90. In response, the Ministry of Oil and Minerals of Yemen and YOGC maintain that the tribunal complied with its mission insofar as it stated the reason for its decision in relation to each of the claims referred to in the action for annulment, to with the claim of the Ministry of Oil and Minerals of Yemen relating to 2011-2013 cost recovery, the claim of the Ministry of Oil and Minerals of Yemen relating to the 2014 and 2014 audits and the claim of the Ministry of Oil and Minerals of Yemen relating to the reimbursement of the excess cost recovery. They added that the conflicting grounds invoked by the appellants is not a ground for annulment.

WHEREFORE:

91. According to Article 1520(3) of France's Rules of Civil Procedure, action for annulment is available if the tribunal ruled without complying with the mission entrusted to it.

92. Pursuant to Article 1509 of France's Rules of Civil Procedure, "*An arbitration agreement may define the procedure to be followed in the arbitral proceedings, directly or by reference to arbitration rules or to procedural rules. Unless the arbitration agreement provides otherwise, the arbitral tribunal shall define the procedure as required, either directly or by reference to arbitration rules or to procedural rules.*"

93. Under Article 31 of the ICC Rules of Arbitration (2012), applicable to the arbitration proceedings "*The award shall state the reasons upon which it is based*".

94. It was thus indeed part of the mission of the arbitrator to state the reasons upon which the award is based.

95. DNO reproaches the arbitral tribunal for having "*failed to take into consideration the argument*" according to which the Ministry of Oil and Minerals of Yemen had no right under the PSA to payment in cash of costs recovered improperly, deeming for its part that the PSA does not give the Ministry of Oil and Minerals of Yemen any contractual right to be reimbursed in cash for any costs recovered improperly but required only "*that an adjustment be made quarterly*".

96. For their part, Petrolin and MOE consider that the review of the judge adjudicating the annulment must relate "*to the existence of genuine grounds, which must be sufficient to explain the decision of the arbitral tribunal*".

97. However, one the one hand, it is not within the purview of the judge adjudicating the annulment to review the content of the reasons upon which the award is based, or to determine whether the reasons are compelling, but just they exist and the claim based on the conflicting grounds of the arbitration award is necessarily a criticism of the award on the merits which is excluded from judicial review.

98. On the other hand, the arbitrators are not required to respond to the totality of the argumentation of the parties.

99. Lastly, based on the arbitration award, the arbitral tribunal examined each of the claims relating to the accounts between the parties, one after the other, in paragraphs 460 onward.

100. It for instance examined the 2011-2013 cost recovery claim made by the Ministry of Oil and Minerals of Yemen in paragraphs 461 to 502 and deemed that Dove, DNO and Petrolin/MOE must reimburse them to the Ministry of Oil and Minerals of Yemen as well as to YOGC to the tune of

101. The arbitral tribunal then examined the claim relating to the 2014 and 2015 audits in paragraphs 503 to 528 to conclude, after its reasons, that Dove, DNO and Petrolin/MOE must reimburse [redacted] for the unjustified recovery of audit costs in 22014-2015.

102. With respect to the claim of the Ministry of Oil and Minerals of Yemen relating to the reimbursement of the excess cost recovery, it was examined by the arbitral tribunal in paragraphs 529 to 533 of the award after the arbitral award had taken into account the differing calculation methods that the parties proposed to value the amount of this excess (§529 and 530) and considered that the one proposed by the Ministry of Oil and Minerals of Yemen and YOGC was incorrect (§532) accepting the thesis argued by Dove, DNO and Petrolin/MOE, which was that the Ministry of Oil and Minerals of Yemen and YOGC was only entitled to receive 77.5% of the exchange value of the excess oil cost and not 100%.

103. In so doing, in light of the foregoing, the tribunal stated the reason for its decision and implicitly but necessarily considered that the argument according to which the Ministry of Oil and Minerals of Yemen had not right under the PSA to a payment in cash for costs recovered improperly, was unfounded, which the judge adjudicating the annulment cannot call into question.

104. The ground of appeal based on the disregard by the tribunal of its mission shall accordingly be dismissed.

3. The ground of appeal based on the violation of the contradiction principle (Article 1520(4) of France's Rules of Civil Procedure)

105. DNO, as well as Petrolin and MOE maintain that the award disregards the contradiction principle by ruling based on a standard of proof (inner conviction) when the only standard of proof that was in the adversarial debate between the parties was the preponderance of evidence. They consider that the tribunal was, however, under obligation to specifically draw the attention of the parties to its intention to apply a principle that had not been raised during the proceedings and to submit it to adversarial debate.

106. They add that the arbitral tribunal disregarded the contradiction principle by noting a practice of the parties that was not argued or debated by the parties, to rule on one of the claims (cost recovery audits claim).

107. In response, the Ministry of Oil and Minerals of Yemen and YOGC argue that the standard of proof, including inner conviction, was subject to debate by DNO in its written submissions and that the question of a practice of the parties described in Article 1.4 of Annex F of the PSA was subject to debate by the Ministry of Oil and Minerals of Yemen.

WHEREFORE:

108. Based on Article 1520(4) of France's Rules of Civil Procedure, the action for annulment is available if the contradiction principle was not observed.

109. The contradiction principle requires only that the parties be given an opportunity to put forward their factual and legal claims and argue those of the opposing party so that nothing that served as a basis for the decision of the arbitrators was not subject to adversarial debate.

110. In the case in point, it is well-established that the question of the burden of proof and that of the standard of proof were addressed in the debates.

111. For instance, in its Statement of Rejoinder and Reply of 28 April 2018, DNO maintained that the burden of proof rested on the Ministry of Oil and Minerals of Yemen and that "*in order to reach the point at which DNO bears an onus of disproving claims, the Ministry, which bears the ultimate burden, must first present a preponderance of evidence*".

112. It is not contested that DNO thus produced before the tribunal an exhibit entitled the Standard of Proof in International Commercial Arbitration (Exhibit 2Rl-5) that refers on several occasions to the inner conviction standard of proof, which is the one used in civil law countries such as France, Belgium, Switzerland and Senegal. The same goes for exhibit 2RL-6, which is an extract from a book entitled Procedure and Evidence in International Arbitration that also contains sections on the standard of proof and the difference between common law and civil law countries.

113. It is therefore by relying on this information produced in the proceedings, which were also subject to discussion of the parties, that the arbitral tribunal was able to mention in its sentence that "*the Arbitral Tribunal notes that although the burden o proof indeed rests on the party on the party alleging a fact, under both French law and Yemeni law, as well as in many civil law systems, there is no standard of proof. Thee judges and, where applicable, the arbitrators, are expected to follow their inner conviction ("intime conviction" in French law). It is what the Arbitral Tribunal will do when assessing whether the Parties have discharged their respective burden of proof*" (§455).

114. No violation of the contradiction principle is thus characterised.

115. Likewise, whilst, in order to dismiss the ground of inadmissibility based on the expiration of the prescriptive period in relation to the claims of the Ministry of Oil and Minerals of Yemen, the arbitral tribunal considered in the award that "*the practice described in Article 1.4 of Annex F of the PSA was not formally respected by the Parties*" and that "*the whole process contemplated by Article 1.4 of Annex F of the PSA was de facto superseded by such practice*", it was not so that the entirety of paragraph 464 of the award confirms it ruling ex nihilo but by basing itself on exhibits subject to debate and in particular letters exchanged on 25 September 2013 (Exhibit C11), 7 November 2014 (Exhibit C12) and 29 May 2015 (Exhibit C13).

116. Also based on this paragraph 464, the arbitral tribunal makes explicit reference to the Statement of Reply and Defence to the counterclaim of the Ministry of Oil and Minerals of Yemen according to which the parties put in place a collaborative practice between themselves.

117. For instance, in this same paragraph, the arbitral tribunal that "*It results from the reports that either no written response was received from DELY (Dove) or, on the contrary, that the Operator's answered to a specific question, thereby showing that this was an interactive process with the operator, which is reinforced by the fact that this is no evidence that Dove objected to that practice*".

118. Based on the foregoing, whilst the arbitral tribunal considered that *"the practice described in Article 1.4 of Annex F of the PSA was not formally respected by the Parties"*, it did so only after reviewing and analysing the exhibits produced in the matter by the parties that were thus subject to discussion by the parties and thereby to the adversarial process.

119. Accordingly, no violation of the contradiction principle is characterised so this ground of appeal shall also be dismissed.

120. In light of all of the foregoing, the action for annulment should be dismissed.

4. Expenses and Court Costs:

121. DNO Yemen AS, Petrolin Trading Limited and MOE Oil & Gas Limited, the losing parties, should be ordered to pay costs that shall be recovered pursuant to the provisions of Article 699 of France's Rules of Civil Procedure.

122. In addition, they must be ordered to pay to the Ministry of Oil and Minerals of Yemen and to the Yemen Oil and Gas Corporation, which had to undertake unrecoverable expenses to assert their rights, compensation by virtue of Article 700 of France's Rules of Civil Procedure that it is only fair to set at EUR 200,000.00.

IV. DECISION

On these grounds the Court,

1. Rejects the action for the annulment of the Arbitration Award handed down on under the aegis of ICC (ICC Case No. ;

2. Orders DNO Yemen AS, Petrolin Tradicng Limited and MOE Oil & Gas Yemen Limited jointly and severally to pay to the Ministry of Oil and Minerals of Yemen and to the Yemen Oil and Gas Corporation the total amount of EUR 200,000.00 by virtue of the provisions of Article 700 of France's Rules of Civil Procedure.

3. Orders DNO Yemen AS, Petrolin Tradicng Limited and MOE Oil & Gas Yemen Limited jointly and severally to pay court costs, including the fees of Barrister-at-Law admitted to the Paris Law Society s by virtue of the provisions of Article 699 of France's Rules of Civil Procedure.

The Clerk **The Presiding Justice**

Najma El Farissi **François Ancel**

I, Granville Wesley Fields,
sworn translator,
French/English, certify that
the preceding is an exact
translation of the original
and of the attached copy
in French

This document is assigned
the number 2021-2952

Signed and stamped *ne varietur* in
Paris, France
on 16 December 2021