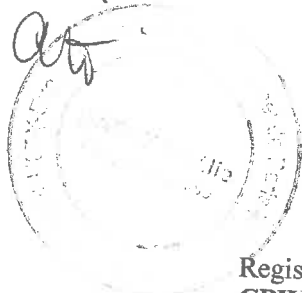


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Française N° 2022-160

13/06/2022



REPUBLIC OF FRANCE
ON BEHALF OF THE FRENCH PEOPLE

COURT OF APPEAL OF PARIS
Internationale Chamber of Commerce

PÔLE 5 - CHAMBER 16

JUDGMENT OF 22 FEVRIER 2022

(no. 22 /2022 , 11 pages)

Registration number in the general register: **RG No. 20/05869 - Portalis No. 35L7-V-B7E-CBWVI**

Award referred to the Court : Arbitration Award rendered on 25 February 2020 under the aegis of the International Chamber of Commerce (ICC no. [X])

CLAIMANT TO THE APPEAL

[COMPANY 1]

A company incorporated under the laws of HONG KONG
Having its registered office at 905, 9/F Blissful Building, 243-247 Des Voeux Road, Central Hong Kong (HONG KONG)
in the person of its legal representatives.

Represented by Mr. _____, lawyer at the bar of PARIS, Lock: _____ and assisted by Mr. _____, lawyer substituted by Mrs. _____ of _____, lawyer at the bar of PARIS, Lock: _____

DEFENDANTS TO THE ACTION

SAS CSE AIRBUS DEFENCE AND SPACE

Having its registered office at: 31 rue des Cosmonautes - Z.I du Palays 31402 TOULOUSE CEDEX 4

in the person of its legal representatives,

Represented by Mr. _____, lawyer at the bar of PARIS, Lock: _____ and assisted by Mrs. _____ of _____, lawyer at the bar of PARIS, Lock: _____

COMPANY AIRBUS DEFENCE AND SPACE GMBH

Company incorporated under the laws of Germany

Having its registered office at Willy-Messerschmitt-Strasse 1, Ottobrunn, 85521 (GERMANY), in the person of its legal representatives,

Represented by Mr. _____, lawyer at the bar of PARIS, Lock: _____ and assisted by Mrs. _____ of _____, lawyer at the bar of PARIS, Lock: _____

COMPANY AIRBUS DEFENCE AND SPACE LIMITED

A company incorporated under the laws of England and Wales

Having its registered office at Gunnels Wood Road, Stevenage, Hertfordshire, SG1 2AS (UNITED KINGDOM)

in the person of its legal representatives,

Represented by Mr. _____, lawyer at the bar of PARIS, Lock: _____ and assisted by Mrs. _____ of _____, lawyer at the bar of PARIS, Lock: _____

COMPANY AIRBUS DEFENCE AND SPACE

Company incorporated under the laws of Spain

Having its registered office at: 404 avenida de Aragon 28022 MADRID (SPAIN), in the person of its legal representatives,

Represented by _____ of _____, lawyer at the bar of PARIS, Lock: _____ and assisted by Mrs. _____, lawyer at the bar of PARIS, Lock: _____

COMPOSITION OF THE COURT :

In application of the provisions of articles 805 and 907 of the French Code of Civil Procedure, the case was debated on 11 January 2022, in public hearing, the lawyers not having opposed it, before Mr. François ANCEL, president and Mrs. Fabienne SCHALLER, Councillor in charge of the report.

These magistrates reported the pleadings in the deliberation of the Court, composed of :
Mr. François ANCEL, President
Mrs. Fabienne SCHALLER, Counsellor
Mrs. Laure ALDEBERT, Counsellor

Clerk, during the debates: Mrs. FOULON

JUDGMENT :

- contradictory
- by placing the judgment at the disposal of the Court, the parties having been previously notified in accordance with the conditions provided for in the second paragraph of Article 450 of the French Code of Civil Procedure.
- signed by François ANCEL, President and by Najma EL FARISSI, Clerk to whom the minute of the decision was handed over by the signatory magistrate.

I/ FACTS AND PROCEDURE

- 1- Company [2], a Korean company, the successor to which is the Hong Kong company [1] (hereinafter "Company [1]"), is a company specialising in the wholesale trade, in particular in materials and steel, and in consulting.
- 2- Airbus Companies Defence and Space (hereinafter "Airbus Companies" or "ADS Companies") are active in the field of aeronautical and space construction and are part of the AIRBUS group.
- 3- ADS Companies and [2] signed two Consultancy Contracts, dated 29 July 2013 and 28 January 2014 in the context of a Korean satellite development programme, under the terms and conditions that [2] was to provide advice and assistance to ADS companies, in return for a fee based on a percentage of ADS' net revenues from the contracts that would be signed (hereinafter the "Contracts").
- 4- In 2015, an anti-corruption audit programme was set up by ADS and entrusted to the firm [X]. The purpose of this programme was to assess whether the anti-corruption procedures in place within the Airbus Group were being properly complied with.
- 5- On 9 March 2015, the executive officer of [2], Mr. [A] completed the compliance questionnaire that was sent to him as part of this audit.
- 6- By letter dated 20 July 2017, the ADS companies terminated the Contracts and stopped all payments to [2], citing the latter's failure to comply with the anti-corruption rules.

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7- Considering that the ADS companies had breached their contractual obligations, [Company 2] filed two arbitration proceedings before the ICC on 4 May 2018 against ADS SAS and ADS GMBH respectively, which were then consolidated following a consolidation agreement of 1 October 2018.

8- On 27 December 2018, Dr. [Z] was appointed by mutual agreement from a list of five names proposed as Sole Arbitrator and on 11 February 2019 the Deed of Appointment was signed.

9- On 26 March 2019, Mr. [A] president of [Companies 1 and 2] indicated that [Company 1] was taking over the rights of [2] in the arbitration proceedings and that it accepted all the terms and conditions of the Deed of Appointment of 11 February 2019 and the Consolidation Agreement of 1 October 2018.

10- On 25 February 2020, the Arbitrator made his Award, at the deadline of which he dismissed all claims and ordered [Company 1] to pay the sum of EUR [..] for the unrecoverable costs and USD [..] for the costs.

11- On 2 April 2020, [Company 1] filed an action for annulment of this Award before the Court of Appeal of Paris.

12- ADS companies applied to the Pre-trial Counsellor for the invalidity of the complaint based on Article 1520, 2° of the French Code of Civil Procedure, the Pre-trial Counsellor by decision dated 18 May 2021, referred the appeal to the court, applying Article 789 of the French Code of Civil Procedure.

II/ CLAIMS OF THE PARTIES

13- In its final pleadings served on 1 September 2020, [Company 1] asks the Court to:

Concerning the irregularity of the constitution of the Arbitration Court, to
- STATE that the Arbitrator was not independent and impartial;

Consequently, to

- STATE AND ORDER that the Arbitration Court composed of the Arbitrator was thus improperly constituted;
- DECLARE that [A] company's request an application to declare the Award null and void is well founded;
- ORDER the annulment of the Award on the basis of Article 1520(2) of the French Code of Civil Procedure;

Concerning the failure to respect the adversarial principle,

- STATE that the arbitration procedure did not respect the adversarial principle in that it was based on elements that were not discussed in adversarial principle;
- STATE that the failure to respect the adversarial principle causes a definite prejudice to company [A];

Consequently, to

- STATE AND ORDER that the principle of adversarial principle has not been respected;
- DECLARE [A] company's request for annulment of the Award is well founded;
- ORDER the annulment of the Award on the basis of Article 1520 4° of the French Code of Civil Procedure;

Concerning the non-respect of international public policy

- STATE that the arbitration procedure did not respect the principle of adversarial principle, the principle of equality between the parties, or the rights of the defence;
- STATE that the failure to respect the above-mentioned principles causes a definite grievance to [A];

- STATE that the Award violates international public policy;

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Consequently, to

- DECLARE that the Award violated international public policy;
- DECLARE that [A]'s claim for invalidity of the Award is well founded;
- ANNUL the Final Award rendered on 25 February 2020 in Paris by a sole Arbitrator Dr. [Z] LL.M.

As to cost

- ORDER Airbus to pay [A] the sum of 35,000 euros pursuant to Article 700 of the French Code of Civil Procedure and to pay all costs.

14- In accordance with their last submissions, served on 1 December 2020, the ADS companies ask the Court to

- JUDGE [A]'s complaint inadmissible on the basis of article 1520 2° of the French Code of Civil Procedure, failing which to declare it unfounded and, consequently, to DISMISS it;
- JUDGE that all the other complaints are unfounded;

Consequently, to

- DISMISS the action for annulment brought by [A]
- ORDER [A] to pay the sum of €12,500 to each of companies Airbus Defense and Space SAS, Airbus Defense and Space GMBH, Airbus Defense and Space LIMITED, Airbus Defense and Space SA, as well as all costs of the proceedings;
- DISMISS [A] from all its claims to the contrary.

15- The parties have notified their agreement to the Protocol of the International Commercial Chamber of the Court of Appeal of Paris.

16- The Public Prosecutor's Office gave its opinion on 28 September 2021 by Virtual Private Network for Lawyers, VPN (French *RPVA*).

17- The closing order was issued on 7 December 2021.

III/ REASONS FOR THE DECISION

As a preliminary point, on the dismissal of the case due to the fact that the Arbitrator was not impartial and that the constitution of the Arbitration Court was irregular (Article 1520-2°)

18- By referral to the court following an order of the Pre-trial Counsellor dated 18 May 2021, the court is requested to dismiss the case by the Airbus companies, based on the fact that the complaint of lack of impartiality of the Arbitrator invoked by [company 1] in support of its action for annulment would be inadmissible on the grounds that it reportedly waived it, as [company 1] was eventually to have knowledge of the alleged cause of impartiality at the time of the appointment of the Arbitrator but did not raise it within the 30-day period of time as provided for by the arbitration rules.

19- The Airbus companies argue that the information that the Arbitrator had written numerous articles and in particular certain articles concerning the fight against corruption was well known, that his CV indicated that he was the editor and co-editor of an Arbitration magazine, that this information also appeared on public sites (WhosWho, LinkedIn), that the articles from which it would appear that the Arbitrator lacked impartiality due to his positions were accessible by simple searches on Internet sites with public access as well as on specialised arbitration databases (Kluwer Arbitration) (Kluwer Arbitration), that it was up to [company 1] in view of these well-known elements to challenge the appointment of the Arbitrator during the arbitration phase within the time limit, which it did not do.

20- In this respect, they indicate that the time limit that began to run from the date of confirmation

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of the arbitrator was enforceable against [A] even though it took over from [B], since [A] and [B] have the same executive officer, Mr. [C], that [B] assigned its rights to [A] on 12 October 2018, prior to the appointment of the Arbitrator and that [A] took over and validated the entire procedure, thus having no more rights than [B] has.

21- [A] maintains, in response, that it is only on reading the Award, the motivation of which is stated as having noted the Arbitrator's defeasible bias towards it, having noted that instead of ruling on the payment claims before him, the Arbitrator sought to characterise a situation of corruption, which he asserted in a peremptory manner, thus establishing that his involvement in the fight against corruption had a direct impact on the biased Award. It states that it discovered that the Arbitrator's involvement in the fight against corruption was the result of articles he had written and published in specialised magazines of which it was not aware and which were not disclosed to it, while the decisions taken by the Arbitrator could be considered as a result of the Arbitrator's involvement, of which he should have informed the parties, as the dispute concerned allegations of breach of compliance rules. It maintains that in the absence of disclosure of these important elements, [A] company cannot be considered as having waived its right to invoke the irregularity related to the Arbitrator's partiality, which was discovered after the Award.

22- It comes to the conclusion that no inadmissibility can be invoked against it at this stage, since it that it was not aware of the articles establishing the Arbitrator's commitment to the fight against corruption in the field of arbitration, stating that these required extensive research to find them and were therefore not notorious.

23- It recalls that the notion of accessibility to information is a matter of strict interpretation - as only easily accessible information is notorious - without requiring a systematic examination of the sources. In this respect, it mentioned that it had not been able to access information that the Arbitrator was an active author on the subject of corruption, as only the title of the published articles appeared on his CV. With regard to the Who's Who, he mentions that Dr. [E] is merely a co-editor of the magazine, without further details. He specified that his LinkedIn profile is not accessible without creating an account. Finally, regarding the Kluwer Arbitration database, it states that the results are not public and require an account to carry out a search.

24- It added that [A] could not have ratified the appointment of the Arbitrator with full knowledge of the facts, since it acted in replacement of [B] after the latter's appointment on 26 March 2019, that it could not therefore have waived the right to denounce facts of which it was unaware, and that it could not be blamed for not having challenged the Arbitrator within 30 days following his appointment and acceptance by the parties, since the time limits had never begun to run in its respect.

25- The Public Prosecutor's Office concluded that the contested information was notorious.

On this point,

26- According to Article 1466 of the French Code of Civil Procedure, made applicable to international arbitration by Article 1506 of the same Code, "the party who, knowingly and without legitimate reason, refrains from invoking an irregularity in due time before the Arbitration Court is deemed to have waived the right to invoke it."

27- This provision does not refer only to procedural irregularities but to all the complaints that constitute plea for annulment of Awards, with the exception of pleas based on Article 1520, 5° of the French Code of Civil Procedure and alleging that the recognition or enforcement of the Award violates substantive international public policy. The alleged grievance constituting the opening case based on the irregular constitution of the Arbitration Court is therefore subject to the aforementioned Article 1466.

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28- In this case, it should be noted that at no time was the irregularity of the constitution of the Arbitration Court or the lack of impartiality of the sole Arbitrator invoked before the Arbitration Court.

29- It follows that by application of the above-mentioned Article 1466, [A] is considered as having waived its right to raise the complaint for such an irregularity, unless in the case that it could not have been aware of it before the Award and that the information was not common knowledge.

30- [A] argues in this respect that the information relating to articles published in the *Austrian Yearbook on International Arbitration* in 2012 and 2015 relating to the fight against corruption, which could have established the Arbitrator's partiality, was not common knowledge and only came to its knowledge after the Award, once it had read the reasons for the Award. It concludes that if it had known of the Arbitrator's commitment through knowledge of the articles in dispute, this information would have aroused its suspicions and would have raised doubts in its mind as for the Arbitrator's independence and impartiality.

31- Still, if it is up to the Arbitrator - under the terms of Article 1456 al. 2 of the French Code of Civil Procedure, applicable to international arbitration - before accepting his mission, to reveal any circumstance likely to affect his independence or impartiality, such an obligation must above all be assessed in the light of the notoriety of the disputed situation, notwithstanding its impact on the Arbitrator's judgment.

32- The notoriety of a piece of information prior to the appointment of an Arbitrator shall trigger the time limit within which the parties may submit their request to challenge the Arbitrator.

33- The starting point for challenging the Arbitrator is not the date on which the parties declare that they had knowledge of a piece of information, unless the information was not well known and should have been revealed, but the date on which the parties could reasonably have had knowledge of it, taking into account precisely the notoriety of the said information and the circumstances surrounding its disclosure or publicity.

34. Although [A] maintains that the Arbitrator's lack of impartiality only became apparent to it on reading the Award, the fact remains that the alleged cause of partiality is based solely on the Arbitrator's positions resulting from articles on the fight against corruption published in 2012 and 2015, prior to the appointment of the Arbitrator, which it says it was not aware of and which should have been disclosed to it.

35- It is therefore necessary to verify whether the information criticised was known before the appointment of the Arbitrator. It is only if the information is not well known that it is necessary to determine whether the alleged bias could be inferred from the grounds of the Award alone and justify the admissibility of the grievance after the Award.

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- On the notoriety of the information

36- In the present case, it is clear from the evidence presented in the proceedings that :

- [A] had been the recipient of the Arbitrator's declaration of independence and CV transmitted to the parties on 10 December 2018 ;
- This declaration contained express references to Mr. [Z]'s status as co-editor of the "Austrian Yearbook on International Arbitration", which appeared in the curriculum vitae provided by the arbitrator, the said CV specifying this status on two occasions, and mentioning since when he had been one of the editors of this magazine (2007);
- This status was also listed in Who's Who and on Mr. [Z]'s LinkedIn profile;
- The CV also listed all the articles published by Mr. [Z] since 1995, with each article listed in the CV with its title, edition, publication, date and references,

- The articles from the 2012 and 2015 editions of the "Austrian Yearbook on International Arbitration" relied upon by [1] were published online on the Kluwer Arbitration database,

- The articles in question were entitled "Bringing Fraud Claims under an arbitration agreement - does the arbitral process pack enough punch" (written by [M.S., M.U. and Mrs. T]) and "corruption in international commercial arbitration - selected issues" (written by [M.Y]) were not written by Mr. [Z] and were fully available in the magazine and on Kluwer Arbitration website.

37- In addition to the fact that the information on the articles written by the Arbitrator was included in the CV, including the precise titles of all these articles, as well as the references to access them, none of the other items listed above required a search of the sources cited to access them, or presented any difficulty in accessing them. Indeed, the articles published in the "Austrian Yearbook on International Arbitration" and communicated by the Kluwer Arbitration database, which is commonly consulted by arbitration firms, the fact that it is subject to subscription being very common, was not sufficient to constitute a lack of accessibility for arbitration professionals.

38- Therefore, there is no doubt as for the reputation of all the articles and magazines cited in the Arbitrator's CV.

39- [1] does not, however, rely on the articles written by the Arbitrator cited in his CV, but on two articles written by third parties and published in the magazine "Austrian Yearbook on International Arbitration" in date of 2012 and 2015, the said magazine, of which he was co-editor, being nevertheless mentioned in the CV, for arguing that these articles were not well known and that the information relating to the publication of such articles should have been revealed to it because of the Arbitrator's bias in the fight against corruption, which is directly reflected in the grounds for the Award.

40- However, on the one hand, as indicated above, the accessibility of these articles is obvious. On the other hand, the arbitrator did not draft these articles, and finally, even supposing that these articles take a position against corruption, which is part of the freedom of thought of these articles in the context of scientific work, and assuming that Mr. [Z] validated them in his capacity as co-editor of the magazine, their publication in the magazines dated 2012 and 2015 mentioned in the Arbitrator's CV and their publication in the Kluwer Arbitration database is sufficient to demonstrate the notoriety of this information, which only concerns indirectly Mr. [Z] since he was not the author of the articles, and the parties could reasonably have been aware of it before the appointment of the Arbitrator.

- Admissibility of the grievance

41- Since the information was known before the appointment of the Arbitrator, it was up to the parties to raise the irregularity of the constitution of the Arbitration Court that would have resulted from that date. Since they did not do so, they are presumed to have waived their right to raise this complaint.

42- [1] is therefore wrong to confirm – although it did not invoke any other cause for alleged partiality resulting from the reading of the Award - that it was from the date of the Award that the time limit would run and not the date of the appointment of the Arbitrator and that it would therefore still be entitled to do so in the context of the action for annulment.

- Whether [1]'s claim cannot be opposed

43- [1], which replaced [Z], cannot validly argue that the notoriety recognized due to the above-mentioned reasons cannot be set up against it, on the grounds that it was only aware of it after the appointment of the Arbitrator, whereas the Arbitrator was appointed on 27 December 2018 by mutual agreement on the basis of the list of five Arbitrators proposed by the ICC, and that before that, as early as on 12 October 2018, i.e. well before the confirmation of the Arbitrator's appointment, [Z] notified Airbus of the

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of the assignment and transfer of all its rights to [A] with the knowledge and validation of the consolidation agreement of 1 October 2018 in the arbitration. The latter, headed by Mr. [CA], executive officer of [A] and [B], notified the sole arbitrator of this assignment on March 26, 2019, confirming that [A] had taken over [B]'s rights in the arbitration proceedings and that it accepted all the deadlines of the assignment deed of February 11, 2019 as well as of the consolidation agreement of October 1, 2018, prior to the appointment of the sole Arbitrator.

44- It must therefore be deemed, in the same way as [B] did, in whose rights it succeeds, to have waived its right on the alleged irregularity relating to the arbitrator's impartiality, pursuant to Article 1466 of the French Code of Civil Procedure.

45. The plea for annulment based on Article 1520(2) of the French Code of Civil Procedure will therefore be declared invalid.

On the plea for annulment based on failure to respect the adversarial principle (Article 1520(4) of the French Code of Civil Procedure)

46- [A] confirms that the Arbitrator disregarded the principle of adversarial principle as he reminded on several occasions the existence and influence of the criminal investigations on the decision to terminate all relations with [B], but without any evidence being provided binding [B] to the said investigations. It argued that the Airbus companies wanted to dispense with the services of [B] and a number of other service providers by using an investigation to which they did not have access, and by withholding evidence against them for justifying the non-payment of outstanding invoices.

47. **The ADS companies** argue that, under the pretext of respecting the adversarial process, [A] is seeking to challenge the validity of the Award.

First of all, they indicate that [A] reportedly isolated in its conclusions paragraphs of the Award that were merely a reminder of the context, as the Airbus companies had been the subject of criminal investigations, in particular for acts of corruption, which was common knowledge.

48- They then indicate that no element resulting from the investigations was used by the Arbitrator to support his reasoning, that the criminal investigations were not used to draw "red flags" from them, that the debates never focused on whether [B] was involved in corruption, but whether its practices were such as to put ADS at risk from a compliance perspective. It states that the Award is motivated by [A]'s failure to comply with its commitments, which justifies the non-payment of invoices, and not by the existence of active corruption.

49. Lastly, it pointed out that [A] had been able to request the production of documents but had not asked for any information or elements concerning the criminal investigations to which the Airbus group was subject.

50- The Public Prosecutor concluded that the criminal investigations appeared to have been cited in the Award as contextual elements, which were referred to by ADS in its pleadings, and that the Arbitrator did not draw any "red flags" due to the existence of these elements, considering that the plea relating to the Arbitrator's failure to respect the principle of adversarial should be rejected.

On this point,

51- It follows from article 1520, 4° of the French Code of Civil Procedure that the action for annulment is available if the adversarial principle has not been respected.

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52- The adversarial principle only requires that the parties have been able to make known their factual and legal claims, and to discuss the claims of their adversary, as well as to debate with respect to adversarial principle the documents produced in such a way that nothing that served as a basis for the arbitrator's decision escaped their contradictory debate.

53- In the present case, [A] does not dispute that it did not request the production of documents or information concerning the criminal investigations, even though this point was mentioned in the Award as part of the context (§147 "The Defendants argue that Airbus Group's current anti-corruption stance must be understood in the broader context of the compliance anomalies that have been uncovered in a group-wide internal due diligence audit, as well as the ongoing criminal investigations being conducted jointly by the SFO and PNF") and had been referred to in the developments as part of the context of the breach of contracts (e.g. §429 "the Defendants contend that this is precisely what happened (...) article 2.5.2 of the Consultancy Contracts emphasises that this provision covers not only an actual breach of a Regulation, but also the presence of a risk for ADS SAS and ADS GmbH if it is put in a challenging situation due to a compliance perspective. It is important to note that the last part of these undertakings expressly mentions the possibility of judicial or administrative proceedings - such as ongoing SFO/PNF investigations - as one of these challenging situations. These provisions are therefore specifically designed and intended to address the type of context surrounding this dispute.")

54- [A] has not contested the notorious nature of these investigations, as Airbus publicly disclosed them on 7 August 2016, but it contends that the Airbus companies merely relied on these investigations to hold without any evidence a failure to comply with the compliance rules provided for in the Contract and applicable to the Airbus Group, and to reject its claim for payment of the unpaid invoices, which does not result from any of the exhibits in the proceedings or from the Award.

55- Consequently, the alleged violation of the adversarial process is not established, and [A] is in fact seeking - by arguing that in the absence of evidence of corruption against it, the Arbitrator wrongly argued that the suspension of the settlements and subsequent termination of the contracts was justified - to challenge the reasoning and basis of the arbitrator's decision, which is not subject to review by the annulment judge.

56- This plea will therefore be rejected.

On the plea for annulment based on the Award's conflict with international public policy (Article 1520 5° of the French Code of Civil Procedure)

57- [A] argues that the Arbitration Award infringes French international public policy in that it was rendered by a non-impartial Arbitrator and does not respect the adversarial principle, and that therefore its enforcement would make effective a biased decision that is not based on adversarial evidence, in violation of the rights of the defence and the principle of equality of the parties.

58- In response, the ADS companies indicate that in the absence of any evidence of a lack of impartiality, the court cannot find a violation of international public policy as this is not justified by any element. They also state that the parties had full opportunity to discuss the documents, as legal and factual arguments exchanged in the course of the arbitral proceedings. Furthermore, they argue that the Award is based on objective elements that were discussed in adversarial principle. They conclude that there is no violation of international public policy.

59. The Public Prosecutor's Office states that the flagrant, effective and concrete nature of the alleged violation has not been established, given that the alleged complaints of partiality by the arbitrator and failure to respect the adversarial principle are not established.

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On this point,

60- It follows from Article 1520-5° of the French Code of Civil Procedure that an action for annulment is launched if the recognition or enforcement of the Award is contrary to international public policy.

61- The international public policy - by virtue of which the annulment judge is reviewing - is the understanding of the French legal system, i.e., the values and principles that the latter would not tolerate to be disregarded even in an international context.

62- However, the control exercised by the annulment judge in defence of international public policy is only concerned with examining whether the implementation of the provisions taken by the Arbitration Court clearly, effectively and concretely infringes the principles and values included in international public policy.

On the allegation of the Arbitrator's partiality as a violation of international public policy ;

63- [A] relies on the same complaint as the one examined with regard to the irregularity of the constitution of the Arbitration Court, alleging the partiality of the Arbitrator due to the articles published on the fight against corruption and the reasons for the Award.

64- It will be recalled that neither the scientific work freely carried out by the Arbitrator as editor in a specialised arbitration magazine, nor the titles of the articles in question - which he did not actually write - nor even the legal opinions that may be given in these articles, are of such a nature as to call into question the arbitrator's impartiality.

65- Moreover, the content of the reasons given in the Arbitration Award is not subject to review by the annulment judge, and if there was to be a doubt resulting from the Award itself as to the Arbitrator's partiality, this doubt would have to be based on precise elements as for the structure of the Award or its very deadlines, which would suggest that the tribunal's attitude was biased or at least of such a nature as to give the impression that it was biased, which is not at all the case when one reads the extracts quoted by [A] as support to the Arbitrator's partiality (§505, 513 and 534 "the warning signal asserted by the Defendants exists", §530 "these assertions, particularly taken together strongly suggest improper influence and the presence of corrupt behaviour", §531 "the Plaintiff has made no effort to explain the circumstances described by the Defendants", §577 "the most plausible explanation involves corrupt behaviour" and §585 "Now surely what comes to mind first is not necessarily the right conclusion and there could be a more innocent explanation"), these excerpts did not contain any assertions related to a posture or bias of the Arbitrator that would allow any partiality to be drawn from them.

On the allegation of failure to respect the adversarial principle on the grounds of breach of international public policy ;

66- [A] maintains that the failure to respect the adversarial principle entails a violation of the rights of the defence and consequently also a violation of international public policy.

67- However, the complaints alleged in support of this plea for annulment are the same as those put forward in support of a plea for annulment based on Article 1520, 4° of the French Code of Civil Procedure.

68. Since these complaints have been rejected for the reasons set out above, and since no other element is alleged in support of this plea for annulment, they are not such as to entail a breach of international public policy.

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69. The application for annulment of the Award shall therefore be dismissed.

Costs and expenses

70. [A], the losing party, should be ordered to pay all the costs. In addition, [A] must be ordered to pay to the Airbus companies - which were in the obligation to incur irreducible costs in order to assert their rights - compensation under Article 700 of the French Code of Civil Procedure, which it is fair to set to the sum of €40,000 in total, i.e., €10,000 for each defendant company.

IV/ DISPOSITION

The Court, on these grounds

- 1- Declare the complaint based on Article 1520-2° of the French Code of Civil Procedure as invalid,
- 2- Dismiss the action for annulment brought by [A] against the Arbitration Award rendered on 25 February 2020 under the aegis of the International Chamber of Commerce (ICC no. [X]);
- 3- Order [A] to pay to each of the Airbus companies the sum of €10,000 (i.e., a total of €40,000 a total) under Article 700 of the French Code of Civil Procedure;
- 4- Orders [A] to pay the costs.

The Clerk

The President

Najma EL FARISSI

François ANCEL

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