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(Translated from French)

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

PARIS COURT OF APPEAL
International Commercial Chamber

SECTION 5 - CHAMBER 16

RULING OF 5 APRIL 2022

(No. 43/2022, 10 pages)

Case number: **20/13582 - Portalis No. 35L7-V-B7E-CCM06**

Decision referred to the Court:

- Provisional Arbitration Award handed down on 30 January 2019 in Paris by an ad hoc arbitral tribunal
- Final Arbitration Award handed down on 30 April 2019 in Paris by the same ad hoc arbitral tribunal

CLAIMANT IN THIS APPEAL:

[Company 1]

A French Company registered with the Trade and Companies Register of Nanterre under number 432.359.685.

Having its registered office at 47 rue Marcel Dassault, 92100 Boulogne Billancourt, France

Represented by its legal representatives

Represented by Me [A], Esq, Barrister-at-Law admitted to the Paris Law Society

[XXXXX]

and represented by trial barrister

Esq, Barrister-at-Law admitted to the Bayonne Law Society M [B]

[XXXXX]

RESPONDENT IN THIS APPEAL:

CSP Shahid Bahanor Copper Industries Co.

An Iranian Company

Having its registered office at 19 Palizvani Alley - South Gandhi Street 15176 15176 - 55911 Teheran, Iran

Represented by its legal representatives

Represented by Me [C], Esq, Barrister-at-Law admitted to the Paris Law Society

[XXXXX]

and represented by trial barrister Me [D]

, Esq, Barrister-at-Law admitted to the Paris Law Society [XXXXX]

MEMBERS OF THE BENCH:

The case was heard at a public hearing on 21 February 2022 before the following members of the bench:

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

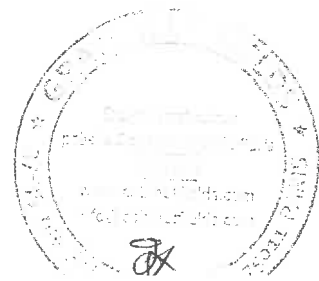
who deliberated thereon.

Clerk: at the appellate trial hearing: Najma El Farissi

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Visé NE VARIETUR sous le n° 2022-2045

Fait à PARIS, le 8 août 2022

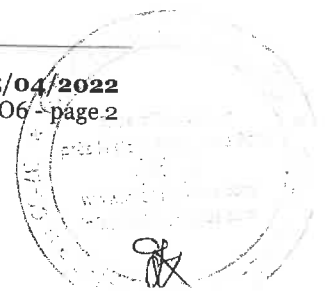


RULING:

The ruling was handed down after adversarial proceedings and made available at the Clerk's Office, the parties having previously been notified as required by virtue of the second paragraph of Article 450 of the French Code 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 decision was given by the signatory justice.

I. STATEMENT OF FACTS AND PROCEEDINGS

1. On 30 September 2013, the French company [company 1] and the Iranian company CSP Shahid Bahanor Copper Industries Co. (hereinafter "CSP Shahid") entered into a sales agreement under which CSP Shahid supplied brass and copper to [company 1]. The agreement was entered into for 3 years, extendable for successive 1-year periods unless terminated by either of the parties with 6 months' notice.
2. The agreement also provided for payments to be made 30 days after the arrival of products in Besançon.
3. A dispute arose between the two companies after [company 1] claimed failures to deliver products in response to demands for payment of invoices made by CSP Shahid.
4. CSP Shahid filed a request for arbitration.
5. The request for arbitration gave rise to two arbitration awards handed down by the ad hoc tribunal on 30 January and 30 April 2019.
6. In its interim award on 30 January 2019, the arbitral tribunal set the amount of unpaid invoices owed by [company 1] EUR [...] ; in principal plus EUR [...] in default interest, suspending its effects pending the final award.
7. In its final award dated on April 2019, the tribunal ordered CSP Shahid to pay to [company 1] the sum of EUR [...] and lifted the suspension of the interim award that had set the debt of CSP Shahid at EUR [...]
8. The exequatur of both awards was ordered by decision of 13 July 2020 and served on [company 1] on 28 August 2020.
9. On 10 September 2020, CSP Shahid had an order for seizure and sale served on [company 1] followed by an order for an iterative payment on 23 September 2020. Three attempts to seize bank account funds were unsuccessful and so, as of 16 November 2020 [company 1] owed CSP Shahid EUR [...]



10. According to the notice filed on 25 September 2020, [company 1] brought an application for the annulment of these two arbitration awards (implying ipso jure, by virtue of Article 1524 of the French Code of Civil Procedure, an appeal of the exequatur order).

11. On 15 December 2020, CSP Shahid brought action in the Commercial Court of Nanterre to initiate liquidation proceedings against [company 1]. The proceedings are still pending as of the date hereof.

12. On 6 July 2021, the pre-trial judge ordered a halt of the enforcement of the arbitration awards handed down between the parties on 30 January and 30 April 2019 pending a ruling from this Court on the application for annulment.

13. The order ending the pre-trial phase was handed down on 15 February 2022.

II. CLAIMS OF THE PARTIES

14. In its last submissions entitled "Submission III" filed electronically on 26 November 2021, Alltech sought, on the basis of Articles 1518 et seq. of the French Code of Civil Procedure and 1446 et seq. of the French Code of Civil Procedure, the following remedies from the Court of Appeals:

- **Annul** the 30 January 2019 and 30 April 2019 arbitration awards;
- **Order** CSP Shahid Bahanor Copper Industries Co. to pay to [company 1] the sum of €20,000 in accordance with the provisions of Article 700 of the French Code of Civil Procedure, plus all costs that will be collected by Me. [A] Esq, Barrister-at-Law admitted to the Paris Law Society by virtue of Article 699 of the French Code of Civil Procedure.

15. In its last submissions entitled "Submission No. 2" filed electronically on 27 September 2021, CSP Shahid sought the following remedies from the Court of Appeals:

- **Find** that the grounds for annulment of the 30 January 2019 and 30 April 2019 arbitration awards put forward by [company 1] lack any serious basis;
- **Reject** the grounds for annulment and, consequently, the application for annulment of. [company 1]
- **Uphold** the 30 January 2019 and 30 April 2019 arbitration awards;
- **Dismiss** all claims, pleas and submissions of Alltech Metal;
- **Order** [company 1] to pay to CSP the sum of EUR 10,000 in accordance with Article 559 of the French Code of Civil Procedure.
- **Order** [company 1] to pay to CSP Shahid Bahanor Copper Industries Co. the sum of €10,000 in accordance with Article 700 of the French Code of Civil Procedure, plus all costs.

III. PLEAS OF THE PARTIES

The ground for annulment of the award based on the lack of jurisdiction of the arbitral tribunal (Article 1520(1) of the French Code of Civil Procedure)

16. [Company 1] maintains that the arbitral tribunal wrongly found that it had jurisdiction on the basis of an invalid arbitration agreement that is not binding on it since it had no knowledge of it and did not sign it. It claims that it became aware of the arbitration agreement, which is a contract setting the rules of the arbitration proceedings, only during these arbitration proceedings, which prevented it from challenging it before the arbitral tribunal. It points out that the only document that CSP Shahid produced in the proceedings, entitled "terms of reference", is in English so it should not be admitted into evidence since it is not translated. It adds that whilst this document indicates that a lawyer, Me [E], Esq, represented it, there is no indication, notwithstanding the reference "PS", that it had authorised the lawyer to sign it since the document does not contain the initials or the signature of its legal representative, ___ (M. [F])

17. **In response, CSP Shahid** points out first that the arbitration agreement is indeed contained in the 30 September 2013 contract and that it is reproduced in the terms of reference document, validly produced in English, the parties having agreed to the procedural protocol applicable in the International Commercial Chamber. It underscores that at no time during the arbitration proceedings did [Company 1] raise the absence of an arbitration agreement, that it did not challenge the arbitration proceedings themselves, that it made no findings during the proceedings and that it did not call into question the authority of Me [E], Esq, the lawyer that it had retained to represent it in the arbitration proceedings.

18. It notes that M. [F], the President of [Company 1], submitted written testimony to the arbitrators and gave testimony at a hearing and at no time did he call into question the authority of his lawyer to sign the terms of reference so the bad faith of [Company 1] is obvious. It adds that it made a counterclaim to the arbitral tribunal, thereby necessarily confirming the jurisdiction of the arbitrators.

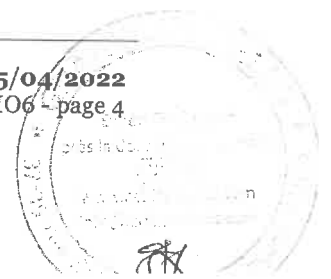
19. It recalls that, in order to be admissible, a ground for annulment must have been raised whenever it is possible before the arbitral tribunal itself and that since the arbitration agreement was indeed signed by both parties and at no time did [Company 1] challenge the jurisdiction of the arbitrators or make any claims in this regard, the claim made by this company can only be dismissed.

WHEREFORE:

20. Under Article 1520(1) of the French Code of Civil Procedure, action for annulment is available if the tribunal wrongly found that it had or lacked jurisdiction.

The Admissibility of this Plea:

21. It should be noted as a preliminary matter that whilst in the operative provisions of its last submissions, CSP Shahid asked the Court to "*reject the grounds for annulment and, consequently, the application for annulment*", it did not specifically



ask the Court to find the ground for annulment based on the lack of jurisdiction of the arbitral tribunal inadmissible, so the Court was not formally asked to rule on any such ground of inadmissibility.

The Merits of the Claim:

22. In connection with the application for annulment based on Article 1520(1) of the French Code of Civil Procedure, it is up to the court adjudicating the annulment to review the decision of the arbitral tribunal with respect to its jurisdiction, regardless of whether it found that it had or lacked jurisdiction, seeking all the elements in law and in fact enabling it to determine the scope of the arbitration agreement.

23. In this case, the agreement signed on 30 September 2013, on which the claims submitted to the arbitral tribunal are based as set out in paragraph 206 of the provisional award, contains an arbitration clause drafted as follows: "Arbitration: In case of any disputes not solved between the parties, place of arbitration will be France".

24. [company 1] Does not dispute that it signed this agreement which, in the absence of additional details, refers the resolution of any disputes between the parties to ad hoc arbitration to take place in France.

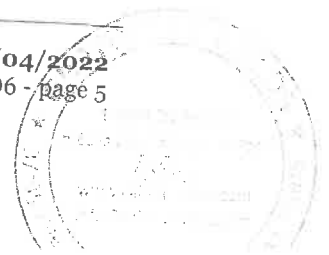
25. In the court adjudicating the annulment, [company 1] disputed only that it signed the terms of reference dated 22 December 2017, produced in English before this Court, which it is seeking, for this reason, not to have it admitted into evidence.

26. However, apart from the fact that the parties accepted a procedural protocol applicable in the International Commercial Chamber on 7 February 2018, section 2.2 of which provides that "documents in English can be produced in court without a translation", it should be noted that the Villiers-Cotterêts Order of August 1539 concerns procedural documents and not documents produced by the parties, which remain subject to the discretionary power of the court, and of which [company 1] did not by the way claim that it did not understand its meaning when the agreement entered into with CSP Shadid on 30 September 2013 was also drafted in English. There is thus no reason not to admitted this document into evidence.

27. It should further be noted that this document specifically indicates that it is represented therein by its lawyer, Me [E] Esq, who initialled it and that, based on the two disputed arbitration awards, this same lawyer effectively represented this company during the arbitration proceedings, which it did not contest, the chief executive of this company, M. [F] having participated in the proceedings.

28. Thus, [company 1] is presumed to have authorised Me [E] to represent it in legal proceedings and the arbitral tribunal was under no obligation to demand that it provide proof of such authorisation and it provided no other proof, other than unsupported allegations, to reverse this presumption.

29. Based further on the disputed awards, [company 1] actively participated in the arbitration proceedings, its legal representative, M. [F] having even testified at the hearings held on 5 and 6 July 2018 in Paris and this company having even made counterclaims before the arbitral tribunal.



30. In light of all of the foregoing, the arbitral tribunal did indeed have jurisdiction, according to the common will of the parties, to take cognizance of the dispute between them.

31. The ground for annulment will consequently be rejected.

The ground for annulment of the award based on the failure to observe the adversarial principle (Article 1520(4) of the French Code of Civil Procedure)

32. [company 1] argues that the arbitral tribunal failed to observe the adversarial principle. It criticises the arbitral tribunal, not for ruling on the applicable law since neither the clause nor the parties designated the applicable law, but rather for failing to rule on this question before the substantive issues. It maintains that not having known the law applicable to the dispute, Iranian law, before the provisional award was handed down on 30 January 2019, which also ordered it to pay a sum of money, it was unable to base its defence on Iranian law, which was prejudicial to it.

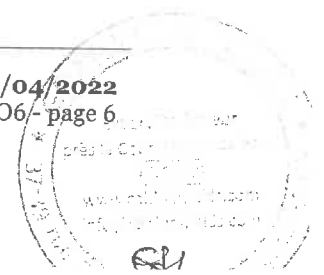
33. In response, CSP Shadid points out that that each party was given an opportunity to take cognizance of all documents communicated to the arbitral tribunal by the opposing party. It explains, with respect to the terms of reference, that the arbitrators were under no obligation to determine the applicable law before the substantive issues. It contends that the applicable law was not included among the questions on which the arbitral tribunal was to rule. It adds that, in accordance with Article 1511 of the French Code of Civil Procedure on which the parties agreed, in the absence of a law chosen by the parties, the tribunal chose the applicable law that it considered the most appropriate. It maintains that this choice was made after having heard the arguments of each of the parties. It also considers that [company 1] should have anticipated that the applicable law would be Iranian law given that the agreement had the stronger ties to Iranian law than to French law. It further underscores that all the documents which were communicated to the arbitral tribunal were also communicated to the opposing party, giving it the opportunity to react to them.

WHEREFORE:

34. Under Article 1520(4) of the French Code of Civil Procedure, action for annulment is available if the adversarial principle was not observed.

35. The adversarial 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 which served as a basis for the decision of the arbitrator was not subject to adversarial debate.

36. In this case, based on the 30 January 2019 provisional award, the arbitral tribunal, after finding that the parties were in agreement to apply Article 1511 of the French Code of Civil Procedure and that the parties had not chosen an applicable law, considered that it was up to it to “*determine the legal rules that it considered appropriate to the case, given that the Parties propose Iranian law, on the one hand, and French law, on the other hand*” (§ 248). In light of the circumstances of the case, and specifically the service contemplated in the agreement that CSP Shahid was to provide, the arbitral tribunal considered that “*Iranian law is applicable to the Agreement as well as the trade usages, and particularly international trade usages, as enunciated in Article 1511 of the French Code of Civil Procedure*” (§ 257).



37. It is well-established that the arbitral tribunal then considered, based on exhibits produced, that [company 1] owed to CSP Shadid in relation to the unpaid invoices EUR [...] in principal and that it particularly wondered about the content of Iranian law as it applied to the claim of CSP Shadid to pay this amount in interest. It was on this occasion that the application of Article 522 of the Iranian Code of Civil Procedure relating to interest was discussed by the arbitral tribunal and that, using its discretionary power in the evaluation of the interest rate, as it considered that the aforementioned Article 522 of the Iranian Code of Civil Procedure conferred on it, the arbitral tribunal finally set this interest rate at 4% per annum (§ 376).

38. On this occasion and contrary to what it maintains, [company 1] was indeed given an opportunity put forward an explanation as it specifically sought, as reflected in paragraph 359 of the award, the application of the aforesaid Article 522, considering that by virtue of this statute no interest was due "because the amounts claimed are in euros and the debt is not certain since it is precisely the subject of this arbitration" (see § 362).

39. In addition, based on Procedural Order No. 3 dated 31 December 2018, the tribunal specifically questioned the parties and asked for their observations about the content of the Iranian law and in particular about the event triggering the payment of interest according to this law, the powers conferred on the tribunal to set an interest rate or, more broadly, about the existence in Iranian law of a principal equivalent to a plea of non-performance of contract.

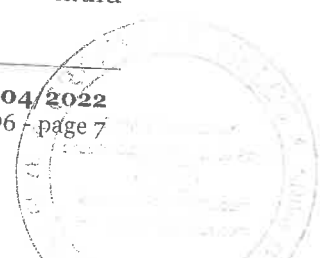
40. Based on paragraphs 191 of both of the disputed arbitration awards, [company 1] provided elements of a response to these questions and that it cannot claim in good faith that it discovered when reading the awards that the arbitral tribunal had applied Iranian law and that at no time did it have the opportunity to put forward any explanation of the content of said law.

41. This claim has even less merit since the arbitral tribunal chose to split its response into two awards: one handed down on 30 January 2019 that ruled, among other things, on the law applicable to the dispute and the claims made by CSP Shadid in connection with the unpaid invoices; and the other one handed down on 30 April 2019 that ruled on the counterclaims of [company 1], so it cannot claim that it was caught off guard by the application of Iranian law.

42. In light of all of the foregoing, and since it is not up to this Court, in relation to the application for annulment, to determine whether the arbitral tribunal, based on its knowledge of Iranian law, properly applied that law to the dispute, it should be considered that the violation of the adversarial principle has not been proven, so this ground for annulment will be rejected.

The ground for annulment on the failure by the arbitral tribunal to comply with its mission (Article 1520(3) of the French Code of Civil Procedure)

43. [company 1] points out that the decision of the arbitral tribunal, in relation to the setting of the amount of the alleged debt of CSP Shadid is not founded in law and did not state the reasons upon which it was based. It explains that the arbitral tribunal, which had no jurisdiction under Iranian law, failed to comply with the mission that was entrusted to it by failing to state the reasons upon which its decision was based. It maintains that the arbitral tribunal only mentioned a single provision of Iranian law, Article 522 of the Iranian Code of Civil Procedure relating to interest, without verifying the reality of it when even CSP Shadid also said that this article was not applicable. It therefore claims that the arbitral tribunal failed to state the reasons legally upon which its decision was based, in particular in saying that CSP Shadid was not required to provide proof of its allegations.



44. In response, CSP Shadid maintains first of all that [company 1] has failed to provide proof of the failure to state the reasons upon which the awards are based. It argues that each question was based on Iranian law as well as on international trade usages, which gave rise to the taking into account of the principle according to which payment must be made by whoever placed the order. It also underscores the fact that the arbitral tribunal was under no obligation to give its reasons to them to the extent that its decision held that only facts and rules that were subject to the adversarial process in which they took part. It adds, concerning Article 552 of the Iranian Code of Civil Procedure, that the parties were given an opportunity to put forward their viewpoint on this, which they did. Moreover, it indicates that they produced a translation of the article as well as doctrinal information relating thereto.

WHEREFORE:

45. 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.

46. The mission of the arbitrators, defined in the arbitration agreement, is limited primarily by the subject matter of the dispute, as it is determined by the claims of the parties and not just the issues borne out in the terms of reference or all the more so in the request for arbitration.

47. According to Article 1482 of France's Rules of Civil Procedure, rendered applicable in matters of international arbitration by Article 1506 of France's Rules of Civil Procedure, "*an arbitration award must state succinctly the respective claims and arguments of the parties. It must state the reasons upon which it is based*".

48. It was thus well within the mission of the arbitral tribunal to state the reasons upon its award was based.

49. In this case, [company 1] maintains in substance that the arbitral tribunal in no way based its claim in law with respect to the setting of the amount of the debt of CSP Shadid, only Article 522 of the Iranian Code of Civil Procedure is cited in relation to interest.

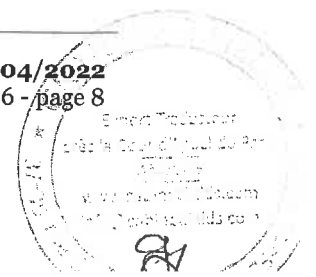
50. However, based on the 30 January 2019 arbitration award the arbitral tribunal explained that it intended to apply Iranian law and international trade usages, about which [company 1] cannot seriously claim that it is unaware that they include the payment obligation by the buyer of goods that are delivered to it.

51. On the other hand, whilst it does not specifically cite the statute applicable under Iranian law to rule on a payment claim made in relation to unpaid invoices, the arbitral tribunal took care to examine the payment claim in detail in paragraphs 323 to 350 of its arbitration award, in light of the elements of proof produced to justify the amount unpaid for the goods delivered. It thus satisfied its obligation to state the reasons upon its award was based.

52. In light of the foregoing, the ground for annulment will also be rejected with the understanding that the review by the court adjudicating the annulment does not include the merits of the reasons stated.

The claim for an order on the basis of Article 559 of the French Code of Civil Procedure:

53. CSP Shadid is seeking, on the basis of Article 559 of the French Code of Civil Procedure, to have [company 1] ordered to pay EUR 10,000. It justifies its claim based on the fact that [company 1] committed an abuse of the right to litigate in court by bringing



this action, which is not seeking to annul the award but rather to delay to enforcement of the award when, at the same time, [company 1] is organising its insolvency. It adds that the grounds invoked by [company 1] lack any serious basis.

54. In response, [company 1] maintains that its appeal is not dilatory or abusive given that it is based on the fact that the rules applicable by the arbitral tribunal that handed down the awards. It argues that it was the behaviour of CSP Shadid that should be described as abusive insofar as it was CSP Shadid that brought the liquidation proceedings in court against it.

WHEREFORE:

55. In accordance with Article 559 of the French Code of Civil Procedure, in the event that an appeal is found to be dilatory or abusive, the appellant can be ordered to a civil fine of no less than EUR 10,000 without prejudice to any damages that may be sought from it.

56. In this case, CSP Shadid is seeking the payment of EUR 10,000 to it so it should be considered that it thereby intends, not to seek a civil fine intended for the Treasury, but rather damages for bringing a dilatory or abusive appeal.

57. It is well-established in this case that the grounds invoked by [company 1] in support of its appeal patently lack any serious basis and, for at least for one of them, namely the ground based on a lack of jurisdiction of the arbitral tribunal, manifestly marked by bad faith.

58. Such an attitude is wrongful on the part of [company 1] insofar as it prevented, with no serious basis for doing so, the enforcement of arbitration awards handed down against it and this when the invoices that it has failed to pay date back to 2014 and it has moreover indicated that it is no longer trading at present, also suggesting that it is organising its insolvency.

59. Consequently, the claim of CSP Shadid will be granted and [company 1] ordered to pay to it the sum of EUR 10,000 in damages.

Expenses and Court Costs:

60. [company 1], the unsuccessful party, will be ordered to pay costs.

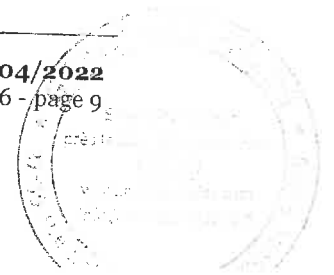
61. In addition, it must be ordered to pay to [company 1] which had to undertake unrecoverable expenses to assert its rights, compensation in accordance with Article 700 of the French Code of Civil Procedure that it is only fair to set at EUR 10,000.

IV. DECISION:

On these grounds, the Court:

1. Rejects the application for the annulment of the Arbitration Awards handed down in Paris on 30 January 2019 and 30 April 2019 in the ad hoc arbitration between CSP Shahid Bahanor Copper Industries Co. and [company 1]

2. Orders [company 1] to pay to CSP Shahid Bahanor Copper Industries Co. the sum of EUR 10,000 for bringing an abusive appeal.



3. Orders [company 1] to pay to CSP Shahid Bahanor Copper Industries Co. the sum of EUR 10,000 in accordance with Article 700 of the French Code of Civil Procedure.

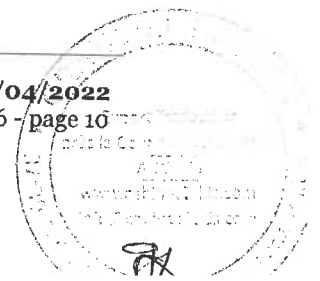
4. Orders [company 1] to pay all costs.

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 2022-2045

Signed and stamped *ne varietur* in
Paris, France
on 8 August 2022