

Brexit: Paris, the new place for arbitration?

Review of the creation of the international chamber of the Paris Court of Appeal (CICAP) one year later

On 1 March 2018, due to Brexit and to Britain's withdrawal from the European Union, an international chamber was created within the economic section of the Paris Court of Appeal which was intended to facilitate international companies with commercial litigations at an international level access to the French commercial jurisdictions.

This innovation followed the creation of the international chamber of the Paris Commercial Court in 2015 (merger between the chamber of international law and the chamber of EU law) and provided a second instance jurisdiction for the decisions of the international chamber of the Paris Commercial Court.

This international chamber of the Paris Court of Appeal, having jurisdiction over litigations emerging from articles L 721-3 and L721-4 of the French commercial code but also from all appeals made against the decisions rendered in cases of international arbitration, was specifically created to facilitate foreign companies access to the French jurisdictions suggesting them more flexible proceedings by getting closer to the international arbitration proceedings and offering more flexibility and interactivity in the conduct of hearings and proceedings.

This sixteenth chamber of section 5 of the Paris Court of Appeal created by the "protocol concerning the proceedings before the international chamber of the Paris Court of Appeal" signed between the Paris Court of Appeal and the Paris Bar Council on 7 February 2018 introduces proceedings which are more responsive to the needs of parties who have the right to:

- to choose the applicable law from the beginning of the proceeding if this has not been done beforehand;
- to choose English as the language of the proceedings enabling the witnesses, the parties the experts and foreign lawyers to be heard/ to intervene in English. Nevertheless, the procedural documents, the notes taken during the hearings and the minutes as well as the pleadings will remain in French, as will the judgement which will be rendered in a bilingual version as required by the order of Villers-Cotterêts;
- to submit exhibits in English without any translation, in what concerns the production of evidence;
- And finally, to have judges qualified in the commercial, financial and economic field accustomed to legal English and with a good knowledge of foreign laws (especially common law), which is a considerable advantage.

The essential advantage of this new chamber is that its decisions can, in accordance with European law, be acknowledged and executed automatically in all member states of the European Union, which is not the case for decisions rendered on English territory which, in the future (should Great Britain leave the EU), will have to undergo exequatur before being recognised and executed on European territory.

Almost a year after the establishment of this chamber 16 of section 5 of the Court of Appeal this chamber has rendered only one decision in a case regarding an action brought against an international transportation company calling into question its contractual liability.

As part of these appeal proceedings the Court partially confirmed, but most of all reformed the judgement of the Commercial Court of Paris and retained the transport company's contractual liability by applying French domestic law, stating that due to a clearly inexcusable fault it could not use against its client the limitation of liability clauses contained in the general terms and conditions for transport.

The decision of the Court of Appeal was rendered less than a year after the decision rendered by the Commercial Court of Paris (dated 22 February 2018) indicating a certain procedural efficiency which is usually one of the reasons for the existence of private justice and arbitration.

In view of this one single decision rendered in the field of international transportation we are obviously still lacking the necessary hindsight to assess the scope and the importance of this procedural and jurisdictional innovation in France.

Nevertheless, this noticeable effort of our jurisdictions to adapt to the needs of business operators with the goal to compete with private justice should be underlined and has the significant advantage of being less expensive. Therefore, international business operators having an obvious interest in applying to these specialised international chambers, especially in the field of arbitration, should be examined in the long run.

Still, these chambers must make themselves sufficiently known by the companies concerned, which does not seem to be the case, yet.

We therefore suggest reviewing this procedural innovation once again in a year and, in the meantime, invite you to apply to these new chambers in order to better assess their functioning and their relevance.

Céline LUSTIN-LE CORE

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