

# LANDMARK ARBITRATION RULING AS FRANCE'S TOP COURT BACKS SETTING ASIDE \$15 MILLION AWARD CITING MONEY LAUNDERING EVIDENCE

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Legal Briefings

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French judges' hands-off arbitration stance under question as Supreme Court backs voiding Belokon award

In *Belokon v. Kyrgyzstan* (Cass. Civ. 1ère, 23 March 2022, No. 17-17.981), the French Supreme Court upheld the Paris Court of Appeal's 2017 decision to set aside a \$15 million UNCITRAL award in favour of Latvian investor Valeri Belokon in a dispute with the Republic of Kyrgyzstan. According to the Supreme Court, the Court of Appeal had not exceeded its powers by determining, based on its own analysis of the case, that enforcement of the award in the French legal order would allow Belokon to benefit from the proceeds of money laundering contrary to French principles of international public policy.

This much-awaited decision confirms when considering a challenge to a French-seated award on the grounds of international public policy – at least with allegations of corruption and money laundering – that French judges have full authority to review the implications enforcing the award would have on the French legal order. According to the Supreme Court, this necessarily includes full fact finding powers which are not limited by the evidence presented to the arbitral tribunal or its interpretation of the facts. The ruling will also be watched closely, coming from one of the world's most popular and influential arbitration seats.

## BACKGROUND

The dispute arose from a series of measures taken by Kyrgyzstan in regards to Belokon's investment in a local bank (the Bank) which was placed into administration and eventually declared insolvent by Kyrgyz authorities. Belokon subsequently initiated ad hoc UNCITRAL arbitration proceedings alleging breaches by Kyrgyzstan of the 2008 Latvia-Kyrgyzstan bilateral investment treaty (BIT). The tribunal issued an award in Belokon's favour in 2014, dismissing Kyrgyzstan's claims the Bank was engaged in money laundering practices.

As the seat of the arbitration was Paris, Kyrgyzstan applied for and successfully obtained the setting aside of the Award by the Paris Court of Appeal. As discussed in previous [blog posts](#), article 1520 5° of the French Code of Civil Procedure allows a party to seek annulment of an award where its recognition or execution would be contrary to French principles of international public policy.

The Court of Appeal found strong evidence that Belokon acquired his interest in the Bank by corrupt means and in order to facilitate money laundering in the absence of effective government oversight. As a result, the Court of Appeal set aside the Award as its recognition in France would have allowed Belokon to benefit from his unlawful activities contrary to the fight against money laundering, recognised by the Court of Appeal as a principle of international public policy.

Belokon subsequently appealed to the Supreme Court alleging that the court had exceeded its powers under article 1520 5° by re-examining the merits of the Award *de novo* - a legal standard for instances in which an appeal court tackles a point anew as if the lower court had not rendered a decision on the matter - and substituting its own factual analysis.

## **THE DECISION**

The Supreme Court's ruling confirms that the prohibition and fight against money laundering is the subject of broad international consensus as recognised by the 2003 United Nations Convention against Corruption and is therefore included in the core principles of France's international public policy.

The Court went on to recognise the role of the Court of Appeal was not to review Belokon's underlying claim under the BIT or the allegations of money laundering under Kyrgyz law, but to determine the effect that recognising the Award would have on the French legal order. To this end, it was not bound by the evidence put before the tribunal or its findings of fact, and was therefore entitled to find as it did that there was "serious, specific and consistent" evidence of money laundering practices in this case.

In circumstances where the Court of Appeal had found that recognising the Award would allow Belokon to benefit from suspected illegal activities, and would therefore result in a serious violation of international public policy, the French Supreme Court upheld the set aside decision.

## **COMMENT**

The non-interventionist and pro-arbitration stance of French courts has historically been such that the scope of the Court of Appeal and Supreme Court's review of awards was extremely limited in the context of set aside proceedings. In recent years, however, the Court of Appeal had begun adopting a more hands-on approach to the oversight of certain international public policy violations, culminating in its controversial decision in *Belokon*.

By upholding the appeal court's decision on all counts, the Supreme Court has now confirmed the trend which has seen a broadening of the scope of the French courts' review in annulment proceedings based on allegations that enforcement of an award would give effect to illicit practices such as money laundering. However, it remains unclear if this trend is limited to allegations of corruption and similar criminal conduct, or whether it may apply to other serious or manifest breaches of international public policy.

Importantly, the Supreme Court's decision states clearly that the Court of Appeal's review of the facts underlying the alleged breach of international public policy was not a substantive review of the findings of the tribunal but only a review of the award's conformity with principles of international public policy.

The balance which the Court of Appeal and Supreme Court seek to strike is delicate and will no doubt give rise to further controversy. However, the *Belokon* decision does provide welcome clarity that where serious breaches of international public policy are at stake – at least with respect to corruption and money laundering – French judges will not shy away from addressing difficult issues, including by carrying out a detailed factual review of the allegations.

***For more information, please contact Laurence Franc-Menget, Partner, Emily Fox, Of Counsel, or your usual Herbert Smith Freehills contact. The authors would like to thank Louis Austin for his assistance with this article.***

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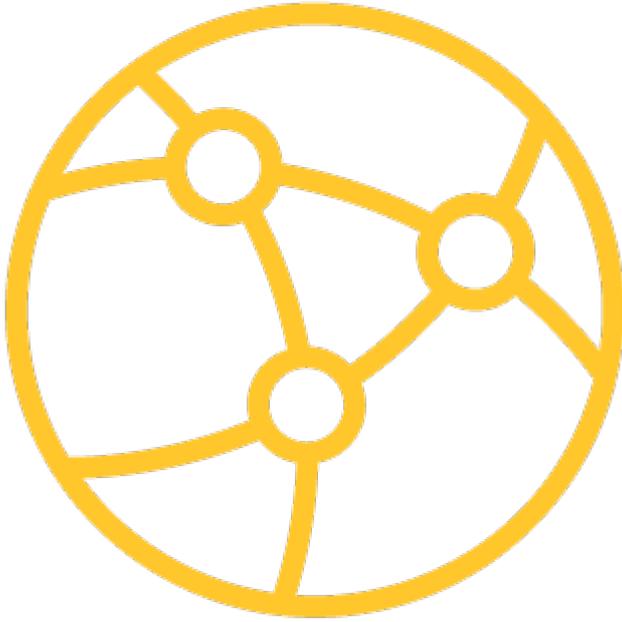
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