

**Paris Court of Appeal, S.N.F. S.A.S v La Chambre de Commerce Internationale**

Member State

 France

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Topic

Accountability/civiliability of arbitral institutions

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Deciding Court Original Language

La Cour d'Appel de Paris

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Deciding Court English translation

Paris Court of Appeal

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Registration N

07/19492

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Date Decision

22 January 2009

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Subject Matter

Liability of arbitral institutions

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Legal issue(s)

The following claims were raised:

1) The Claimant (SNF) claimed that the 1988 ICC Rules of Arbitration should apply to the assessment of the liability of the ICC (the rules applicable at the time of signing the arbitration

agreement, not those applicable at the time of submitting the Request for Arbitration to the ICC Secretariat in 2000). The 1988 ICC Rules did not contain the exclusion of liability clause included in ICC Rules in effect as of 1 January 1998.

2) The ICC exclusion of liability clause is “manifestly abusive” under Art. 132-1 of the French Consumer Code (in a contract between the ICC and non-professional).

3) The ICC failed to perform its duties by acting “careless” while failing to notice that the addendum to the arbitral awards was signed by 2 not 3 arbitrators. The same claim concerned the ICC’s failure to interpret its own Rules upon the request of the party.

4) The ICC failed to verify the lawfulness of the arbitral award and its compliance with EU public policy.

5) The ICC organised lengthy and costly arbitral proceedings by granting the extensions of time limits 13 times.

6) The ICC applied the cost scale in force on the date of the initiation of the award, not on the date when the award was issued.

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### Request for expedited/PPU procedures

N/A

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### National Law Sources

Art. 132-1 of the French Consumer Code (regarding the effects of the exclusion of liability clauses in contracts between professional contractors and non-professionals).

Art. 34 of the 1998 ICC Rules (arbitration rules).

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### Facts of the case

This case originates from a dispute between SNF SAS (a French company) and Cytec Industries BV (a Dutch company) regarding the compliance of their supply contract of 1 October 1993 with EU competition law. Based on the arbitration clause contained in the contract in question, SNF filed a Request for Arbitration before the ICC. Two arbitral awards were issued in Belgium by the arbitral tribunal (on 5 November 2002 and 28 July 2004, respectively). In the first award, the tribunal found that both parties contributed equally to the violation of EU competition law (Art. 81 and Art. 82 of the then EC Treaty). In the second award, the tribunal ordered SNF to pay damages to Cytec amounting to EUR 4,447,548 excluding interest. Following the granting of the enforcement of the awards in France to Cytec, SNF appealed to the Paris Court of Appeal claiming that the awards violated the French international public policy. The SNF’s claims were dismissed and SNF initiated a case before the French Supreme Court that confirmed the decision

of the lower court. Furthermore, SNF initiated criminal proceedings against Cytec before the Paris Court of Appeal for the abuse of its dominant position but the claims were dismissed. SNF also sought to have the awards annulled by the first instance court in Brussels. The court agreed with SNF that the awards violated EU public policy since the tribunal ordered damages to one party that violated EU competition law. Cytec appealed the Brussels Court of Appeal that quashed the decision of the lower court. Consequently, SNF initiated a civil liability suit against the ICC before the Paris Tribunal de Grande Instance based on the following claims: (1) the ICC violated its own Rules, (2) the ICC violated the rules on public policy in competition law and (3) the ICC organised and administered lengthy and expensive proceedings. The Tribunal de France Instance dismissed the claims. SNF appealed to the Paris Court of Appeal.

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### Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Paris Court of Appeal in its decision of 22 January 2009, decided that the ICC's exclusion of liability clause contained in its arbitration rules was unenforceable under French law and that it was in principle possible to hold the ICC liable.

However, the Court did not find the ICC in breach of its contractual obligations in the case at hand. This was so as (1) ICC followed the proper procedure for the determination of costs (that were not contested by the SNF), (2) the ICC followed its own procedures included in Art. 27 of the applicable ICC Rules regarding the scrutiny of arbitral awards, and (3) the parties contributed to the extension of time limits in the arbitration underlying the dispute.

Consequently, the Court dismissed the claims of SNF.

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(Link to) full text

<https://www.doctrine.fr/d/CA/Paris/2009/SKF9C0B390C1B814296FDC> (in French)

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