

Société Cubic Defense Systems Inc. v Chambre de Commerce Internationale, Cour de Cassation, 1st Civil Chamber, 20 February 2001

Member State

 France

Topic

Accountability: Arbitral institutions can be, in principle, held liable for the breach of their contractual duties under French law.

Deciding Court Original Language

Cour de Cassation (1 Ch. civile)

Deciding Court English translation

French Supreme Court

Registration N

99-12.574

Date Decision

20 February 2001

National Follow Up Of (when relevant)

?/?

EU legal sources and CJEU jurisprudence

?/?

ECtHR Jurisprudence

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Subject Matter

Accountability

Legal issue(s)

Accountability of arbitral institutions.

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

Article 1304 of the French Civil Code.

Facts of the case

On October 23, 1977, the Cubic Defense Systems and the Islamic Republic of Iran entered into two written contracts for the sale and service of an Air Combat Manoeuvring Range for use by the Iranian Air Force. The Contracts provided for progress payments upon completion of specified portions of work, pursuant to which Iran paid Cubic \$12,608,519 under the Sales Contract and \$302,857 under the Service Contract as of October 4, 1978. In late 1978 and early 1979, political unrest and revolution developed in Iran, resulting in the Shah's departure from Iran and the return from exile of Ayatollah Ruhollah Khomeini. Iran alleged that Cubic breached both Contracts by removing its service specialists from Iran and by failing to deliver the military system and equipment. Cubic alleged that in February and March of 1979, Cubic sent to Iran notices of completion of Milestone 3 of the Sales Contract and demanded payment of \$5,403,651. According to Cubic, Iran neither responded to those notices, nor proceeded with payment. Furthermore, Iran claimed that after the Iranian Revolution in 1979, Cubic sold the goods to a third party, retained the sale proceeds, and failed to notify Iran of the sale. Cubic, however, alleged that it had notified Iran of the possibility of resale on August 3, 1979. On January 19, 1982, Iran filed a claim against Cubic with the Iran-United States Claims Tribunal at The Hague. On April 28, 1987, the Iran-U.S. Claims Tribunal issued an Order stating that it lacked jurisdiction to hear the matter. Pursuant to

the Sales and Service Contracts, Iran filed a Request for Arbitration before the ICC on September 24, 1991. Article 15 of the Sales Contract and Article 18 of the Service Contract both stated that "[a]ny controversy, dispute or claim arising out of or relating to [these contracts] or breach thereof shall be settled by arbitration in the City of Zurich, Switzerland, in accordance with the laws of the Government of Iran in effect as of the date of [these contracts]." Iran and Cubic appointed their respective Arbitrators in 1992, and the ICC appointed a Panel Chair on May 6, 1993. On August 11, 1993, the ICC ordered bifurcation of the dispute, deferring the issue of quantification of the claim and counterclaim. Thus, on June 13-15, 1994, a hearing was held on all issues except for the quantification pursuant to the August 11, 1993 Order. On April 6, 1995, the ICC Tribunal issued an Order finding that Iran's claim for reimbursement and Cubic's counterclaim were not time-barred by the Iranian statute of limitations and that the bifurcation of the proceedings was no longer applicable. On May 5, 1997, the ICC issued its Final Award: "Cubic Defense System[s], Inc ... shall pay the Islamic Republic of Iran ... the amount of U.S. Dollars 2,808,519, together with (simple) interest on such amount at the rate of 12% per annum as from September 24, 1991 until the date of this Final Award ... [Cubic] shall reimburse [Iran] the amount of USD 60,000 advanced by [Iran] in excess of its 50% share in the Parties' cost deposits." (Award §21). The ruling was issued by the Panel Chair, with dissents from both Arbitrators.

The Court of Appeal of Paris and the French Supreme Court ruled over a claim to hold the contract with the ICC void.

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

The Court of Appeal held that where it is shown that a party clearly manifested its acceptance of an arbitration agreement, the trial court was correct to rule that the contract was valid and that arbitration must proceed as laid out therein. The French Supreme Court highlighted that the validity of an arbitration agreement in a contract should be distinguished by reference to the particular centre for arbitration: if the contract is ambiguous about the reference, it will only be valid if both parties agree to the centre expressly or implicitly; if the contract is specific about the centre, it will be valid as soon as one party contacts the centre, thereby completing the offer and acceptance necessary to form a common law contract.

The Paris Court of Appeal deemed that the exclusion of liability clause did not exist, because it aimed at absolving the institution of responsibility for its essential obligations. The ICC, pursuant to its rules, was obligated to provide an effective and efficient arbitration, suitable screening for impartial arbitrators, and a more involved oversight of the arbitral process. The Court of Cassation overturned the Court of Appeal's finding: the ICC could not be held liable for shortcomings in the arbitrators' reasoning and for their failure to consider European Union competition law. Accordingly, the ICC had properly performed the contract. The decision stated as follows: "the obligation of the ICC Court was to provide the parties with a proper structure allowing for efficient arbitration proceedings, i.e., conducted according to the expected dispatch, according to the chosen rules and which lead to the rendering of an award that is enforceable."

The Court of Appeal's decision was challenged for having held that the contract's nullity invoked was of a relative nature, subject to a statute of limitations of five years pursuant to Article 1304 of the Civil Code: 1) in basing its decision on an inoperative criterion owing to the harm caused to pecuniary interests of the claimant in the nullity proceedings; 2) and although the lack of

consideration concerned the general good as it eliminated the contract's role as an instrument of economic and social exchange, resulting in a prescription period of 30 years for the nullity proceedings.

The French Supreme Court recognised a contract between the ICC and the parties to the arbitration, and held that under the contract, the ICC is contractually obligated to fulfil its essential function as an arbitral institution, i.e., to follow the rules applicable to the arbitration, and therefore, is potentially liable for any breach of the arbitration agreement. The Court noted that the ICC will not be granted immunity but instead will incur liability for the breach of its contractual obligations. These obligations are not to ensure perfect arbitral proceedings, instead the Court held that the ICC forms a contract with each of the parties thereby committing to provide the means for an efficient arbitration. The ICC is obligated to provide an effective and efficient arbitration, suitable screening for impartial arbitrators, and a more involved oversight of the arbitral process.

Fouchard, Gaillard, Goldman explain the rationale as to how the contract between the institution and the parties comes into effect. They state that a permanent offer of contract is put out by the arbitral institution, by drafting and publishing its rules and providing fixed conditions for acceptance. This offer is accepted by the parties when they agree to resolve potential disputes through a particular institution in their contract with each other. *"The contract is not perfected until the institution receives notice through receipt of request for arbitration by the parties."*

Essentially, once arbitrators accept an appointment, they have duties and obligations to both parties and hence, if an arbitrator or the institution which is administering the arbitration breach an express or implied term of the arbitration agreement, they may be liable under their contractual liabilities.

On the last claim of Cubic concerning the alleged violation of Article 6.1 ECHR, the Court stated that Cubic had not managed to prove that it was deprived of an equitable procedure because of an unreasonable delay of the decision or because of lack of independence/impartiality of the arbitrators.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

N/A

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with

foreign courts)

N/A

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

Strategic use of judicial interaction technique (purpose aimed by the national court)

N/A

Impact on Legislation / Policy

Arbitral institutions can be, in principle, held liable for the breach of their contractual duties under French law.

Notes on the national implementation of the preliminary ruling by the referring court

N/A

Impact on national case law from the same Member State or other Member States

N/A

(Link to) full text

https://www.legifrance.gouv.fr/juri/id/JURITEXT000007043289?tab_selection=all&searchField=ALL&query

US Court decision based on the award:

<https://law.justia.com/cases/federal/district-courts/FSupp2/29/1168/2472235/>

V.V. Veeder, Arbitrators And Arbitral Institutions: Legal Risks For Product Liability?, American University Business Law Review, Vol. 5, No. 3 (2018).

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