

21 KEY ARBITRATION DEVELOPMENTS FROM 2020

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18. Breach of international sanctions can justify the annulment of arbitral awards by French courts

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In the *TCM* case, the Paris Court of Appeal analysed whether the violation of **international sanctions** imposed on Iran, can justify annulment of the award on grounds of breach of **French international public policy**.

The Court adopted a **two-step** approach.

Firstly, the Court determined whether the international sanctions invoked were **overriding mandatory rules** and if they could be considered as **part of French international public policy**.

The Court **distinguished** between the type of sanctions (UN, EU & US) as follows:

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- **UN sanctions** resulting from resolutions of the UN Security Council should be considered foreign and/or “truly international” overriding mandatory rules.
- **EU sanctions** resulting from EU regulations are directly applicable in France and constitute French overriding mandatory rules.

UN & EU sanctions aim to preserve peace and international security, thus **both fall within French international public policy.**

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However, unilateral **US sanctions** against Iran **do not represent an international consensus**, as the extraterritorial effect of US sanctions is disputed in France and in the EU.

Thus, the Court held that **US sanctions are not part of French international public policy.**

Secondly, the Court recalled that the arbitral tribunal's failure to consider UN & EU sanctions cannot justify *per se* the annulment of the award:

- failure must amount to an “effective and concrete” violation of French international public policy; and
- such violation must be assessed according to the material and temporal scope of the sanctions invoked.

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In the case at hand, the Court held that the dispute did not fall within the material and/or temporal scope of the international sanctions invoked and therefore there was no violation of French international public policy.

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As part of their duty to render an enforceable award, arbitrators are now invited to **carefully consider international sanctions.**

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# Source

3 June 2020, Paris Court of Appeal,  
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