

# Evidence of Money Laundering Leads French Supreme Court to Uphold Setting Aside of \$15 Million Award

By Adrian Sharma

Allegations of criminal activity are being increasingly used in France to argue for the setting aside of arbitral awards on the grounds of breach of public policy. In keeping with this trend, a recent ruling by the French Supreme Court affirmed a Court of Appeal decision to set aside an award due to evidence of money laundering.

In *Belokon v Kyrgyzstan*,<sup>1</sup> the French Supreme Court upheld the 2017 decision of the Court of Appeal to set aside a \$15 million UNCITRAL<sup>2</sup> award in favour of Latvian investor Valeri Belokon (**Belokon**). In its decision, the Supreme Court found that the Court of Appeal acted within its powers when it made a decision that enforcing the award in France would lead to Belokon benefitting from the proceeds of money laundering, which would have been contrary to principles of international public policy.

## Background

Belokon, a Latvian citizen, acquired a bank in Kyrgyzstan in 2007, and renamed it “Manas Bank”. Three years later, political tension in Kyrgyzstan led to the downfall of its then President, resulting in Kyrgyz authorities placing Manas Bank into temporary administration, which was extended several times and eventually resulted in the bank being declared insolvent.

In 2011, Belokon initiated UNCITRAL arbitration proceedings, alleging breaches of the Kyrgyzstan-Latvia bilateral investment treaty. A tribunal

seated in Paris found in favour of Belokon, deciding that the allegation of money laundering had not been sufficiently established, and ordered Kyrgyzstan to pay Belokon \$15 million.

Given that the seat of the arbitration was in Paris, Kyrgyzstan applied to the French Court of Appeal to have the award set aside. Article 1520(5) of the French Code of Civil Procedure allows for a party to seek annulment of an award where its recognition or execution would be contrary to French principles of international public policy.

Kyrgyzstan argued that Manas Bank was being used to launder money and that a number of the bank’s clients were offshore companies whose operations had no economic purpose. It also presented evidence that another bank owned by Belokon had been fined for breaching anti-money laundering laws in Latvia. Belokon sought dismissal of the application, arguing that Kyrgyzstan’s attempt to have the award set aside would amount to a review of the merits of the case, which he argued, was not permitted under French law.

## Court of Appeal ruling

In 2017, the French Court of Appeal delivered a ruling setting aside the award. The Court of Appeal disagreed with the tribunal’s finding that there was insufficient evidence to support the allegations of money laundering, and held that there was strong evidence to suggest that Belokon purchased Manas Bank through corrupt means in order to facilitate money laundering. This was the first occasion in which the Court of Appeal in France had set aside an award on the grounds of money laundering.

In reaching its decision, the Court of Appeal considered that its decision-making power was not bound by the evidence presented before the arbitral tribunal. It carried out a comprehensive review of the evidence that was presented to the arbitral tribunal and took into consideration new evidence which became available after the arbitral award.

The Court of Appeal said that its task was to determine whether enforcement of the award would undermine the fight against money laundering by allowing a party to benefit from criminal activities. The Court was satisfied that Manas Bank’s *tremendous success, in such a*

<sup>1</sup> *Belokon v Kyrgyzstan* (Cass. Civ.1ère, 23 March 2022, No.17-17.981).

<sup>2</sup> The United Nations Commission on International Trade Law is the core legal body of the United Nation’s system in the field of international trade law. It has the general mandate to further the progressive harmonisation and unification of the law of international trade.

limited amount of time, in such a poor country, could not be explained by orthodox banking practices. It also found that the enforcement of the award would constitute a breach of international public policy.

Clearly unhappy with the Court of Appeal's decision, Belokon appealed to the Supreme Court, arguing that the Court of Appeal exceeded its powers under Article 1520(5) of the French Code of Civil Procedure by looking at the merits of the award afresh.

## Supreme Court's findings

The matter was then taken up to the French Supreme Court, which endorsed the Court of Appeal's decision that it falls within a judge's role to consider whether the enforcement of an award is likely to breach internal public policy standards by allowing a party to benefit from illicit activities, in this case, money laundering.

The Supreme Court found that when asked to determine whether the enforcement of the award could lead to a breach of the international public policy of the prohibition of money laundering, the Court of Appeal adopted the correct approach in not limiting itself to the evidence that was before the arbitral tribunal. It agreed that the Court of Appeal could and was indeed correct to rely on evidence not put to the arbitral tribunal, as well as evidence obtained after the tribunal's award. The Supreme Court further stated that it is not necessary for an underlying criminal offence to be established in order to annul an award, as long as indications of fraudulent activities show a *characterised breach of international public policy*.

## What are the implications of this case?

This decision raises issues that are topical in the world of international arbitration. The question of the type of control that domestic courts enjoy in proceedings where a party challenges an award, and whether new evidence that had not been put before an arbitral tribunal is admissible in a domestic court, is a hot topic of debate.

A judge tasked with looking into the issue of whether an arbitral award conformed to international public policy was traditionally not expected to look into most factual and legal

issues, as these would have been issues to be determined by the tribunal. The Supreme Court's decision in *Belokon v Kyrgyzstan*<sup>3</sup> and the reasons stated within it seems to have changed this approach. The Supreme Court's decision has broadened the scope of the review of arbitral awards by using the standard of *characterised breach of international public policy* instead of the narrower test of *manifest, concrete and effective breach of international public policy* that was previously adopted by French courts.

The Supreme Court's decision appears to establish the extent of review that courts may perform when dealing with allegations of a breach of international public policy in cases where issues of money laundering are at stake, as it follows a detailed review of facts that were put before the arbitral tribunal and the consideration of new evidence. It also reinforces the principle that when considering whether the enforcement of an award could hinder international public policy, domestic courts are not bound by the arbitral tribunal's findings as to the facts of the case in annulment proceedings.

While the Supreme Court's decision does not expressly say that arbitrators are duty bound to investigate money laundering allegations beyond the parties' submissions, the decision could serve as a warning for arbitrators to tread with caution when such allegations are made.

## About the author



Adrian is the Head of the NZDRC's Knowledge Management Team. Originally from Fiji, his previous role was as a State Counsel at the Fiji Independent Commission Against Corruption where he successfully prosecuted a wide range of complex fraud and corruption cases.

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