

**DECISION BY THE FRENCH SUPREME  
COURT, FIRST CIVIL CHAMBER  
RENDERED IN 2004 IN CASE 1231 FS-P**

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**Subject Matter:**

Whether French courts can order a company to pay interest as from the date of an international arbitral award, “post-award interest.”

**Finding:**

Where post-award interest has not been awarded by the international arbitral tribunal, it may be obtained from French courts when the award is subject to an enforcement order (*exequatur*) in France since the law applicable to the post-award interest is the law of procedure of the country where the award is enforced.

**Parties:**

Claimants: 1. ABC International Bank PLC (France)  
2. The Inter-Arab Investment Guarantee Corporation  
(IAIGC) (Kuwait)  
Respondent: BAI Recouvrement (France)

**Place of Court Proceedings:**

France

**Applicable Law:**

French Law, Article 1153-1 of the Civil Code

**Place of Arbitral Proceedings:**

Jordan

**Excerpts below are an unofficial translation of the court proceedings.**

**Supreme Court**

At the public hearing held on June 30, 2004

Dismissal

Mr. Lemontey, Presiding Judge

Judgment N° 1231 FS-P

Appeal N°s G 01-10.269 JUNCTION  
and G 01-77.718

**The Republic of France  
In the Name of the People of France**

THE SUPREME COURT, FIRST CIVIL CHAMBER, has rendered the following judgment:

- I. On appeal N° G 01-10.269 filed by ABC International Bank PLC, with headquarters located at 49/51, avenue Georges V, 75008 Paris,
- II. On appeal N° G 01-11.718 filed by The Inter-Arab Investment Guarantee Corporation (IAIGC), with headquarters located at BP 23568, Safat 13096 Kuwait,

reversing the same judgment rendered on January 18, 2001 by the Paris Court of Appeal (8th Chamber, Section D) between these parties and the company BAII Recouvrement, corporation formerly named Banque Arabe et Internationale d'Investissement, with headquarters located at 5, rue de Castiglione, 75001 Paris,

defendants before this Court;

ABC International Bank PLC, plaintiff in appeal N° G 01-10.269, argues, based on a single legal ground, for reversal in support of its action;

The Inter-Arab Investment Guarantee Corp., plaintiff in appeal N° G 01-11.718, argues, based on a single legal ground annexed hereto, for reversal in support of its action;

In view of the fact that the Attorney General has been informed of the case;

The COURT, at the public hearing held on June 15, 2004, where there were present: Mr. Lemontey, Presiding Judge; Mr. Pluyette, Chief Judge; Messrs. Gridel, Gueudet, Ms. Marais, Messrs. Tay, Rivière, Judges; Ms. Trassoudaine-Verger, Mr. Chauvin, Mses. Chardonnet, Trapero, Ingall-Montagnier, Temporary Judges; Mr. Sainte-Rose, Advocate-General; Ms. Collet, Clerk of the Court;

Based on the report presented by Mr. Pluyette, Chief Judge; the pleadings of Mr. Balat, attorney representing ABC International Bank PLC; Mr. Capron, attorney representing The Inter-Arab Investment Guarantee Corporation; and SCP Defrenois and Levis, attorneys representing the company BAII Recouvrement, formerly named Banque Arabe et Internationale d'Investissement; the briefs filed by Mr. Sainte-Rose, Advocate-General; and after having deliberated in accordance with the law;

Enclosing the related appeals N° G 01-11.718 and N° G 01-10.269;

With respect to the single legal ground for the two appeals filed by the companies, The Inter-Arab Investment Guarantee Corporation and ABC International Bank PLC, which are identical:

Considering that, by an arbitral award rendered in Jordan on November 17, 1994, completed on January 21, 1995, the company The Inter-Arab Investment Guarantee Corporation (IAIGC) was ordered to pay the company BAII Recouvrement (BAII) more than ten million US dollars; that subsequently, BAII Recouvrement having claimed from the arbitrators moratory interest starting as from the date of the award by a letter dated January 23, 1995, the arbitrators declared that they could not decide this point since they were *functus officio* as from November 17, 1994; that the award had been declared enforceable in France; that BAII had undertaken measures to enforce the award in France and applied to the Commercial Court of Paris to obtain moratory interest pursuant to Article 1153-1 of the Civil Code; that the companies IAIGC and ABC International Bank, the latter in its capacity as guarantor, had challenged the decision in question (Paris, January 18, 2001) that had ordered them to pay BAII the sum of 1,459,495 US dollars, said sum representing the amount due with respect to moratory interest that ran as from the date of the award of November 17, 1994 until the date of payment of the award in 1997, whereas, in accordance with the legal grounds annexed herein, *the law applicable to moratory interest due following an international arbitral award which does not grant such interest is the law which governs the interest-bearing debt; such that the Court of Appeal, in applying Article 1153-1 of the Civil Code, while maintaining that the claim of the company BAII was governed; pursuant to the express clause in the agreement between the parties, by legal principles common to the Arab countries, and recognized principles of international law, violated Article 12, paragraph 1 of the New Code of Civil Procedure and both Articles 3 and 1134 of the Civil Code ...*

Considering that, as regards a dispute arising from the enforcement in France of an arbitral award that is the subject of an enforcement order, where the arbitrator has not decided [the matter] and he can no longer be seized of it, the law applicable to moratory interest after an arbitral award is rendered, such law attaching itself automatically to the decision, is the law of procedure [of the place of] enforcement, in this case French law; that, in the case at hand, the arbitrators having declared themselves without jurisdiction, whereas no claim for this purpose had initially been submitted to them, the Court of Appeal, which had noted that the award had ordered IAIGC to pay damages, had correctly applied Article 1153-1 of the Civil Code by ordering this company to pay post-award interest in respect of an award that was the subject of an enforcement order, thereby legally justifying its decision. ...

*Decision*

ON THESE GROUNDS:

REJECTS the appeals;

Orders the plaintiff companies to pay for all court costs relating to their respective appeal;

In view of Article 700 of the New Code of Civil Procedure, rejects the petitions;

In this way it is decided and ruled by the Supreme Court of Appeal, First Civil Chamber, and pronounced by the Presiding Judge at the public hearing on June 30, 2004.

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## Observations by Christopher R. Seppälä\*

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### The Paris Court of Appeal

In an earlier article in the Stockholm Arbitration Report (“SAR”) in 2001,<sup>1</sup> the author reported that, by a decision dated January 18, 2001 of the Paris Court of Appeal, the French courts had, for the first time, ordered a party to pay interest from the date of an award (“post-award interest”) in respect of an international arbitration award which had omitted to order the payment of such interest but which was the subject of an enforcement order (*exequatur*) in France. That case concerned an international arbitral award made in Jordan ordering IAIGC to pay US\$ 10 million in damages to BAIL.<sup>2</sup> In that case, although the arbitral award had contained no ruling on the subject of post-award interest, the Paris Court of Appeal awarded BAIL US\$ 1.5 million in post-award interest. The Paris Court of Appeal (8<sup>th</sup> Chamber, Section D) justified its decision on the basis of Article 1153, paragraph 1, of the French Civil Code, which provides as follows:

“En toute matière, la condamnation à une indemnité emporte intérêts au taux légal même en l’absence de demande ou de disposition spéciale du jugement.”

[Translation: In any matter, where a party is held liable to pay damages, such liability shall be deemed to include liability for interest at the legal rate even in the absence of a demand therefor or a special provision in the judgment.]

The Court of Appeal reasoned as follows (translation):

“Considering that, pursuant to Article 1476 of the New Code of Civil Procedure, an arbitral award constitutes a decision of a judicial nature and that as it gives rise to an award of damages, it is appropriate to apply Article 1153-1, paragraph 1, of the Civil Code with respect to the interest

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<sup>1</sup> Christopher R. Seppälä, *Post-Award Interest: Where Post-Award Interest Has Not Been Awarded by an International Arbitration Tribunal, May It Be Obtained From French Courts?* (2001) STOCKHOLM ARB. REP. 2001:1 p. 41.

<sup>2</sup> The award (or extracts thereof) has been published in several legal journals including MEALEY’S INTERNATIONAL ARBITRATION REPORT, 1996, Vol. 11, p. A-1, the YEARBOOK OF COMMERCIAL ARBITRATION (Vol. XXI, 1996, p. 13) and, in French, in the REVUE DE L’ARBITRAGE, 1998, p. 211 with a note by Professor F. Horchani. In the same issue of MEALEY’S INTERNATIONAL ARBITRATION REPORT, there is also a brief article (at p. 22) about the arbitration by the present author.

that has run as from the date of the arbitration award until April 7, 1997, the date of payment.”<sup>3</sup>

On this basis (which was discussed in the author’s earlier article in the SAR), the Court of Appeal found that BAII was entitled to interest at the French legal rate on the Euro equivalent of the amount of the award (US\$ 10 million) from the date of the award until the date the award was paid by IAIGC. This sum, reconverted into U.S. dollars, was approximately US\$ 1.5 million.<sup>4</sup>

### The Supreme Court

In the author’s earlier article, the author noted that IAIGC had filed a *pourvoi* (appeal) against this decision to the *Cour de Cassation*, France’s highest court for civil matters. Indeed, IAIGC and another interested party<sup>5</sup> filed such a *pourvoi*, arguing that the issue of post-award interest is a substantive matter which should be governed by the law governing the main contract (which, in this case, was “the common legal principles prevailing in the [Arab countries], and the recognized principles of international law”) and not a procedural matter to be governed by the law of the forum state (French law) (translation):

“... that the law applicable to moratory interest due following an international arbitral award which does not grant such interest is the law which governs the interest-bearing debt; as a consequence, the Court of Appeal, by applying Article 1153-1 of the Civil Code, while maintaining that the claim of the company BAII was governed, pursuant to an express clause in the agreement between the parties, by the legal principles common to the Arab countries and recognized principles of international law, violated Article 12, paragraph 1 of the New Code of Civil Procedure and both Articles 3 and 1134 of the Civil Code . . .”

However, by a decision dated June 30, 2004, the *Cour de Cassation* rejected IAIGC’s argument that the question of post-award interest was a substantive issue to be governed by the law governing the contract holding that, where the award had been the subject of an enforcement order (*exequatur*) in France, the law applicable to post-award interest is the law of procedure of the country where the award was enforced, namely French law. The *Cour de Cassation* ruled as follows (translation):

<sup>3</sup> REVUE DE L’ARBITRAGE, 2002, p. 935 with a note by Professor Emmanuel Jeuland.

<sup>4</sup> In an earlier proceeding in Belgium between the same parties, the Belgian courts had denied BAII’s claim for post-award interest although BAII had also obtained an enforcement order (*exequatur*) on the award in Belgium. See the author’s earlier 2001 article in the SAR referred to above for details.

<sup>5</sup> ABC International Bank PLC.

“Considering that, as regards a dispute arising from the enforcement in France of an arbitral award that is the subject of an enforcement order, where the arbitrator has not decided [the matter] and he can no longer be seized of it, the law applicable to moratory interest after an arbitral award is rendered, such law attaching itself automatically to the decision, is the law of procedure [of the place of] enforcement, in this case French law; that, in the case at hand, the arbitrators having declared themselves without jurisdiction, whereas no claim for this purpose had initially been submitted to them, the Court of Appeal, which had noted that the award had ordered LAIGC to pay damages, had correctly applied Article 1153-1 of the Civil Code by ordering this company to pay post-award interest in respect of an award that was the subject of an enforcement order, thereby legally justifying its decision...”

The case is a significant one for international arbitration as it is the first time that France’s highest court has ordered a party to pay post-award interest in respect of an international arbitration award which is the subject of an enforcement order (*exequatur*) in France, where the award itself had not ordered the payment of such interest. Where the arbitral tribunal has not done so in respect of an international arbitral award,<sup>6</sup> the French courts may be requested to do so:

- (1) on the basis of Article 1153-1, paragraph 1, of the French Civil Code (which has hitherto been applied to French court judgments only and not arbitral awards), and
- (2) where the award is the subject of an enforcement order (*exequatur*) in France.

### Conclusion

The decision of the *Cour de Cassation* achieves a sensible result and one supportive of international arbitration. Where a party has claimed post-award interest from the arbitral tribunal (as was the case here), the arbitral tribunal has omitted to award such interest and, because it is *functus officio*, is unable to correct that omission, a party should not have to choose between (a) beginning a new arbitration solely to recover post-award interest, and (b) forgoing a claim for such interest. It should be entitled to

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<sup>6</sup> The decision of the *Cour de Cassation* indicates that the Claimant, BAIL, had not demanded post-award interest from the arbitral tribunal (“... whereas no claim for this purpose had been submitted to them...”). This is incorrect (the author was counsel to BAIL in the arbitration). The Claimant had done so (as legal commentators have correctly noted, *see* the note of Professor Emmanuel Jeuland, *REVUE DE L'ARBITRAGE*, 2002, pp. 943 and 950), but the Arbitral Tribunal had omitted to rule on this issue. Noticing this when it received the award, BAIL had asked the Tribunal to complete its award with a ruling on this issue but the Tribunal declared that it was *functus officio* and, thus, no longer empowered to do so. This is further discussed in the author’s earlier 2001 article in the SAR referred to above.

require a national court enforcing the award to order the payment of post-award interest.

This decision is further evidence of the policy of French courts to promote the enforcement in France of international arbitral awards.



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