

CIV. 1

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COURT OF CASSATION

Public Hearing of **June 19, 2024**

Dismissal

Ms. CHAMPALAUNE, Presiding Judge

Judgment No. 355 F-D

Appeal No. A 22-20.121

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

JUDGMENT OF THE COURT OF CASSATION, FIRST CIVIL CHAMBER OF JUNE 19, 2024

1^o/ The Republic of Guinea, whose headquarters is in the Almamya District, Post Office Building, POB 3000, Conakry (Guinea), acting in the person of its State Judicial Officer, Chemin de Fer City, Mam Ou Building, Municipality of Kaloum, Conakry, (Guinea), in the person of the Minister of Post Offices, Telecommunications and the Digital Economy of the Republic of Guinea, Ministry of Post Offices, Telecommunications and the Digital Economy Conakry (Guinea),

2^o/ The Post Offices and Telecommunications Regulatory Authority (ARPT) of Guinea, whose head office is Municipality of Kaloum, Almamya District, POB 1500, Conakry (Guinea),

lodged Appeal No. A 22-20.121 against the Judgment rendered on September 7, 2021, by the Paris Court of Appeal (International Commercial Chamber), in the litigation between them and the Global Voice Group Company (GVG), a Joint Stock Company, whose registered office is 1st Floor, #5 Dekk House, De Zippora Street, PO Box 456, Providential Estate, Mahé (Seychelles), Defendant in the Cassation.

The Plaintiffs invoke, in support of their Appeal, a sole Plea of Cassation.

The case file was sent to the Attorney General.

As to the Report from Ms. Robin-Raschel, Auxiliary Judge, the Observations from the SCP Boucard-Maman, Attorney for the Republic of Guinea and the Post Offices and Telecommunications Regulatory Authority of Guinea, from the SARL Ortscheidt, Attorney for the Global Voice Group Company, after debates at the Public Hearing of May 7, 2024, where Ms. Champalaune, Presiding Judge, Ms. Robin-Raschel, Auxiliary Reporting Judge, Ms. Guihal, Senior Judge, and Ms. Vignes, Chamber Clerk, were present.

the First Civil Chamber of the Court of Cassation, composed of the aforementioned Presiding Judge and Judges, after having deliberated in accordance with the law, rendered this Judgment.

Facts and Proceedings

1. According to the Judgment under Appeal (Paris, September 7, 2021), on May 22, 2009, the Post Offices and Telecommunications Regulatory Authority of Guinea (ARPT), a legal entity under public law placed under the supervision of the Minister responsible for Telecommunications of the Republic of Guinea, whose mission is to ensure the telephone operators' compliance with the telecommunications legislation, and the company, incorporated under Seychellois law, Global Voice Group (the GVG Company), whose business activity is the marketing of technologies for the supervision and oversight of telecommunications flows and operations, concluded a Partnership Agreement stipulating an arbitration clause and comprising various amendments.

2. Raising a failure to pay invoices since May 2014, the ARPT expressed its desire to terminate the Agreement. The GVG Company referred an arbitration proceeding to the International Chamber of Commerce.

3. The ARPT and the Republic of Guinea filed an action to set aside the Arbitration Award, rendered in Paris on July 18, 2019, which notably ordered them to pay the GVG Company a certain sum as compensation.

Review of the Plea

Wording of the Plea

4. The Republic of Guinea and the ARPT complain that the Judgment dismisses the action to set aside, whereas:

“1°/ seized of a plea based on the fact that the recognition or execution of an Arbitral Award conflicts with international public policy in that the Agreement

on the basis of which the Arbitral Tribunal pronounced Awards was obtained by corruption, the Annulment Judge is required to seek, in law and in fact, all the evidence concerning this violation of international public policy; considering that some of the serious, specific and concordant evidence invoked by the Applicants was not relevant, in particular that gifts had been granted by the GVG Company, and that the ARPT had issued checks made out to cash to the order of an employee of the GVG Company who was able to deposit them in cash, evidence that was established in particular by Minutes of the Hearing of a former Country Director of the GVG Company, on the grounds that this evidence was appended to an Amendment to the Partnership Agreement to which the disputed Award had not given effect, whereas this Amendment was an integral part of the Partnership Agreement upon which the Arbitral Tribunal had relied and the GVG Company promised contribution before the conclusion of the Partnership Agreement, which only materialized afterwards, the Court of Appeal ruled on inoperative grounds and deprived its Decision of legal basis with regard to Article 1520, 5°, of the Code of Civil Procedure;

2°/ the judge is not permitted to misrepresent foreign law; that Article 27.2 of the Guinean Public Procurement Code provides that "contracts may be awarded by private agreement" i.e. [without public tender] when "the compelling urgency motivated by unforeseeable circumstances and force majeure does not allow, as regards the delivery of supplies, the execution of work services, for compliance with the deadlines provided for in the competitive tendering process"; by considering that "it appears from the Guinean Public Procurement Code that certain contracts falling within its scope can also be concluded "by private agreement" (see Article 27.2) and this is so particularly if "the compelling urgency justified by unforeseeable circumstances and force majeure, does not allow, for the delivery of supplies, the execution of works or industrial contracts," the Court of Appeal misrepresented Article 27.2 of the Guinean Public Procurement Code and violated Article 3 of the Civil Code;

3°/ seized of an argument based on the fact that the recognition or execution of an Arbitral Award violates international public policy in that the Agreement on the basis of which the Arbitral Tribunal pronounced Awards had been obtained by corruption, the Annulment Judge is required to research, in law and in fact, all the evidence concerning this violation of international public policy and it is his responsibility to research the content of the foreign law that he recognizes as applicable to the contract upon which the Arbitral Award is based, when the serious evidence of corruption resulting from the circumvention of internal public procurement procedures is invoked; by simply noting, in order to consider that the evidence drawn from the circumvention of the rules for awarding Guinean public procurement contracts would have lost its force by being characterized as corruption, that the Guinean Public Procurement Code allows for the awarding of procurement contracts by private agreement in the event of compelling urgency, that the circumstances at the time of the signing of

the Partnership Agreement would have justified that the competitive tendering process had been set aside and that in 2015, another procurement contract was concluded by private negotiation with another company, the Subah Company, without verifying the content of Guinean public procurement law, as it was asked to do, and the meaning of the notion of compelling urgency authorizing the awarding of privately negotiated contracts, the Court of Appeal deprived its Decision of legal basis with regard to Articles 1520 5° of the Code of Civil Procedure and 3 of the Civil Code;

4°/ seized of an argument based on the fact that the recognition or execution of an Arbitral Award contravenes international public policy in that the Agreement on the basis of which the Arbitral Tribunal pronounced the Awards had been obtained by corruption, the Annulment Judge is required to investigate, in law and in fact, all the evidence concerning this violation of international public policy; the violation of the internal procedures, particularly of the competitive tendering process, constitutes serious evidence of corruption; considering that the evidence consisting of the circumvention, during the conclusion with the GVG Company of the Partnership Agreement of May 22, 2009, of the rules for awarding public procurement contracts, as they result from the Guinean Public Procurement Code, would have lost its force once the alleged corruption was characterized, because the Guinean Public Procurement Code allows for the awarding of procurement contracts by private agreement in the event of compelling urgency, that the circumstances at the time of the signing of the Partnership Agreement would have justified that the competitive tendering process be set aside and that in 2015, another contract had been directly awarded by private agreement with another company, the Subah Company, to replace the Partnership Agreement, without explaining, as it was asked to do, concerning the urgency that there may have been in setting up a partnership in May 2009 with a military regime resulting from a coup d'état during which the constitutional order was put on hold and the difference with the circumstances that surrounded the conclusion of the public procurement contract with the Subah Company, several years later and when there was an urgency to ensure the continuity of the public service and the supply of public revenues, the Court of Appeal deprived its decision of legal basis with regard to Article 1520, 5°, of the Code of Civil Procedure."

Response from the Court

5. In the first place, having noted that the Award gave no effect to Amendment No. 3 to the Partnership Agreement since the Awards pronounced by the Arbitral Tribunal were not based on its provisions, the Court of Appeal legally justified its Decision to dismiss the evidence of corruption as being inoperative, which it considered was linked to the conclusion of this Amendment.

6. In the second place, having noted, in the exercise of its discretion in the assessment of the evidence submitted to it, that pursuant to the Guinean Public Procurement Code, certain procurement contracts that fall within

its scope could be awarded “by private agreement”, particularly in situations of compelling urgency, that this same process had been used for the conclusion of the procurement contract with the GVG Company’s competitor and that it was not finally demonstrated that in this case the disputed public procurement contract required recourse to a competitive tendering process, the Court of Appeal, which was not required to carry out the research referred to in the plea, did legally justify its Decision, for these sole reasons not resulting from any misrepresentation.

7. The Plea is therefore unfounded.

FOR THESE REASONS, the Court:

REJECTS the Appeal;

Orders the Post Offices and Telecommunications Regulatory Authority of Guinea and the Republic of Guinea to pay the costs;

Pursuant to Article 700 of the Code of Civil Procedure, rejects the request made by the Post Offices and Telecommunications Regulatory Authority of Guinea and the Republic of Guinea and orders them to pay to the Global Voice Group Company the sum of 3,000 Euros;

Thus done and judged by the Court of Cassation, First Civil Chamber, and pronounced by the Presiding Judge at her Public Hearing of June nineteen, two thousand and twenty-four.

THE AUXILIARY REPORTING JUDGE

THE PRESIDING JUDGE

THE CLERK OF THE CHAMBER

