

Enforceable copies issued to the parties on:

[Stamp: EXTRACT FROM THE REGISTRY RECORDS]  
FRENCH REPUBLIC  
IN THE NAME OF THE FRENCH PEOPLE

**COURT OF APPEAL OF PARIS**

**International Chamber of Commerce  
DIVISION 5 CHAMBER 16**

**DECISION OF 21, JANUARY 2025**

(No. 2/2025, 21 pages)

Registration number in the general directory: **RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV**

Decision referred to the Court: arbitral award no. 26290/AYZ/ELU handed down in Paris on February 26, 2023 by the Arbitral Tribunal composed of Mr. Bassam Mirza, sole arbitrator, under the aegis of the Arbitration Rules of the International Chamber of Commerce

**PLAINTIFF IN THE APPEAL:**

**THE CENTRAL BANK OF IRAQ**

entity under Iraqi law  
with its registered office: Al-Rasheed Street, BAGHDAD (IRAQ)  
represented by its legal representatives,

*Having as instructing counsel: Maître Benjamin MOISAN from the SELARL BAECHLIN MOISAN Partners, lawyer at the PARIS bar, ID no.: L34*

*Having as pleading counsel: Maître Jean-Yves GARAUD, Laurie ACHTOUK-SPIVAK and Maître Andrew BERNSTEIN, from the firm CLEARY GOTTLIEB STEEN & HAMILTON LLP, lawyers at the PARIS bar, ID no.: J21*

**DEFENDANT IN THE APPEAL:**

**The Company CARDNO ME Limited**

company under Emirati law  
with its registered office: Incubator Building, Masdar City, P.O. Box 145530 ABU DHABI (UNITED ARAB EMIRATES)  
represented by its legal representatives,

*Having as instructing counsel: Maître Matthieu BOCCON GIBOD from the SELARL LX PARIS-VERSAILLES-REIMS, lawyer at the PARIS bar, ID no.: C2477*

*Having as pleading counsel: Maître Michael OSTROVE, Maître Sérena SALEM and Maître Mamadou GACKO, from the firm DLA PIPER FRANCE LLP, lawyers at the PARIS bar, ID no.: R 0235*

**COMPOSITION OF THE COURT:**

The case was heard on October 21, 2024 at a public hearing before the Court composed of:

Mr. Daniel BARLOW, President of the chamber  
Ms. Fabienne SCHALLER, President of the chamber  
Mr. Jacques LE VAILLANT, Judge

who deliberated thereon.

Mr. Jacques LE VAILLANT presented a report at the hearing, under the terms and conditions provided for by Article 804 of the French Code of Civil Procedure.

Clerk, during the proceedings: Ms. Najma EL FARISSI

**DECISION:**

- in the presence of the parties
- pronounced publicly by making the decision available at the Court registry, the parties having been informed thereof beforehand under the terms and conditions provided for in Article 450 paragraph 2 of the Code of Civil Procedure.
- signed by Daniel BARLOW, president of the chamber and by Najma EL FARISSI, clerk, to whom the record of the decision was handed by the signing judge.

\* \*  
\*

**I/ FACTS AND PROCEEDINGS**

1. An action for annulment was brought before the court, against award no. 26290/AYZ/ELU handed down in Paris on February 26, 2023, by an arbitral tribunal composed of a sole arbitrator, under the aegis of the Arbitration Rules of the International Chamber of Commerce, in a dispute between the Central Bank of Iraq (hereinafter referred to as “the CBI”) and the company under Emirati law, Cardno Middle East Limited (hereinafter referred to as “Cardno ME”).

2. The dispute arising from this award concerns the performance of a consulting agreement entered into on May 8, 2016 between, on the one hand, the CBI and, on the other hand, the companies Cardno ME and Meinhardt Singapore PTE Limited (Dubai Branch), the former being referred to as the “principal consultant” and the latter as the “sub-consultant”, with the purpose of providing advice and assistance to the CBI during two phases of the construction project of its new head office in Baghdad (the Project), namely an initial phase called the “call for tenders”, including assistance in the selection of the contractor who will be responsible for the construction of the Project, then a second phase called “construction”, during which the consultants were to be involved in monitoring the performance of the construction agreement.

3. Issues started to arise between the parties in the fourth quarter of 2020 regarding the payment of invoices issued by Cardno ME, which led the latter to cease its involvement in the Project.

4. Cardno ME initiated arbitration proceedings on the basis of the arbitration clause stipulated in the agreement by filing an arbitration request on June 2, 2021. It sought the settlement of the unpaid invoices from September 2020 to March 2021, the outstanding amounts from April 2021 regarding its remuneration provided for in the consulting agreement, interest on these sums and that the CBI should be ordered to return the performance bond provided in execution of the consulting agreement.

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 2<sup>nd</sup> page

5. By award of February 26, 2023, the arbitral tribunal ruled as follows:

“On these grounds, the Arbitral Tribunal:

1. Declares that it has jurisdiction to determine Cardno ME Limited’s claims;
2. Decides that Cardno ME Limited’s claims are admissible;
3. Decides that the Central Bank of Iraq breached its obligations under the Consultancy Agreement;
4. Orders the Central Bank of Iraq to pay Cardno ME Limited the amount of USD 5,847,530 for the outstanding invoices 33 to 39;
5. Orders the Central Bank of Iraq to pay Cardno ME Limited the amount of USD 4,342,924.15 as compensation (under Article 169 of the Iraqi Civil Code) with respect to Cardno ME Limited’s deprivation of the remaining value of the Consultancy Agreement;
6. Decides that simple interest shall run on the amounts mentioned in paragraphs (4) and (5) above as from June 2, 2021, at the rate of 5% per annum, up to and until payment in full of said amounts by the Central Bank of Iraq;
7. Decides that the Central Bank of Iraq’s claim under the bank guarantee issued by the Trade Bank of Iraq was wrongful;
8. Orders the Central Bank of Iraq to take the necessary steps to release the bank guarantee set up by the Trade Bank of Iraq in its favor;
9. Orders the Central Bank of Iraq to pay Cardno ME Limited for the legal costs associated with dealing with the attachment application in the Dubai Courts in an amount of USD 14,506;
10. Decides that simple interest shall run on the amount mentioned in paragraph (9) above from January 6, 2022, at the rate of 5% per annum, up to and until payment in full of said amount by the Central Bank of Iraq;
11. Decides that the Central Bank of Iraq will bear 100% of the ICC costs of arbitration, as fixed by the ICC Court at USD 230,000. Cardno ME Limited having advanced 100% of the ICC arbitration costs, *i.e.* USD 230,000, the Tribunal orders the Central Bank of Iraq to reimburse Cardno ME Limited the amount of USD 230,000 USD in addition to the amount of USD 7,304 paid by Cardno ME Limited to cover the Central Bank of Iraq’s VAT on the ICC administrative expenses;
12. Decides that the Central Bank of Iraq will bear 100% of the legal and other costs incurred by Cardno ME Limited in this arbitration and therefore orders the Central Bank of Iraq to reimburse Cardno ME Limited the amount of USD 947,763.56;
13. Dismisses Cardno ME Limited’s claim for interest on the amounts mentioned in paragraphs (11) and (12) above;
14. Dismisses all other claims or requests.”

6. The CBI lodged an action for annulment against this award by filing a motion with the registry of the Paris Court of Appeal on March 17, 2023.

7. By order dated November 9, 2023, the trial judge ruled as follows:

“1 – Renders enforceable the arbitral award handed down in Paris on February 26, 2023 in ICC case no. 26290/AYZ/ELU;

Paris Court of Appeal

DECISION OF JANUARY 21, 2025

---

**Division 5 – Chamber 6      RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 3<sup>rd</sup> page**

---

- 2 – Dismisses the claim to halt the execution of the award;
- 3 – States that there is no need to adjust the execution of the award;
- 4 – Orders the Central Bank of Iraq to pay Cardno ME Limited the sum of 8,000 Euros (eight thousand euros) on the basis of Article 700 of the Code of Civil Procedure;
- 5 – Orders the Central Bank of Iraq to pay the costs of the proceedings.”

8. The proceedings were pronounced closed on October 15, 2024 and the case was called to a court hearing on October 21, 2024.

## **II/ CLAIMS OF THE PARTIES**

9. In its latest submissions notified electronically on October 11, 2024, the CBI requested the Court, under Articles 1518 et seq., in particular Article 1520(2), (3), (4) and (5) of the Code of Civil Procedure, to:

- Rule admissible and well founded, all the arguments cited by the Central Bank in order to demonstrate the violation of substantive and procedural international public policy, including on the basis of fraud, as well as the violation by the Sole Arbitrator of his mandate;
- Rule admissible the factual exhibits of the Central Bank no. 64, 65 and 68;

In any event:

- Pronounce the annulment of the Award handed down on February 26, 2023 in ICC case no. 26290/AYZ/ELU;
- Dismiss Cardno ME's claims for irrecoverable costs and legal expenses;
- Order Cardno ME to pay the sum of 400,000 Euros under Article 700 of the Code of Civil Procedure; and
- Order Cardno ME to pay all the costs and expenses under Article 695 of the Code of Civil Procedure.

10. In its latest submissions notified electronically on October 14, 2024, Cardno ME requests the Court, under Articles 1464 paragraph 2, 1466, 1518 to 1520, 395 and 700 of the Code of Civil Procedure, to:

- Rule inadmissible, if not unfounded, the arguments invoked by the CBI for the purposes of demonstrating that the Award runs counter to international public policy;
- Rule inadmissible, if not unfounded, the arguments invoked by the CBI for the purposes of demonstrating that the Sole Arbitrator did not comply with his mandate;
- Rule inadmissible and dismiss from the proceedings factual exhibits no. 64, no. 65 and no. 68 of the CBI due to them having been obtained illegally and/or unfairly;

In any event:

- Dismiss the action for annulment brought by the CBI against the Award handed down on February 26, 2023 in ICC case no. 26290/AYZ/ELU;

Paris Court of Appeal

DECISION OF JANUARY 21, 2025

Division 5 – Chamber 6

RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 4<sup>th</sup> page

- Dismiss the CBI's claims submitted for irrecoverable costs and legal expenses;
- Order the CBI to pay Cardno ME Limited the sum of 400,000 Euros under Article 700 of the Code of Civil Procedure; and
- Order the CBI to pay all the costs and expenses under Article 695 of the Code of Civil Procedure including expenses on behalf of the Selarl LX Paris-Versailles-Reims.

### **III/ GROUNDS FOR THE DECISION**

#### **1. On the CBI's waiver of its right to invoke objections based on the violation of international public policy**

##### *Statement of the arguments*

11. Cardno ME maintains that the objections made by the CBI based on the violation of substantive and procedural international public policy are inadmissible, on the one hand, by application of the principle of procedural fairness, enshrined by Article 1464 paragraph 3 of the Code of Civil Procedure, and the principle of estoppel and, on the other hand, by application of the principle of not reviewing the merits of the arbitral award.

12. It argues that an objection based on the violation of the public order of direction provisions (*ordre public de direction*) only prevents the provisions of Article 1466 of the Code of Civil Procedure and the principle of estoppel from being invoked against a party seeking annulment on the basis of Article 1520(5) of the Code of Civil Procedure, this limitation, however, does not apply where the violation concerns the public policy of protection (*ordre public de protection*), which includes fraud, regardless of its form, of the co-contractors' rights only, or procedural public order (*ordre public procedural*)/procedural public policy.

13. Cardno ME asserts that only CBI's interests are in dispute in this case, as the CBI provides no evidence that the general public interest is implicated. It therefore concludes that the breaches alleged against it by the CBI could, even if established, affect only public policy of protection (*ordre public de protection*), so with the consequence that the sanction for procedural disloyalty/unfairness on the part of the CBI, or for acting in contradiction to the detriment of others attributable to CBI, may be invoked against it (CBI).

14. It maintains that the CBI knowingly refused to raise its allegation of fraud in due time, by failing to participate in the arbitration proceedings for eighteen months, even though it had been informed of its developments at each step of the process, waiting for the proceedings to be closed by the arbitral tribunal before appearing for the first time, even though the facts that it invoked in support of its allegations of fraud were known to it even before the request for arbitration was filed and, in any event, before the closing of the proceedings.

15. Cardno ME concludes from this that the CBI acted in complete contradiction with the parties' duty of consistency.

16. It also asserts that analyzing the CBI's allegations of fraud would amount to questioning the explicit decision of the arbitrator to dismiss the request to reopen the proceedings, which would contravene the principle of not reviewing the merit of awards since the violation of public order provisions is not at stake in this case and, as a result, the ground for annulment invoked by the CBI does not fall within any grounds for annulment.

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 5<sup>th</sup> page

17. In response, the CBI maintains that the conditions for the application of Article 1466 of the Code of Civil Procedure are not met because, on the one hand, there is no procedural unfairness or bad faith on its part since it attempted to invoke the fraud and to bring the allegations of fraud and the factual evidence supporting it to the attention of the sole arbitrator, but came up against the arbitrator's refusal to hear it despite its repeated requests and, on the other hand, its late participation in the arbitration proceedings is justified by its ignorance of arbitration and the fact that, not being represented by an attorney, it was mistaken as to the consequences of the fraud affecting the agreement, thinking that it constituted an obstacle to the jurisdiction of the sole arbitrator since the principle of the autonomy of the arbitration clause is not known in Iraqi law.

18. It also disputes that any waiver to invoke the fraud could be demonstrated since not only did it not refrain from raising the allegations of fraud as part of the arbitration, but it also could not raise this irregularity earlier since the false invoicing system implemented by Cardno ME was only revealed at a later stage of the arbitration process, in its memorial on the damages of August 17, 2022, and that in any event it cannot be deduced from the refusal or inability of a party to participate in arbitration, that it agrees to the course of the arbitration proceedings.

19. The CBI also asserts that neither the alleged bad faith nor the procedural unfairness or principle of estoppel could be an obstacle to the admissibility of the objection of violation of procedural international public policy. It maintains that the distinction between violation of international public order provisions (*ordre public international de direction*) and protective legal provisions (*ordre public international de protection*) made by Cardno ME is ineffective.

20. It argues that the annulment judge should exercise a full and complete review on the compliance of the arbitral award with international public policy, including with regard to information not presented by a party to the arbitral tribunal and thus a fortiori with regard to the de jure and de facto evidence demonstrating the violation of international public policy that a party attempted to assert but could not do in the end due to a refusal to respect its right to be heard.

21. The CBI maintains that the allegations of fraud in question, in particular the misappropriation of public funds, scams, forgery and the use of forged documents, money laundering and identity theft fall under procedural international public policy and more specifically international public order provisions to which Cardno ME refers, which it is not possible to waive.

22. Finally, the CBI asserts that the principle of not reviewing the merits of awards pertains to the scope of the investigation and not the admissibility of an objection provided for in Article 1520 of the Code of Civil Procedure, and this is obstacle to the admissibility of the objection of violation of international public policy.

#### *The Court's Assessment*

23. According to Article 1466 of the Code of Civil Procedure, rendered applicable to international arbitration through Article 1506 of the same code, the party who, in full knowledge of the facts and without legitimate grounds, refrains from invoking an irregularity in due time before the arbitral tribunal is considered to have waived it.

24. It is up to the judge to determine whether, relative to each of the alleged facts and circumstances constituting the irregularity, the party who asserts it had knowledge thereof while the arbitration

proceedings were underway, such that it should have asserted it at the time and failing which it is considered to have waived it.

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 6<sup>th</sup> page

25. While compliance with substantive international public policy cannot be conditional upon a party's position before the arbitrator, this principle is not intended to apply when the alleged violation concerns only the rules of protection which the parties are free to waive.

26. In this case, the CBI maintains that the recognition of the arbitral award rendered in Paris on February 26, 2023 under the aegis of the International Chamber of Commerce's Arbitration Rules is in conflict with international public policy in that it would allow Cardno ME to benefit from the proceeds of criminal acts and fraud. It adds that the award is vitiated by a procedural fraud.

27. It argues in the first place that the consulting agreement would not have been entered into with Cardno ME if the latter did not resort to fraud as part of the process of awarding and entering into the contract, concealing the fact that it did not have the necessary experience as a consulting company and that it in reality it was not affiliated with the Australian company Cardno International which does have recognized experiences on an international level, by voluntarily excluding Meinhardt Singapore PTE Limited (Dubai Branch) from any contribution to the Project while the consulting agreement required that Cardno ME and Meinhardt should work as co-consultants.

28. It argues in the second place that Cardno ME engaged in the fraudulent performance of the consulting agreement by submitting invoices including billing for the provision of services that did not even exist, by employees from Meinhardt, then by billing for services by a so-called "off-site" support team, which is also fictional and, finally, by making payments to questionable subcontractors who had not been approved by the CBI, in an amount of eleven million US dollars to the company Alfa Consult and 346,371 USD to the company Ghobn Group, thus misappropriating Iraqi public funds.

29. Given their nature, these objections, without an assessment being made here as to their merit, do not fall under international public policy since the acts of which Cardno ME is accused and described as fraudulent by the CBI, only concern its contractual relationship with the CBI, whether at the time of forming the consulting agreement through allegedly fraudulent dealings and/or subsequently, during the performance of the consulting agreement, through the alleged violation of the obligation to perform the contract in good faith.

30. The fact that the actions of which the CBI is accusing Cardno ME could constitute one or more offences in application of Iraqi law is irrelevant in this regard, since: (i) it was not argued that the consulting agreement had been formed and that the payments made had been obtained by bribing public officials, (ii) the alleged misappropriation of public funds concerned the funds paid by the CBI in performance of a contract for the management of its own assets, in other words in the administration of its private interest, and not as part of performing its public interest duties and (iii) this misappropriation had taken place not through the action of a public official for their personal gain, but by a private operator, Cardno ME, as part of its subcontracting relationship entered into with two other commercial companies.

31. It hence follows that for the CBI, the objections invoked constitute legal and factual means of which it can freely dispose in the context of an action for annulment, execution or termination of the disputed consulting agreement.

Paris Court of Appeal  
**Division 5 – Chamber 6**

DECISION OF JANUARY 21, 2025  
**RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 7<sup>th</sup> page**

32. It is consistent that the CBI had full knowledge of the objections of which it is accusing Cardno ME, with the exception of the payments made by the latter to Alpha Consult and Ghobn Group, even before Cardno ME had sent its request for arbitration to the Secretariat of the International Chamber of Commerce of Paris on June 2, 2021 since these objections serve as the basis of the complaint filed by the CBI with the Iraqi prosecuting authorities on April 7, 2021, according to the factual and procedural evidence set out in the ruling (“Ruling of Incrimination”) handed down by the criminal court of the Al-Karrada region (Iraq) on August 25, 2021 against two executives and/or directors from Cardno ME (factual exhibit no. 63 of the plaintiff).

33. The CBI acknowledges that Cardno ME had mentioned the criticized payment that it had made to Alpha Consult and Ghobn Group as subcontractors in its memorial on the quantum of its interim claims on August 17, 2022, in other words nearly four months before the arbitral tribunal pronounced the closing of the proceedings, on December 13, 2022.

34. However, it follows from the detailed procedural history of the arbitration proceedings set forth by the sole arbitrator in his award of February 26, 2023 (pages 9 to 39 of the award), which is not disputed by the CBI, that all of the documents from the arbitration proceedings had been notified to it, as the case may be, by the Secretariat of the Court of the International Chamber of Commerce, the arbitral tribunal or Cardno ME not only to the e-mail address provided by Cardno ME in its request for arbitration but also to the e-mail address provided by the parties for their notifications within the context of the consulting agreement of May 8, 2016.

35. The CBI did not, however, participate in any of steps in the arbitration proceedings and did not submit any defense memorial or present any observations in any form whatsoever before sending an e-mail dated December 29, 2022 to the arbitral tribunal seeking that the proceedings be reopened and for the first time mentioned that no arbitration agreement existed and the fraudulent acts committed by Cardno ME (factual exhibit no. 89 of the plaintiff).

36. To justify this late participation in the arbitration proceedings and invoking this fraud more than eighteen months after the filing of the arbitration request, the CBI invokes its lack of experience in international commercial arbitration, its ignorance of the rules of procedure applicable in arbitration under the aegis of the Rules of the International Chamber of Commerce and its lack of representation by a lawyer.

37. However, apart from the fact that the CBI does not support its arguments with any probative evidence and not having demonstrated any ignorance of the international rules of arbitration in its e-mail of December 29, 2022, it follows from the consulting agreement that the parties expressly elected to submit any dispute in connection with the consulting agreement of May 8, 2016 to arbitration governed by the Rules of the International Chamber of Commerce (factual exhibit no. 2 of the plaintiff).

38. It is a fact that the Secretariat of the Court of the International Chamber of Commerce notified the request for arbitration from Cardno ME to the CBI by e-mail on June 14, 2021 and informed it that its answer to this arbitration request should be submitted within a period of thirty days, with its observations regarding the number of arbitrators, the place and language of arbitration (factual exhibit no. 1 of the plaintiff, page 10).

39. The CBI cannot reasonably claim, irrespective of its experience and understanding of the rules of international commercial arbitration, that it had understood from this notification of the request for arbitration that the arbitration proceedings would not be able to be pursued to their completion, that is, until an arbitral award was handed down on the claims for payment and the claims for compensation from Cardno ME, if it decided not to participate therein and not to present arguments in its defense or any form of counterclaims.

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 8<sup>th</sup> page

40. The fact that the CBI had chosen not to be represented by a lawyer is irrelevant in this regard to the extent that representation by a lawyer is not mandatory in the arbitration proceedings conducted under the aegis of the Rules of the International Chamber of Commerce.

41. It follows that by refraining from invoking the facts of which it is accusing Cardno ME in due time and without legitimate reason, both at the time of forming the consulting agreement of May 8, 2016 and during its execution, of which it was aware even before the request for arbitration was filed or of which it was aware on August 17, 2022 at the latest, the CBI is considered to have waived asserting them.

42. Its pleas for the annulment of the arbitral award of February 26, 2023 based on the violation of international public policy must thus be declared inadmissible, in addition the CBI's two objections for annulment are interdependent in that they are based on the same factual arguments and, with regard to the violation of procedural international public policy, no separate legal and factual arguments are invoked by the CBI that are susceptible of being demonstrated as fraud in the arbitration, since the allegation of the concealment of factual evidence regarding the true experience of Cardno ME, the discharge of Meinhardt and the presentation of false invoices is only the procedural expression of the dealings, concealments, offences and/or contractual breaches that the CBI accuses Cardno ME of.

## 2. On the inadmissibility of factual exhibits no. 64, 65 and 68 produced by the CBI

43. Based on the provisions of Article 9 of the Code of Civil Procedure and Article 6 § 1 of the European Convention of Human Rights, Cardno ME argues that the CBI's exhibits no. 64, 65 and 68, which correspond to three series of messages exchanged via WhatsApp, the authenticity of which it challenges, are inadmissible since they were obtained in violation of the fundamental rights of their authors.

44. These three exhibits are only invoked by the CBI in support of its objection based on the violation of international public policy due to Cardno ME's fraud in the formation and execution of the consulting agreement entered into on May 8, 2016.

45. The arguments for annulment presented by the CBI in support of its application for annulment of the arbitral award of February 26, 2023 based on this particular ground for annulment are declared inadmissible on the basis of Article 1466 of the Code of Civil Procedure.

46. It follows that the claim of Cardno ME to have exhibits no. 64, 65 and 68 of the CBI declared inadmissible is irrelevant, since the examination of these documents does not fall within the remit of a court that does not rule on the merits of the objection invoked by the CBI.

47. Accordingly, there is no need to rule on this claim of Cardno ME.

## 3. On the claim for annulment of the arbitral award due to the violation of the adversarial principle based on Article 1520(3), (4) and (5) of the Code of Civil Procedure

### A. On the objection based on the breach of international public policy due to the violation of the adversarial principle and equality of arms

*Statement of the arguments*

48. The CBI argues that the sole arbitrator's decision to rule without taking into consideration the serious allegations of fraud that it had raised constitutes a clear violation of the adversarial principle and equality of arms which are components of the right to a fair trial falling under international public policy.

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 9<sup>th</sup> page

49. It asserts that the violation of the adversarial principle results from the arbitrator's refusal to grant its request to reopen the proceedings for a limited period so that its allegations of fraud against Cardno ME could be examined, or even simply to examine the multitude of claims that it had presented to him for this purpose.

50. From this it draws the conclusion that the arbitral award was handed down by the sole arbitrator without any of its arguments on the merits being heard, as the arbitrator refused to examine the determinative evidence for the resolution of the dispute that it presented to him in its e-mail of December 29, 2022.

51. The CBI asserts that its delay in attempting to participate in the arbitration proceedings is justified by its lack of understanding of the challenges and pace of the arbitration process whereas its agents, not represented by a lawyer, were unaware that the proceedings could come to a conclusion since the directors of Cardno ME had been sentenced for fraud in connection with the consulting agreement between the two parties and that it was convinced that, since an Iraqi court had declared this contract null and void due to fraud, the arbitration clause therein was also null and void, since the principle of autonomy of the arbitration clause does not apply in Iraqi law.

52. It also maintains that Article 27 of the Rules of the International Chamber of Commerce cannot be an obstacle to the fundamental principles of a fair trial, pointing out, on the one hand, that Article 22(4) of the ICC Rules expressly acknowledge this since it provides that the arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case., which was not the case here since the arbitrator rejected the letter from its counsel, without examining it, and since the rules applicable to arbitration proceedings, even when one party expressly consented to it, cannot be invoked to limit the fundamental guarantees of the right to a fair trial provided for by Article 6 § 1 of the European Convention of Human Rights.

53. With regard to the violation of the principle of equality of arms, the CBI asserts that it is up to arbitrators to find a fair balance, on a case-by-case basis, between the right of the claimant to have their claims examined within a reasonable period and the right of the respondent to usefully organize its defense.

54. It argues that compliance with this fundamental principle required the sole arbitrator to examine the allegations of fraud that it raised before him to the extent that these allegations were presented only fifteen days after the closing of the proceedings and their examination would have led to a minimal delay in the proceedings, that the arbitrator did not have any other evidence from the CBI to hand down a decision and that this evidence should have a determinative effect on the resolution of the dispute.

55. It argues that the arbitrator granted disproportionate weight to the arguments put forward by Cardno ME, even after the closing of the proceedings, while denying the CBI the chance to respond to these arguments, about a subject as serious as fraud.

56. The CBI claims as evidence that the arbitrator, having been informed of the criminal proceedings initiated in Iraq against Mr. Pether and Mr. Zaghloul even before the closing of the proceedings, through

the production of the [United Nations Working Group on Arbitrary Detention] notice by Cardno ME, he should have taken into consideration the criminal investigations underway and allowed the CBI to present its observations in connection with this notice and the fraud of which Cardno ME is accused when four months after the communication of this notice in the proceedings, the CBI requested that he reopen the proceedings specifically to report to the fraud and present its observations in the matter.

---

Paris Court of Appeal

DECISION OF JANUARY 21, 2025

**Division 5 – Chamber 6 RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 10<sup>th</sup> page**

57. In response, Cardno ME asserts that the adversarial principle in no way entails an obligation for the arbitrator to reopen the proceedings which a party, after having knowingly refused to participate in eighteen months of proceedings, requests him to do. It argues that in this case, the sole arbitrator respected the adversarial principle throughout the proceedings in which the CBI systematically refused to participate, even though it had the material time to reply but not having done so, while it does not present any arguments in good faith justifying this failure to participate in the arbitration proceedings and did not even see to it to inform the arbitrator of the difficulties it encountered that would have prevented its participation in the proceedings.

58. Cardno ME asserts that in regard a party's unilateral decision not to participate in proceedings cannot serve as the basis for the alleged violation by an arbitral tribunal of the adversarial principle.

59. Referencing the provisions of Article 27 of the Rules of the International Chamber of Commerce, it maintains that the sole arbitrator was under no obligation to accept the new arguments and the new exhibits from CBI, other than to consider whether that article is itself in contradiction with the principle of adversarial proceedings.

60. Cardno ME further maintains that the arbitrator also did not violate the adversarial principle when the CBI's request to reopen the proceedings was brought before him late, since he then read the letter sent to him and invited Cardno ME to respond to it before taking his decision to reject the reopening request in the procedural order no. 4 then refusing to take into account any other subsequent communication from the parties in accordance with this order.

61. Finally, it states that the sole arbitrator cannot be criticized for having attempted to make up for the CBI's absence since, on the contrary, it requested that the claimant to the arbitration respond to several of his questions during the arbitration proceedings.

62. Regarding the violation of the principle of equality of arms, Cardno ME asserts that it is in the performance of his duties that the arbitrator assessed whether it was appropriate to reopen the proceedings in this case, concluding that there were no reasonable grounds for this, such that the CBI attempted to challenge the outcome of the sole arbitrator's decision, which is not under the control of the annulment judge by virtue of the principle of not reviewing the merits of arbitral awards.

63. It argues that the CBI does not establish that there was a violation of the principle of equality of arms, in the absence of demonstrating a material impossibility with which it was faced that prevented it from presenting its case in the arbitration proceedings.

64. It asserts that the protection of this principle does not include an assessment by the arbitral tribunal of the manner in which the parties implement their right to be represented

*The Court's Assessment*

65. According to Article 1520(5) of the Code of Civil Procedure, the annulment of the award can be sought when its recognition or execution is contrary to international public policy.

66. International public policy with regard to which the judge's review is carried out is understood from the conception thereof in the French legal system, in other words the values and principles that may not be disregarded, even in an international context.

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 11<sup>th</sup> page

67. This review only endeavors to examine whether arbitral tribunal's decisions demonstrates a violation of the principles and values contained in this international public policy .

68. Regardless of the procedure chosen, it is up to the arbitral tribunal, by virtue of Article 1510 of the Code of Civil Procedure, to guarantee the equality of the parties and to respect the adversarial principle.

69. The adversarial principle only requires that the parties were given the opportunity to debate the arguments invoked and the exhibits produced, and that they should be able to present their legal and factual claims and discuss those of their opponent such that nothing that serves as basis for the arbitrators' decision is outside their adversarial debate.

70. The equality of arms constitutes a component of fair trial protected by international public policy. It involves the obligation to offer each party a reasonable opportunity to present their case, including the evidence, under conditions that do not place it in a substantially disadvantageous situation in relation to the opposing party.

71. In this case, it follows from the procedural history set forth by the arbitrator in the award of February 26, 2023, the accuracy is not disputed by the CBI, that the closing of the proceedings took place on December 13, 2022 in application of Article 27 of the Rules of the International Chamber of Commerce, eighteen months after Cardno ME filed a request for arbitration on June 2, 2021.

72. The CBI does not dispute that all the procedural acts in arbitration proceedings during the course of these eighteen months had been sent to it, in particular the various requests and reminders soliciting its position. In this regard, it should be mentioned that the e-mail sent to the parties by the arbitral tribunal on August 24, 2021 forwarding the Terms of Reference, reminding them that it should be signed before September 30, 2021 and expressly asking the CBI to specify before August 30, 2021, whether it intended to participate in the proceedings by reminding it of the provision in Article 6(8) of the Rules of the International Chamber of Commerce which states the following: "if any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure."

73. It is an established fact that despite this reminder and the notification of procedural acts in the arbitration proceedings, the CBI did not participate in the arbitration proceedings and did not send the arbitral tribunal any justification or explanation for its absence and its failure to be represented.

74. Article 27 of the Rules of the International Chamber of Commerce in force as of January 1, 2021 stipulates that: "As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the arbitral tribunal shall: a) declare the proceedings closed with respect to the matters to be decided in the award; and b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the Court for approval pursuant to Article 34. After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal."

75. The CBI only appeared in the proceedings for the first time after the closing of the proceedings, which took place in application of this article on December 13, 2022, by e-mail dated December 29,

2022 seeking that the proceedings be reopened and citing the absence of an arbitration agreement and the commission of acts of fraud by Cardno ME (factual exhibit no. 89 of the plaintiff).

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 12<sup>th</sup> page

76. However, it follows from the arbitral award that the arbitrator did not ignore this request to reopen the proceedings since he gives the details of its content and lists the exhibits that were attached thereto in paragraphs 140 to 142 of the award. It is also established that upon receipt of this request from the CBI, the arbitrator sought the opinion of Cardno ME on this request, which was communicated by the latter on January 10, 2023 (paragraphs 144 and 145 of the award).

77. The arbitral tribunal dismissed CBI's request to reopen the proceedings by procedural order no. 4 dated January 18, 2022, handed down in the performance of his duties such as provided for in Article 27 of the above-mentioned ICC Rules, specifically reasoned. The arbitrator therein explains his decision in the first place with regard to the course of the arbitration proceedings, the CBI's failure to participate and the lack of justification from the latter of new circumstances independent of its will that would have occurred after the closing of the proceedings. He completes his reasoning by means of a specific and detailed analysis of the allegations of fraud contained in CBI's request and came to the conclusion that there was a contradiction between the seriousness invoked in these allegations of fraud and the fact that the CBI had not raised them previously as part of the normal course of the proceedings while they were based on facts that were known to it before the closing of the proceedings, in particular regarding the offences of which Mr. Pether and Mr. Zaghloul are accused (paragraph 16 of the procedural order no. 4 reproduced in paragraph no. 150 of the award).

78. It follows that the CBI cannot validly invoke a violation by the arbitrator of its right to be heard mentioned in Article 22(4) of the Rules of the International Chamber of Commerce nor an infringement of the adversarial principle since it follows sufficiently from the course of the arbitration proceedings that the arbitrator had given the CBI a reasonable opportunity to present its response to the request for arbitration and to assert its defense through the latter whereas the CBI does not justify any objective impediment in participating in the arbitration proceedings, for the reasons listed in paragraphs 36 to 42 of this decision, or material impossibility in presenting its case in due time before the arbitral tribunal.

79. The CBI cannot, without contradicting itself, firstly waive participating in the arbitration proceedings, of which it does not dispute it was fully informed, then maintain that its defense on the merits and its allegations of fraud based on facts of which it was aware before the pronouncement of the closing of the proceedings on December 13, 2022 could not be examined by the arbitral tribunal due to the rejection of its request to reopen the proceedings, whereas this situation is solely the consequence of its procedural attitude and its choice of action.

80. This situation does not result in any breach of the equality of arms between the parties since the CBI's late participation in the arbitration proceedings is its own fault and the course of the proceedings does not show any difference in treatment to its detriment, in particular the time periods for submitting its responses and its defense arguments. The rejection of the communications that its new counsel had sent to the arbitrator and the Secretariat of the Court of the International Chamber of Commerce is only the sanction of the refusal to reopen the proceedings decided by the arbitral tribunal by procedural order no. 4 of January 18, 2023, it being observed that this rejection was also applied to the unsolicited communications from Cardno ME's lawyers.

81. It follows that the CBI's criticism is in reality based on the grounds that led the arbitrator to reject its request to reopen the proceedings in his procedural order no. 4 and in doing so, under the cover of invoking a violation of the adversarial principle and equality of arms, that its purposes is to cause the review judge of the award to review the merit of this decision, which is not within his powers.

82. The CBI thus fails to demonstrate the existence of a breach of procedural international public policy due to the violation of the adversarial principle and equality of arms. Its claim for annulment of the arbitral award of February 26, 2023 based on Article 1520(5) of the Code of Civil Procedure will therefore be rejected.

---

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 13<sup>th</sup> page

B. On the objection based on the adversarial principle formed under Article 1520(4) of the Code of Civil Procedure

*Statement of the arguments*

83. The CBI argues that the violation of the adversarial principle justifies the annulment of the award under Article 1520(4) on the grounds that:

- the arbitrator rejected, or refused to examine the multitude of motivated requests from the CBI to reopen the proceedings concerning the single subject of fraud;
- it cannot be accused of having waived making the allegation of fraud and submitting the corresponding evidence while at the same time being accused of having violated the arbitrator's order that [the parties] not put forward any additional arguments;
- the arbitrator demonstrated great severity and rigidity towards it by not allowing it to present its arguments, thus allowing the effects of this fraud to perpetuate under French law.

84. Cardno ME responds that there is in no event any violation of the adversarial principle whether it is invoked under Article 1520(5) of the Code of Civil Procedure on international public policy, or Article 1520(4) dedicated to the adversarial principle.

*The Court's Assessment*

85. The CBI does not present any arguments in support of this objection separate from the arguments that it had set out in support of its request for annulment of the arbitral award due to the breach of international public policy as a result of the violation of the adversarial principle.

86. For the reasons stated in paragraphs 65 to 82 of this decision, the CBI does not demonstrate that the arbitral tribunal violated the adversarial principle.

87. Subsequently, its request for annulment of the arbitral award of February 26, 2023 on the basis of Article 1520(4) of the Code of Civil Procedure is also rejected.

C. On the objection based on the arbitrator's non-compliance with his mission

(i) ***On the CBI's waiver to assert this objection***

*Statement of the arguments*

88. In response to the objection to admissibility (*fin de non-recevoir*) raised by Cardno ME, the CBI asserts that it cannot be accused of not having timely invoked the fact that the arbitrator failed to comply with his mandate while the latter refused every other submission of exhibits or defense arguments from the parties or their counsel in his procedural order no. 4 of January 18, 2023, such that the CBI was unable to raise this objection.

89. Cardno ME argues that CBI refrained from invoking its objection based on the arbitrator's failure to comply with his mandate in the context of the arbitration proceedings while it clearly was aware of the irregularity it invoked, namely the arbitrator's decision to reject its request to reopen the proceedings. It asserts that this waiver is demonstrated because the CBI raised other objections in

connection with the breach of international public policy, the impartiality of the arbitrator or the violation of equality of arms and the adversarial principle in its counsel's communications after procedural order no. 4 of January 18, 2023.

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 14<sup>th</sup> page

*The Court's Assessment*

90. Article 1466 of the Code of Civil Procedure states that: "The party who, in knowledge of the facts and without legitimate grounds, refrains from timely invoking an irregularity before the arbitral tribunal is considered to have waived asserting it."

91. In his procedural order no. 4, the arbitrator, after having rejected the request to reopen the proceedings submitted by the CBI via e-mail of December 29, 2022, ordered the parties to comply with his order by specifying that no additional submissions on their part would be accepted as part of the arbitration proceedings (paragraph no. 18 of order no. 4 reproduced in paragraph no. 150 of the award).

92. It follows that no conclusions can be drawn regarding the CBI's procedural behavior from the content of the various e-mails sent by its counsel to the arbitrator or to the Secretariat of the Court of the International Chamber of Commerce after the delivery of procedural order no. 4 of January 18, 2023.

93. It is therefore irrelevant that the CBI had not invoked the objection based on the arbitrator's non-compliance with his mandate in these e-mails, even though it could have invoked other objections therein, since it was no longer able to raise any irregularities in the proceedings in due time, since the proceedings had been declared closed by the arbitral tribunal with the refusal of any further submissions.

94. Subsequently, the CBI is admissible in raising the grounds for annulment of the award based on the provisions of Article 1520(3) of the Code of Civil Procedure.

*(ii) On the merits of the objection based on the arbitrator's non-compliance with his mandate*

*Statement of the arguments*

95. The CBI asserts that as soon as a party raises serious allegations of fraud that are likely to challenge the compliance of the arbitral award with the French conception of international public policy, the arbitral tribunal has the obligation to reopen the proceedings to allow this evidence in order to comply with its mandate, which consists of rendering an enforceable award.

96. It argues furthermore that the sole arbitrator intentionally failed to rule on the allegations of fraud that it formulated, categorically refusing its multiple requests to reopen the proceedings as to fraud only, declaring such evidence and arguments struck from the arbitration record, that the closing of the proceedings which took place beforehand could not suffice to justify or explain, and thus committed a denial of justice.

97. The CBI asserts that the arbitral tribunal has the duty to investigate as soon as there are indications suggesting that a criminal offence has been committed in connection with an economic operation that forms the subject of the dispute, which was the case here since the arbitrator was aware of the criminal proceedings initiated in Iraq against the directors of Cardno ME even before the CBI reported it in its e-mail of December 29, 2022.

98. It concludes from this that by knowingly deciding to ignore these suspicious circumstances and the allegations of fraud that it communicated to him, the arbitrator violated the duty incumbent on him by virtue of his mandate.

99. The CBI maintains that this failure to rule could not be repaired by the arbitrator himself since it is voluntary and it follows from the arbitral award that that arbitrator had a clear bias in favor of Cardno ME. It also argues that it could not bring its claims before another arbitral tribunal because that would amount to requesting a new arbitral tribunal to redecide the issues that had been decided by the sole arbitrator, and which are *res judicata* *res judicata*.

---

Paris Court of Appeal DECISION OF JANUARY 21, 2025  
**Division 5 – Chamber 6** RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 15<sup>th</sup> page

100. In response, Cardno ME asserts that the arbitrator did not fail to rule on the requests of either one of the parties to the arbitration proceedings, since the matter of fraud invoked by the CBI was not part of the claims presented by the parties, was not timely raised nor added to the proceedings by express agreement of the arbitral tribunal after the closing of the proceedings.

101. It argues that, in reality, the CBI disputes the outcome of the decision handed down by the arbitrator on January 18, 2023 by his procedural order no. 4, and that the arbitrator had no obligation to reopen the proceedings due to the principle of “*fraus omnia corruptit*”, especially since the CBI’s allegations of fraud were not likely to render the award contrary to French international public policy.

102. Cardno ME asserts that if the failure to rule should be considered proven, then it should be maintained that the CBI failed to provide evidence of any material impossibility or any cause for recusal which arose after the delivery of the arbitral award which would have prevented the sole arbitrator or another arbitral tribunal from correcting that failure to rule.

103. It also argues that the CBI did not demonstrate the denial of justice that it alleges, since the arbitrator indeed ruled on the sole claim presented by the CBI, namely its request to reopen the proceedings.

*The Court’s Assessment*

104. In terms of Article 1520(3) of the Code of Civil Procedure, annulment is only available if the arbitral tribunal ruled without complying with its mandate.

105. Defined by the arbitration agreement, the arbitral tribunal’s mandate is mainly outlined by the subject of the dispute, which is determined by the respective claims of the parties, without it being necessary to focus only on the statement of the questions found in the Terms of Reference.

106. The objection based on the failure to respond to an argument is not an admissible ground for annulment, as the arbitral tribunal is not required to make a decision on each of the factual or legal arguments set out by the parties. It is thus not up to the judge in charge of reviewing the arbitral award to sanction it.

107. In this case, the CBI did not participate in the arbitration proceedings, since it did not send any response to the request for arbitration, observations on the Terms of Reference that was submitted to it or defense memorial as part of the procedural timetable notified to it.

108. It personally described the allegations of fraud that it mentioned for the first time in its e-mail to the arbitrator on December 29, 2022 as defense pleas which were outcome determinative of the dispute (paragraph 433 of the CBI’s summary submissions).

109. [The CBI] therefore does not justify any claim that it could have validly formulated as part of the arbitration proceedings that the arbitrator failed to rule upon.

110. The CBI wrongly maintains that the arbitrator ignored its allegations of fraud and the exhibits that it sent to justify it when he ruled on its request to reopen the proceedings.

Paris Court of Appeal  
**Division 5 – Chamber 6**

DECISION OF JANUARY 21, 2025  
**RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 16<sup>th</sup> page**

111. It follows in fact from the reasoning of procedural order no. 4 of January 18, 2023 that the arbitrator conducted an analysis of the CBI's exhibits and made an assessment as to the nature of the fraud invoked by comparing it to the facts already submitted by Cardno ME as part of the arbitration proceedings to decide, as part of his duties, whether it was appropriate to authorize the reopening of the proceedings in order to examine the defense pleas presented late by the CBI.

112. More specifically, the arbitrator maintained the following in his procedural order no. 4:  
 Moreover, the Tribunal finds that Respondent's statement with regard to the 'seriousness of the fraud on the Court and on the Tribunal, and also on CBI' is in contradiction with Respondent's conduct as to not raising such allegation during the normal course of the proceedings. This is even more so in light of the fact that Claimant has never hidden that two of its employees were arrested and sentenced to prison in Iraq and produced at the Hearing a report issued by 'the Human Rights Council Working Group on Arbitrary Detention (Opinion No. 70/2021 concerning Robert Pether and Khalid Radwan [i.e. Mr. Zaghloul] (Iraq)' whereby the report raised concerns, *inter alia*, 'with the conduct of the trial' and noted 'with grave concern that even during the trial hearing, Messrs. Pether and Radwan [i.e. Mr. Zaghloul] did not have clarity around their charges. The charges they had prepared to defend themselves against were dropped during the hearing and replaced with other charges. Along with the failure to provide copies of the decisions immediately to the defense or the consular or diplomatic authorities, that demonstrates a trial replete with grave due process violations' (see, paras. 10 and 11 of the report). Given the importance that Respondent is attaching today in the Application to the Iraqi criminal proceedings, one would have expected a reaction from Respondent to Claimant's allegations (including the allegations made in the Human Rights Council's report) during the normal course of the proceedings. In particular, the Tribunal granted to Respondent, although it did not participate to the Hearing, the additional opportunity to comment on the Hearing by 29 September 2022, and more particularly on the Human Rights Council's report as indicated by the Tribunal at the Hearing (see footnote, n°5). Respondent did not submit its comments on the Hearing by 29 September 2022. It alleged 'fraudulent misrepresentation' for the first time on 1 January 2023 after the closing of the proceedings which occurred on 13 December 2022 and after the draft award was sent to the ICC Court for scrutiny on 16 December 2022."

"(Paragraph no. 16 of order no. 4 reproduced in paragraph no. 150 of the award).

113. It follows that the CBI does not demonstrate any failure whatsoever by the arbitrator to rule on a claim that had validly been brought before him, but that in reality it is criticizing both a failure to respond to the defense arguments it presented after the closing of the proceedings and the relevance of the arguments having led the arbitrator to refuse the requested reopening, which, by virtue of the principles set out above, does not constitute grounds for annulment of the award.

114. Consequently, the arbitral tribunal fully complied with its mandate, which was to rule on the claims of the parties.

115. The request for annulment of the arbitral award of February 26, 2023 formulated by the CBI on the basis of Article 1520(3) of the Code of Civil Procedure is therefore be rejected.

Paris Court of Appeal  
**Division 5 – Chamber 6**

DECISION OF JANUARY 21, 2025  
**RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 17<sup>th</sup> page**

**4. On the request for annulment of the arbitral award due to the arbitrator's impartiality on the basis of Article 1520(2) of the Code of Civil Procedure**

*Statement of the arguments*

116. The CBI asserts that the arbitrator's impartiality assumes the absence of bias or prejudice likely to affect the arbitrator's judgment and that doubts as to this can result from the award itself, and the losing party should not have any reasonable doubt as to the fact that [the award] was decided fairly.

117. It argues that the words used by the arbitrator in the award of February 26, 2023 reveal his excessive rigidity towards it, since they particularly reveal criticisms against it in contrast to the laudatory words used in connection with Cardno ME, which naturally brings to mind legitimate doubts as to the sole arbitrator's impartiality even more so since the latter refused to take into account the evidence that should have had an influence on his decision when it was presented to him.

118. It also maintains that the award confirms that the arbitrator favored Cardno ME to the detriment of its opponent on several occasions, in particular by granting the Cardno ME's claim for damages after having assisted it in reformulating its claims and without taking into consideration the CBI's interrogations, even though they were brought to his attention, regarding the actual work allegedly performed in terms of the disputed invoices.

119. Cardno ME asserts that it is the CBI's burden to prove that the arbitrator's bias is very likely or, in any case, that it raises a reasonable doubt and that such evidence is lacking in this case.

120. It argues that the arbitrator fully made sure that the CBI was able to participate in the arbitration proceedings and that the latter did not suffer any excessive criticism that is transparent from the reading of the award, as the examples given by the CBI to the contrary in reality are a mere assessment of the facts and law by the arbitrator and do not amount to bias or prejudice.

121. It also argues that the arbitrator did not attempt to protect its interest during the arbitration proceedings when he merely used his discretion to ask it questions regarding a decision of the French *Conseil d'Etat* invalidating a provision that was, for that matter, favorable to it and having taken into account the supporting documents that it provided before concluding on the merits of its claims for damages. It points out that the arbitrator only considered that there was a more appropriate alternative method to calculate the damage without, for that matter, replacing the method that it had invoked.

*The Court's Assessment*

122. The arbitrator's impartiality assumes the absence of bias or prejudice likely to affect the arbitrator's judgment, which can result from various factors such as the arbitrator's nationality, his social, cultural or legal environment.

123. However, to be taken into account, these factors must create a reasonable doubt, in the mind of the parties, as to his impartiality such that this fault must be assessed objectively.

---

Paris Court of Appeal DECISION OF JANUARY 21, 2025  
**Division 5 – Chamber 6** RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 18<sup>th</sup> page

124. If such doubt can result from the award itself, again, the content of the arbitral award's reasoning is not within the review of the annulment judge, this doubt should be based on precise factors as to the structure of the award and its very terms, which suggest that the arbitrator's attitude was biased or at the very least was likely to give the feeling that it was so.

125. In this case, it follows from the procedural history provided by the arbitrator in the award of February 26, 2023 that, at each step of the proceedings, he sought to protect the CBI's right to be heard

and that this right could always be exercised within a reasonable time, despite the latter's continued silence until it sent its first e-mail on December 29, 2022.

126. It is significant in this regard that, observing the lack of any response from the CBI to the letters that had been sent to it electronically since the filing of the request for arbitration on June 2, 2021, he took care to ask the parties, by e-mail of August 31, 2021, to express their positions on the validity of the notifications that had been made to the CBI since the beginning of the arbitration proceedings with regard to the applicable rules and the contractual stipulations, furthermore inviting Cardno ME to specify the reason why it had provided an e-mail address for the CBI for notifications that differs from the one indicated in Article 1.8 of the specific terms and conditions of the consulting agreement (paragraph no. 34 of the arbitral award).

127. It also follows from the procedural history presented by the arbitrator in the award that two requests for provisional measures by Cardno ME were rejected by procedural orders no. 1 and 2, in particular due to lack of evidence or insufficient evidence, even though the CBI had not responded to Cardno ME's requests within the deadline that it had been granted by the arbitrator (paragraphs no. 41 and 47 of the arbitral award).

128. Furthermore, contrary to what the CBI argues, it follows from the arbitral award that the arbitrator conducted an active and objective investigation of the case before the hearing of September 22, 2022, despite the lack of any opposition presented by the CBI, by asking various procedural and substantive questions to Cardno ME on April 11, 2022 (paragraph no. 84 of the award) dealing with a penalty provided for by French law for the violation of the obligation to mediate prior to a request for arbitration (paragraphs no. 126, 208 and 223 of the award), the analysis of the contractual stipulations with regard to Article 150 of the Iraqi Civil Code requiring that contracts be executed in good faith, for the part of the dispute regarding the outstanding invoices (paragraph 292 of the award), the legal classification to be given to the cessation of involvement of Cardno ME with regard to Iraqi law and the contractual stipulations, in particular the question of whether it should be interpreted as a termination of the agreement and the terms and conditions of compensation of the resulting loss in application of Iraqi law (paragraph no. 329 of the award) as well as on the implementation of the performance bond (paragraph no. 398 of the award).

129. It follows from the nature of the questions asked, their formulation in neutral terms, not skewed contrary to what the CBI argues for the questions regarding the calculation of the loss that could result from the early termination of the consulting agreement, and the fact that these questions were raised and asked to both parties, that the arbitrator acted in this way in order to use this a basis for his factual and legal assessment of the claims that were submitted to him by Cardno ME without having to limit himself to the initial position expressed by the latter in its request for arbitration and its statement of claim. This conduct by the arbitrator excludes any prejudice on his part against the CBI.

---

Paris Court of Appeal  
Division 5 – Chamber 6

DECISION OF JANUARY 21, 2025  
RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 19<sup>th</sup> page

130. The CBI argues that the arbitrator's bias is revealed through the contrasting descriptions he gives to the arguments by Cardno ME as being "particularly enlightening", "fair", "coherent", "valid" or even "plausible" and the criticisms made against the CBI for being "contradictory to the detriment of [Cardno ME]", "unclear", of presenting requests for no valid reason and in an "unsolicited" or "unjustified" manner and indicating its "disregard for any attempt to settle the dispute" or "having complicated [...] the proceedings".

131. The CBI chose, however, a few characterizations, both for Cardno ME and for itself, that it extracts from a more general demonstration which does not present a subjective tone, do not contain any value

judgment and only correspond to the expression of the reasons adopted by the arbitrator as basis for his decision.

132. Furthermore, none of the words put forward by the CBI are insulting towards it, as it is limited to providing an assessment by the arbitrator of a factually proven procedural situation.

133. It follows that the CBI does not fulfill its burden of providing the evidence regarding precise and verifiable facts that are likely to give rise to a reasonable doubt as to the sole arbitrator's impartiality.

134. The request for annulment of the arbitral award of February 26, 2023 formed by the CBI on the basis of Article 1520(2) of the Code of Civil Procedure will thus be rejected.

## **5. On the costs of the proceedings**

135. The CBI, whose action is dismissed, will be ordered to pay the costs of the proceedings, with application of the provisions of Article 699 of the Code of Civil Procedure to the Selarl LX Paris-Versailles-Reims represented by Maître Matthieu Boccon-Gibod, lawyer at the Paris bar, as the claim that the CBI brought under Article 700 of the Code of Civil Procedure is rejected.

136. It will also be ordered to pay Cardno ME the sum of 200,000.00 Euros in application of the same article.

## **IV/ OPERATIVE PART**

For these reasons, the court:

- 1) Declares inadmissible the grounds for annulment of the arbitral award of February 26, 2023 based on the breach of international public policy for a reason other than the violation of the adversarial principle and equality of arms;
- 2) Declares admissible the grounds for annulment of the arbitral award of February 26, 2023 based on the arbitral tribunal's non-compliance with its mandate;
- 3) States that it is not necessary to rule on Cardno ME's claim to have factual exhibits no. 64, 65 and 68 produced by the Central Bank of Iraq declared inadmissible;
- 4) Dismisses the action for annulment of the arbitral award of February 26, 2023 by the International Court of Arbitration of the International Chamber of Commerce in case no. 26290/AYZ/ELU;
- 5) Orders the Central Bank of Iraq to pay the costs of the proceedings, including costs on behalf of the Selarl LX Paris-Versailles-Reims represented by Maître Matthieu Boccon-Gibod, lawyer at the Paris bar, by application of the provisions of Article 699 of the Code of Civil Procedure;

---

Paris Court of Appeal DECISION OF JANUARY 21, 2025  
**Division 5 – Chamber 6** RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 20<sup>th</sup> page

6) Dismisses the Central Bank of Iraq's claims for costs under Article 700 of the Code of Civil Procedure;

7) Orders the Central Bank of Iraq to pay the company under Emirati law, Cardno ME Limited, the sum of two hundred thousand Euros (€200,000.00) in application of Article 700 of the Code of Civil Procedure.

**THE CLERK,**  
[Signature]

**THE PRESIDENT,**  
[Signature]

[Stamp: FOR CERTIFIED TRUE COPY  
Director of the court registry services]

[Stamp: PARIS COURT OF APPEAL]  
[Signature]

[hw: On 06/03/2025]

---

Paris Court of Appeal  
**Division 5 – Chamber 6**

DECISION OF JANUARY 21, 2025  
**RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV – 21<sup>st</sup> page**



**CERTIFICATE OF TRANSLATION**

I, Danelle Shaw, a professional translator with 14 years of translation experience, do hereby certify that I am professionally trained and experienced in providing professional translations, from French to English. My qualifications include an Honour's degree in French Translation (University of Johannesburg, South Africa), a Master's degree in Foreign Language and Literature (Université de Paris Ouest Nanterre la Défense, Paris, France); and I have professionally translated the document referenced as "RG No. 23/05511 – Portalis No. 35L7-V-B7H-CHKZV" from French to English, faithfully, accurately and completely, to the best of my expertise and experience.

A handwritten signature in black ink that reads "Danelle Shaw".

---

Danelle Shaw