

Paris

The French *Cour de cassation* rules on the fate of arbitral awards rendered in violation of a multi-tiered dispute resolution clause

Oftentimes, arbitration proceedings are initiated pursuant to multi-tiered dispute resolution clauses. These clauses provide for a number of steps that the parties commit to undertaking prior to initiating arbitration proceedings, generally with a view to settling their disputes amicably. A typical example of a multi-tiered dispute resolution clause is the *Med-Arb clause*, whereby the parties agree to try to resolve their disputes by mediation and only initiate arbitral proceedings should the mediation between them fail.

On 23 November 2021, the Paris Court of Appeal was requested to set aside an arbitral award on the ground that the arbitral tribunal erroneously upheld its jurisdiction in violation of a *Med-Arb* clause. In particular, the claimant to the set-aside proceedings alleged that the arbitral tribunal lacked jurisdiction as the arbitration was initiated – and fully conducted – on the basis of a *Med-Arb* clause, notwithstanding the fact that the parties had never participated in any prior mediation.

The Paris Court of Appeal, noting that the claimant had drawn to the attention of the tribunal that a prior and mandatory mediation was required under the *Med-Arb* clause, and that the arbitral tribunal itself acknowledged that the dispute fell within the very scope of the mediation clause, stated that under these conditions, the arbitral tribunal should not have upheld its jurisdiction so long as the prior and compulsory mediation procedure had not been implemented by the parties. The Court therefore set the award aside for lack of jurisdiction.

On [1 February 2023](#), the French *Cour de cassation* reversed the decision of the Paris Court of Appeal and reinstated the award. Notably, it stated that the failure to comply with a mediation clause is a question that pertains to admissibility of claims rather than to a tribunal's jurisdiction. While the decision of the Paris Court of Appeal had casted some doubt on French law's position *vis-à-vis* the fate of awards rendered in violation of a multi-tiered dispute resolution clause, the French *Cour de cassation* restored the order. Arbitrators, on the one hand, are granted complete leeway in settling issues pertaining to admissibility. The Paris Court of Appeal, on the other hand, may examine issues pertaining to jurisdiction in set-aside proceedings. As compliance with pre-arbitration steps provided under a multi-tiered dispute resolution clause (or lack thereof) is a question that pertains to admissibility, the appreciation of this condition falls outside of the scope of control operated by the Paris Court of Appeal.

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