

The Bulletin in Brief

Felix DASSER and Danielle GAUTHEY summarize the position of Swiss law regarding **the rule of good faith** (*bonne foi*), and its practical application to arbitration proceedings. The paper focuses on the Supreme Court's extensive case law under Article 190 PIL Act (challenges of arbitral awards). The authors submit that, when applied properly and with common sense, the rule of good faith can provide more flexible answers to alleged misconduct of parties, arbitrators or counsel than the recent guidelines issued by the IBA and other institutions (Felix DASSER and Danielle GAUTHEY, *La bonne foi dans l'arbitrage*).

The risk of **overregulation of international arbitration** proceedings is also the focus of a critical paper by Ugo DRAETTA. The author argues that many guidelines and rules promulgated by arbitral institutions and associations impair rather than increase the flexibility of the arbitration process (Ugo DRAETTA, *The Transnational Procedural Rules for Arbitration and the Risks of Overregulation and Bureaucratization*).

David PERKINS comments on two **protective orders on the confidentiality of documents** issued by arbitral tribunals under the WIPO Rules, which contain a specific regime as to confidentiality (David PERKINS, *Protective Orders in International Arbitration*).

Michael DUNMORE provides an overview of the scope of the **review of arbitral awards** conducted by courts by examining jurisprudence and the legislative framework in a number of jurisdictions (Michael DUNMORE, *What to Expect from the Review of Arbitral Awards by Courts at the Seat*).

Ali YEŞİLIRMAK introduces the reader to the specificities of **expert determination in Turkey**, and how it is used for effective dispute resolution in respect of technical matters (Ali YEŞİLIRMAK, *Expert Determination in Turkey*).

In the case law section we report on a number of salient decisions rendered by the Swiss Federal Supreme Court:

- Decision 4A_609/2014 of 20 February 2015: Failing any agreement to the contrary, **the time limit for filing a request to set aside an award starts to run with the notification of the award by email**.
- Decisions 4A_378/2014 of 24 November 2014 and 4A_536/2014 of 3 March 2015: The **allocation of costs** in a (domestic) award was challenged unsuccessfully, since no violation of public policy was established.

- Decision 5A_165/2014 of 25 September 2014: The Court confirmed a lower court’s judgment granting the enforcement of a foreign arbitral award, **rejecting a defense based on Article V(2)(b) of the New York Convention**. The party resisting enforcement had initiated criminal proceedings abroad against witnesses in the arbitration who had allegedly given **false testimony**. The Court accepted that awards influenced by procedural fraud may not be enforceable, but found that the party resisting enforcement had not established a case of fraud, and had not shown that the alleged false testimony had an impact on the outcome of the award.
- Decision 4A_540/2013 of 5 November 2013: The Court rejected the request of a former secretary-general of a sports federation who had in vain challenged his removal before the CAS. The CAS award denied his standing to sue. The Court upheld the award as it was based on the **application of internal regulations of the sports federation which are not subject to the Supreme Court’s review**.
- Decision 4A_554/2014 of 15 April 2015: The plaintiff applied to the Supreme Court to have an arbitral award annulled, alleging that the arbitral tribunal had violated due process by relying in its award on an unpredictable application of the law. The Court found that arbitral tribunals are free to apply the law (*iura novit curia*), **subject only to a prohibition on taking the parties by surprise**. No surprise was established in the present case.

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