

The Bulletin in Brief

ASA President Elliott GEISINGER's Message calls for more self-questioning by the arbitration community, and more engagement with the users of arbitration and with those who are criticizing arbitration, rightly or wrongly.

Felix DASSER, Piotr WÓJTOWICZ (*Challenges of Swiss Arbitral Awards – Updated and Extended Statistical Data as of 2015*) update the invaluable statistical data of challenges of international arbitral awards in Switzerland. The percentage of successful challenges in non-sports arbitration remains at around 7 %, and the median duration of annulment proceedings before the Federal Supreme Court is roughly six months.

Alice FREMUTH-WOLF introduces the Vienna International Arbitral Centre's new Vienna Mediation Rules (*Mediation and Arbitration in Vienna – One-Stop-Shop Solution for Parties under the Vienna Rules and the new Vienna Mediation Rules*).

Ned BEALE, James LANCASTER, Stephanie GEESINK (*Removing an Arbitrator: Recent Decisions of the English Court on Apparent Bias in International Arbitration*) analyse two important English decisions on arbitrator bias: *Cofely Ltd v (1) Anthony Bingham and (2) Knowles Ltd* [2016] EWHC 240 (Comm), dealing with repeat appointments, and *W Ltd v M Sdn Bhd* [2016] EWHC 422 (Comm), in which the arbitrator's law firm had a commercial relationship with a party's group of companies.

Maximilian SATTLER (*Abandon Ship? West Tankers, Gazprom, and Anti-Suit Injunctions under “Brussels Ia”*) elaborates on two developments that appear to run counter to the ECJ's jurisprudence from *West Tankers* that anti-suit injunctions must not be issued by courts of EU member states if the injunctions would curtail the jurisdiction of the courts of other member states: the ECJ's decision in the matter *Gazprom OAO v. Republic of Lithuania*; and the recast EU regulation on jurisdiction (“Brussels Ia”).

Dimitrij EULER (*Transparency Rules and the Mauritius Convention: A Favourable Haircut of the State's Sovereignty in Investment Arbitration?*) investigates whether the UNCITRAL Transparency Rules are more favourable for host states than for investors.

Michael WIETZOREK (*The Story Continues: Ukrainian Court Proceedings After The Landmark Decision Of The Swiss Federal Supreme Court On res iudicata (4A_508/2013)*), reports on Ukrainian enforcement proceedings regarding an award rendered in Switzerland.

This Bulletin's selection of court decisions deals with a number of highly relevant topics such as (for abstracts in English see the Introduction to the Case Law Section, p. 386):

- 4A_324/2014 of 16 Oktober 2014 on the **allegedly undue expedition of a CAS arbitration** (award issued six days after the hearing).
- 4A_335/2014 of 18 December 2014 on the **nature of an award on liability** (found to be a hybrid award).
- 4A_92/2015 of 18 Mai 2015 (141 III 201) finding that certain disputes under **residential lease agreements cannot be referred to arbitration or expert-determination** due to the mandatory jurisdiction of the state courts.
- 4A_586/2014 of 25 November 2014 and others recalling that **decisions of private bodies, such as the ICC Court or CAS cannot be challenged** before the Supreme Court.
- 4A_54/2012 of 27 June 2012 **rejecting an argument that arbitrators could not possibly be impartial after the annulment of an award they have rendered**.
- 4A_426/2015, of 11 April 2016 **setting aside a second award rendered by an arbitral tribunal for having disregarded the Court's annulment decision setting aside the first award**.
- Decision 5A_441/2015 of 4 February 2016 admitting the **enforcement of an English (GAFTA) award under the New York Convention although the parties (commodity traders) were not originally bound by an arbitration agreement**, as the contract had been concluded by a broker, not by the traders directly. However, the traders had proceeded on the merits in the arbitration. This was also fatal to a plaintiff's challenge of an award on jurisdictional grounds in case 4A_172/2015 of 29 September 2015. The Court in Decision 5A_441/2015 further ruled that Article IV(2) NYC, which **requires the translation of the award and of the arbitration agreement into an official language** of the country in which enforcement is sought, is **not mandatory**, especially if the original is in English.
- Finally, we publish a **termination order** issued in a Swiss Rules arbitration following the **(insolvent) claimant's failure to pay the cost deposits** requested by the arbitral tribunal.

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