

Editorial

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Should leaked awards be published?

Maybe because they have come to see international arbitration as “total warfare”, some parties and their counsel have taken it upon themselves in the last few years to leak to specialized publications, not only final but also interim awards: this is a blatant violation of confidentiality obligations.

Some publications, perhaps because they set the freedom of the press principle above everything, have no hesitation in publishing leaked awards. At the *Journal of International Arbitration* we value this principle highly but, as arbitration practitioners, place even more importance on upholding the integrity of the arbitration process. Consequently, we have always refused, and will continue to refuse, to publish leaked decisions.

There are two important comments which should be made in this connection.

Arbitration institutions must act coherently

Explicitly or implicitly, most arbitration institutions follow a certain policy, based on the specific requirements of their customers and particularities of their trade, depending on whether the awards rendered under their auspices are in the public domain, or should be treated as confidential. Parties who arbitrate under the rules of these arbitration associations thus agree to abide by their policy. Those associations which have a policy of sustaining confidentiality should consequently take the necessary steps to enforce it and, when warranted, not hesitate to sanction parties and counsel who are known to have blatantly breached their obligations in this respect. Some institutions have been notably lax about this, serving only to undermine confidence in the integrity of the arbitration process they administer.

Sanitized awards are no solution

In order to avoid conflict with the arbitration associations' confidentiality policy, the practice of publishing expurgated awards, from which the names of the parties and certain details of the facts are deleted, but the arbitrators' names and reasoning remain, has become widespread. This is certainly good for massaging the arbitrators' ego, but is of doubtful value to readers, as the full facts of a case and particulars of the parties are needed to make a correct assessment of a judicial or arbitral decision. More important, it shows little respect for the rights of the parties, who have generally paid good money for the arbitrators' work and who, in our view, should be considered as the joint owners of the awards and therefore have the exclusive right to dispose of them. They should be spared the unpleasant surprise of seeing all, or part, of their award published without their joint consent.