

Transparency of proceedings in international arbitration

Summary

The purpose of my thesis is to explore the concept of transparency in international arbitration. There are different types of international arbitration, characterized by different participants and naturally distinct aspects of procedure. One of these aspects is, according to my opinion, the said transparency of the proceedings. For the purposes of this thesis, I have decided to analyze the position of transparency in two major areas, namely in investment arbitration and in commercial arbitration, respectively. As the concept of transparency in international arbitration is only recently developing, there is much to be resolved. Thus, the state of the affairs with respect to the subject matter of this thesis is ambiguous and misty. The aim of my research is to describe the position of transparency in two basic types of arbitration and identify the reasons for different trends in this respect.

The thesis is composed of an Introduction, four basic chapters and a Conclusion. Chapters are divided into subchapters and parts, respectively.

The Introduction presents the topic, defines relevant terminology and sets out the aim of my thesis.

Chapter One deals with the confidentiality of arbitration which is clearly opposite concept than that of the transparency. Confidentiality has always been considered as a natural feature of arbitration. However, this is not the case anymore. The development in respect of confidentiality, provided in this chapter, needs to be analyzed in order to understand the development in respect of transparency.

Relatively brief chapter Two examines the relation between the arbitral process, which is typically conducted in private, and the right to a fair trial as incorporated into Article 6 of The Convention for the Protection of Human Rights

and Fundamental Freedoms. The focus of this chapter is to demonstrate the compatibility of arbitration with the aforementioned human right.

Chapter Three, probably the most comprehensive one, provides an analysis of the position of transparency in international investment arbitration. Due to the existence of public interest in this type of proceedings, investment arbitration enjoys high level of transparency. In this context, transparency is being examined within different regimes of investment arbitration, namely the ICSID and NAFTA arbitration.

Final chapter Four, as opposed to chapter Three, concentrates on considerations determining the position of transparency in international commercial arbitration. Here, the desired confidentiality of proceedings and the interests of parties simply prevail over tendency to promote publication of information with respect to arbitral process between private parties.

A Conclusion purports to summarize the outcomes of my research, describe the development of the concept of transparency and identify possible reasons for it.