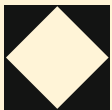


Stavroula Angoura

The Impartiality and Independence of Arbitrators in International Commercial Arbitration



Nomos

Successful Dispute Resolution

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Volume 11

Stavroula Angoura

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To my parents

Foreword

The independence and impartiality of arbitrators in international arbitration is a subject of profound and timely importance. Contemporary obligations of impartiality for international arbitrators arise from a wide variety of sources, including international arbitration conventions, applicable national laws, institutional arbitration rules and arbitration agreements. Given the variety of those sources, there are also a diversity of views about the content of arbitrators' obligations of independence and impartiality, as well as related questions of disclosure obligations, standards for challenge, issues of waiver and the relevance of a lack of impartiality or independence in annulment or recognition proceedings.

Dr. Angoura's book provides a detailed, systematic and comprehensive analysis of the concepts of independence and impartiality of arbitrators in international commercial arbitration. It examines the recurrent factual circumstances and issues relating to the impartiality and independence of arbitrators in both arbitral institutional practice and national courts. The book's main thesis, which is a provocative and thoughtful contribution to the current literature, is that a common core of international public policy has emerged with regard to the concepts of impartiality and independence of international arbitrators. The book develops and supports that thesis with admirable rigor and creativity.

The book also examines how obligations of independence and impartiality of arbitrators can be relevant at different stages of the arbitral procedure: at the pre-appointment stage, during the arbitral process (including challenges to the arbitrators), in annulment proceedings and in recognition proceedings. The final chapter of the book examines the waiver of objections to an arbitrator's lack of independence or impartiality, and, more specifically, the recurrent issue of the effects of a party's failure to assert a challenge to an arbitrator despite constructive (but not actual) knowledge of the basis for the challenge. The book's analysis examines the most significant European seats of international arbitration – France, England, Switzerland, Germany – while also addressing other important jurisdictions, including Singapore, Sweden, Austria and Greece.

Finally, in addition to exploring the arbitrator's duties of impartiality and independence on a conceptual and theoretical level, provides a valuable tool for practice in international arbitration. Its careful examination

Foreword

of national court decisions, institutional rulings and other authorities is an important contribution to parties, lawyers, arbitrators, institutions and national courts to facilitate decisions on questions of disclosure and waiver and its application to impartiality at the different arbitration stages. Dr. Angoura's book contributes in particular to the ongoing discussion of the arbitrator's impartiality as one of the (most frequently-invoked) grounds for annulment or non-recognition of arbitral awards.

I congratulate the author for her very thorough research and thoughtful writing and her valuable contribution to the dialogue between academia and practice.

Gary B. Born

London, November 2021

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The book is dedicated to my parents for all the sacrifices they have made to help me achieve my goals. It is thanks to their endless love, support and ethos that I have become the person I am today.

Dr. Stavroula Angoura

Thessaloniki, October 2021

Table of Contents

MAIN ABBREVIATIONS	15
§ 1. Introduction	23
I. Research Question	23
II. Methodology	27
III. Structure	29
§ 2. Legal foundations, definition and interpretation of the concepts of arbitrator impartiality and independence	31
I. Foundations	31
1. The fair trial principle	38
2. National arbitration laws	42
3. Institutional rules	45
II. The IBA Guidelines on Conflicts of Interest in International Arbitration as interpretation aid	46
III. Concepts of arbitrator impartiality and independence	53
1. The concept of impartiality	53
2. The concept of independence	55
3. Impartiality applied to arbitrators	60
IV. The question of ‘justifiable doubts’	65
§ 3. Instances of arbitrator’s lack of impartiality	68
I. General remarks	68
II. Arbitrator’s relationship with the dispute	69
1. Significant direct or indirect financial interest in the dispute	70
2. Personal interest in the dispute	71
3. Prior involvement in the dispute	71
4. Arbitrator’s appointment in a related matter	72
5. Publicly expressed legal opinion	76
III. Arbitrator’s relationship with one of the parties or counsel	77
1. General remarks	77

Table of Contents

2. Arbitrator's professional relationship with one of the parties	79
a) Arbitrator's employment by one of the parties	79
b) Arbitrator acting as manager, director or member of the supervisory board of one of the parties	80
3. Arbitrator's business or financial relationship with one of the parties	81
a) Direct relationship	81
b) Indirect relationship	82
c) Prior business or financial relationship	84
d) 'Repeat arbitrator'	85
4. Arbitrator's family or personal relationship or any other non-trivial ex parte contact with one of the parties (or its counsel)	90
a) Close family relationship	90
b) Close personal relationship	92
c) Remote and insignificant social relationship	93
d) Ex parte contacts	94
5. Common nationality of presiding arbitrator with one of the parties	99
6. Arbitrator representing one of the parties	100
7. Arbitrator's relationship with counsel representing one of the parties	103
IV. Arbitrator's relationship with another arbitrator, witness or arbitral secretary	112
V. Arbitrator's law firm relationship with one of the parties or counsel	115
VI. Arbitrator's conduct and expressions of opinion during arbitration	118
§ 4. Controlling lack of impartiality before and after rendering award	121
I. Arbitrator's duty of disclosure	121
1. Nature of the duty of disclosure	124
2. Timing of the duty of disclosure	126
3. Arbitrator's investigation duty	127
4. Scope of the duty of disclosure	130
a) The applicable law to arbitrator's disclosure duty	131
b) The subjective and objective standards of the duty of disclosure	133

c) The interface between parties' investigation duty and arbitrator's disclosure duty	138
5. Consequences of breach of the duty of disclosure	149
II. Challenge of the arbitrator during arbitration proceedings on grounds of lack of impartiality	156
1. The interplay between the principle of party autonomy and fair trial	157
2. Challenge procedure and time limit	159
3. Subsidiary competence of the judge at the seat of the arbitral tribunal	160
4. Legal remedies against the decision on the challenge of the arbitrator	162
5. The objective standard of the disqualification of an arbitrator	166
III. Annulment of an arbitral award or non-recognition and non-enforcement of a foreign arbitral award on grounds of arbitrator's lack of impartiality	167
1. Grounds for annulment of an arbitral award, non-recognition or non-enforcement of a foreign arbitral award based on arbitrator's lack of impartiality	168
a) The violation of due process	169
b) The irregular composition of the arbitral tribunal or violation of parties' agreed arbitral proceedings	171
c) The violation of public policy	176
2. Effect of bias on the arbitral award	179
§ 5. The institution of waiver	183
I. The object of waiver: the right to an impartial tribunal versus the right to contest arbitrator's lack of impartiality	183
II. The mechanism of waiver as an aspect of good faith	187
III. Preconditions of implicit waiver	189
1. Knowledge of facts or circumstances giving rise to arbitrator's lack of impartiality	189
2. Failure to object to arbitrator's lack of impartiality within set time limit	195
a) The specification and compliance with the set time limit	195
b) The preclusive effect of waiver of the right to contest arbitrator's lack of impartiality at different stages	199
IV. Advance waiver	204

Table of Contents

§ 6. Conclusions	212
BIBLIOGRAPHY	219
LIST OF CASES	251
Biography	265
Index	267

MAIN ABBREVIATIONS

AAA	American Arbitration Association
AAA/ICDR Rules	Rules of the American Arbitration Association/ International Centre for Dispute Resolution
Am. Rev. Int'l Arb.	American Review of International Arbitration, published by Juris
Am. U. Int'l L.Rev.	American University International Law Review
Am.J. Com. L.	American Journal of Comparative Law
Annals Fac. L. Belgrade Int'l	Annals of the Faculty of law in Belgrade (International Edition)
App/Apps	Application/Applications
Arb Intl	Arbitration International, published by LCIA (journal)
Art/Arts	Article/Articles
ASA Bull	Bulletin of the Swiss Arbitration Association, Published by Kluwer Arbitration (journal)
Asian Intl Arb J	Asian International Arbitration Journal
Austrian YB	Austrian Yearbook on International Arbitration
BayObLG	Bayerisches Oberstes Landesgericht (Highest Regional Court of Bavaria)
b-arbitra	Belgian Review of Arbitration
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGE	Amtliche Sammlung der Entscheidungen des Schweizerischen Bundesgerichts (Official Collection of the Decisions of the Swiss Federal Court)

MAIN ABBREVIATIONS

B.J.C.	Belgian Judicial Code
BGH	Bundesgerichtshof (German Federal Court of Justice)
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen (official collection of German Federal Supreme Court decisions in civil matters)
BLR	Building Law Reports
Bull	Bulletin
Bus. L. Int'l	Business Law International (journal)
CA	Cour d' appel, Court of Appeal
Cah. arb.	Cahiers de l'arbitrage/Paris Journal of International Arbitration
Cah. dr. entrep.	Cahiers de droit de l'entreprise (journal)
CAS	the Court for Arbitration for Sport
Case W. Res. L. Rev.	Case Western Reserve Law Review
Cass. civ.	Court de Cassation, Chambre civile, première chambre, etc
CEA	Spain Arbitration Review
cf	confer
ch	chapter
ChrPrL	Chronika Idiotikou Dikaiou (journal)
Ciarb	Chartered Institute of Arbitrators
CIETAC	China International Economic and Trade Arbitration Commission
CJEU	Court of Justice of the European Union
C.J.Q.	Civil Justice Quarterly
C.L.C.	Commercial Law Cases (reporter)
CPC	Code de Procédure Civil Français (French Code of Civil Procedure)
Croat. Arbit. Yearb.	Croatian Arbitration Yearbook
Ct.	Court
CUP	Cambridge University Press

MAIN ABBREVIATIONS

Cyarb	czech (& central european yearbook of arbitration) (journal)
D	Recueil Dalloz
DAC	Department Advisory Committee
DIS	Deutsche Institution für Schiedsgerichtsbarkeit (German Arbitration Institute)
DIS Rules	Arbitration Rules of the German Arbitration Institute
Disp. Resol. Int'l	Dispute Resolution International (journal)
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950)
ECtHR	European Court of Human Rights, Strasbourg
ed/eds	editor/editors
edn	edition
eg	<i>exempli gratia</i> (for example)
EIAR	European International Arbitration Review (journal)
Epold	Episkopisi Politikis Dikonomias (journal)
et al.	et alii/aliae/alia (and others)
<i>etc.</i>	<i>et cetera</i> (and so on)
EWCA civ	Court of Appeal of England and Wales Civil Division (neutral citation), available at https://www.bailii.org/ew/cases/EWCA/ (last visited June 9, 2020)
EWHC	High Court of England and Wales, also known as High Court of Justice; neutral citation for same, available at https://www.bailii.org/ew/cases/EWHC/Comm/ (last visited June 9, 2020)
ff	and following
fn	footnote
Ford. Int'l L.J.	Fordham International Law Journal
FS	Festschrift

MAIN ABBREVIATIONS

GAR	Global Arbitration Review
Gaz. Pal.	Gazette du Palais (journal)
GDPR	General Data Protection Regulation
Geo. J. Legal Ethics	Georgetown Journal of Legal Ethics
Geo. L.J.	Georgetown Law Journal
GesRZ	Der Gesellschafter - GesRZ, Zeitschrift für Gesellschafts und Unternehmensrecht (journal)
GG	Grundgesetz
GroJIL	Groningen Journal of International Law
HKIAC	Hong Kong International Arbitration Centre
HKIAC Rules	HKIAC Administered Arbitration Rules
<i>i.e.</i>	<i>id est</i> (that is)
IBA	International Bar Association
ICC	International Chamber of Commerce
ICC Disp. Res. Bull	ICC Dispute Resolution Bulletin
ICC Rules	Arbitration Rules of International Chamber of Commerce
ICCA	International Council for Commercial Arbitration
ICDR	International Centre for Dispute Resolution
ICDR Rules	Rules of the International Centre for Dispute Resolution
ICSID	International Centre for Settlement of Investment Disputes
ICSID Rev.	ICSID Review (journal)
<i>idem</i>	the same
Int.Enc.Comp.L.	International Encyclopedia of Comparative Law
IHU	International Hellenic University
ILA	International Law Association

MAIN ABBREVIATIONS

Int. Law: Rev. Colomb. Derecho	International law: Revista Colombiana de Derecho Internacional
Int.A.L.R.	International Arbitration Law Review (journal)
Int'l & Comp. L.Q.	International and Comparative Law Quarterly (journal)
Int'l Bus. L.J.	International Business Law Journal (journal)
IPRax	Praxis des Internationalen Privat-und Verfahrensrechts (journal)
J Intl Arb	Journal of International Arbitration, published by Kluwer Arbitration (journal)
J-Cl. Pr. civ	Juris-Classeur Procédure Civile (journal)
JCP	Juris-Classeur Périodique, La semaine juridique, édition générale (journal)
JCP EA	Juris-Classeur, La semaine juridique, édition entreprise et affaires (journal)
JDI	Journal du droit international: Clunet
JIDS	Journal of International Dispute Settlement
JZ	Juristenzeitung (journal)
LA	Liber amicorum
LCIA	London Court of International Arbitration
LCIA Rules	Arbitration Rules of the London Court of International Arbitration
LG	Landesgericht
LJIL	Leiden Journal of International Law
Lloyd's Rep	Lloyd's Law Reports
LoyLa Int'l & Comp. L. Rev	Loyola of Los Angeles International and Comparative Law Review
LPA	Les Petites Affiches (journal)
Mealey's I.A.R.	Mealey's International Arbitration Report
Mich. J. Int'l L.	Michigan Journal of International Law

MAIN ABBREVIATIONS

New York Convention, NYC	1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York)
NJW-RR	NJW-Rechtsprechungs-Report Zivilrecht (reporter)
No/Nos	Number/Numbers (of a report etc)
Nomos	Nomos Verlagsgesellschaft Baden Baden
NoV	Nomiko Vima (journal)
OGH	Oberster Gerichtshof (Austrian Supreme Court)
OLG	Oberlandesgericht (German higher regional court)
OUP	Oxford University Press
p.	page
Pace L. Rev.	Pace Law Review
para/paras	paragraph (s)
Pepp. Disp. Resol. L.J.	Pepperdine Dispute Resolution Law Journal
Prel. Rem.	Preliminary Remarks
QB	Law Reports – Queen’s Bench Division
r/rr	rule/rules
RCDIP	Revue Critique de Droit International Privé (journal)
Rev arb	Revue de l'Arbitrage (journal)
Rev. Bras. Arb.	Revista Brasileira de Arbitragem (journal)
RG	Reichgericht (Supreme Court of the German Reich until 1945)
RGZ	Entscheidungen des Reichgerichts in Zivilsachen (official collection of Supreme Court of the German Reich decisions in civil matters until 1945)
RG	Reichgericht (Supreme Court of the German Reich until 1945)

MAIN ABBREVIATIONS

RGZ	Entscheidungen des Reichgerichts in Zivilsachen (official collection of Supreme Court of the German Reich decisions in civil matters until 1945)
RTD com.	Revue trimestrielle de droit commercial (journal)
s	section
SCC	Stockholm Chamber of Commerce
SCC Rules	Rules of the Arbitration Institute of the Stockholm Chamber of Commerce
SchiedsVZ	Zeitschrift für Schiedsverfahren (German Arbitration Journal)
SIAC	Singapore International Arbitration Centre
SIAC Rules	Rules of the Singapore International Arbitration Centre
SJ	La semaine judiciaire Geneva (journal)
Spec.	Special
SPILA	Swiss Private International Law Act 1987
St. John's Law Rev.	St. John's Law Review
Stan. J. Int'l L.	Stanford Journal of International Law
Stockholm Arb. Rep.	Stockholm International Report
Stockholm Int'l Arb Rev	Stockholm International Arbitration Review
Sup. Ct	Supreme Court
Supp.	Supplement
TDM	Transnational Dispute Management
Tex. Int'l. L. J.	Texas International Law Journal
U.K.	United Kingdom
U. Miami L.Rv	University of Miami Law Review
U.S.	the United States
U.S. FAA	Federal Arbitration Act (U.S.)
UKHL	United Kingdom House of Lords (neutral citation), available at https://www.bailii.org/uk/cases/UKHL/ (last visited June 9, 2020)

MAIN ABBREVIATIONS

UKSC	United Kingdom Supreme Court
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL Model Law	UNCITRAL Model Law on International Commercial Law
<i>v</i>	versus
VIAC	Vienna International Arbitral Centre
VIAC Rules	Rules of the Vienna International Arbitral Centre
WLR	The Weekly Law Reports
YAR	Young Arbitration Review
YCA	Yearbook Commercial Arbitration by ICCA
ZPO	Deutsches Schiedsverfahrensrecht, Zivilprozessordnung (German Code of Civil Procedure)
ZVglIRWiss	Zeitschrift für Vergleichende Rechtswissenschaft (journal)
ZZP	Zeitschrift für Zivilprozess (journal)
ZZPint	Zeitschrift für Zivilprozess International (journal)