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Condifentiality of Arbitral Awards on National, International and Institutional Level

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Abstract

Confidentiality of arbitration is told to be one of the reasons why parties actually choose to arbitrate. The question of whether the arbitral award should remain confidential is however not unified across different jurisdictions. The regulation of this matter varies even when it comes to rules of various arbitration tribunals. Some jurisdictions consider the confidentiality of arbitral award to be an implied obligation derived from the very nature of arbitral process. This article analyses the legal regulation of confidentiality of arbitral awards on various levels while the importance of the publication is presented in the context of the lack of decisional coherence in international arbitration. Further, the resolution of potential conflict of the regulations is analysed. There are good reasons for making awards publicly available. Considering the information society of the 21st century, the fact that the publication of awards is regulated differently in different jurisdictions is a hindrance of parties' legal certainty.

Keywords

Confidentiality in Arbitration; Arbitral Award Confidentiality; Decisional Coherency; Confidentiality in National and International Law; Confidentiality in Institutional Rules; Interest for Publication of Arbitration Awards.

1 Introduction

Publication of arbitral awards is a fundamental prerequisite for decisional consistency and coherency. Problematic point is that publication of awards

contradicts the maxim of arbitrations – confidentiality, which is often said to be an intrinsic attribute of arbitration.[1] Some claim that it is the confidentiality of arbitration that actually attracts parties the most to choose to arbitrate.[2] Others tend to be more conservative and list confidentiality as one of the advantages and assets of arbitration in comparison to state courts.[3] Popularity of arbitration is growing and it would not be much of a surprise that privacy and confidentiality play a crucial role in it. We live in the information society, in which information represents one of the most important assets. Although many say that arbitration is *eo ipso* confidential, it is not *prima facie* evident what confidentiality in this sense is supposed to mean and what is its scope. In different national laws is this matter regulated in a different manner.[4] In other words, there is no common understanding of the confidentiality principle and it is not clear whether the confidentiality principle encompasses also the prohibition of publication of awards.

A great part of the article is of a descriptive nature and its aim is to see whether and to what extent the issue of confidentiality, in particular in regard to arbitral award, is regulated. Based on the analysis of the sources of regulation on international, national, and institutional level, the hypothesis whether the *status quo* of legal regulation is sufficient to ensure a sufficient level of legal certainty to parties who decide to arbitrate shall be verified.

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1 KÖNIG, V. *Präzedenzwirkung internationaler Schiedssprüche*. Berlin: De Gruyter, 2013, p. 56; ЕРОФЕЕВА, Н. М. Подходы к обеспечению конфиденциальности в международном коммерческом арбитраже. *Гуманитарные, социально-экономические и общественныенауки,* 2015, Vol. 11, no. 1, p. 272.

2 LALIVE, P. A. Problèmes relatifs à l'arbitrage international commercial. In: *Recueil des Cours 1967*. Leyde: A. W. Sijthoff, 1969, Vol. 120, p. 573 – *"Il est superflu d'insister sur l'intérêt qu'il y a, pour les parties à des relations commerciales internationales, à maintenir leurs secrets d'affaires, et à ne pas alerter la concurrence* […] *ou le fisc!"*; YVES FORTIER, L. The Occasionally Unwarranted Assumption of Confidentiality. *Arbitration International*. 1999, Vol. 15, no. 2, p. 131; TRAKMAN, L. E. Confidentiality in International Commercial Arbitration. *Arbitration International*. 2002, Vol. 18, no. 1, p. 1; BLACKABY, N., PARTASIDES, C., REDFERN, A., HUNTER, M. *Redfern and Hunter on International Arbitration*. Oxford: Oxford University Press, 2015, p. 30.

3 HAAS, U. Vertraulichkeit im Zusammenhang mit Schiedsverfahren. In: GEIMER, R., SCHÜTZE, R. A. (eds.). *Recht ohne Grenzen: Festschrift für Athanassios Kaissis zum 65. Geburtstag*. München: Otto Schmidt Verlagskontor, 2012, p. 315; CROFT, C., KEE, C., WAINCYMER, J. *A Guide to the UNCITRAL Arbitration Rules*. Cambridge: Cambridge University Press, 2013, p. 467.

4 See also CROFT, C., KEE, C., WAINCYMER, J. *A Guide to the UNCITRAL Arbitration Rules*. Cambridge: Cambridge University Press, 2013, p. 467.

In order to evaluate the level of legal certainty, it is immanent to discuss the potential conflict of the mentioned sources of regulation as for the confidentiality (and publication) of arbitral awards.

2 Confidentiality as an Inherent Principle in Arbitration

It is more of a truism than a truth, as *Fortier* mentions, that arbitrations are private and confidential.[5] The true nature and scope of the confidentiality principle, as well as its formulation as a rule of arbitral procedure are highly contentious.[6] The principle as such, although still being rather fundamental to international arbitration, can no longer be taken for granted.[7] There have been discussions about its place in international arbitration for decades already but we have not managed to move far from what *Fortier* labelled as *"definite lack of consensus"*.[8] In 2016, the United Nations Commission on International Trade Law ("UNCITRAL") stated that there is no uniform approach nor in domestic laws, nor in arbitration rules as for the extent to which the parties in arbitration are obliged to maintain the confidentiality of information regarding the arbitral proceedings.[9] Truth is that in many national and international sources of law of international arbitration there are often no clear rules for confidentiality in detail.[10] From one side there are claims that this shows that it needed no explanations nor discussions as it has been taken for granted (and has not been challenged until

5 YVES FORTIER, L. The Occasionally Unwarranted Assumption of Confidentiality. *Arbitration International*. 1999, Vol. 15, no. 2, p. 131; cf. also Art. 30.1 LCIA Rules, which states that confidentiality is a "general principle", but still the obligation of every subject engaged in the arbitration process is duly described in the Rules.

6 Ibid.

7 BLACKABY, N., PARTASIDES, C., REDFERN, A., HUNTER, M. *Redfern and Hunter on International Arbitration*. Oxford: Oxford University Press, 2015, p. 124.

8 YVES FORTIER, L. The Occasionally Unwarranted Assumption of Confidentiality. *Arbitration International*. 1999, Vol. 15, no. 2, p. 132.

9 UNCITRAL Notes on Organizing Arbitral Proceedings. In: *UNCITRAL* [online]. 2016, p. 17 [cit. 25. 5. 2022]. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/arb-notes-2016-e.pdf. In this sense also TRAKMAN, L. E. Confidentiality in International Commercial Arbitration. *Arbitration International*. 2002, Vol. 18, no. 1, p. 1.

10 KÖNIG, V. *Präzedenzwirkung internationaler Schiedssprüche*. Berlin: De Gruyter, 2013, p. 56.

recently).[11] Inherent confidentiality is generally regarded as an implied duty which is to be assumed and preserved as an essential corollary of the privacy of arbitral proceedings and prohibition to disclose the award.[12] On the other hand it could also be concluded that the lack of explicit norms implies the inexistence of obligation to confidentiality. The lack of the default settings in favour of confidentiality poses a risk that one of the parties could disclose the award or other documents to third parties or to the media.[13]

In either case, the lack of international consensus on the exact place of confidentiality in arbitration is basically an obstacle to the foreseeability of protection of confidentiality on the global level and may also cause a decline in popularity of international arbitration as such.[14] Parties that have not agreed expressly on confidentiality or have not agreed to apply arbitration rules which expressly address the issue of confidentiality cannot assume confidentiality which would be recognised as an implied commitment to confidentiality. *Trakman* stated already twenty years ago that international organisations and domestic legislatures were developing laws to govern arbitral confidentiality.[15] The fact that even now many national systems do not provide for (in)existence of confidentiality in arbitration is rather pitiful. If it was explicitly stated in national laws that there is no confidentiality by default, the parties would be much more likely aware of the fact and would more probably act accordingly in their arbitration agreements.

11 Cf. YVES FORTIER, L. The Occasionally Unwarranted Assumption of Confidentiality. *Arbitration International*. 1999, Vol. 15, no. 2, p. 132; cf. also KÖNIG, V. *Präzedenzwirkung internationaler Schiedssprüche*. Berlin: De Gruyter, 2013, p. 56, including the references in fn. 268.

12 KURKELA, M. S., TURUNEN, S. *Due Process in International Commercial Arbitration*. Oxford: Oxford University Press, 2010, p. 137.

13 Ibid.

14 Cf. LOH, Q. S. O., LEE, E. P. K. *Confidentiality in Arbitration: How Far Does It Extend?* Singapore: Academy Publishing, 2007, p. 85.

15 TRAKMAN, L. E. Confidentiality in International Commercial Arbitration. *Arbitration International*. 2002, Vol. 18, no. 1, p. 2.

3 Privacy, Confidentiality and Their Scope

It is important to distinguish between the notion of privacy of arbitration proceedings and the confidentiality thereof.[16] Privacy means that the actual arbitral proceedings are held privately.[17] The hearing is private, i.e., attendance is limited to the arbitrator, the parties and their representatives and witnesses, both of fact and of opinion.[18] The public has access neither to the information of the proceeding taking place[19], nor is it possible for anybody to be present at a hearing except for the parties to the dispute. On the other hand, confidentiality standardly means that the documents used in (and resulting from) arbitration, including evidence and award, are not made available to the public.[20] Some authors use the term confidentiality to describe both privacy and confidentiality *stricto sensu* as explained above.[21]

16 The judge *Collin* in the case *John Forster Emmott vs. Michael Wilson & Partners Limited* distinguished three different legal principles in arbitration. The first principle is privacy. The second is the inherent confidentiality of the information contained in documents, such as trade secrets or other confidential information generated or deployed in an arbitration. And the third principle relates to all other documents in arbitration not falling under the scope of the second principle, i.e., which do not contain any confidential information, but the parties are under an obligation not to use those documents for any purpose other than arbitration. – Cf. Judgment of the England and Wales Court of Appeal (Civil Division), UK, of 12 March 2008, *John Forster Emmott vs. Michael Wilson & Partners Ltd.*, Case [2008] EWCA Civ 184. In: *British and Irish Legal Information Institute* [online]. Para. 79 [cit. 24. 4. 2022]. Available at: https://www.bailii.org/ew/cases/EWCA/Civ/2008/184.htm

17 HAAS, U. Vertraulichkeit im Zusammenhang mit Schiedsverfahren. In: GEIMER, R., SCHÜTZE, R. A. (eds.). *Recht ohne Grenzen: Festschrift für Athanassios Kaissis zum 65. Geburtstag*. München: Otto Schmidt Verlagskontor, 2012, p. 315; Despite this generally accepted conception of privacy, it is not an exception that the two notions are mixed together, cf. Art. 1 Appendix II of ICC Rules.

18 STEPHENSON, D. S. *Arbitration Practice in Construction Contracts*. Oxford: Blackwell Science, 2001, p. 87.

19 Some classify the fact that the arbitration is taking place to confidentiality rather than privacy. – Cf., e.g., CROFT, C., KEE, C., WAINCYMER, J. *A Guide to the UNCITRAL Arbitration Rules*. Cambridge: Cambridge University Press, 2013, p. 467.

20 It may also cover the identity of the arbitrators.

21 See KURKELA, M. S., TURUNEN, S. *Due Process in International Commercial Arbitration*. Oxford: Oxford University Press, 2010, pp. 136 ff.

The two notions were not distinguished in the past[22], but nowadays[23] both of them are given the above mentioned particular meaning.

The obligation of confidentiality imposed on parties and arbitral bodies may vary with the circumstances of the case (parties may agree on the confidentiality regime by contract) as well as the applicable arbitration law and arbitration rules.[24] The same applies for privacy. Generally, privacy tends to be accepted as an inherent principle of arbitration to a much greater extent than confidentiality.[25]

The most legal orders as well as statues of arbitral institutions are rather reticent as to the existence of privacy obligation, *a fortiori* as to the question whether the general privacy principle immanently implies the confidentiality obligation, i.e., the imperative not to publish or discuss in public the arbitral award.[26] The decisional practice has, however, demanded the question to be,

22 Cf. Judgment of the High Court of Justice of England and Wales (Queen's Bench Division, Commercial Court), UK, of 26 June 1984, *Oxford Shipping vs. Nippon Yusen Kaisha*, Case [1984] 2 Lloyd's Rep. 373. In: *Trans-lex.org* [online]. [cit. 24. 4. 2022]. Available at: https://www.trans-lex.org/302940/_/oxford-shipping-v-nippon-yusen-kaisha-%5B1984%5D-2-lloyd%27s-rep-373/

23 Cf. Judgment of the Court of Appeal (Civil Division), UK, of 21 March 1990, *Dolling-Baker vs. Merrett*, Case [1990] 1 W.L.R. 1205. In: *Practical Law* [online]. [cit. 24. 4. 2022]. Available at: https://uk.practicallaw.thomsonreuters.com/D-016-8129?transitionType=Default&contextData=(sc.Default)&firstPage=true, in which it was concluded that the two notions are different, but also that privacy implies confidentiality. In a different way it was decided in the Judgment of the High Court of Australia of 7 April 1995, *Esso Australia Resources Ltd. and others vs. The Honorable Sidney James Plowman (The Minister for Energy and Minerals)*, Case (1995) 128 ALR 391. In: *High Court of Australia* [online]. [cit. 24. 4. 2022]. Available at: https://staging.hcourt.gov.au/assets/publications/judgments/1995/013--ESSO_AUSTRALIA_RESOURCES_LTD_AND_OTHERS_v_THE_HONOURABLE_SIDNEY_JAMES_PLOWMAN_AND_OTHERS--(1995)_128_ALR_391.html

24 UNCITRAL Notes on Organizing Arbitral Proceedings. In: *UNCITRAL* [online]. 2016, p. 18 [cit. 25. 5. 2022]. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/arb-notes-2016-e.pdf

25 ONYEMA, E. *International Commercial Arbitration and the Arbitrator's Contract*. New York: Routledge, 2010, p. 141 – *"It is now acknowledged that the international commercial arbitral process is private but not necessarily confidential."* See also BLACKABY, N., PARTASIDES, C., REDFERN, A., HUNTER, M. *Redfern and Hunter on International Arbitration*. Oxford: Oxford University Press, 2015, pp. 124–125; DIMOLITSA, A. Institutional Rules and National Regimes Relating to the Obligation of Confidentiality on Parties in Arbitration. In: *ICC Digital Library* [online]. 2009, p. 6 [cit. 25. 5. 2022]. Available at: https://library.iccwbo.org/

26 Cf. KÖNIG, V. *Präzedenzwirkung internationaler Schiedssprüche*. Berlin: De Gruyter, 2013, p. 57.

at least partly, enlightened. Arbitration parties may turn to the arbitrator and request him to rule on an issue of confidentiality, i.e., if the award in question can be discussed in public or even published as such.[27] Also it can be a court who has power to decide upon this question.[28] It will be shown in the following parts of the text how this issue has been handled in the rulings of the international arbitral institutions as well as in the national systems.

4 Interest for Publication of Arbitral Awards

Disclosure of arbitral awards can foster coherence in jurisprudence and in that way contribute to legal certainty and predictability as well as to enhance the overall confidence in arbitration mechanism as such. General confidentiality of arbitration awards causes that there is basically no guidance from previous awards, which in turn causes lack of decisional coherency. On the other hand, investment arbitral tribunals consider previous awards. That does not mean they feel bound by their previous decisions like in the system of common law precedence *(stare decisis)*. They try to maintain the coherence while acknowledging the lack of binding force of former decisions.[29]

It is not a rare case that there are two cases with practically the same factual situation, possibly governed by the same substantive law, and in spite of this decided in a different manner by arbitral bodies. Often times it is the lack of transparency that causes the disharmony.[30] Decisional coherence is surely not the only justification for consideration of arbitral awards publication but

27 TRAKMAN, L. E. Confidentiality in International Commercial Arbitration. *Arbitration International*. 2002, Vol. 18, no. 1, p. 3.

28 Cf. Judgment of the New South Wales Court of Appeal, Australia, of 27 June 1995, *Commonwealth of Australia vs. Cockatoo Dockyard Pty Ltd.*, Case [1995] 36 N.S.W.L.R. 662. In: *New South Wales Law Reports* [online]. [cit. 24. 4. 2022]. Available at: https://nswlr.com.au/view/36-NSWLR-662

29 VADI, V. *Analogies in International Investment Law and Arbitration*. Cambridge: Cambridge University Press, 2015, p. 186; It is also worth mentioning that while in commercial arbitration the third parties are generally excluded from the proceeding, in investment arbitration there have been cases where they participated in the case as *amici curiae*.

30 There are, however, cases which despite of certain level of transparency of arbitral outcomes (e.g., partial awards) have been decided differently. Example of this can be the *CMS vs. Argentina* case on one hand and *LG&E vs. Argentina* on the other hand. – Award of 25 May 2005, *CMS Gas Transmission Company vs. The Republic of Argentina*, ICSID Case No. ARB/01/8; Award of 3 October 2006, *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. vs. The Republic of Argentina*, ICSID Case No. ARB/02/1, Decision on Liability.

in our eyes it is one of the most important ones. Publication of awards can be seen as a *sine qua non condition* for edification of *jurisprudence constante*.

For arbitral awards to have a factual precedent effect there are several conditions which have to be fulfilled apart from previous decisions being available. First of all, decisions have to state clear grounds. There is no point in publishing awards which do not state grounds on which the conclusions have been made. Most of the time arbitral rules provide that the awards should state clear grounds. Such is the case of ICC Rules of Arbitration[31], DIS-Schiedsgerichtsordnung[32] or also ICSID Convention[33]. Apart from that it is also fundamental that arbitrators also actually refer to the older decisions, so that the coherency is factually ensured.

5 Confidentiality in Rules of Investment Arbitration Institutions

Investment arbitration must be distinguished from commercial arbitration. The former takes place in the resolution of disputes between an investor and a state hosting the investment. It is mainly conducted by the International Centre for Settlement of Investment Disputes ("ICSID"). Its procedure is somewhat different from that of commercial arbitration. Indeed, it tends to follow the principle of transparency in the name of protection of public interest, which is according to *Lazareff* the only exception to the principle

Similar situation was in cases *Lauder vs. Czech Republic* and *CME vs. Czech Republic*. – Final Award of 3 September 2001, UNCITRAL Arbitration Proceedings in London, *Lauder vs. Czech Republic*. In: *Italaw.com* [online]. [cit. 24. 4. 2022]. Available at: https://www.italaw.com/sites/default/files/case-documents/ita0451.pdf; Partial Award of 13 September 2001, UNCITRAL Arbitration Proceedings in Stockholm, *CME Czech Republic B.V. (The Netherlands) vs. The Czech Republic*. In: *Italaw.com* [online]. [cit. 24. 4. 2022]. Available at: https://www.italaw.com/sites/default/files/case-documents/ita0178.pdf; More closely cf. DOUGLAS, Z. Can a Doctrine of Precedent Be Justified in Investment Treaty Arbitration? *ICSID Review – Foreign Investment Law Journal*. 2010, Vol. 25, no. 1, pp. 109–110.

31 Art. 32 para. 2 ICC Rules of Arbitration – *"The award shall state the reasons upon which it is based."*

32 Art. 39 para. 1 point ii) 2018 DIS-Schiedsgerichtsordnung – *"Each arbitral award shall* […] *state* […] *the reasons upon which it is based, unless the parties have agreed that reasons need not be given…"*

33 Art. 48 para. 3 ICSID Convention – *"The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based."*

of confidentiality.[34] As investment arbitration concerns state interests, many recent arbitration rules provide for greater transparency. While the publication of commercial arbitration awards is rare, in investment arbitration it seems to be perceived in a much more generous way. As a proof of this tendency may also serve the UNCITRAL Transparency Rules[35]. According to Article 3 of this soft-law document the notice of arbitration, the response to the notice of arbitration, the statement of claim, the statement of defence, and most importantly, all orders, decisions and awards of the arbitral tribunal should be made publicly available as far as investment arbitration is concerned.

In the case of ICSID, which is trying in this regard to catch more or less the suggestions mentioned in the soft-law document, all its awards are published and a register of current and past arbitrations is kept. Article 48 para. 5 of the ICSID Convention states that *"the Centre shall not publish the award without the consent of the parties"*. Notwithstanding this prima facie rigid provision, the ICSID Convention is complemented by the Rules of Procedure for Arbitration Proceedings adopted by the Administrative Council of the ICSID Centre pursuant to Article 6 para. 1 letter c) of the ICSID Convention. Arbitration Rule 48 para. 4 stipulates that although *"the Centre shall not publish the award without the consent of the parties*[, it] […] *shall, however, promptly include in its publications excerpts of the legal reasoning of the Tribunal"*.[36]

Besides the normative regulation about the publication of parts of ICSID awards, there is also a numerous decisional practice when it comes to the principle of confidentiality from the side of the parties. An important ICSID ruling which should be mentioned as first is the *Biwater Gauff vs. Tanzania*, in which it has been stated that *"in the absence of any agreement between the parties* […], *there is no provision imposing a general duty of confidentiality in ICSID arbitration, whether in the ICSID Convention, any of the applicable Rules or otherwise* […], *however, there is [also] no provision imposing a general rule of transparency*

34 LAZAREFF, S. Confidentiality and Arbitration: Theoretical and Philosophical Reflections. In: *ICC Digital Library* [online]. 2009, p. 90 [cit. 25. 5. 2022]. Available at: https://library.iccwbo.org/

35 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

36 The ICSID decision database is available on ICSID official website on the Internet. Similarly, the Financial Industry Regulatory Authority (FINRA), which has a monopoly on financial investment disputes between investors and securities firms, systematically publishes its arbitration awards on its official website on the Internet as well.

or non-confidentiality in any of these sources."[37] In a similar way decided ICSID the dispute in *Loewen vs. United States* case, rejecting *"that each party is under a general obligation of confidentiality in relation to the proceedings"* and stating *"that in an arbitration under NAFTA, it is not to be supposed that, in the absence of express provision, the Convention or the Rules and Regulations impose a general obligation on the parties, the effect of which would be to preclude a Government (or the other party) from discussing the case in public, thereby depriving the public of knowledge and information concerning government and public affairs."*[38] The arbitral tribunal in the *World Duty Free vs. Kenya* case stated similarly that *"… unless the agreement between the Parties includes* […] *a* [relevant] *restriction, each of them is* […] *free to speak of the arbitration."* Emphasizing the peculiarities of investor-state arbitration, it expressed its views in a very pertinent manner on the confidentiality stating that *"especially in an arbitration to which a Government is a Party, it cannot be assumed that the Convention and the Rules incorporate a general obligation of confidentiality which would require the Parties to refrain from discussing the case in public".*[39]

6 Confidentiality in Rules of Commercial Arbitration Institutions

As for commercial arbitration, here the rules of arbitral institutions have a tendency to be much more reluctant towards publication of awards. London Court of International Arbitration ("LCIA") Rules provide for general obligation of confidentiality (Article 30 para. 1). Disclosure is permitted, however, if it is a party's legal duty or if it is required to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority.[40] Article 30 para. 3

37 Procedural Order No. 3 of 29 September 2006, *Biwater Gauff (Tanzania) Ltd. vs. United Republic of Tanzania*, ICSID Case No. ARB/05/22, para. 121.

38 Decision on Hearing of Respondent's Objection to Competence and Jurisdiction of 5 January 2001, *Loewen Group, Inc., and Raymond L. Loewen vs. United States of America*, ICSID Case No. ARB(AF)/98/3, para. 26.

39 Decision on a Request by the Respondent for a Recommendation of Provisional Measures of 25 April 2001, *World Duty Free Co Ltd. vs. The Republic of Kenya*, ICSID Case No. ARB/00/7, para. 16.

40 This exception is a mirrored conclusion of the Judgment of the High Court of Justice of England and Wales (Queen's Bench Division, Commercial Court), UK, of 22 December 1992, *Hassneh Insurance Co. of Israel vs. Mew*, Case [1993] 2 Lloyd's Rep 243. *Practical Law* [online]. [cit. 24. 4. 2022]. Available at: https://uk.practicallaw.thomsonreuters.com/D-016-8131?transitionType=Default&contextData=(sc.Default)

of LCIA Rules explicitly states that *"the LCIA does not publish any award or any part of an award without the prior written consent of all parties and the Arbitral Tribunal"*. Similarly it is in the case of China International Economic and Trade Arbitration Commission ("CIETAC") Rules.[41] The International Bar Association ("IBA") Rules of Ethics (which are not a binding instrument as such, but can be applied if their application is agreed upon by the parties) also prohibit any publication of awards without explicit consent of the parties.[42] Similarly, according to the Administered Arbitration Rules of the Hong Kong International Arbitration Centre, the publication, disclosure or communication of any information relating to an award made in the arbitration is not allowed, unless otherwise agreed by the parties.[43] When it comes to the World Intellectual Property Organization ("WIPO") Arbitration Rules, they provide for confidentiality by default, unless the parties agreed otherwise or the award falls into the public domain as a result of an action before a national court or other competent authority. Apart from that WIPO Rules also think about the case when the publication of the award is necessary in order to comply with a legal requirement imposed on a party or in order to establish or protect a party's legal rights against a third party (Article 77 para. 3). Presence of this provision in the case of WIPO Rules has a very good reason as will be explained later.

Detailed regulation of confidentiality in commercial arbitration was elaborated by ICC International Court of Arbitration. The ICC decided to take the opposite approach from most of the other commercial arbitration institutions and introduce greater transparency into its arbitration. In principle, ICC publishes entire arbitral final awards, as well as any other award and dissenting or concurring opinion made in the case with the aim

41 Art. 33 para. 2 CIETAC Arbitration Rules – *"… the parties and their representatives, the arbitrators, the witnesses, the interpreters, the experts consulted by the arbitral tribunal, the appraisers appointed by the arbitral tribunal and other relevant persons shall not disclose to any outsider any substantive or procedural matters relating to the case."*

42 IBA Rules of Ethics for International Arbitrators 1987 – *"The deliberations of the arbitral tribunal, and the contents of the award itself, remain confidential in perpetuity unless the parties release the arbitrators from this obligation."*

43 Art. 45.1 letter b) 2018 Hong Kong International Arbitration Centre Administered Arbitration Rules.

to create guidance for the benefit of lawyers and arbitrators.[44] Access to the ICC decision database is available in partnership with *Jus Mundi*[45], which is the search engine for international law and arbitration. All publishable ICC International Court of Arbitration awards and related documents made as of 1 January 2019 are fully available for the public no less than two years after the date of said notification, as regulated in Article 58 of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration from 1 January 2021.[46] *Mourre*, former President of the ICC International Court of Arbitration, states that *"the increased availability of awards will contribute to improve the quality of ICC arbitration as much as to strengthen the legitimacy of arbitration in general."*[47]

The publication of ICC arbitral awards and related documents includes the names of the parties and of the arbitrators. On the other hand, according to the Article 59 of the Note to Parties and Arbitral Tribunals from 1 January 2021, any party at any time before publication may object to publication or require that any award and related documents be in all or part anonymised or pseudonymised (replacement of any name by one or more artificial identifiers or pseudonyms). In case of a confidentiality agreement, order or explicit provisions under the law of the place of arbitration the publication of certain aspects of the arbitration or of the award will be subject to the parties "specific consent".[48] The Secretariat is empowered, in its discretion, to exempt any ICC awards and related documents from publication (Article 62 of the Note to Parties and Arbitral Tribunals). Moreover, according to the Article 1 para. 5 of the Appendix II to the Rules

44 BLACKABY, N., PARTASIDES, C., REDFERN, A., HUNTER, M. *Redfern and Hunter on International Arbitration*. Oxford: Oxford University Press, 2015, p. 129.

45 Latest ICC arbitral awards published on *Jus Mundi* webpage on the Internet.

46 Art. 58 Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration. In: *ICC International Court of Arbitration* [online]. P. 10 [cit. 25. 5. 2022]. Available at: https://iccwbo.org/content/uploads/sites/3/2020/12/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration-english-2021.pdf

47 MOURRE, A. A Unique Partnership for the Publication of ICC Arbitral Awards. In: *International Chamber of Commerce* [online]. [cit. 25. 5. 2022]. Available at: https://jusmundi.com/en/partnership/icc

48 Art. 60 Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration. In: *ICC International Court of Arbitration* [online]. P. 11 [cit. 25. 5. 2022]. Available at: https://iccwbo.org/content/uploads/sites/3/2020/12/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration-english-2021.pdf

of Arbitration of the International Chamber of Commerce[49] *"the President or the Secretary General of the Court may authorize researches undertaking work of an academic nature to acquaint themselves with awards and other documents of general interest, with the exception of memoranda, notes, statements and documents remitted by the parties within the framework of arbitration proceedings."*

7 Confidentiality in National Laws

Generally speaking, it is quite rare for national laws to explicitly regulate confidentiality in arbitration. National laws usually do not prescribe obligatory publication of awards but they do not forbid such publication of arbitration awards either. Unfortunately, as will be shown, national laws do not always provide for confidentiality *expressis verbis*, but they rather rely on judicial practice to deduce the confidentiality principle from other maxims of international arbitration. The UNCITRAL Model Law which should serve as a template for national laws does not contain any provisions in this regard either. Paradoxically, UNCITRAL Arbitration Rules do not provide for confidentiality either, as the Working Group considered that the matter is to be dealt with in the applicable law rather than the Rules.[50] According to some scholars UNCITRAL missed an opportunity to bring a degree of harmonisation to practice of confidentiality in international arbitration.[51] Most countries do not see in principle of privacy (which is widely accepted) an implied obligation to confidentiality. For example, the Swedish Supreme Court in *Bulgarian Foreign Trade Bank Ltd vs. AI Trade Finance Inc* held that there was no implied duty of confidentiality in arbitrations and that the Swedish law does not make arbitration proceedings secret unless the parties contract for secrecy.[52]

49 Rules of Arbitration of the International Chamber of Commerce, in force as from 1 March 2017, Appendix II: Internal Rules of the International Court of Arbitration.

50 CROFT, C., KEE, C., WAINCYMER, J. *A Guide to the UNCITRAL Arbitration Rules*. Cambridge: Cambridge University Press, 2013, p. 193.

51 BROWN, J. C. P. The Protection of Confidentiality in Arbitration Balancing the Tensions Between Commerce and Public Policy. *In: London Metropolitan University* [online]. 2021, p. 40 [cit. 25. 5. 2022]. Available at: http://repository.londonmet.ac.uk/6685/1/Brown-Julian-Christopher-Patric_Final-Submission_26Feb2021.pdf

52 Judgment of the Swedish Supreme Court (Högsta domstolen), Sweden, of 27 October 2000, *Bulgarian Foreign Trade Bank vs. A. I. Trade Finance Inc.*, Case No. T 1881-99 (2000). In: *lagen.nu* [online]. [cit. 24. 4. 2022]. Available at: https://lagen.nu/dom/nja/2000s538

Neither arbitral rules nor party agreements can derogate the cogent norms of applicable national law.[53] In general, it is the law of the seat of the arbitration that shall be applicable to the question of confidentiality, at least when it comes to the publication of an award from the side of the arbitral body itself.[54] Other than that it seems reasonable to consider applicable the law of the place in which disclosure is sought to be enforced or prevented, as the award turns with its publication to an ubiquitous phenomenon.[55] It is, however, understandable that application of mandatory rules of *lex fori* might present themselves more as a rule than an exception in this regard. National laws may require to make the award publicly available due to disclosure obligations incumbent on publicly traded companies or also, for example, in the course of collateral litigation (such as setting aside or enforcement proceedings).[56] Or more generally speaking, owing to prevailing public interest.[57] Also tax officials, police and security trading or banking supervision agencies may have a legal interest to have access to the content of awards.[58] It is obvious that there are various levels to which the confidentiality can be attenuated. Whilst police having access to the award is unquestionably

53 See GUSY, M. F., HOSKING, J. M., SCHWARZ, F. T. *A Guide to the ICDR International Arbitration Rules*. New York: Oxford University Press, 2011, pp. 24–25; cf. also Art. 27 para. 4 International Centre for Dispute Resolution (ICDR) Rules; Art. 30.1 LCIA Rules.

54 Cf. Award of 24 October 2012, *The Louis Berger Group Inc. / Black & Veatch Special Projects Corp. Joint Venture vs. Symbion Power LLC*, ICC Case No. 16383/VRO, para. 656. – *"… in the absence of an agreement between the Parties providing for the confidentiality of the award, it should look first to the law of the seat of the arbitration, French law."*

55 Cf. TRAKMAN, L. E. Confidentiality in International Commercial Arbitration. *Arbitration International*. 2002, Vol. 18, no. 1, p. 4.

56 See GUSY, M. F., HOSKING, J. M., SCHWARZ, F. T. *A Guide to the ICDR International Arbitration Rules*. New York: Oxford University Press, 2011, p. 241; The example of a case where the award was disclosed by US District Court within an enforcement procedure of Award of 31 March 1986, *Liberian Eastern Timber Corporation vs. Republic of Liberia*, ICSID Case No. ARB/83/2.

57 Judgment of the High Court of Australia of 27 June 1995, *Commonwealth of Australia vs. Cockatoo Dockyard Pty Ltd.*, Case [1995] 36 N.S.W.L.R. 662. In: *NSW Law Reports* [online]. [cit. 24. 4. 2022]. Available at: https://nswlr.com.au/view/36-NSWLR-662 – *"it is both significant and urgent that the material should be made available, for the protection of public health and the restoration of the environment* […] *Where one of those parties is a government, or an organ of government, neither the arbitral agreement nor the general procedural powers of the arbitrator will extend so far as to stamp on the governmental litigant a regime of confidentiality or secrecy which effectively destroys or limits the general governmental duty to pursue the public interest."*

58 KURKELA, M. S., TURUNEN, S. *Due Process in International Commercial Arbitration*. Oxford: Oxford University Press, 2010, p. 137.

a limitation to confidentiality, it is far from the award being publicly available for a factual precedent-like coherent decision-making system to be built upon it. And, on the contrary, it can also happen that national law renders certain information concerning a nationalised company confidential due to its national interests.[59]

In general, proceedings before arbitration courts are preferred to proceedings before national courts. This is particularly true in cases when parties are interested in protecting their trade secrets and when they intend to preserve the principle of confidentiality. However, this protection could be granted by national courts as well. For example, in the Russian Federation the national court hearings held in camera are allowed not only when, e.g., protecting the state secret, but also according to the Article 11 para. 2 of the Commercial Procedure Code, on request of a party to the proceeding. This request should refer to the need to preserve commercial, official or other secrets protected by law.[60] The party requesting a court hearing held in camera should prove the existence of necessity to preserve commercial, official or other secrets. The court is not obliged to grant a party's request and as a rule, parties shall be denied a hearing held in camera in the procedure for the recognition and enforcement of international commercial arbitration awards.[61]

Unlike national courts, which are fully established and regulated by national law, including the rules of procedure and the question of confidentiality, the arbitral courts have a different nature. They do not hold a form of a governmental body or organisation, but they are more like an institution formed by the parties to resolve a dispute between them. However, in the law on arbitration the State expresses its consent that arbitration awards are capable of producing legal effects within its jurisdiction.[62]

There are two types of national arbitration legislations – the dualist one and the one with the monistic approach. The dualist countries have a separate

59 TRAKMAN, L. E. Confidentiality in International Commercial Arbitration. *Arbitration International*. 2002, Vol. 18, no. 1, p. 4.

60 Russian Federation. Art. 11 para. 2 Act No. 95-FZ, Commercial Procedure Code.

61 МАХРИНА, М. Г. Принцип конфиденциальности в международном коммерческом арбитраже. *Сфераправа*. 2020, no. 1, p. 31.

62 БАХИН С. В. Преюдиция: государственные суды и международные коммерческие арбитражи (соотношение государственной и третейской юрисдикций). *Журнал международного частного права*. 2015, no. 3, p. 46.

legislation for international and national arbitration, whilst the monistic ones prefer to have single arbitration rules for both of them. Without making reference to any particular legal order, we can define international arbitration as the one giving rise to the question of determination of its legal framework,[63] or more commonly in a narrower sense, the one in which interests of international business are at stake.[64]

For instance, in the Russian Federation there is the dualist type of national arbitration legislation regulating separately both international and national arbitration. The principle of confidentiality of arbitration is explicitly enshrined in the Articles 18 and 22 of the Federal Law No 102-FZ On Arbitration Courts in the Russian Federation of 24 July 2002. The arbitrator is not allowed to disclose information learned during the arbitration proceedings without the consent of the parties or their legal successors. Moreover, the arbitrator may not be questioned as a witness about any information that became known to him during the arbitration proceedings.[65] In contrast, the Russian Federal Law No 5338-I On International Commercial Arbitration of 7 July 1993 does not explicitly contain the request to observe the principle of confidentiality, but this principle is said to stem from theory and practice.[66] On the contrary, French practice shows that, although French law represents the dualist theory too and as well as Russian law provides for the presence of confidentiality principle in national[67] arbitration, the law being quiet about confidentiality principle in the case of international arbitration means that there is no general rule or presumption of confidentiality in such arbitration that would indicate that the final award should be presumed

63 LIMA PINHEIRO, L. de. *Estudos de Direito da Arbitragem*. Lisboa: AAFDL Editora, 2022, p. 281.

64 Cf. ibid., p. 282.

65 Russian Federation. Art. 22 Act No. 102-FZ, on Arbitration Courts in Russian Federation.

66 СКВОРЦОВ, О. Ю. Принцип конфиденциальности третейского разбирательства и его соотношение со смежными институтами публичного права. *Вестник Санкт-Петербургского Университета*. 2014, Vol. 14, no. 4, p. 182.

67 France. Art. 1464-4 Act No. 75-1123, Code of Civil Procedure – *"Sous réserve des obligations légales et à moins que les parties n'en disposent autrement, la procedure arbitrale est soumise au principe de confidentialité."*

to be confidential.[68] Every state can choose to regulate confidentiality arbitrarily, as there is no international instrument which would regulate this matter, and states are free to differentiate in this regard between national internal arbitrations and the international ones.[69]

On the other hand, the principle of confidentiality in arbitration proceedings in the Russian Federation is not absolute and might be revealed by national court. In the court proceeding the court at the request of a party to the proceeding might petition from an arbitration institution or from an institution authorised to store the arbitration case materials, in accordance with the legislation of the Russian Federation the case material for which an enforcement order is sought.[70]

In addition, public procurement is subject to a special regime in the Russian Federation that excludes the principle of confidentiality in arbitration, including the publication of arbitral awards. In 2014 the Russian Higher Commercial Court in the decision No 11535/13 dealt with the question if the public procurement could be a subject of arbitration proceedings and the details of this arbitration proceeding, including the arbitral awards,

68 Award of 24 October 2012, *The Louis Berger Group Inc. / Black & Veatch Special Projects Corp. Joint Venture vs. Symbion Power LLC*, ICC Case No. 16383/VRO, para. 656. The decisional practice has not, however, been consistent in this regard. In the *Aïta vs. Ojjeh* case – Judgment of the Court of Appeal of Paris (Cour d'Appel de Paris), France, of 18 February 1986, *Aïta vs. Ojjeh*. In: *Revue de l'Arbitrage*, 1986, pp. 583 ff., the party which sought in France nullification of award made in England, was imposed a significant penalty against by Court of Appeal of Paris, because the court held that the proceedings violated the principle of confidentiality, emphasising that the action *"caused a public debate of facts which should remain confidential,"* and that *"the very nature of arbitral proceedings [requires] that they ensure the highest degree of discretion in the resolution of private disputes, as the two parties had agreed."* – cit. according to BROWER, C. N., SMUTNY, A. C. Recent Decisions Involving Arbitral Proceedings. *The International Lawyer*. 1996, Vol. 30, no. 2, p. 283. On the contrary, in the case *Nafimco vs. Forster Wheeler Trading Company* (Judgment of the Court of Appeal of Paris (Cour d'Appel de Paris), France, of 22 January 2004, *Nafimco vs. Forster Wheeler Trading Company*. In: *Revue de l'Arbitrage*, 2004, pp. 647 ff.) the court found that as the party failed to prove *"the existence and foundation of* […] [confidentiality] *duty in French international arbitration law"*, it cannot be implied by default (cf. also BLACKABY, N., PARTASIDES, C., REDFERN, A., HUNTER, M. *Redfern and Hunter on International Arbitration*. Oxford: Oxford University Press, 2015, p. 130).

69 Other dualist states are for example Switzerland, Greece, Ireland or Denmark. Monist are, e.g., Germany, Austria, Spain or Czech Republic.

70 Russian Federation. Art. 238 para. 2 Act No. 95-FZ, on Commercial Procedure Code of the Russian Federation.

could be protected against disclosure by the principle of confidentiality.[71] The Public Procurement Act does not contain any provision regulating that contracting parties are not allowed to resolve their disputes in arbitration. However, the Court stated in its reasoning that relations in the field of public procurement are characterised by particular public importance. The main purpose of contracting in the field of public procurement is ultimately to meet public needs, contracts must not only be concluded but also executed in compliance with the principles of openness and transparency, ensuring competition and prevention and counteraction of corruption. All phases of legal relationship, including the conclusion, performance, termination and application of liability for non-performance or improper performance, must be fully transparent. Principles of arbitration proceedings, including the principle of confidentiality, proceedings in camera, informal nature of the proceedings, simplified procedure for collecting and presenting evidence, lack of information about the decisions made, and the impossibility of checking and reviewing their merits, do not meet the objectives for which the public procurement system was introduced.

Regarding the publicly available awards, the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation enables publication of arbitral awards and judgments when agreed by the Presidium under conditions, that the names of the parties and other identifying information which might prejudice the legitimate interests of the parties are deleted.[72]

In the United States the publication of arbitral awards is not forbidden in general since the Federal Arbitration Act nor the Uniform Arbitration Act does not contain any special provision in this regard.[73] Unless agreed otherwise by the parties (or without having adopted a set of arbitration rules containing a pertinent confidentiality provision), there is no obligation

71 Decision of the Presidium of the Highest Commercial Court of the Russian Federation of 28 January 2014, Case No. 11535/13. In: *Garant.ru* [online]. [cit. 25. 5. 2022]. Available at: https://base.garant.ru/70661280/

72 Art. 46 para. 4 Rules of Arbitration of International Commercial Disputes to the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation.

73 Cf. BLACKABY, N., PARTASIDES, C., REDFERN, A., HUNTER, M. *Redfern and Hunter on International Arbitration*. Oxford: Oxford University Press, 2015, p. 128.

to confidentiality.[74] However, some states in the US have adopted special regulation in this matter. The Civil Procedure of North Carolina (USA) contains the following rule: *"Unless otherwise agreed by the parties, or required by applicable law, the arbitral tribunal and the parties shall keep confidential all matters relating to the arbitration and the award"*.[75]

Another example of a country, where confidentiality is considered as an inherent principle to arbitration, is New Zealand. Confidentiality of arbitral awards is granted by national legislation there. The New Zealand Arbitration Act defines confidential information as *"information that relates to the arbitral proceedings or to an award made in those proceedings"*. Any award of the arbitral tribunal is considered as an inherent part of confidential information.[76] At the same time every arbitration agreement, unless otherwise agreed by the parties, is deemed to provide that the parties and the arbitral tribunal must not disclose confidential information, i.e., including the arbitral award.[77]

Adopting those provisions in New Zealand was most likely a reaction to the decision of the High Court of Australia of 7. 4. 1995 in *Esso Australia Resources vs. Plowman and Others* where the Court ruled on the privacy of arbitration proceedings, confidentiality of documents and information and limitation of this confidentiality. The Court refused to protect confidentiality of documents produced in those proceedings, including the award and reasons for the award. Furthermore, the Court held that in Australia there is neither a general obligation requiring confidentiality about arbitration proceedings nor any obligation to maintain confidentiality

74 Cf. Judgment of the United States District Court, Southern District of New York, USA, of 17 April 2003, *Contship Container lines Ltd vs. PPG Industries Inc.*, Case 2003 US Dist. 6857. In: *Casetext.com* [online]. [cit. 24. 4. 2022]. Available at: https://casetext.com/case/contship-containerlines-ltd-v-ppg-industries; Judgment of the United States District Court, Southern District of New York, USA, of 1987, *Giacobassi Grandi Vini SpA vs. Renfield Corporation*, Case US Dist. LEXIS 1783 (1987); Judgment of the United States District Court, Southern District of New York, USA, of 1 April 1984, *Industrotech Constructors Inc. vs. Duke University*, Case 67 NC App. 741, 314 S.E.2d 272 (1984). In: *Casetext.com* [online]. [cit. 24. 4. 2022]. Available at: https://casetext.com/case/industrotech-constructors-v-duke-university

75 USA, North Carolina. Art. 45B para. 1-567.54 – 54 letter d) 2014 North Carolina General Statutes.

76 New Zealand. Art. 2 Act No. 99, Arbitration Act.

77 New Zealand. Art. 14B Act No. 99, Arbitration Act.

in regard to information and documents disclosed in those proceedings.[78] As a consequence of this case, Australia has become less attractive and competitive as a country for arbitration of overseas disputes.[79]

The same interpretation of the principle of confidentiality in arbitration like in New Zealand was admitted in England. Although the Arbitration Act 1996 which regulates arbitration proceedings within the jurisdiction of England, Wales and Northern Ireland is still silent on the question of confidentiality[80], the importance of privacy and confidentiality in arbitral proceedings in England goes back to 1880, when in case *Russel vs. Russel* was highlighted the obligation of parties not to discuss details about their arbitration in public.[81] In 1997 in the case *Ali Shipping Corporation vs. Shipyard Trogir*, the England and Wales Court of Appeal held that *"privacy of arbitration proceedings necessarily involves an obligation not to make use of material generated in the course of the arbitration outside the four walls of the arbitration"*.[82] In 2008, the England and Wales Court of Appeal in the case *John Forster Emmott vs. Michael Wilson & Partners Limited* held that the duty of confidentiality is an implied obligation (arising out of the nature of arbitration itself) in arbitration *"arising out of the nature of arbitration"*. All documents produced in the arbitration, including transcripts or notes of the evidence in the arbitration or the award,

78 Judgment of the High Court of Australia of 7 April 1995, *Esso Australia Resources Ltd. and others vs. The Honorable Sidney James Plowman (The Minister for Energy and Minerals)*, Case (1995) 128 ALR 391. In: *High Court of Australia* [online]. [cit. 24. 4. 2022]. Available at: https://staging.hcourt.gov.au/assets/publications/judgments/1995/013--ESSO_AUSTRALIA_RESOURCES_LTD_AND_OTHERS_v_THE_HONOURABLE_SIDNEY_JAMES_PLOWMAN_AND_OTHERS--(1995)_128_ALR_391.html

79 BENNETT, D. Q. C. Public Interest, Private Arbitration and Disclosure. In: *Australian Construction Law Newsletter* [online]. 1996, no. 49, p. 16 [cit. 25. 5. 2022]. Available at: http://classic.austlii.edu.au/au/journals/AUConstrLawNlr/1996/54.pdf

80 The Law Commission on 30 November 2021 announced that it will conduct a review of the Arbitration Act 1996, including the law concerning confidentiality and privacy in arbitration proceedings. See Law Commission to review the Arbitration Act 1996 [online]. *The Law Commission.* 30. 11. 2021 [cit. 25. 5. 2022]. Available at: https://www.lawcom.gov.uk/law-commission-to-review-the-arbitration-act-1996/

81 Judgment of the High Court of Justice of England and Wales (Chancery Division), UK, of 6 February 1880, *Russel vs. Russel*, Case (1880) LR 14 Ch D 471. In: *Trans-lex.org* [online]. [cit. 24. 4. 2022]. Available at: https://www.trans-lex.org/302010/_/russel-v-russel-lr-14-ch-d-471/

82 Judgment of the England and Wales Court of Appeal (Civil Division), UK, of 19 December 1997, *Ali Shipping Corporation vs. Shipyard Trogir*, Case [1997] EWCA Civ 3054. In: *Practical Law* [online]. [cit. 24. 4. 2022]. Available at: https://uk.practicallaw.thomsonreuters.com/D-001-1354?transitionType=Default&contextData=(sc.Default)

should not be disclosed or used for any other purpose, unless: i) where there is a consent by the parties; ii) where there is an order or leave of the court; iii) where it is reasonably necessary for the protection of the legitimate interests of an arbitrating party; iv) where the interests of justice require disclosure and also (perhaps) where the public interest requires disclosure.[83] Confidentiality is in England considered as an important advantage over the courts as a means of dispute resolution and therefore confidentiality is a necessary consequence of the concept of private arbitration.[84]

Implicit confidentiality has been deduced also in Singapore. The court, however, found that it is legitimate to disclose certain materials to the relevant public authorities because *"there was reasonable cause to suspect criminal conduct."*[85] So that basically means that public policy exceptions are allowed and shall be ad hoc evaluated.

8 Potentially Conflicting National, International and Institutional Regulation

The legal regime of confidentiality and its limits may depend on one or more of the following: the arbitration agreement, the applicable institutional rules, the law at the seat of the arbitration, and the law of the states on the territory of which the award is (potentially) available.[86] One cannot neglect the crucial question of which rules should prevail in case of conflict between these sources of regulation, notably when it comes to the conflict between national law of the state in which the arbitration proceedings take place,

83 Judgment of the England and Wales Court of Appeal (Civil Division), UK, of 12 March 2008, *John Forster Emmott vs. Michael Wilson & Partners Ltd.*, Case [2008] EWCA Civ 184. In: *British and Irish Legal Information Institute* [online]. Para. 79 [cit. 24. 4. 2022]. Available at: https://www.bailii.org/ew/cases/EWCA/Civ/2008/184.htm

84 Judgment of the High Court of Justice of England and Wales (Queen's Bench Division, Commercial Court), UK, of 22 December 1992, *Hassneh Insurance Co. of Israel vs. Mew*, Case [1993] 2 Lloyd's Rep 243. In: *Practical Law* [online]. [cit. 24. 4. 2022]. Available at: https://uk.practicallaw.thomsonreuters.com/D-016-8131?transitionType=Default&contextData=(sc.Default)

85 Judgment of the Supreme Court of Singapore of 2011, *AAY and others vs. AAZ (AAY)*. In: *The Singapore Law Reports*. 2011, no. 1, pp. 1093 ff.

86 *Dimolitsa* states that the confidentiality can depend also on the law governing the arbitration agreement. – DIMOLITSA, A. Institutional Rules and National Regimes Relating to the Obligation of Confidentiality on Parties in Arbitration. *ICC Digital Library* [online]. 2009, p. 5 [cit. 25. 5. 2022]. Available at: https://library.iccwbo.org/. We neglect this potential aspect in this article.

state where the arbitral award is to be published, and institutional arbitral rules used by the particular arbitral court in question. For example, the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation clearly states that arbitral awards and judgments can be published only anonymously. At the same time, the confidentiality in arbitral proceedings in the Russian Federation, including awards, could be revoked and the names of the parties and other identifying information could be made public under the conditions mentioned above, imposed by the effective national law, in particular by the Federal Law No 102-FZ On Arbitration Courts in the Russian Federation. Does this mean that certain rules of the arbitral institutions are not applicable, if they are in conflict with the national law? And what if the law of the state in which the arbitration proceedings took place *(lex loci arbitri)* entirely forbids publication of awards? Is the legal regime of award confidentiality dictated always by the law of award's origin, i.e., generally by law of the state where the arbitration took place *(lex loci arbitri)*? And what if the award is made available on the territory of state which forbids publication of arbitral awards by its law?

De Lima Pinheiro states that legal framework of arbitration comprises both procedural and substantive law issues, namely the arbitration agreement, jurisdiction, the operation of the arbitral tribunal, the determination of the substantive applicable law, and the prerequisites of arbitral award.[87] According to some opinions, the institutional rules of arbitral tribunals are not subordinated to the law of any particular state as they do not form part of one single state's political organisation, and thus no country holds the jurisdiction to define their legal framework.[88] They are told to be transnational.[89] For such cases there are several ways of determination of the applicable regulation which the decisional practice and doctrine invented. Most of the time the rules are told to come from customary decisional practice of the arbitral institution in question and its institutional arbitral rules whilst being independent from the national *lex loci arbitri*.

87 LIMA PINHEIRO, L. de. *Estudos de Direito da Arbitragem*. Lisboa: AAFDL Editora, 2022, pp. 281–282.

88 Ibid., p. 283, cf. also all the remarks in the fn. 7.

89 Ibid., pp. 297–298, 299–304.

A different part of doctrine claims that when it comes to conflict of arbitral rules and national *lex loci arbitri*, the default position is that the geographical place of arbitration creates the factual connection of contractual and procedural rights and obligations between the parties and arbitrators.[90] The rules of the arbitration court are inherently subordinated to *lex fori (lex loci arbitri)* since *lex fori* rules are part of the national legal system that governs arbitration and gives it binding force and effect.[91] That means that the rules cannot override imperative national regulation. These national rules are created by state – a subject of international law. Therefore, generally speaking, rules of arbitral tribunal should be in conformity with its *lex loci arbitri* and in case of conflict between the rules of the arbitral tribunal and national law, the regulation of national law shall prevail.

While we do not want to express our stance towards these general doctrinal theories, we would like to show that even if the transnational theory was accepted, the nature of publication of awards is somewhat different from all the elements of the mentioned "legal framework" of international arbitration and must be treated in a different manner. Confidentiality of award is not a prerequisite of such, but rather a postrequisite. Even if we admit that the rules of arbitral institutions could exist on their own without a particular national legal order, this would be true only to a certain extent. Thus, we would like to raise this exception towards the all-encompassing position[92] that rules of institutions are applicable as a whole independently from the point of view taken by a particular national legal order. While we understand the alibistic rationale behind this stance which has been expressed also in the decision of ICC International Court of Arbitration No 8938[93] (it was held that the provisions of ICC Rules are *"independent rule of international*

90 Judgment of the Supreme Court of India of 10 March 2017*, Imax Corporation vs. E City Entertainment India Private Limited*, Civil Appeal No. 3885 of 2017. In: *Indiankanoon.org* [online]. [cit. 24. 4. 2022]. Available at: https://indiankanoon.org/doc/190793657/

91 SVOBODOVÁ, K. Místo konání rozhodčího řízení – rozhodující kritérium určení "lex arbitri". In: SEHNÁLEK, D. et al. (eds.). *Dny práva – 2009 – Days of Law*. Brno: Masaryk University, 2009, pp. 1884 ff.; cf. also LIMA PINHEIRO, L. de. *Estudos de Direito da Arbitragem*. Lisboa: AAFDL Editora, 2022, pp. 299–300.

92 LIMA PINHEIRO, L. de. *Estudos de Direito da Arbitragem*. Lisboa: AAFDL Editora, 2022, p. 290.

93 Award of 1996, ICC Case No. 8938. In: *Yearbook of Commercial Arbitration*. 1999, Vol. 24, pp. 174 ff.

Arbitration Law"), we find this proclamation to be rather arbitrary and without a sufficiently logical ground when it comes to certain aspects such as to the question of confidentiality of the award.

What we focus on in this particular case is the information which is to be made public or kept confidential. Information is of ubiquitous nature, it can be present in every country simultaneously. In this sense it can be likened to intellectual property rights, whose scope and content are governed by the *lex loci protectionis* principle, which corresponds to their territorially limited nature. In a similar way, when it comes to publication of awards, of the information contained therein, its regulation is part of public policy and is thus always territorially limited.[94] Apart from that, the confidentiality of awards is not a question of arbitration as such. We are talking about regulation of what happens with the award once the arbitration proceeding is finished. For these reasons the anomalous nature of the question of confidentiality of awards should be emphasised and it should be concluded that the question of admissibility of publication of awards will always be regulated by the law of the state, which provides protection to the confidentiality of the award, i.e., the information contained therein.[95]

If the award is made public (and possibly worldwide accessible in Internet) according to the law applicable at the place of seat of the arbitral tribunal, other countries where the information will also be available should not sanction such a publication, as it is a result of parties' will. They chose the particular arbitral court and should have been acquainted with all the legal consequences of such choice.

On the other hand, in case when the applicable law (arbitral rules of the arbitral institution to the extent admissible by the *lex fori)* provides for confidentiality by default, the law of other countries may require publication.

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94 Cf. LIPSTEIN, K. Inherent Limitations in Statutes and the Conflict of Laws. *The International and Comparative Law Quarterly*. 1977, Vol. 26, no. 4, pp. 885 ff.

95 Another thinkable doctrinal approach could be seen in general application of *lex loci arbitri* for the question of confidentiality of award, and subsequently raising the *ordre public* exception or proclaiming the national norms of place of "confidential" award availability to have an imperative nature once they require publication of an award which is deemed confidential by the *lex loci arbitri*. We find this solution to be way too robust and it does not correspond with the fact that the confidentiality of arbitral awards as such has nothing to do with the country of origin once the arbitral process has ended.

Such publication should, however, be limited to the territory of that particular state. Otherwise, if the publication happened for example online without any geo-blocking technology engaged, it is possible that the party that "caused" the publication could be sanctioned in the country of origin of the award or even other countries which provide for confidentiality by default. Of course, this presupposes that the sufficient causal nexus would be proven. Such a nexus could be present in case when the party demands enforcement of the award in a country which for such enforcement requires publication and the publication would have a sufficient reach to the protecting country. This is, however, only a theoretical conclusion, as in practice the courts would usually require the available information to have a significant relation to the country where the tort is claimed to be committed, just like it is the case for trademarks used in the Internet. In addition, the causal nexus could be missing in this case as, after all, it is the state who publishes the award, not the party itself who demanded its enforcement. It is important to mention that the territoriality of information and consequently of arbitral award confidentiality does not exclude respect of foreign law towards the law of arbitration *(lex loci arbitri)*. It is already up to the protecting country to decide whether it will respect the legal settings in locus arbitri or not. However, such a respect towards *lex loci arbitri* cannot be taken for granted.

Notwithstanding all that has been said, there is one way for rules of an arbitration institution to take precedence over *lex loci arbitri* national legal order. Such a situation arises when the arbitration is held by an arbitration court which has not been established or accredited by a national law but rather by an international instrument, or possibly by an international organisation. In other words, it has been established by several states giving it its international legitimacy. International intergovernmental organisations are, like states, subjects of international law.[96] They have been given a certain level of authority derived from the sovereignty of states. Once the states provide authority to an international organisation, they are also obliged to respect the rules of arbitration issued according to the foreseen procedure. Such states are obliged to give full precedence to these rules over

[96] ГУРЕЕВ С. А. Субъекты международного права. *Московский журнал международного права* [online]. 2012, p. 29 [cit. 20. 5. 2022]. Available at: https://www.mjil.ru/jour/article/view/500/391

their national laws in order to comply with international law obligations. Territorial scope *(ratione loci)* of international organisation acts is derived from the territories of the contracting states establishing the authority for the organisation.

For instance, the United Nations specialised agency WIPO established the WIPO Arbitration and Mediation Center in 1994. This Center offers among others the arbitration to enable private parties to settle their domestic or cross-border commercial disputes related to intellectual property and technology.[97] As shown above, WIPO Arbitration Rules provide that awards can be disclosed *inter alia* in order to comply with a legal requirement imposed on a party or in order to establish or protect a party's legal rights against a third party.[98] It is only because the Rules state so, that the national laws can prescribe a publication of an award in this case, not vice versa. The same is true for awards issued by the International Centre for Settlement of Investment Disputes established by the ICSID Convention.[99]

9 Confidentiality Agreement

Only in some jurisdictions is confidentiality considered to be an implied duty of arbitration. Arbitration agreement means using a pre-agreed set of arbitration rules, which could also focus, among others, on the regulation of confidentiality and its extent. However, since confidentiality is often understood as a fundamental aspect of arbitration, it is not an exception that parties do not pay enough attention to arbitration clauses and their confidentiality agreements. This can cause severe problems for them in the future.[100] Very often parties simply adopt specific arbitration rules that provide a certain level of confidentiality but usually they do not regulate the exact scope of confidentiality, duration and remedies available in case

97 Alternative Dispute Resolution. *WIPO* [online]. [cit. 25. 5. 2022]. Available at: https://www.wipo.int/amc/en/

98 Art. 77 point iii) WIPO Arbitration Rules.

99 Art. 1 para. 1 ICSID Convention – *"There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre)."*

100 JULKA, N., BHASIN, M. Confidentiality in Arbitration: A Broken Promise. *International Journal of Law Management & Humanities* [online]. 2011, Vol. 4, no. 4, p. 3770 [cit. 25. 5. 2022]. Available at: https://www.ijlmh.com/wp-content/uploads/Confidentiality-in-Arbitration.pdf

of a breach. In order to avoid later disputes it is recommended for the parties to put an agreement among them in place to establish an exact scope of the duty to confidentiality.[101]

Parties in arbitration generally do not have any legal obligation to conclude confidentiality agreements. However, as shown above, national laws and institutional approaches towards confidentiality of arbitral awards vary greatly. This underlines the importance of confidentiality agreement as an instrument to create a pertinent *in casu* framework for confidentiality of the arbitral award notwithstanding the rules of a particular arbitration institution. In order to ensure the appropriate standard of confidentiality, it is advisable to discuss the confidentiality beforehand and include it in the arbitration agreement. However, it is possible to agree on confidentiality not only *ex ante*, but also at the time of a conflict.[102] In general, the parties' autonomy to decide the confidentiality rules is not limitless. Although the will of parties expressed in their confidentiality agreement can generally outweigh the default rules of particular arbitration institutions, this does not mean that it could, at the same time, prevail over the provisions of the national law. Parties may agree on confidentiality regime to the extent not precluded by the applicable arbitration law.[103] That means that the extent to which arbitration could be confidential depends not only upon the parties agreement to arbitrate, but also upon the law at the seat of the arbitration institution and other national laws of countries where the award might be exposed, both of which may require the disclosure in certain cases despite the contractual obligation of confidentiality. The obligation to keep

101 JANSEN D. Parties' Confidentiality Obligations in International Commercial Arbitration: A Dutch Perspective. *Kluwer Arbitration Blog* [online]. 22. 2. 2022 [cit. 25. 5. 2022]. Available at: http://arbitrationblog.kluwerarbitration.com/2022/02/22/parties-confidentiality-obligations-in-international-commercial-arbitration-a-dutch-perspective/

102 TRAKMAN, L. E. Confidentiality in International Commercial Arbitration. *Arbitration International.* 2002, Vol. 18, no. 1, p. 3; cf. further DIMOLITSA, A. Institutional Rules and National Regimes Relating to the Obligation of Confidentiality on Parties in Arbitration. *ICC Digital Library* [online]. 2009, pp. 3–22 [cit. 25. 5. 2022]. Available at: https://library.iccwbo.org/

103 UNCITRAL Notes on Organizing Arbitral Proceedings. *UNCITRAL* [online]. 2016, p. 17 [cit. 25. 5. 2022]. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/arb-notes-2016-e.pdf

the award confidential may also be time limited.[104] It can as well be extended to various persons such as witnesses, translators or transcribers involved in the arbitration process, which are not directly obliged by the arbitration agreement, unlike the parties themselves.[105] Nonetheless, the confidentiality agreement generally keeps its *inter partes* effect and the arbiter and other persons taking part in the arbitral proceedings are not legally bound by such an agreement. Unless the obligation of confidentiality extends to them due to the institutional rules (or the *lex loci arbitri)* and due to the following implied consent of the person in question to take part in the arbitration process, the confidentiality agreement has effect only in relation to the parties at dispute.

10 Conclusion

From what has been shown it is evident that the *status quo* of legal regulation is not sufficient to ensure legal certainty to parties who decide to arbitrate. The principle of confidentiality needs a concrete legal basis, which should ideally come from the international law level in the form of a convention which will harmonise the national confidentiality regulations. Considering the different legal systems from the point of view of the interconnected information society, a comprehensive confidentiality principle cannot be constructed as an inherent implicit value deduced possibly in a different way in each country. Let us remember that all the possible rules concerning confidentiality in institutional rules or party agreements cannot contradict the mandatory requirements of applicable law. The applicable law for the question of confidentiality/publication of awards is *lex loci protectionis*. International harmonisation of the question of award confidentiality regime would enhance coherence of movement of arbitral awards and would also enhance general efficiency of justice.

In order to determine the scope of confidentiality of arbitral awards, we could propose two possible theoretical approaches. One of them is the anonymized publication in cases when there is no confidentiality agreement.

104 Cf. ibid., p. 18.

105 SMELLIE, R. Is arbitration confidential? *Fenwick Elliott* [online]. 2013, p. 2 [cit. 25. 5. 2022]. Available at: https://www.fenwickelliott.com/research-insight/articles-papers/arbitration-confidential

This could be considered as a default setting with the aim of promoting decisional harmony and not harming disproportionally parties' confidentiality. However, it is evident that in arbitration with parties represented by large companies or in a well-known media case the anonymized publication of arbitral awards would not fully guarantee confidentiality since the scope of arbitration remains obvious from the award despite deployment of various methods of anonymization.

When parties have concluded a confidentiality agreement they might agree on publication of the key decision grounds, i.e., not the complete decision will be published but solely the grounds on which the arbitration court has decided the case. However, it should be taken into account that only key decision grounds are potentially not enough in order to learn about the case and about the decision-making practice of the particular arbitration court. Another proposed solution is to make arbitral awards available only to arbitral institutions, i.e., they will be available not to the general public but exclusively for competent arbitral institutions.

There are still several remaining questions related to the presented paper. For instance, whether there should be any difference in regulation of confidentiality in *ad hoc* arbitral courts. Should only arbiters be allowed to point out precedent cases or the same right should be granted to parties as well? What are the limits of the right to be heard and to what extent should this right be protected in arbitration? However, we believe that all those questions should be subject of further research projects.

References

Alternative Dispute Resolution. *WIPO* [online]. [cit. 25. 5. 2022]. Available at: https://www.wipo.int/amc/en/

БАХИН, С. В. Преюдиция: государственные суды и международные коммерческие арбитражи (соотношение государственной и третейской юрисдикций). *Журнал международного частного права*. 2015, no. 3, pp. 37–49.

BENNETT, D. Q. C. Public Interest, Private Arbitration and Disclosure. *Australian Construction Law Newsletter* [online]. 1996, no. 49, pp. 16–22 [cit. 25. 5. 2022]. Available at: http://classic.austlii.edu.au/au/journals/AUConstrLawNlr/1996/54.pdf

BLACKABY, N., PARTASIDES, C., REDFERN, A., HUNTER, M. *Redfern and Hunter on International Arbitration*. Oxford: Oxford University Press, 2015, 711 p.

BROWER, C. N., SMUTNY, A. C. Recent Decisions Involving Arbitral Proceedings. *The International Lawyer*. 1996, Vol. 30, no. 2, pp. 271–286.

BROWN, J. C. P. The Protection of Confidentiality in Arbitration Balancing the Tensions Between Commerce and Public Policy. *London Metropolitan University* [online]. 2021, 248 p. [cit. 25. 5. 2022]. Available at: http://repository.londonmet.ac.uk/6685/1/Brown-Julian-Christopher-Patric_Final-Submission_26Feb2021.pdf

CROFT, C., KEE, C., WAINCYMER, J. *A Guide to the UNCITRAL Arbitration Rules*. Cambridge: Cambridge University Press, 2013, 521 p. DOI: https://doi.org/10.1017/CBO9781139018135

DIMOLITSA, A. Institutional Rules and National Regimes Relating to the Obligation of Confidentiality on Parties in Arbitration. *ICC Digital Library* [online]. 2009, pp. 3–22 [cit. 25. 5. 2022]. Available at: https://library.iccwbo.org/

DOUGLAS, Z. Can a Doctrine of Precedent Be Justified in Investment Treaty Arbitration? *ICSID Review – Foreign Investment Law Journal*. 2010, Vol. 25, no. 1, pp. 104–110. DOI: https://doi.org/10.1093/icsidreview/25.1.104

ЕРОФЕЕВА, Н. М. Подходы к обеспечению конфиденциальности в международном коммерческом арбитраже. *Гуманитарные, социально-экономические и общественныенауки*. 2015, Vol. 11, no. 1, pp. 272–274.

ГУРЕЕВ, С. А. Субъекты международного права. *Московский журнал международного права* [online]. 2012, pp. 29–48 [cit. 20. 5. 2022]. DOI: https://doi.org/10.24833/0869-0049-2012-1-29-48. Available at: https://www.mjil.ru/jour/article/view/500/391

GUSY, M. F., HOSKING, J. M., SCHWARZ, F. T. *A Guide to the ICDR International Arbitration Rules*. New York: Oxford University Press, 2011, 399 p.

HAAS, U. Vertraulichkeit im Zusammenhang mit Schiedsverfahren. In: GEIMER, R., SCHÜTZE, R. A. (eds.). *Recht ohne Grenzen: Festschrift für AthanassiosKaissiszum65. Geburtstag*. München: Otto Schmidt Verlagskontor, 2012, 1086 p. DOI: https://doi.org/10.1515/9783866539501.315

JANSEN D. Parties' Confidentiality Obligations in International Commercial Arbitration: A Dutch Perspective. *Kluwer Arbitration Blog* [online]. 22. 2. 2022 [cit. 25. 5. 2022]. Available at: http://arbitrationblog.kluwerarbitration.com/2022/02/22/parties-confidentiality-obligations-in-international-commercial-arbitration-a-dutch-perspective/

JULKA, N., BHASIN, M. Confidentiality in Arbitration: A Broken Promise. *International Journal of Law Management & Humanities* [online]. 2011, Vol. 4, no. 4, pp. 3763–3775 [cit. 25. 5. 2022]. Available at: https://www.ijlmh.com/wp-content/uploads/Confidentiality-in-Arbitration.pdf

KÖNIG, V. *Präzedenzwirkung internationaler Schiedssprüche*. Berlin: De Gruyter, 2013, 304 p. DOI: https://doi.org/10.1515/9783110334654

KURKELA, M. S., TURUNEN, S. *Due Process in International Commercial Arbitration*. Oxford: Oxford University Press, 2010, 555 p.

LALIVE, P. A. Problèmes relatifs à l'arbitrage international commercial. In: *Recueil des Cours 1967*. Leyde: A. W. Sijthoff, 1969, Vol. 120, pp. 570–713.

Law Commission to review the Arbitration Act 1996. *The Law Commission* [online]. 30. 11. 2021 [cit. 25. 5. 2022]. Available at: https://www.lawcom.gov.uk/law-commission-to-review-the-arbitration-act-1996/

LAZAREFF, S. Confidentiality and Arbitration: Theoretical and Philosophical Reflections. *ICC Digital Library* [online]. 2009, pp. 81–93 [cit. 25. 5. 2022]. Available at: https://library.iccwbo.org/

LIMA PINHEIRO, L. de. *Estudos de Direito da Arbitragem*. Lisboa: AAFDL Editora, 2022, 437 p.

LIPSTEIN, K. Inherent Limitations in Statutes and the Conflict of Laws. *The International and Comparative Law Quarterly*. 1977, Vol. 26, no. 4, pp. 884–902. DOI: https://doi.org/10.1093/iclqaj/26.4.884

LOH, Q. S. O., LEE, E. P. K. *Confidentiality in Arbitration: How Far Does It Extend?* Singapore: Academy Publishing, 2007, 115 p.

МАХРИНА, М. Г. Принцип конфиденциальности в международном коммерческом арбитраже. *Сфераправа*. 2020, no. 1, pp. 29–32.

MOURRE, A. A Unique Partnership for the Publication of ICC Arbitral Awards. *International Chamber of Commerce* [online]. [cit. 25. 5. 2022]. Available at: https://jusmundi.com/en/partnership/icc

Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration. *ICC International Court of Arbitration* [online]. 40 p. [cit. 25. 5. 2022]. Available at: https://iccwbo.org/content/uploads/sites/3/2020/12/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration-english-2021.pdf

ONYEMA, E. *International Commercial Arbitration and the Arbitrator's Contract*. New York: Routledge, 2010, 257 p. DOI: https://doi.org/10.4324/9780203859919

СКВОРЦОВ, О. Ю. Принцип конфиденциальности третейского разбирательства и его соотношение со смежными институтами публичного права. *Вестник Санкт-Петербургского Университета*. 2014, Vol. 14, no. 4, pp. 181–184.

SMELLIE, R. Is arbitration confidential? *Fenwick Elliott* [online]. 2013, pp. 1–5 [cit. 25. 5. 2022]. Available at: https://www.fenwickelliott.com/research-insight/articles-papers/arbitration-confidential

STEPHENSON, D. S. *Arbitration Practice in Construction Contracts*. Oxford: Blackwell Science, 2001, 296 p. DOI: https://doi.org/10.1002/9780470698907

SVOBODOVÁ, K. Místo konání rozhodčího řízení – rozhodující kritérium určení "lex arbitri". In: SEHNÁLEK, D. et al. (eds.). *Dny práva – 2009 – Days of Law*. Brno: Masaryk University, 2009, pp. 1882–1898.

TRAKMAN, L. E. Confidentiality in International Commercial Arbitration. *Arbitration International*. 2002, Vol. 18, no. 1, pp. 1–18. DOI: https://doi.org/10.1023/A:1014277907158

UNCITRAL Notes on Organizing Arbitral Proceedings. *UNCITRAL* [online]. 2016, 40 p. [cit. 25. 5. 2022]. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/arb-notes-2016-e.pdf

VADI, V. *Analogies in International Investment Law and Arbitration*. Cambridge: Cambridge University Press, 2015, 304 p. DOI: https://doi.org/10.1017/CBO9781316144879

YVES FORTIER, L. The Occasionally Unwarranted Assumption of Confidentiality. *Arbitration International*. 1999, Vol. 15, no. 2, pp. 131–139. DOI: https://doi.org/10.1093/arbitration/15.2.131

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