

Jaunius GUMBIS/Miglė PETKEVIČIENĖ

Application of selected elements of procedural justice in arbitration

Table of contents

I	Introduction.....	40
II	Necessity to comply with standards of procedural justice.....	40
III	Elements of procedural justice	42
A	Judicial protection.....	43
B	Impartiality	44
C	Guarantee of court instances	45
D	Respect for previously formed precedents	45
IV	Application of standards of procedural justice to arbitration proceedings.....	45
A	Judicial protection.....	45
B	Impartiality	46
C	Guarantee of court instances	46
D	Respect for previously formed precedents	47
V	Lack of compliance of arbitration proceedings to general standards of procedural justice: justification.....	47
VI	Conclusion.....	48

Abstract

Even though arbitral tribunals (or sole arbitrators) do not perform the function of administration of justice, arbitral proceedings shall nevertheless conform to general standards of justice. After analyzing the elements of procedural justice, a conclusion is drawn that arbitration does not ensure the application of all elements of procedural justice to the fullest extent. However, it is the contractual nature of arbitration that justifies such deviations. The pursuit of justice remains one of the key aims of arbitration, irrespective of the lack of certain aspects of procedural justice.

Keywords

Justice, procedural justice, rule of law, court proceedings, administration of justice

I Introduction

Arbitration is one of the most popular and widely used methods of alternative dispute resolution. It aims at the settlement of disputes between the disagreeing parties in a less formal way without (or with very limited) interference of the national courts.

It is usually asserted that national courts are the exclusive administrators of justice.¹ It is also believed that arbitration per se does not implement justice, but is a valid vehicle for dispute resolution.² Even though the function of administration of justice is not vested into arbitration, the concept of justice does not go far away from arbitration proceedings. It is usually agreed that the arbitral award shall nonetheless conform to the standards of justice and legitimacy.³

Arbitral awards shall in any case comply with the general principle of justice. There is no universal concept of justice – the number of definitions of justice is equal or probably even higher than the number of authors analyzing this subject.

One of the most general concepts of justice recognizes that the core aspect of any legal system is a dual phenomenon composed by procedural and material (substantial) elements of decision-making. The procedural element deals with the question “how”, i.e. how and under what procedural conditions or in what manner the decision is taken. Whereas the material element deals with the question “what”, i.e. what does the decision mean and what consequences it brings.⁴

To our understanding, arbitration proceedings, as well as the arbitral award itself, shall reflect both of these elements of justice to fully comply with the conditions necessary for its recognition and enforcement.

This article is further concentrated on the analysis of whether the essence of arbitration proceedings allows full conformity with the procedural element of justice and what limitations it carries within.

II Necessity to comply with standards of procedural justice

Regarding procedural justice in general, legal parlance refers to the fairness of a process by which a decision is reached.⁵ Recently, some scholars claimed that despite the similarities between arbitration and traditional litigation, arbitration is faster and more efficient; in exchange, the parties lose some important procedural protections.⁶

In the eyes of legal scholars, alternative dispute resolution mechanisms often show disadvantages when compared to their judicial counterparts, particularly on the grounds of procedural fairness. There has been grave concern about the

1 Jaunius Gumbis, Constitutional aspects of dispute resolution by means of arbitration, in: Marianne Roth/Michael Geistlinger (eds.), Yearbook on International Arbitration, Volume I, Vienna 2010, 167.

2 Ibid.

3 Ibid.

4 Miglė Dereškevičiūtė, Procedūrinio teisingumo elementai Lietuvos Respublikos Konstitucinio Teismo jurisprudencijoje, Teisė, 87 (2013), 112-126.

5 Rebecca Hollander-Blumoff/Tom R. Tyler, Procedural Justice and the Rule of Law: Fostering Legitimacy, Alternative Dispute Resolution, (2011) 1, 1-19.

6 Ibid.

alternative dispute resolution process and whether it appropriately protects individual rights while comporting with principles within the rule of law.⁷

Many authors agree that the principles of procedural justice in arbitration proceedings remain controversial, including the aspect of confidentiality and party autonomy.⁸

The main rationale behind this conflict is the fact that arbitration (and other means of alternative dispute resolution) has a more flexible procedural approach. It bears less formal requirements and the state has less control over them. Does that mean that arbitration proceedings do not have to at least attempt to correspond to general requirements of procedural justice?

Taking into account the success of the system of alternative dispute resolution, threats of breaching rules of law should be eliminated.⁹ To our understanding, the most substantial argument in favour of application of standards of procedural justice is the requirements for recognition and enforcement of arbitral awards. Article V(2)B of the Convention on Recognition and Enforcement of Foreign Arbitral Awards¹⁰ (also referred to as the New York Convention), establishes that it may be refused to recognize and enforce an arbitral award if the competent authority of the country in which recognition is sought and pursued, ascertains that the recognition and enforcement of the arbitral award is contrary to public policy of that country. The term “public order” is usually interpreted as an order encompassing fair and fundamental principles of procedural fairness, as well as mandatory substantive rules, which lay down the fundamental and universally recognized principles of law. This leads to the conclusion that an arbitral award could not contradict the principle of justice and therefore, is a justice-based method of dispute settlement.¹¹

One more argument in favour of application of procedural justice standards to arbitration proceedings is rather psychological. Authors suggest that a psychological construct of procedural justice provides an important perspective on how alternative dispute resolution systems can help to maintain societal values that are consistent with the rule of law.¹²

It is stated that procedural justice drives the satisfaction that people have with their outcomes, and it also predicts future adherence to outcomes and agreements.¹³ Even when people lose, they feel better about that loss when they experience procedural fairness; conversely, when they win, they do not feel as good about that outcome absent procedural fairness.¹⁴

7 Ibid.

8 Ernst-Ulrich Petersmann, International Rule of Law and Constitutional Justice in International Investment Law and Arbitration, *Indiana Journal of Global Legal Studies*, 16 (2009) 2, 513-533.

9 David W. Rivkin, The Impact of International Arbitration on the Rule of Law, The 2012 Clayton Utz/University of Sydney International Arbitration Lecture, available at http://www.globalarbitrationreview.com/cdn/files/gar/articles/david_rivkin_The_Impact_of_International_Arbitration_on_the_Rule_of_Law.pdf (29 June 2016).

10 Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

11 Lithuanian Supreme Court, *Algirdo Vaičio individuali įmonė v. Kazimierz Czarniecki firma “Schwarz”*, Judgment of 17 November 2004, case no. 3K-3-612/2004.

12 Rebecca Hollander-Blumoff/Tom R. Tyler, Procedural Justice and the Rule of Law: Fostering Legitimacy, *Alternative Dispute Resolution*, (2011) 1, 1-19.

13 Ibid.

14 Ibid.

The analysis above dictates that the arbitral award has to comply with the main measures and ideas of procedural justice. The arbitral award, which will violate the basic concept of justice and public order, shall be refused to be recognized and enforced by the court as well as will lose its power and reputation in the eyes of the people.

III Elements of procedural justice

Procedural justice establishes very important requirements for the methods and forms of administration of justice. Justice must be carried out strictly in accordance with the procedural rules and requirements in order to reach its goals.

Historically, as well as in legal doctrine and court practice, procedural justice has to fulfil a number of requirements. The concept of procedural justice was not fully developed before the second half of the 20th century. In 1971, J. Rawls, and later in 1975, J. W. Thibaut and L. Walker, were the first ones to establish the link between the results of the proceedings with the just performance of the proceedings.¹⁵

At first, J. Rawls raised the question of how to distribute a pie between two persons as fairly as possible. He offered to apply a procedure under which one person cut the pie, and the other person chose the part of the pie. According to J. Rawls, such procedure revealed that the person who cut the pie would distribute the pie as fairly as possible in order to avoid the situation whereby a smaller part of the pie remains for himself.¹⁶ According to J. Rawls, pure procedural justice exists only if the procedure is fair and just, and the result of the procedure is fair and just due to the fact that this procedure has been applied.¹⁷ J. W. Thibaut and L. Walker, on the other hand, analyzed and compared the satisfaction of justice in different legal systems – common law system and continental law system.¹⁸ The conclusion that people trust the common law system more was drawn due to the fact that the decision is taken by a neutral party therein, i.e. the case is presented and the process is carried out in front of a judge and the decision is adopted by a jury. J. W. Thibaut and L. Walker established that people are more likely to accept a decision if they believe the dispute was solved under a fair procedure.¹⁹ Similar conclusions were later drawn by T. Tyler and E. A. Lind, who tried to prove that procedural justice mainly depends on the possibility to control the process of adoption of the decision.²⁰ T. R. Tyler and E. A. Lind established a *group-value* theory according to which a number of factors are essential in order to reach procedural justice, i.e. neutrality of the adjudicating

15 Kjell Yngve Tornblom/Riel Vermunt, *Distributive and Procedural Justice – Research and Social Applications*. Hampshire/Burlington 2007, 5.

16 John Rawls, *A Theory of Justice*, Oxford 1999.

17 Ibid.

18 John Thibaut/Laurens Walker, *Procedural Justice: A Psychological Analysis*, Hillsdale 1975, 5.

19 Joseph Sanders/V. Lee Hamilton, *Handbook of justice research in law*, New York 2001, 70-71.

20 Tom R. Tyler/E. Allan Lind, *A Relational Model of Authority in Groups*, cited in: Kjell Yngve Tornblom/Riel Vermunt, *Distributive and Procedural Justice – Research and Social Applications*, Hampshire/Burlington 2007, 6.

person, confidence in the adjudicating person and recognition of the status of disputing parties.²¹

This theory was further supplemented by L. L. Fuller, who further elaborated on the list of elements of procedural justice. According to L. L. Fuller, procedural justice shall be composed of the requirement to apply common rules, the requirements for these rules to be clear, the requirement to fairly apply these rules, etc.²² J. Raz further developed this system of principles of justice by concentrating on the processes of courts.²³

After having researched the analysis conducted by scholars, we can create a non-exhaustive list of key elements of procedural justice including the guarantee of legal protection, impartiality, guarantee of court instances, respect for previously formed precedents of the court, objectivity, proper motivation and clarity of the courts' decision, proportionality of the decision, etc.

This article is further aimed at analyzing such components of procedural justice, which have certain limitations or reservations in arbitral proceedings. Firstly we will briefly look into the essence of each of these components. Please note that only the most significant components which deserve attention of international audience are discussed in more details below.

A Judicial protection

The principle of access to judicial protection is one of the most important guarantees of human rights protection, established both in international and national legal acts. Article 8 of the Universal Declaration of Human Rights²⁴ states that everyone has the right to an effective remedy granted by competent national tribunals. Also, Paragraph 3 of Article 2 of the International Covenant on Civil and Political Rights²⁵ claims that each state has to ensure that any person claiming respective remedies shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state. Analogous rights are established in Articles 6 and 13 of the European Convention on Human Rights and Fundamental Freedoms²⁶ and other legal acts.

Similar principles are usually reflected in national laws. For example, paragraph 1 of Article 30 of the Constitution of the Republic of Lithuania²⁷ specifies that a person whose constitutional rights and freedoms are violated, has the right to apply to the court. Such principle is also established in Article 4 of the Law on Courts of the Republic of Lithuania²⁸, and paragraph 1 of Article 5 of the Code of

21 Joseph Sanders/V. Lee Hamilton, Handbook of justice research in law, New York 2001, 8, 22, 75.

22 Lon L. Fuller, The Morality of Law, New Haven 1964, 39, 46-94, cited in: Anthony S. Mathews, Freedom, State Security and the Rule of Law – Dilemmas of the Apartheid Society, Berkley/Los Angeles/London 1986.

23 Joseph Raz, The Rule of Law and its virtue, Law Quarterly Review, 1977, 195, cited in: Anthony S. Mathews, Freedom, State Security and the Rule of Law – Dilemmas of the Apartheid Society, Berkley/Los Angeles/London 1986.

24 Universal Declaration of Human Rights (1948).

25 International Covenant on Civil and Political Rights (1966).

26 European Convention on Human Rights and Fundamental Freedoms (1950).

27 Constitution of the Republic of Lithuania (1992, with further amendments).

28 Law on Courts of the Republic of Lithuania (1994, with further amendments).

Civil Procedure of the Republic of Lithuania.²⁹

The Constitutional Court of the Republic of Lithuania further elaborated on these provisions by stating that a person who considers that his rights or freedoms are violated shall have the absolute right to an independent and impartial court or an arbitrator, which would solve the dispute. Also, the Constitutional Court stated that a person's constitutional right to go to court cannot be artificially limited, and there shall be no undue burden to exercise this right. The Constitutional Court stated that the judicial protection guarantee must be provided in each case, despite of its nature.³⁰

B Impartiality

The process of adopting a decision in a court proceeding is usually based on the assumption that the decision shall be made without interference into the legislative sphere of impartiality.

It is considered as one of the most important factors of procedural justice. Psychologists have studied how people form assessments about whether they have been treated fairly, and the most critical factor was the neutrality of the decision maker.³¹

H. L. A. Hart indicates that criticism for the terms "fair" and "unfair" in most cases may also be applied with respect to the terms "partial" and "impartial".³² B. Barry has developed the whole theory of "justice as impartiality".³³ M. P. Golding sets forth the following criteria for impartiality: no one can solve his own case; the decision maker may not have any private interest in the case, and must not be biased in the mood for or against any party.³⁴

A litigating party interested in the outcome of the proceedings expects that the decision-making will not be affected by any subjective factors and that a judge will be objective in applying the law properly. More generally, it means that the public wants to know what competence is granted to a judge to act as a representative of state authority and take a binding decision which affects an individual's freedom and property, and can be enforced by the state. The general public wants a court decision to be a lawful exercise of the state authority. A judge has strictly defined limits of competence; he has to legitimize his verdict and make a lawful decision. For these reasons, a judge is obliged to resolve a dispute based on the law and not on the personal scale of values which is not recognized by laws.³⁵

29 Code of Civil Procedure of the Republic of Lithuania (2002, with further amendments).

30 The Constitutional Court of the Republic of Lithuania, Judgement of 8 August 2006 No. 34/03.

31 Tom R. Tyler, *Why people obey the law*, New Haven 1990, 3-7, 163-164.

32 Herbert Lionel Adolphus Hart, *Teisės samprata*, Vilnius 1997, 266.

33 Brian Barry, *Justice as impartiality. A treatise of social justice*, Volume II, Oxford 1996, 11-13.

34 Martin P. Golding, *Philosophy of Law*, New Jersey 1975, 122.

35 Jaunius Gumbis/Miglė Dereškevičiūtė, *Justice in arbitration – is it equal to justice exercised by courts?*, in: Marianne Roth/Michael Geistlinger (eds.), *Yearbook on International Arbitration*, Volume II, Vienna 2012, 101-106.

C Guarantee of court instances

Another aspect of procedural justice worth mentioning in the context of this article is the right to appeal the decision, i.e. the right to have the case decided in more than one instance of court. The Constitutional Court of the Republic of Lithuania stated that in order to be fully compliant with the laws of the Republic of Lithuania, legal regulation has to establish the right to appeal the decision to at least one higher instance of court.

The Constitutional Court noted that the purpose of this instance in the court system is to eliminate possible errors in the court of lower instance, and to prevent the occurrence of injustice. Thus, this would protect the rights and legitimate interests of individuals and of the public.³⁶

D Respect for previously formed precedents

On the one hand, the courts are bound by their decisions because they understand that they will have to rely on them in the future. Also, the courts shall take into consideration not only the particular dispute between the parties, but they also have to assess the full picture of the legal system by evaluating the consequences that such decision may lead to in the society. The courts shall also realize that this decision will serve as a guidance for future judicial practice. As a result, the decisions must be properly balanced, bearing in mind the fact that in particular situations, the judges become the law makers.³⁷

On the other hand, this means that the courts must follow the precedents already formed. In order to apply the precedent in a certain case, the facts must be identical or very similar to the case in which the precedent was formed. The case should also be subject to the same law.³⁸

IV Application of standards of procedural justice to arbitration proceedings

After having defined certain problematic aspects of procedural justice, we will further examine their application to the arbitral proceedings.

A Judicial protection

By selecting to resolve the dispute in arbitration, the parties refuse submission of their disputes to the competent national body – the court. It means that they waive their right to judicial defence, guaranteed by the constitution, laws and international conventions.

Arbitration as a method of dispute resolution is fundamentally different from the judicial dispute resolution. While solving the disputes by the means of arbitration, the dispute is administered by a third person, selected by the parties, which

36 The Constitutional Court of the Republic of Lithuania, Judgement of 16 January 2006 No. 7/03-41/03-40/04-46/04-5/05-7/05-17/05.

37 Benjamin N. Cardozo, *The Nature of the Judicial Process*, New York 2005, 161-162.

38 The Constitutional Court of the Republic of Lithuania, Judgement of 24 October 2007 No. 26/07.

is not authorized to execute this function by the state. Whereas in court, the dispute is adjudicated by a public body – the judge having official assignment to be the intermediary in judicial cases solved by means of national court.

B Impartiality

Arbitration receives a lot of criticism due to concerns regarding impartiality. Whereas the judges in the court proceedings are selected randomly and the parties have no influence on their appointment, arbitrators are usually selected by the parties themselves. As a general rule, in case of a sole arbitrator, the parties agree on its candidacy by their mutual agreement. In case of three arbitrators, the parties select one arbitrator each, who then select the chairman. In case the parties do not agree on the candidacies of the arbitrators, the matter is taken care by the arbitral institution or the court. It means that usually the parties select the persons who shall settle their dispute. The process of this selection might cause the threat of impartiality.

Authors suggest that although courts intervene when the panel of arbitrators appears to be exceptionally biased, a closer look at arbitration through the lens of procedural justice suggests that there are attacks on the neutrality and trustworthiness of the arbitrator.³⁹

However, it is crucial to take into account the specifics of the market of arbitration services. The reputation of the arbitrator plays the major role in this part, as the ethics of the arbitrator are the key to the successful career of the arbitrator.

C Guarantee of court instances

The absence of an appeal system is another concern usually raised by scholars.

While arbitral awards may be subject to annulment proceedings or maybe refused to be enforced and recognized, the grounds are limited and mostly procedural. The absence of an appeal system has given rise to two key criticisms. First, arbitral tribunals often hail from different legal systems and have different experience and different methods of determining disputes. Moreover, even those from similar backgrounds may take very different philosophical approaches to the importance of consistency to arbitration. Second, arbitrators are considered as super-judges having no one to control them.⁴⁰

However, it is sometimes claimed that an appellate mechanism might raise at least as many problems as it would solve. For example, given the likely volume of cases, the appellate body would have to include more than just a handful of judges. There would then be no guarantee of consistency between the decisions of different judges or panels. As it is suggested by D. Rivkin, rather than create an appeal mechanism that will simply create its own problems, once again the burden is on the arbitration community, to address concerns related to inconsistency. Some authors suggest that this inconsistency may be eliminated or

39 Rebecca Hollander-Blumoff/Tom R. Tyler, *Procedural Justice and the Rule of Law: Fostering Legitimacy*, *Alternative Dispute Resolution*, (2011) 1, 1-19.

40 David W. Rivkin, *The Impact of International Arbitration on the Rule of Law*, The 2012 Clayton Utz/University of Sydney International Arbitration Lecture, available at http://www.globalarbitrationreview.com/cdn/files/gar/articles/david_rivkin_The_Impact_of_International_Arbitration_on_the_Rule_of_Law.pdf (29 June 2016).

reduced by building a system of soft precedents.⁴¹ This issue is addressed in this article below.

D Respect for previously formed precedents

Usually the arbitral awards are not announced publicly due to one of the most important principles of arbitration – confidentiality of the proceedings. Therefore, there is no stable ground and sources of precedential doctrine.

Some authors find more deviations from the general principles of procedural justice in this respect. For example, they claim that arbitrators do not have strong incentives to lay down rules for future cases. They have been paid by the parties to decide the specific case, not to think deeply about the rule that should apply to other individuals in the future. Actually, arbitrators may fear that a very clear holding will make them less likely to be hired as arbitrators in future disputes, if that holding disfavors a class of people that may be potential clients. Even if the rules they formulated were “balanced” ones, their effect would be to reduce future disputes. Arbitrators are not particularly interested in that, of course: they want more, not less, arbitration business. So we cannot expect arbitrators to produce much in terms of precedents, which are technically a “public good”.⁴²

However, some authors argue that international arbitration may be more inclined to the creation of consistent case law than national courts.⁴³ In the marketplace of ideas, the awards that are the best reasoned have greater influence and are followed more often. Similarly, the arbitrators who provide the best-reasoned awards receive a greater number of appointments, thus enabling them to render consistent decisions in a broad range of cases. According to D. W. Rivkin, the fact that arbitral awards contribute to public international law and in particular to standards that are binding on states and that impact their ability to regulate requires that the law thus developed be fair and just both to the parties before the tribunal and to the broader constituencies that may be impacted by the decision.⁴⁴

V Lack of compliance of arbitration proceedings to general standards of procedural justice: justification

The brief analysis above shows that certain elements of procedural justice remain unrealized in case of a dispute settlement by means of arbitration. Does it raise any fundamental concerns and preclude the parties from invoking arbitration in case they aim for fair and just proceedings?

41 Ibid.

42 Víctor Ferreres Comella, Arbitration, democracy and the rule of law: a constitutional landscape, available at <https://www.wzb.eu/sites/default/files/veranstaltungen/victor-ferreres-comella-arbitration-democracy-and-the-rule-of-law-a-constitutional-landscape/vfcomellaarbitrationdemocracyandtheruleoflaw2013.pdf> (29 June 2016).

43 David W. Rivkin, The Impact of International Arbitration on the Rule of Law, The 2012 Clayton Utz/University of Sydney International Arbitration Lecture, available at http://www.globalarbitrationreview.com/cdn/files/gar/articles/david_rivkin_The_Impact_of_International_Arbitration_on_the_Rule_of_Law.pdf (29 June 2016).

44 Ibid.

To our understanding, the answer is negative. As mentioned above as well as in our previous researches⁴⁵, justice shall be considered as the state of spirit to protect the common good and give people things, which belong to them, especially protecting the equitable agreement of people.⁴⁶ Thus, the nature of arbitration, which is based on the particular agreement between the parties, cannot be opposed to the concept of justice and therefore, the principles of procedural justice shall be respected. It is the contractual nature of arbitration that justifies such deviations.

In this context, it is worth noting that some scholars do not envisage these deviations as a threat by stating that the rule of law is less in tension with alternative dispute resolution than critics imagine, because they both aim to serve the same goal – the pursuit of justice.⁴⁷

Thus, the pursuit of justice remains one of the key aims of arbitration irrespective of the lack of certain aspects of procedural justice. The arbitrators will always try to adopt a decision which is well reasoned, showing the right business-approach. The pursuance for the right and just decision will usually be based on a common understanding of business principles, combined with a sense of legal notion. Both, judges and arbitrators, have their predetermined choices of decisions to be made, and seek for them in different ways and methods. The only difference is the line of legal reasoning, which has to be formal and weighed by legal arguments in the court proceedings, whereas in the arbitration proceedings the reasoning is not as important as the fairness and result of the decision itself.⁴⁸ Therefore, needless to say, it is the material (substantive) justice that finally matters.

VI Conclusion

The parties require the decision to be procedurally fair and justified not only in court proceedings, but in arbitral proceedings as well. After having analyzed the elements of procedural justice it might be concluded that arbitration does not ensure the application of all elements of procedural justice to the full extent. However, it is the contractual nature of arbitration that justifies such deviations. It is even believed sometimes that arbitration ensures even a higher satisfaction of procedural justice. The pursuit of justice remains one of the key aims of arbitration irrespective of a lack of certain aspects of procedural justice.

45 Jaunius Gumbis/Miglė Dereškevičiūtė, Justice in arbitration – is it equal to justice exercised by courts?, in: Marianne Roth/Michael Geistlinger (eds.), Yearbook on International Arbitration, Volume II, Vienna 2012, 101-106; Jaunius Gumbis, Constitutional aspects of dispute resolution by means of arbitration, in: Marianne Roth/Michael Geistlinger (eds.), Yearbook on International Arbitration, Volume I, Vienna 2010, 167-174.

46 Aaron Alexander Olizarovius, *De politica hominum societate*, Vilnius 2003, 481-483.

47 Jean R. Sternlight, Is Alternative Dispute Resolution Consistent with the Rule of Law? Lessons from Abroad, cited in: Rebecca Hollander-Blumoff/Tom R. Tyler (eds.), *Procedural Justice and the Rule of Law: Fostering Legitimacy, Alternative Dispute Resolution*, (2011) 1, 1-19.

48 Jaunius Gumbis/Miglė Dereškevičiūtė, Justice in arbitration – is it equal to justice exercised by courts?, in: Marianne Roth/Michael Geistlinger, Yearbook on International Arbitration (eds.), Volume II, Vienna 2012, 101-106.