Czech (& Central European) Yearbook of Arbitration®

Czech (& Central European) Yearbook of Arbitration®

Volume VIII

2018

Arbitral Awards and Remedies

Editors

Alexander J. Bělohlávek
Professor
at the VŠB TU
in Ostrava
Czech Republic

Naděžda Rozehnalová
Professor
at the Masaryk University
in Brno
Czech Republic

Questions About This Publication

www.czechyearbook.org; yearbook@ablegal.cz

LEX LATA

Printed in the EU.
ISBN/EAN: 978-90-824603-8-4
ISSN: 2157-9490

Lex Lata BV
Mauritskade 45-B
2514 HG – THE HAGUE
The Netherlands

Typeset by Lex Lata BV.

Address for correspondence & manuscripts

Czech (& Central European) Yearbook of Arbitration®

Jana Zajíce 32, Praha 7, 170 00, Czech Republic

yearbook@ablegal.cz

Editorial support:

Tereza Tolarová, Jan Šamlot, Lenka Němečková, Karel Nohava

Impressum

Institutions Participating in the CYArb® Project

Academic Institutions

University of West Bohemia in Pilsen, Czech Republic
Faculty of Law, Department of International Law
& Department of Constitutional Law
Západočeská univerzita v Plzni, Právnická fakulta
Katedra mezinárodního práva & Katedra ústavního práva

Masaryk University in Brno, Czech Republic
Faculty of Law, Department of International and European Law
Masarykova univerzita v Brně, Právnická fakulta
Katedra mezinárodního a evropského práva

Pavol Jozef Šafárik University in Košice, Slovak Republic
Faculty of Law, Department of Commercial Law and Business Law
Právnická fakulta UPJŠ, Košice, Slovensko
Katedra obchodného a hospodárskeho práva

VŠB – TU Ostrava, Czech Republic
Faculty of Economics, Department of Law
VŠB – TU Ostrava, Ekonomická fakulta
Katedra práva

Institute of State and Law of the Academy of Sciences of the Czech Republic, v.v.i.
Ústav státu a práva Akademie věd ČR, v.v.i.

Institute of State and Law, Slovak Academy of Sciences, Slovak Republic
Ústav štátu a práva. Bratislava, Slovenská akadémia vied, Slovensko

North-West Institute of Management of the Russian Presidential Academy of National Economy and Public Administration, Russian Federation

Non-academic Institutions Participating in the CYArb® Project

International Arbitral Centre of the Austrian Federal Economic Chamber
Wiener Internationaler Schiedsgericht (VIAC), Vienna

Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania
Curtea de Arbitraj Comercial Internațional de pe lângă Camera de Comerț și Industrie a României, Bucharest

Arbitration Court attached to the Hungarian Chamber of Commerce and Industry
A Magyar Kereskedelmi és Iparkamara mellett szervezett Választottbíróság, Budapest

Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic
Rozhodčí soud při Hospodářské komoře České republiky a Agrární komoře České republiky, Prague

Arbitration Court attached to the Czech-Moravian Commodity Exchange Kladno
Rozhodčí soud při Českomoravské komoditní burze Kladno (Czech Republic)

ICC National Committee Czech Republic
ICC Národní výbor Česká republika

The Court of Arbitration at the Polish Chamber of Commerce in Warsaw
Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej w Warszawie

Proofreading and translation support provided by:
SPĚVÁČEK překladatelská agentura s.r.o., Prague, Czech Republic and Pamela Lewis, USA.

Contents

Poland

BOOK REVIEWS

News & Reports

BIBLIOGRAPHY, CURRENT EVENTS, CYIL & CYArb® PRESENTATIONS, IMPORTANT WEB SITES

All contributions in this book are subject to academic review.

List of Abbreviations

AAA	American Arbitration Association
ACCP	Austrian Code of Civil Procedure
ADR	Alternate dispute resolution
ArbAct	Act [Czech Republic] No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards, as amended
BEPS Project	Base Erosion and Profit Shifting Project
BIT	Bilateral Investment Treaty
CAFTA	Central American – United States Free Trade Agreement
CAM	Chamber Arbitral Maritime
CAS	Chromalloy Aeroservices
CCI RF	Chamber of Commerce and Industry of the Russian Federation
CETA	Comprehensive Economic and Trade Agreement
CFC	Controlled Foreign Companies
CIArb	Chartered Institute of Arbitrators
CIETAC	China International Economic and Trade Arbitration Commission
CJEU	Court of Justice of the European Union
DIS	Deutsche Institution für Schiedsgerichtsbarkeit
DTC	Double Tax Conventions
ECT	Energy Charter Treaty
ECtHR	European Court of Human Rights
EU	European Union
European Convention on International Commercial Arbitration	European Convention on International Commercial Arbitration Geneva, 1961
FAA	Federal Arbitration Act
FCIArb	Fellow of the Chartered Institute of Arbitrators
FOSFA	Federation of Oil,Seeds and Fats Associations
FTA	Free Trade Agreement

GAA	Guarantees Acknowledgment Act of Alberta
GAFTA	Grain and Feed Trade Association
GCCP	German Code of Civil Procedure
Geneva Convention 1927	Convention on the Execution of Foreign Arbitral Awards, Geneva, 26 September 1927
Geneva Protocol 1923	Protocol on Arbitration Clauses, Geneva, 24 September 1923
Hague Convention	Convention for the Pacific Settlement of International Disputes adopted at the 1907 Hague Peace Conference
HKIAC	Hong Kong International Arbitration Centre
ICAC	International Commercial Arbitration Court
ICC	International Chamber of Commerce
ICCA	International Congress and Convention Association
ICDR	International Centre for Dispute Resolution
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of other States, Washington, 1965
ICT	International Court of Justice
ICT Rules	the Rules of the International Court of Justice of 1978
ICT Statute	the Statute of the International Court of Justice of 1945
ILA	International Law Association
IMA	Arbitration Center at the Institute of Modern Arbitration
JAMS	Judicial Arbitration and Mediation Services
LCIA	The London Court of International Arbitration
LMAA	London Maritime Arbitrators Association
MAC	Maritime Arbitration Commission
MAP	Mutual Agreement Procedure

MGIMO	Moscow State Institute of International Relations
ML	UNICITRAL Model Law on International Commercial Arbitration
NAFTA	North American Free Trade Agreement
New York Convention	Convention in the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958
OECD	Organisation for Economic Cooperation and Development
PAI	Permanent Arbitral Institution
PILA	(Swiss) Private International Law Act
PILS	Private International Law of Switzerland
QMUL	Queen Mary University of London
RAAB	Arbitral Institution for Constructions
RF CCI	Chamber of Commerce and Industry of the Russian Federation
RIAA	Reports of International Arbitral Awards
RSPP	Arbitration Center at Russian Union of Industrialists and Entrepreneurs
SCC	Stockholm Chamber of Commerce
SIAC	Singapore International Arbitration Centre
Slovak Arbitration Act	Act No. 244/2002 Coll. on Arbitration, as amended
Slovak Constitution	Act No. 460/1992 Coll. Constitution of the Slovak Republic
Swiss Federal Constitution	Federal Constitution of the Swiss Confederation of April 18, 1999
TAS	Tribunal arbitral du sport
UAL	Law of Ukraine "On International Commercial Arbitration"
UCCI	Ukrainian Chamber of Commerce and Industry
UML	UNCITRAL Model Law on International Arbitration
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL Arbitration Rules	Arbitration Rules of the United Nations Commission on International Trade Law
UNCITRAL Model Law	Model law on International Commercial Arbitration as adopted by the United

	Nations Commission on International Trade Law on 21 June 1985, with amendments on 7 July 2006
UNCTAD	United Nations Conference on Trade and Development
VIAC	Vienna International Arbitral Centre
WIPO	World Intellectual Property Organization
ZPO	German Civil Procedure Code

Articles

Roman Prekop | Peter Petho

The Standard of Reasoning in Arbitral Awards

Key words:
arbitral award | reasoning | due process | right to be heard | arbitrariness

Abstract **|** *This article addresses whether there is a requirement that international arbitral awards be reasoned and whether the reasoning should have a certain 'quality' in order to satisfy a certain minimum 'standard' for withstanding an ordinary court's scrutiny. The authors first conclude that it has become an internationally accepted standard that arbitral awards contain reasoning. This standard is implemented in the vast majority of binding legal instruments governing international arbitration (international arbitration conventions, national arbitration laws, and widely used arbitration rules) which explicitly require that awards be reasoned, although the parties can usually waive such a requirement. Second, the authors are of the view that there is one vague international standard and various, albeit converging, national standards in the countries following the UNCITRAL Model Law (with a particular focus in this article on the Swiss, Austrian, and Slovak standards of review) which denote what the reasoning should contain. Yet, the authors believe that until a unified common standard is devised, the arbitrators should do their utmost to make reasoning in their awards as persuasive as possible by taking care to properly identify, consider, and address all relevant issues raised by the parties throughout the proceedings, and briefly explain why they treated other issues as irrelevant. This will help to achieve the goal of having a widely enforceable award.*

Roman Prekop is a founding partner at Barger Prekop Attorneys admitted to practice in the Slovak Republic and in New York. He is a member of the Slovak Bar Association, New York State Bar Association, International Bar Association, American Bar Association and Austrian Arbitration Association, and is a co-chair of the Slovak chapter of New York State Bar Association's International Section. Roman Prekop focuses his practice on litigation and international arbitration, energy sector regulation, competition and projects, M&A, and on corporate and banking matters.
E-mail: rprekop@bargerprekop.com

Peter Petho is a senior associate at Barger Prekop Attorneys admitted to practice in the Slovak Republic. He is a member of the Slovak Bar Association, Chartered Institute of Arbitrators, UK (FCIArb), International Bar Association, and 'below 40' platforms of the ICC, LCIA, ICCA, Austrian Arbitration Association and Swiss Arbitration Association. Peter Petho focuses his practice on litigation and international arbitration, construction law, real estate transactions, EU law, and on general commercial matters.
E-mail: ppetho@bargerprekop.com

I. Reasoning, 'Quality' and 'Standard'

8.01. 'No cards regarded by [the judge] as significant should remain face downwards or in the pack.'[1]

8.02. This instruction is clear; an arbitral decision must be reasoned. But, is the reasoning of arbitral awards subject to any standard requirement? We first outline the meaning of 'reasoning', and then propose that the reasoning should have a certain 'quality', which is desired from an international commercial arbitration policy perspective, but in any case must satisfy a certain minimum 'standard', which is a key to a wide enforcement.

8.03. **Reasoning.** The 'reasoning' in an arbitral award comprises the arbitrator's factual findings, the determination of the applicable law, and the application of the applicable law to the facts.[2] As such, the reasoning is a roadmap of the arbitrators' decision-making process explaining how the arbitrators reached their conclusions.

8.04. **Quality.** '[T]he quality of reasoning is an important feature of the 'art of arbitration'.'[3] In particular, a properly reasoned, high quality award shows that the arbitrators considered all critical issues and the parties' arguments, and explains 'to the parties why they have won or lost.'[4] This is of great importance because arbitration is normally a single instance proceeding and awards are usually not subject to full appeal on factual and legal issues. Proper high quality reasoning also enhances the persuasiveness of the award and may even serve to demotivate the losing party from challenging the award before the court.[5]

8.05. The extent of reasoning differs considerably. An award's reasoning may range from extremely concise statements to a lengthy discussion of the parties' positions and the arbitrators' conclusions.[6] However, each arbitrator masters the language, logical build up and the art of persuasiveness differently.

---

1 Bingham, *Reasons and Reasons for Reasons*, 4 ARBITRATION INTERNATIONAL 141, 145 (1988), cited in 3 GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION, the Netherlands: Kluwer Law International 3041 (2nd ed. 2014).

2 RAY TURNER, ARBITRATION AWARDS: A PRACTICAL APPROACH, Oxford: Blackwell Publishing Ltd 35 (2005).

3 TOBIAS ZUBERBÜHLER, CHRISTOPH MÜLLER, PHILIP HABEGGER, SWISS RULES OF INTERNATIONAL ARBITRATION COMMENTARY, Zürich: Schulthess 359 (2nd ed. 2013).

4 Chartered Institute of Arbitrators, Drafting Arbitral Awards, Part I – General, available at: http://www.ciarb.org/docs/default-source/ciarbdocuments/guidance-and-ethics/practice-guidelines-protocols-and-rules/international-arbitration-guidelines-2015/drafting-arbitral-awards-part-i-general-8-june-2016.pdf?sfvrsn=16, p. 16 (accessed on 22 August 2017).

5 S.I. Strong, *Reasoned Awards in International Commercial Arbitration: Embracing and Exceeding the Common Law-Civil Law Dichotomy*, 37 MICHIGAN JOURNAL OF INTERNATIONAL LAW 17, available at: http://ssrn.com/abstract=2654368 (accessed on 22 August 2017).

6 NIGEL BLACKABY, CONSTANTINE PARTASIDES, ALAN REDFERN, MARTIN HUNTER, REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION, Oxford: Oxford University Press paragraph 9.157 (6th ed. 2015).

Therefore, a shorter decision may be of a higher quality than a longer one. Also, the arbitrator cannot influence the quality of the parties' submitted pleadings. Even the most skilled arbitrator cannot create a masterpiece from thin air.

8.06. **Standard.** From a policy point of view, the award's quality is a desired and recommendable feature. However, the lack of the award's high quality reasoning does not consequentially impact the award. Put bluntly, an order to pay is an order to pay.

8.07. But, what if the reasoning does not tick like a Swiss watch, but is rather full of illogical and factual holes like a slice of Swiss emmental? Would an award lacking a certain minimum standard of reasoning face the risk of being set aside or unenforceable? If yes, what is this 'minimum standard'? Would such a standard be universally respected in the countries where the award is made or enforced?

8.08. As we argue below, while it is nice to receive a high quality French cuisine meal, even the serving of a mere sandwich can satisfy basic nutritional needs, so to speak. Nevertheless (and to continue the metaphor), as a rotten dish can cause illness and must be thrown out, a minimum applicable standard must be identified and safeguarded.

II. The Requirement that International Arbitral Awards be Reasoned

8.09. As outlined below, many (1) international arbitration conventions, (2) national arbitration laws, and (3) arbitration rules require that an arbitral award be reasoned.

II.1. International Arbitration Conventions

8.10. **State-to-State Arbitrations.** Historically, reasoned awards have been mandatory in state-to-state arbitrations. For instance, the 1907 Hague Convention[7] provided in its Article 79 that '[t]he Award must give the reasons on which it is based. […].' Similar provisions can be found in the Statute of the International Court of Justice of 1945 (the "ICT Statute")[8] and the more detailed requirements in its Rules of 1978 (the "ICT Rules").[9]

8.11. **International Law Commission's Model Rules on Arbitral Procedure.** The requirement that awards be reasoned was

[7] Convention for the Pacific Settlement of International Disputes adopted at the 1907 Hague Peace Conference (the '1907 Hague Convention').

[8] Article 56(1) of the ICT Statute provides that '[t]he judgment shall state the reasons on which it is based.'

[9] Article 95 of the ICT Rules provides that '[t]he judgment, which shall state whether it is given by the Court or by a Chamber, shall contain: the date on which it is read; the names of the judges participating in

also later implemented in the field of international commercial arbitration. In particular, in 1958, the UN International Law Commission adopted the Model Rules on Arbitral Procedure, which explicitly provided in Article 29 that '[t]he award shall, in respect of every point on which it rules, state the reasons on which it is based.'

8.12. **New York Convention.**[10] On the other hand, despite being one of the most break-through, world-wide reaching, commercial arbitration legislations, the New York Convention adopted by the UN Conference on International Commercial Arbitration in 1958 did not impose the requirement that an award be reasoned. In fact, it does not impose any formal or material requirements for arbitral awards. *Travaux préparatoires* (preparatory notes) suggest that the signatories' representatives did not even discuss such matters.

8.13. **European Convention on International Commercial Arbitration.**[11] The requirement that arbitral awards be reasoned started to become an internationally accepted standard in international commercial arbitration a few years after the 1958 New York Convention's adoption. In particular, in 1961, the United Nations' Special Meeting of the Economic Commission for Europe adopted the European Convention on International Commercial Arbitration, which applies to international commercial arbitration in the majority of European states[12] and also several non-European states.[13]

8.14. Article VIII of this convention provides a presumption that the parties have agreed that reasons must be given for an award:

> 'The parties shall be presumed to have agreed that reasons shall be given for the award unless they (a)

it; the names of the parties; the names of the agents, counsel and advocates of the parties; a summary of the proceedings; the submissions of the parties; a statement of the facts; the reasons in point of law; the operative provisions of the judgment; the decision, if any, in regard to costs; the number and names of the judges constituting the majority; a statement as to the text of the judgment which is authoritative.'

[10] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), 330 UNTS 38, 21 UST 2517, 7 ILM 1046 (1968) (the 'New York Convention').

[11] European Convention on International Commercial Arbitration (Geneva, 1961), 484 UNTS 364 (the 'European Convention on International Commercial Arbitration').

[12] In Europe, the European Convention on International Commercial Arbitration applies in Albania, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Kazakhstan, Latvia, Luxembourg, Montenegro, Poland, Republic of Moldova, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, The former Yugoslav Republic of Macedonia, and Ukraine, and not in Andorra, Cyprus, Estonia, Georgia (country), Greece, Iceland, Ireland, Liechtenstein, Macedonia, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Sweden, Switzerland, United Kingdom, and Vatican City. United Nations Treaty Collection, European Convention on International Commercial Arbitration, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-2&chapter=22&clang=_en (accessed on 22 August 2017).

[13] The European Convention on International Commercial Arbitration applies in the following non-European states: Azerbaijan, Burkina Faso, Cuba, Kazakhstan, and Turkey (United Nations Treaty Collection, European Convention on International Commercial Arbitration, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-2&chapter=22&clang=_en (accessed on 22

> either expressly declare that reasons shall not be given; or (b) have assented to an arbitral procedure under which it is not customary to give reasons for awards, provided that in this case neither party requests before the end of the hearing, or if there has not been a hearing then before the making of the award, that reasons be given.'

8.15. In essence, this arbitration legislation brought a bare-bones requirement that an award be reasoned but also allowed the parties to opt out from this requirement at their discretion. It also allowed the tribunals not to give reasons in the award if a specific industry (such as disputes concerning the quality of commodities) does not customarily rely on reasoned decisions.

8.16. **1965 ICSID Convention.**[14] Still in the 1960s', many countries agreed that a strict reasoning requirement apply in investment arbitration. In particular, Article 48(3) of the 1965 ICSID Convention provides that '[t]he award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.'

8.17. Originally, the first draft of the 1965 ICSID Convention provided that the parties may derogate from Article 48(3).[15] However, according to *travaux préparatoires*, the Panama and Turkey representatives proposed to omit such party rights. The Turkey representatives explained that 'in the cases of judicial or arbitral decisions the reasons are of such importance to the interested parties that it would be hardly conceivable that parties might willingly waive their right of knowing such reasons.'[16] Hence, the 1965 ICSID Convention requires that an award be reasoned, without allowing the parties to opt-out.

II.2. National Arbitration Laws

8.18. **Three Differing Approaches.** Many national arbitration laws explicitly require that an award – whether domestic or international – be reasoned. The majority expressly permit the

August 2017)).

[14] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965), 17 UST 1270, TIAS 6090, 575 UNTS 159 (the '1965 ICSID Convention'). Today, the ICSID Convention applies to 161 ICSID member states (International Center for Settlement of Investment Disputes, Database of ICSID Member States, available at: https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx (accessed on 22 August 2017).

[15] International Center for Settlement of Investment Disputes, History of the ICSID Convention, Volume I., (ICSID Publication, 1970) available at: https://icsid.worldbank.org/en/Documents/resources/History%20of%20ICSID%20Convention%20-%20VOLUME%20I.pdf, p. 212 (accessed on 22 August 2017).

[16] International Center for Settlement of Investment Disputes, History of the ICSID Convention, Volume II-2, (ICSID Publication, 2006) available at: https://icsid.worldbank.org/en/Documents/resources/History%20of%20ICSID%20Convention%20-%20VOLUME%20II-2.pdf, p. 664 (accessed on 22 August 2017).

parties to waive this requirement. Some national laws are silent on whether an arbitral award should be reasoned. National arbitration laws can thus be divided into three categories: (i) those that require awards to be reasoned unless the parties permissibly dispense with such a requirement, (ii) those requiring that awards be reasoned without providing the parties the right to derogate from the requirement, and (iii) those that, as a default rule, do not insist on reasoning in arbitral awards.

8.19. **The UNCITRAL Model Law Approach.** The first category consists of countries that follow the principle set out in Article 31(2) of the UNCITRAL Model Law. It provides that '[t]he award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.'

8.20. According to *travaux préparatoires*, this provision was a compromise solution between two main views.[17] Proponents of the first view suggested that the requirement for a reasoned award could be found in many national arbitration laws and such a requirement would also be beneficial for the arbitrators' decisions.[18] Proponents of the second view argued that not requiring reasons could speed up the decision-making process, make awards less vulnerable to potential challenges, and was more appropriate for certain types of arbitrations (e.g. quality arbitrations).[19] The acceptable solution for both sides was to require that awards be reasoned by default, but entitle the parties to waive such a requirement. The countries following this principle include, in particular, Austria, China, England & Wales, Germany, Hong Kong, Singapore, Sweden, and Switzerland.[20]

8.21. **Traditional Civil Law Approach.** The second category is represented by countries following the traditional civil law approach which requires that arbitral awards always be reasoned.[21] This requirement in certain countries is also considered as a 'guarantee that justice has been done.'[22] The

[17] United Nations Commission on International Trade Law, A/CN.9/216 - Report of the Working Group on International Contract Practices on the work of its third session (New York, 16-26 February 1982), available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/V82/252/94/PDF/V8225294.pdf?OpenElement, paragraph 80 (accessed on 22 August 2017).

[18] *Ibid.*

[19] *Ibid.*

[20] GETTING THE DEAL THROUGH ARBITRATION 2017, London: Law Business Research Ltd, 51, 84, 132, 159, 182, 313, 335, 343 (Gerhard Wegen, Stephan Wilske eds., 2017).

[21] JEAN F. POUDRET, SÉBASTIEN BESSON, COMPARATIVE LAW OF INTERNATIONAL ARBITRATION, London: Sweet & Maxwell Ltd paragraph 746 (2nd ed., 2007).

[22] LAWRENCE W. NEWMAN, GRANT HANESSIAN, INTERNATIONAL ARBITRATION CHECKLISTS, New York: JurisNet, LLC 151 (2004).

countries following this principle include Belgium, France, Italy, Russia, Spain, and Turkey.[23]

8.22. **A Traditional Common Law Approach.** The third category is represented by the USA. The US Federal Arbitration Act does not require that arbitral awards be reasoned. US courts normally uphold and enforce unreasoned awards unless the parties' agreement or applicable rules require a reasoned award.[24] Thus, the US Federal Arbitration Act follows the traditional common law rule permitting unreasoned awards,[25] even though this rule was abandoned in other common law countries, particularly in England.[26] Nevertheless, if the parties' agreement or applicable arbitral rules require that an arbitral award be reasoned, US courts demand the arbitrators comply with such a requirement.[27]

II.3. Arbitration Rules

8.23. **Widely Used Arbitration Rules.** The most utilized international arbitration rules require that awards be reasoned. They only differ as to whether the parties have an explicit right to dispense with such a requirement. The following ten widely used arbitration rules expressly allow the parties to agree that the award not be reasoned: (i) 2015 CIETAC Rules, (ii) 1998 DIS Rules, (iii) 2013 HKIAC Rules, (iv) 2014 ICDR Rules, (v) 2014 LCIA Rules, (vi) 2017 SCC Rules, (vii) 2016 SIAC Rules, (viii) 2012 Swiss Rules, (ix) 2010 UNCITRAL Rules, and (x) 2013 VIAC Rules.[28]

8.24. **The ICC Rules.** The ICC Rules are the most notable widely used arbitration rules which do not expressly allow the parties to dispense with the reasoning requirement.[29] Nevertheless, even the ICC Court has already agreed to derogate from this rule upon the parties' request in a few cases, although it seems to be inclined to do so only in exceptional situations.[30] The ICC

[23] GETTING THE DEAL THROUGH ARBITRATION 2017, *supra* note 20, at 60, 150, 221, 329, 365; Russian Federation Law on International Commercial Arbitration No. 5338-1, as amended (entered into force on 7 July 1993), English translation available at: http://arbitrations.ru/upload/medialibrary/d94/international-arbitration-act-russia-in-english.pdf (accessed on 22 August 2017).

[24] GETTING THE DEAL THROUGH ARBITRATION 2017, *supra* note 20, at 388 – 389.

[25] 3 GARY B. BORN, *supra* note 1, at 3045.

[26] EMMANUEL GAILLARD, JOHN SAVAGE, FOUCHARD GAILLARD GOLDMAN ON INTERNATIONAL ARBITRATION, the Netherlands: Kluwer Law International paragraph 1392 (1999).

[27] 3 GARY B. BORN, *supra* note 1, at 3046.

[28] Article 48(3) of the 2015 CIETAC Rules, Article 34(3) of the DIS Rules, Article 34.4 of the 2013 HKIAC Rules, Article 30(1) of the 2014 ICDR Rules, Article 26(2) of the 2014 LCIA Rules, Article 42(1) of the 2017 SCC Rules, Article 32(4) of the 2016 SIAC Rules, Article 32(3) of the 2012 Swiss Rules, Article 34(3) of the 2010 UNCITRAL Rules, and Article 36(1) of the 2013 VIAC Rules.

[29] Article 25(2) of the 1998 ICC Rules, Article 31(2) of the 2012 ICC Rules and Article 32(2) of the 2017 ICC Rules.

[30] THOMAS H. WEBSTER, MICHAEL W. BÜHLER, HANBOOK OF ICC ARBITRATION, COMMENTARY, PRECEDENTS, MATERIALS, London: Sweet & Maxwell paragraph 31-19 (3rd ed., 2014), JASON FRY, SIMON GREENBERG, FRANCESCA MAZZA, THE SECRETARIAT'S GUIDE TO ICC ARBITRATION, Paris: ICC Services, Publications Department paragraph 3-1152 (2012).

Court's strict position may also be justified by the fact that, unlike other major institutions, the ICC Court scrutinizes reasoning in draft awards and thus signals to arbitration practitioners that ICC awards always maintain a requisite quality.

III. Content Requirements for Reasoning in International Arbitral Awards

8.25. As evident from the above, many international arbitral awards will have to contain reasoning. The typical reasoning requirement is plainly worded and in itself does not specify exactly what the reasoning should contain. As we explain below, there seems to be one vague international standard and various, albeit converging, domestic standards denoting what the reasoning should contain.

8.26. **The International Standard.** As an award in international commercial arbitration is not a state court decision, several respected authors propose that its reasoning does not have to address every substantive argument or piece of evidence submitted by a party, but that it is sufficient to provide for succinct reasons dealing with arguments and evidence that the tribunal considered relevant in rendering its award. They also propose that the question of whether the reasons are factually and legally well founded is irrelevant, as even a wrong reasoning would meet the requirement that an international award is reasoned. At the same time, they acknowledge the case law of national courts dealing with arbitral awards that often view the reasoning requirement as more stringent, which often results in the award being set aside or unenforceable. We address this standard in Section III.1 below.

8.27. **National Standard.** National laws – whether the country employs the UNCITRAL Model Law, or utilizes either a traditional civil or common law approach – do not typically define what reasoning means in an international award. Rather, national courts, through their decisions (rendered, among other instances, when dealing with award set aside and enforcement motions or court appeals), formulate standards for determining whether an award's reasoning satisfies public policy or the national due process requirement.

8.28. In practical terms, the courts deal with questions such as whether: (i) arbitrators must address every single party argument, (ii) the arbitrators' findings must be correct from the substantive law point of view, (iii) the reasoning must not contain a manifestly wrong finding of fact, and (iv) the reasoning must be logical and not arbitrary. As countries define their due

process requirements autonomously, the laws of each country differ and answers to the above questions vary. We address this standard in Section III.2 below.

8.29. **Standard Derived from 'Standard of Review'.** In essence, the above international and national standards suggest there is common recognition for the need to establish a certain standard of review for determining whether the award is adequately reasoned. What both approaches have in common is that they determine a standard for analyzing whether an award is sufficiently reasoned to withstand applicable court scrutiny. From this point of view, the question of whether the award's reasoning is of a certain 'quality' is irrelevant. The only thing that matters is whether the award is able to carry the consequences for which the parties commenced the arbitration.

8.30. So, is there a common standard of review for determining whether an award is adequately reasoned and, if not, what could it be? We address this standard derived from the standard of review in Section III.3 below.

III.1. International Standard

8.31. **CIArb.** One of few attempts to establish an appropriate standard for award reasoning comes from the Chartered Institute of Arbitrators (the "CIArb"). In this respect, the CIArb suggests that arbitrators should 'have a wide discretion to decide on the length and the level of detail of the reasons but it is good practice to keep the reasons concise and limited to what is necessary, according to the particular circumstances of the dispute.'[31] The CIArb seems to follow the standard set out by the English Court of Appeal, which held that:

> 'All that is necessary is that the arbitrators should set out what, on their view of the evidence, did or did not happen and should explain succinctly why, in the light of what happened, they have reached their decision and what that decision is. This is all that is meant by a 'reasoned award'."[32]

8.32. **Leading Authors.** Also, certain leading arbitration practitioners advocate for not imposing very strict rules on the award's reasoning. For instance, Gary Born, one of the most renowned practitioners, suggests that 'reasons can be short and concise or they can be ill-phrased, unpersuasive and unreflective; but

[31] Chartered Institute of Arbitrators, *supra* note 4.

[32] *Bremer Handelsgesellschaft mbH v Westzucker GmbH*, [1981] 2 Lloyd's Rep 130 at 132-133.

they are still reasons.'[33] Similarly, other commentators explain that reasoning does not have to be necessarily 'well-founded in fact or law' and that even apparently wrong grounds satisfy the requirement that awards be reasoned.[34]

8.33. According to Born, the requirement for a reasoned award does not mean that arbitrators should write an academic treatise.[35] He also refers to decisions of national courts suggesting that an award does not have to deal with every substantial argument raised by the parties,[36] nor does it need to discuss how the arbitral tribunal evaluated each item of evidence submitted by the party.[37]

8.34. There also seems to be a general understanding among leading practitioners that reasoning does not have to discuss factual or legal issues in detail that are irrelevant for the tribunal's decision.[38] This means, for instance, that if the respondent raises three defences, each of which may result in dismissing the claim, upholding any of these defences by the arbitral tribunal necessarily means that the remaining defences do not have to be discussed in much detail.

8.35. On the other hand, Born also acknowledges that certain courts have annulled arbitral awards where the reasoning showed that the arbitral tribunal did not consider the parties' arguments, concluding that the arbitrators thus violated the parties' right to be heard.[39] Similarly, other commentators note that 'giving contradictory reasons could be considered as amounting to giving no reasons at all' and thus justify the annulment of an award.[40]

8.36. For instance, a German court held that an award may be set aside if the reasoning lacks any substance and evidently conflicts with the decision.[41] A Dutch court further stated that an award may be set aside if the reasoning is so incorrect that it constitutes a failure to explain the award.[42] Furthermore, the Tunisian Court of Cassation set aside an award containing contradictory

[33] 3 GARY B. BORN, *supra* note 1, at 3044.
[34] EMMANUEL GAILLARD, JOHN SAVAGE, *supra* note 26, paragraph 1395.
[35] 3 GARY B. BORN, *supra* note 1, at 3042.
[36] *Ibid.*, at 3043.
[37] *Ibid.*, at 3044.
[38] Murray Gleeson, *Writing Awards in International Commercial Arbitrations*, in ARBITRATION - THE INTERNATIONAL JOURNAL OF ARBITRATION, MEDIATION AND DISPUTE MANAGEMENT, London: Sweet & Maxwell 77 (2015).
[39] 3 GARY B. BORN, *supra* note 1, at 3254.
[40] EMMANUEL GAILLARD, JOHN SAVAGE, *supra* note 26, paragraph 1395.
[41] United Nations Commission on International Trade Law, UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration, (United Nations Publications, 2012) available at: http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf, p. 127, paragraph 7 (accessed on 22 August 2017).
[42] *Ibid.*, p. 127, paragraph 8.

reasons, holding that such reasons must be considered non-existing.[43] Similarly, an Indian court set aside an award stating that where the tribunal took into account the parties' claims and counterclaims and recorded the tribunal's findings without any explanation, the requirement to make an award with reasons was not satisfied.[44]

8.37. **ICSID.** The ICSID Convention requirement that the tribunal deal with every question submitted to it and state reasons on which the award is based has been interpreted several times by the ICSID. In essence, this requirement obliges the tribunal to deal with every piece of a party's argumentation that could have an impact on the tribunal's findings.[45] Also, an award will not be considered reasoned, for example, if the award's reasoning is internally contradictory (meaning that the reasoning of one part of the award clearly contradicts the reasoning in another part),[46] or the award does not provide 'sufficiently pertinent reasons'.[47] In other words, even if the ICSID award does not deal with every argument raised by a party as mandated by Article 48(3), the requirement that the tribunal address every question raised can be met, and an award can still be considered to be unreasoned even if the award prima facie contains 'reasoning'.

8.38. Clearly, a 'simple and definitive test'[48] cannot be formulated by Article 48(3). Although there are attempts to summarize the ICSID decisions as guidance, we note that ICSID does not deal with issues such as due process and public policy which the national courts deal with.

8.39. **Summary.** On the international scale, there is no single strict definition of what the award's reasoning requirement means in commercial arbitration. Commentators and practitioners try to formulate a standard for determining whether an award is adequately reasoned by referring to national case law and awards issued by institutions such as ICSID or ICT. Institutions such as ICSID, ICT, and the CIArb provide guidance as to what, on an international level, they consider the reasoning to require.

---

43 *Ibid*., pp. 127-128, paragraph 8.

44 *Ibid*., p. 128, paragraph 10.

45 4 ROSEMARY RAYFUSE, REPORTS OF CASES DECIDED UNDER THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES, 1965, United Kingdom: Cambridge University Press, 59 (1997)

46 CHRISTOPH H. SCHREUER, THE ICSID CONVENTION: A COMMENTARY, United Kingdom: Cambridge University Press, 824 (2009).

47 1 ROSEMARY RAYFUSE, REPORTS OF CASES DECIDED UNDER THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES, 1965, United Kingdom: Cambridge University Press, 520 (1993).

48 *Ibid.*

III.2. National Standard

8.40. The absence of an internationally binding standard on the reasoning requirement means that it rests with national courts to review whether arbitrators have fulfilled their duties to reason their international awards (if in fact such a duty exists under the applicable arbitration rules) when there is a hearing setting aside challenges, appeals, or objections to the enforcement of an award. However, logically, courts in separate countries have different expectations and impose different requirements on arbitrators when it comes to their duty to reason an award rendered in an international dispute.[49]

8.41. The diverging approaches applied by national courts are further illustrated from a more detailed review of case law in Switzerland, one of the most renowned arbitration venues worldwide, Austria, which is of significant importance for Central and Eastern European practitioners, and Slovakia, the authors' home jurisdiction. These diverging approaches are discussed in more detail below.

III.2.1. Switzerland

8.42. Switzerland is one of the most preferred venues for hosting international arbitrations. The Swiss Arbitration Association describes international arbitration in Switzerland as 'Neutral – Accessible – Predictable – Balanced'.[50] Switzerland's success and popularity is mainly derived from a very flexible arbitration law (Chapter 12 of the 1987 Federal Private International Law Act) (the '**Swiss PILA**') and the pro-arbitration case law of the Swiss Federal Supreme Court.

8.43. Switzerland's arbitration-friendly policy is also reflected in the requirements for reasoning in international arbitral awards.

8.44. In particular, under the Swiss PILA, while an arbitral award must be supported by reasons, the parties may waive this requirement[51] in line with the principle of party autonomy. On the other hand, from a constitutional point of view, the right to a reasoned decision is included in the right to be heard (the Swiss equivalent for the concept of due process) under Article 29(2) of the Swiss Federal Constitution.[52] Violation of the right to be

[49] Such expectations may further vary if the award was rendered in a purely domestic dispute, but awards rendered in such disputes are not discussed in this article.

[50] Swiss Arbitration Association, Arbitration in Switzerland Neutral - Accessible - Predictable - Balanced, available at: http://www.arbitration-ch.org/en/arbitration-in-switzerland/index.html (accessed on 22 August 2017).

[51] Article 189 of the Swiss PILA.

[52] Federal Constitution of the Swiss Confederation of April 18, 1999 (the 'Swiss Federal Constitution').

heard is one of the grounds for setting aside an international award under Article 190(2)(d) of the Swiss PILA.[53]

Against this legislative framework, the Swiss Federal Supreme Court established the following rule suggesting that arbitral awards can only be annulled for lack of reasoning in exceptional circumstances:

a) The right to be heard within the meaning of Article 190(2)(d) of the Swiss PILA does not require an international arbitral award to be reasoned, but imposes on the arbitrators a minimum duty to examine and deal with the pertinent issues;
b) The arbitrators violate such a duty if, inadvertently or due to a misunderstanding, they do not take into account factual allegations, arguments, evidence, or offers for evidence submitted by the party which are important for the decision;
c) If an award overlooks an issue claimed to be important for the decision, the arbitrators or the respondent in the setting aside proceedings may justify such an omission by showing that the omitted items were not important for the decision or that the arbitral tribunal rejected such items implicitly; and
d) In any event, the arbitrators are not required to discuss all arguments invoked by the parties and, therefore, they cannot violate the party's right to be heard only because they did not reject, even implicitly, an argument objectively having no importance for the decision.

8.45. The most often cited precedent for this rule is the 2007 Cañas decision.[54] Since then, the Swiss Federal Supreme Court has reiterated this rule on a number of occasions and dismissed most of the challenges invoking the right to be heard in connection with the award's reasoning.[55] The Swiss Federal Supreme Court has usually concluded that the arbitral award explicitly or implicitly rejected the party's argument, the party's argument was irrelevant for the decision, or the party's challenge was merely an inadmissible criticism of the reasoning aimed at

[53] Article 190(2)(d) of the Swiss PILA.

[54] Decision of the Swiss Federal Supreme Court dated March 22, 2007, 4P 172/2006.

[55] Decisions of the Swiss Federal Supreme Court No. 4A 550/2009 dated 29 January 2010, 4A 446/2013 dated 5 February 2014, 4A 564/2013 dated 7 April 2014, 4A 178/2014 dated 11 June 2014, 4A 324/2014 dated 16 October 2014, 4A 486/2014 dated 25 February 2015, 4A 426/2014 dated 6 May 2015, 4A 124/2015 dated 17 June 2015, 4A 684/2014 dated 2 July2015, 4A 54/2015 dated 17 August 2015, 4A 69/2015 dated 26 October 2015, 4A 520/2015 dated 16 December 2015. English translations of these decisions are available at: http://www.swissarbitrationdecisions.com (accessed on 22 August 2017).

reviewing the merits of the award under the cloak of the right to be heard challenge.

8.46. The few Swiss Federal Supreme Court decisions upholding a setting aside challenge confirm the court is only willing to annul the award in exceptional circumstances.[56] In those decisions, the Swiss Federal Supreme Court concluded that it could not find any hint in the relevant award suggesting that the arbitral tribunal, even implicitly, addressed an important argument raised by the challenging party,[57] that the arbitral tribunal simply overlooked important arguments raised by the challenging party in its post-hearing brief,[58] or that a mere reference to an important argument raised by a party in the summary of the parties' arguments without analysis of this argument in the section dealing with legal reasons cannot meet the requirements resulting from the right to be heard.[59]

8.47. It thus appears that the Swiss Federal Supreme Court will only uphold a challenge alleging a breach of the right to be heard in connection with an award's reasoning where the arbitral tribunal has entirely omitted important arguments so that the party presenting such arguments is put in the same position as if such arguments had not been heard at all.[60] Undoubtedly, as one Swiss commentator notes, this case law provides legal certainty for arbitration in Switzerland.[61] On the other hand, as pointed out by other Swiss commentators, it is highly questionable whether the review of arbitral awards by the Swiss Federal Supreme Court 'can still be called 'judicial review.'"[62]

8.48. Nevertheless, the position of the Swiss Federal Supreme Court seems to be clear and there is nothing to indicate any forthcoming significant changes. In particular, the Swiss Federal Supreme Court recently emphasized that it was not going to broaden the

[56] Decisions of the Swiss Federal Supreme Court No. 4A 46/2011 dated 16 May 2011, 4A 360/2011 dated 31 January 2012, 4A 460/2013 dated 4 February 2014, 4A 246/2014 dated 15 July 2015, 4A 532/2016 dated 16 June 2017. English translations of these decisions are available at: http://www.swissarbitrationdecisions.com (accessed on 22 August 2017).

[57] Decision of the Swiss Federal Supreme Court No. 4A 46/2011 dated 16 May 2011 at 4.3.2. An English translation is available at: http://www.swissarbitrationdecisions.com (accessed on 22 August 2017).

[58] Decision of the Swiss Federal Supreme Court No. 4A 360/2011 dated 31 January 2012 at 5.2.1.2 and 5.2.3.2. An English translation is available at: http://www.swissarbitrationdecisions.com (accessed on 22 August 2017).

[59] Decision of the Swiss Federal Supreme Court No. 4A 460/2013 dated 4 February 2014 at 3.2.2 and 3.3. An English translation is available at: http://www.swissarbitrationdecisions.com (accessed on 22 August 2017).

[60] TOBIAS ZUBERBÜHLER, CHRISTOPH MÜLLER, PHILIP HABEGGER, *supra* note 3, at 360.

[61] Nathalie Voser, There is no violation of a party's right to be heard where a tribunal does not address arguments that it considers to be irrelevant (Swiss Supreme Court), (UK Practical Law, 3 February 2016) available at: http://www.swlegal.ch/getdoc/82a51864-a69c-4495-9088-265a222787ed/2016_Nathalie-Voser_No-violation-of-a-party-s-righ.aspx (accessed on 22 August 2017).

[62] Swiss International Arbitration Decisions, Federal Tribunal refuses to extend the scope of its review, available at: http://www.swissarbitrationdecisions.com/federal-tribunal-refuses-extend-scope-its-review (accessed on 22 August 2017).

review of international arbitral awards, particularly because of the increasing number of challenges invoking the right to be heard in the hope of obtaining review of the award's merits.[63] In order to discourage such practice and justify its position, the Swiss Federal Supreme Court explained that the 'party's fate will not be less enviable than that which would have transpired for the party if the arguments, duly examined, were rejected by the arbitral tribunal on unsustainable grounds because arbitrariness is not a grievance included in the exhaustive list of Article 190(2) PILA.'[64]

8.49. Yet, the losing party's raising such challenges are of no surprise because the rule established by the Swiss Federal Supreme Court gives some space for the creative counsel to manoeuvre and the losing party usually, reflexively, attempts to use all available remedies to reverse the adverse consequences of a lost lawsuit.

III.2.2. Austria

8.50. Austria is also considered an arbitration-friendly forum. For Central and Eastern European practitioners, Austria is a natural choice for arbitrating international disputes, but its importance continues to increase among arbitration users worldwide. According to the Austrian Arbitration Association, Austria's attractiveness as an arbitration form is derived from a modern and arbitration-friendly arbitration law (Sections 577-618 of the Austrian Code of Civil Procedure (the 'Austrian Arbitration Act'), which is fully in line with UNCITRAL Model Law, and the pro-arbitration approach of Austrian courts.[65]

8.51. Consistent with this pro-arbitration policy, the Austrian Supreme Court was, traditionally, very strict in following the rule that an award cannot be set aside because of missing or insufficient reasoning.[66] This rule was also supported by the majority of Austrian scholars.[67]

8.52. However, in a recent decision concerning an international dispute, the Austrian Supreme Court overturned its previous case law by outlining circumstances where defective reasoning of an arbitral award may lead to its annulment.[68] In particular, the Austrian Supreme Court held that '[i]f an arbitral award is not

[63] Decision of the Swiss Federal Supreme Court No. 4A 520/2015 dated 16 December 2015 at 3.3.1. An English translation is available at: http://www.swissarbitrationdecisions.com (accessed on 22 August 2017).

[64] *Ibid*., at 3.3.2.

[65] Arbitration in Austria (Arb/Aut), available at: http://www.arbitration-austria.at/index.php?option=com_k2&view=item&layout=item&id=43&Itemid=661 (accessed on 22 August 2017).

[66] Decision of the Austrian Federal Supreme Court No. 4Ob185/12b dated 8 November 2012 at paragraph 2.4 (a).

[67] GEROLD ZEILER, SCHIEDSVERFAHREN, Wien: NMV Verlag GmbH 308 (2014).

[68] Decision of the Austrian Federal Supreme Court No. 18 OCg 3/16i dated 28 September 2016.

reasoned or reasoned only by empty phrases upon an essential issue', such award violates Austrian public policy and can be annulled under Section 611(2)(5) of the Austrian Arbitration Act.[69] The Austrian Supreme Court further clarified that an arbitral award is properly reasoned if the arbitral tribunal refers to its or the respective party's position presented in the course of the proceedings.[70] If, however, the arbitral tribunal bases the reasoning on an argument not raised in the proceedings, it must elaborate on the reasons in much greater detail.[71]

8.53. The Austrian Supreme Court also articulated two important exceptions where defective reasoning will not lead to a successful setting aside challenge. First, the party cannot successfully invoke defective reasoning as a ground for setting aside an award if the parties waive their right to a reasoned award.[72] Permissibility of such a waiver is expressly contemplated by Section 606(2) of the Austrian Arbitration Act. Second, the party is also prevented from successfully challenging the award based on defective reasoning if it fails to submit a request for interpretation of the award, provided that such a remedy is available under applicable procedural rules.[73] Section 610(1)(2) of the Austrian Arbitration Act provides that such remedy may be agreed upon by the parties.

8.54. It seems that Austrian practitioners have welcomed this decision.[74] In particular, they note that the decision expressly requires arbitrators to carefully deal with the parties' arguments pertinent to the decision and thus contributes to a higher quality of arbitral awards. On the other hand, it is now reasonable to expect an increase in the number of setting aside challenges

69 *Ibid.*, paragraph 5.
70 *Ibid.*
71 *Ibid.*
72 *Ibid.*
73 *Ibid.*
74 See, in particular, the following case briefs:
Oliver Loksa, Austria: setting aside arbitral awards that lack reasoning (Slovak Arbitration Blog, 12 December 2016) available at: http://slovarblog.com/austria-setting-aside-arbitral-awards-that-lack-reasoning/ (accessed on 22 August 2017);
- Nikolaus Pitkowitz, Supreme Court sets aside arbitral award for defective reasoning (International Law Office, 19 January 2017) available at: http://www.internationallawoffice.com/Account/Login.aspx?ReturnUrl=http%3a%2f%2fwww.internationallawoffice.com%2fNewsletters%2fArbitration-ADR%2fAustria%2fGraf-Pitkowitz%2fSupreme-Court-sets-aside-arbitral-award-for-defective-reasoning (accessed on 22 August 2017);
- Anne K. Grill, Sebastian Lukic, Austrian Supreme Court Establishes New Standards as Regards the Decisive Underlying Reasoning of Arbitral Awards (Kluwer Arbitration Blog, 24 December 2016) available at: http://kluwerarbitrationblog.com/2016/12/24/austrian-supreme-court-establishes-new-standards-as-regards-the-decisive-underlying-reasoning-of-arbitral-awards (accessed on 22 August 2017), and
- Alexander Zollner, Austrian Supreme Court set aside an arbitral award due to a violation of the public procedural order (Global Arbitration News, 21 June 2017) available at https://globalarbitrationnews.com/austrian-supreme-court-set-aside-arbitral-award-for-violation-of-public-policy/ (accessed on 22 August 2017).

invoking the arbitrators' violation of Austrian public policy by failing to reason the awards properly.

8.55. Nevertheless, it remains to be seen whether the recent decision signifies that the Austrian Supreme Court is going to follow a path similar to that of the Swiss Federal Supreme Court or if it will more significantly increase its supervision over arbitrators' work.

III.2.3. Slovakia

8.56. Unlike Switzerland and Austria, Slovakia is not generally regarded as a popular venue among arbitration practitioners. While the Slovak Arbitration Act[75] is in line with the UNCITRAL Model Law, Slovak courts, in general, have a negative perception of arbitration as an alternative dispute resolution method because domestic arbitration was historically misused for years against customers. Such misuse has also influenced the courts' general perception of commercial arbitration. Therefore, it is not unusual that Slovak courts apply much stricter requirements to the arbitral proceedings and review of awards compared to arbitration-friendly countries.

8.57. The Slovak courts' scepticism towards arbitration is also reflected in the case law concerning requirements for reasoning in domestic arbitral awards concerning purely domestic disputes. In a particular case, in 2011, the Slovak Constitutional Court held that domestic arbitral awards are subject to the same constitutional guarantees of due process as court decisions and such requirements require that the decision not be arbitrary and that reasoning contain clear and relevant reasons as to both facts and law.[76] In that case, the Slovak Constitutional Court annulled a domestic award concluding that the arbitral tribunal manifestly erred in its application of substantive law and thus violated the complainant's right to a properly reasoned decision guaranteed by the Slovak Constitution.[77]

8.58. Some practitioners criticized the Slovak Constitutional Court's decision in the case because it indicated its willingness to review the merits of an arbitral award and rendered its decision upon an extraordinary constitutional complaint, not in a setting aside proceeding.[78] Nonetheless, despite numerous subsequent

[75] Act No. 244/2002 Coll. on Arbitration, as amended (the 'Slovak Arbitration Act').

[76] Decision of the Slovak Constitutional Court No. III. US 162/2011 dated 31 May 2011.

[77] Act No. 460/1992 Coll. Constitution of the Slovak Republic (the 'Slovak Constitution').

[78] Kristián Csach, *Prieskum rozhodcovských rozsudkov* ústavným *súdom*, in PRÁVO – OBCHOD – EKONOMIKA 386 - 395 (2011), Kristián Csach, Rozhodcovské rozsudky a ústavný súd (Lexforum, 17 August 2011) available at: http://www.lexforum.cz/330 (accessed on 22 August 2017), Martin Magál, Juraj Gyarfáš, Slovakia: Court expands power of review (Global Arbitration Review, 1 November 2011) available

attempts of other complainants, the Slovak Constitutional Court annulled a domestic arbitral award only in one additional case where it again found that the arbitral tribunal decided in breach of the constitutional requirements of due process, including the right to a properly reasoned decision.[79]

8.59. Notably, at the time when the Slovak Constitutional Court rendered both decisions annulling domestic arbitration awards, Slovak courts having jurisdiction over the setting aside proceedings did not have an explicit legal basis for annulling domestic awards violating Slovak public policy. Therefore, the intervention of the Slovak Constitutional Court may also be viewed as an attempt to remove the legislative gap. In any event, as of 1 January 2015, violation of public policy as a ground for setting aside a domestic award was introduced into the Slovak Arbitration Act and the grounds for setting aside a domestic award have since been essentially identical to the grounds set out in the UNCITRAL Model Law. Subsequently, a few months later, the Slovak Constitutional Court put an end to all future attempts to have domestic arbitral awards reviewed through a constitutional complaint.[80]

8.60. In its comprehensively reasoned plenary opinion, the Slovak Constitutional Court held that it does not have jurisdiction to review arbitral awards because arbitral tribunals are not public authorities.[81] As *obiter dictum*, the Slovak Constitutional Court explained that since 1 January 2015, protection against the most serious procedural grievances violating the constitutional concept of due process seemed to be properly safeguarded through grounds for filing a setting aside challenge under the Slovak Arbitration Act, in particular under the public policy rule.[82] The Slovak Constitutional Court also noted, however, that it will be up to the courts hearing the setting aside challenges to elaborate on the extent of protection afforded to the parties to arbitration through the grounds for setting aside an award.

8.61. This plenary opinion should be welcomed as a strong signal that the Slovak Constitutional Court will not accept any future attempts to circumvent standard judicial review of domestic arbitral awards envisaged in the provisions governing setting aside proceedings. However, it is unclear whether the plenary opinion of the Slovak Constitutional Court will also lead to a

at: http://globalarbitrationreview.com/article/1030730/slovakia-court-expands-powers-of-review (accessed on 22 August 2017); Juraj Gyarfáš, *Constitutional Scrutiny of Arbitral Awards: Odd Precedents in Central Europe*, 29 J. INT'L ARB. 391 – 404 (2012).

79 Decision of the Slovak Constitutional Court No. III. US 547/2013 dated 19 February 2014.

80 Decision of the Slovak Constitutional Court No. PLz. ÚS 5/2015 dated 18 November 2015.

81 *Ibid*., paragraph 57.

82 *Ibid*., paragraphs 50 and 53.

change of its earlier holding that reasoning in arbitral awards is subject to the same constitutional requirements as court decisions.

8.62. The Slovak Constitutional Court has developed a significant amount of requirements for reasoning in court decisions falling within the constitutional concept of due process. In particular, the Slovak Constitutional Court held that court decisions must contain sufficient reasons upon which they are made.[83] Furthermore, the reasoning must not be arbitrary, illogical or inconsistent in light of the underlying facts.[84] Additionally, the reasoning must comprehensively, correctly and understandably address all factual and legal issues relevant for the decision,[85] and the reasoning must properly deal with all relevant legal arguments, factual allegations, and offers for evidence of the parties.[86]

8.63. However, as noted by the Slovak Constitutional Court, it is now up to the courts hearing the setting aside challenges to consider whether all or at least some of the requirements for reasoning in court decisions are part of the Slovak procedural public policy, the violation of which would justify annulment of domestic arbitral awards. Alternatively, as suggested by certain practitioners,[87] the violation of fundamental requirements for reasoning (i.e. that an award's reasoning must be logical, consistent and not arbitrary, and must address all relevant arguments and offers for evidence of the parties) may also justify annulment of an award under Section 40(1)(a)(4) of the Slovak Arbitration Act (equivalent to Article 34(2)(a)(iv) of the UNCITRAL Model Law).[88]

8.64. It also remains to be seen whether Slovak courts would apply the same or less strict requirements for reasoning with respect

[83] Decisions of the Slovak Constitutional Court No. III. ÚS 115/03 dated 7 May 2003, and II. ÚS 410/06 dated 2 August 2007.

[84] Decisions of the Slovak Constitutional Court No. IV. ÚS 150/03 dated 7 August 2003, I. ÚS 301/06 dated 4 October 2006, II. ÚS 583/2011 dated 16 May 2012, IV. ÚS 249/2011 dated 20 June 2013, I. ÚS 243/07 dated 19 June 2008, I. ÚS 155/07 dated 3 December 2008, and I. ÚS 402/08 dated 1 April 2009.

[85] Decisions of the Slovak Constitutional Court No. III. ÚS 199/09 dated 7 July 2009, III. ÚS 328/05 dated 29 March 2006, III. ÚS 116/06 dated 5 September 2006, III. ÚS 107/07 dated 30 October 2007, IV. ÚS 14/07 dated 17 May 2007, I. ÚS 265/05 dated 14 September 2006, IV. ÚS 115/03 dated 3 July 2003, III. ÚS 119/03 dated 16 September 2003, III. ÚS 209/04 dated 23 June 2004, and III. ÚS 117/2012 dated 19 June 2012.

[86] Decisions of the Slovak Constitutional Court No. III. ÚS 44/2011 dated 26 October 2011, and III. ÚS 402/08 dated 17 March 2009.

[87] JURAJ GYARFÁŠ, MAREK ŠTEVČEK, ZÁKON O ROZHODCOVSKOM KONANÍ KOMENTÁR, Praha: C. H. Beck 459 (2016), and LUDOVÍT MIČINSKÝ, MILOŠ OLÍK, DOHOVOR O UZNANÍ A VÝKONE CUDZÍCH ROZHODCOVSKÝCH ROZHODNUTÍ KOMENTÁR, Bratislava: Wolters Kluwer 185 (2016).

[88] Under Article 34(2)(a)(iv) of the UNCITRAL Model Law, 'An arbitral award may be set aside by the court specified in article 6 only if: […] (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or […].'

to foreign arbitration awards when hearing objections to their enforcement. In particular, the Slovak Arbitration Act includes an almost identical public policy exception to that set forth in the 1958 New York Convention.[89] According to the explanatory memorandum for the amendment to the Slovak Arbitration Act that came into force on 1 January 2015, public policy should be interpreted restrictively and in accordance with international practices in order to promote arbitration in Slovakia. Therefore, the public policy exception should apply, for instance, where the award is affected by a criminal offence of an arbitrator, expert, or witness. However, it is questionable whether Slovak courts would buy into the suggested restrictive interpretation of the public policy concept.

8.65. One may only hope that Slovak courts will try to find a reasonable balance between the parties' right to due process and the interest in limiting court intervention in arbitration.

8.66. **Summary.** The above discussed UNCITRAL Model Law countries have different standards of review with respect to assessing whether an award is duly reasoned.

8.67. Switzerland, given its embedded requirement of the right to be heard, it historically does not allow the arbitrator to dispense with the reasoning requirement by completely failing to provide reasons (unless the parties agree that the award does not have to be reasoned). On the other hand, Swiss law does not require that the tribunal address all of the parties' arguments. The minimum threshold is that the tribunal addresses the raised questions that are important for the case.

8.68. Historically, Austria has not been willing to be subject to the reasoning requirement even to a Swiss standard. However, by referring to its public policy, in its latest line of court decisions Austria accepted that an arbitral award is subject to a minimum requirement such that it must provide at least some meaningful reasoning on the arbitration's key issue.

8.69. For some time, Slovakia seemed to be trending toward a direction where the award's reasoning would be subject to a rather strict due process requirement, allowing the courts to set aside the award for being wrongly reasoned. However, the recent line of case law and commentaries suggest that Slovakia will follow a

[89] Section 50(2) of the Slovak Arbitration Act provides that '[t]he court having jurisdiction to recognize, enforce or perform execution shall refuse to recognize and enforce a foreign arbitral award even if not requested to do so by the party against whom the foreign arbitral award is sought to be enforced if it discovers that […] its recognition and enforcement would be against public policy.'

more reasonable standard of review for determining whether awards are sufficiently reasoned.

8.70. In sum, it seems that the national courts at least in UNCITRAL Model Law Countries would have a tendency to apply a converging standard of review.

III.3. Devising a Standard of Review

8.71. At the moment, no standard of review exists that is applicable universally and across-the-nations . Therefore, a tribunal rendering an international award shoots into the dark when aiming for adequate reasoning that would give the award the effective power to be upheld and enforced when and where necessary.

8.72. The rules applicable to a set aside or appeal motion stem from arbitration law of the seat and, as such, the arbitrators are perfectly aware of them. However, the rules applicable to a request for a refusal to enforce the award are different in every country in which a party will seek to enforce the award. As the arbitrators have no or almost no definitive information as to where the party may wish to enforce the award, if their award is to be universally enforceable, they would have to follow the rules applicable in every country in the world.

8.73. As it is impossible for the arbitrators to master all of the laws in the world, a generally and widely accepted and recommended standard derived from a common standard of review would be helpful. Also, in such case, the arbitrators would reasonably know what is required from them in order to meet the enforceability requirement explicitly or impliedly imposed[90] on them by various institutions (such as ICC) and laws.

8.74. Arguably, the standard should be formulated on the basis of national standard or standards that have been long tested and work. The practitioners and the international arbitration forums should discuss what constitutes sufficient reasoning for an enforceable award in civilized countries.

8.75. Irrespective of any requirements under national laws, and until a more unified and discernable common standard is devised, the arbitrators should do their utmost to make reasoning in their awards as persuasive as possible. In particular, arbitrators should take care to properly identify, consider, and address all relevant issues raised by the parties throughout the proceedings, and briefly explain why they treated other issues as irrelevant.

[90] For instance, Article 42 of the ICC Rules provide that 'In all matters not expressly provided for in the Rules, the Court and the arbitral tribunal shall act in the spirit of the Rules and shall make every effort to make sure that the award is enforceable at law.'

By addressing these factors, the arbitrators would mitigate risks that the award could be found unenforceable in countries less arbitration friendly than the state in which the award is rendered. Indeed, even if an award meets the minimum requirement in pro-arbitration countries such as Switzerland or Austria, from a policy point of view it is not bad to have a good 'quality' award.

IV. Conclusion

8.76. It seems to be an internationally accepted standard that arbitral awards contain reasoning. This standard is reflected in the vast majority of binding legal instruments governing international arbitration which explicitly require that awards be reasoned, although the parties can usually waive such a requirement. This standard is followed by the European Convention on International Arbitration, the national arbitration laws following the UNICTRAL Model Law (e.g. Austria, China, England & Wales, Germany, Hong Kong, Singapore, Sweden, and Switzerland), and the majority of the most often used arbitration rules (e.g. the latest revisions of the CIETAC, DIS, HKIAC, ICDR, LCIA, SCC, SIAC, Swiss, UNCITRAL, and VIAC arbitration rules). The right to waive the reasoning of the award is not explicitly permitted under certain arbitration laws following the traditional civil law approach (e.g. Belgium, France, Italy, Russia, Spain, and Turkey) and the ICC arbitration rules.

8.77. While a reasoning requirement is recognized, there is no universally accepted standard of reasoning in arbitral awards concerning international disputes. Indeed, it always rests with national courts to decide whether arbitrators have fulfilled their duty to reason their awards properly when hearing setting aside challenges, appeals, or objections to the enforcement of an award. However, national courts may have, and in some cases indeed do have, different requirements governing the award's reasoning.

8.78. As noted in this article, the Swiss Federal Supreme Court has established that an award rendered in an international dispute does not meet the requirement for reasoning if the tribunal has entirely omitted an important argument raised by the party challenging the award and the other party or the tribunal subsequently cannot show that the tribunal rejected such an argument implicitly. In Austria, the well-established and long-lived rule was that defective reasoning cannot lead to the annulment of an award. Only recently has the Austrian Supreme Court recognized an exception where it held that reasoning in

an award concerning an international dispute only containing empty phrases on an essential issue can be set aside as violating Austrian public policy. Conversely, in Slovakia, the basic rule for years was that reasoning in domestic arbitral awards is subject to the same requirements as those applicable to court decisions under the concept of due process. However, the recent plenary opinion of the Slovak Constitutional Court can be viewed as an indication that the basic rule may change. Importantly, in essence, the above development shows that the national standards of review are converging.

8.79. As arbitrators in international commercial arbitration are expected to render enforceable awards, they should know what is expected for the award's reasoning to withstand any attack. While it is arguably not possible to master all potentially applicable national standards, the arbitrators would benefit from following one recommended standard derived from assessing national standards of review. In order to formulate such a transnational standard, the arbitration forums could discuss examples of national standards of review and case law and develop a list of specific recommendations to establish a single standard for determining whether an award is sufficiently reasoned. This recommended standard should not follow a standard of review from a pro-arbitration country such as Switzerland or Austria as such standards appear too lenient for providing the necessary support if the award is to be enforced in less pro-arbitration countries. At the same time, if tribunals were encouraged to follow a higher recommended standard of reasoning, it would certainly add to the 'quality' of the awards, which is welcome from policy point of view.

| | |

Summaries

DEU [***Der Begründungsstandard für Schiedssprüche***]
Dieser Beitrag befasst sich damit, ob ein Erfordernis existiert, wonach internationale Schiedssprüche begründet sein müssen, und ob diese Begründung von einer gewissen „Qualität" sein muss, um einen gewissen „Mindeststandard" zu erfüllen und einer Überprüfung durch die ordentlichen Gerichte standhalten zu können. Die Autoren befinden zunächst, dass die Begründung als integraler Bestandteil eines Schiedsspruchs zum international anerkannten Standard geworden ist. Dieser Standard kommt in

der Mehrzahl der verbindlichen internationalen Quellen, welche das internationale Schiedsverfahren regeln, zur Umsetzung – also internationale Schiedsabkommen, nationale Vorschriften zum Schiedsverfahren und die häufig genutzten Schiedsregeln. Sie fordern ausdrücklich, dass Schiedssprüche begründet sein sollen; allerdings ermöglichen sie es den Streitparteien im Regelfall, von diesem Erfordernis per Verzichtserklärung Abstand zu nehmen. Die Autoren des vorliegenden Beitrags vertreten die Auffassung, dass neben einem nur vage umrissenen internationalen Begründungsstandard außerdem mehrere nationale Standards bestehen (und zwar in den Ländern, die das UNCITRAL-Modellgesetz übernommen haben – der Artikel schenkt diesbezüglich dem schweizerischen, österreichischen und slowakischen Standard besondere Aufmerksamkeit). Diese geben vor, welchen inhaltlichen Ansprüchen die Begründung des Schiedsspruchs genügen muss. Allerdings finden die Autoren, dass Schiedsrichter bis zur Schaffung eines vereinheitlichten gemeinsamen Standards alles daran setzen sollten, möglichst detaillierte Begründungen zu verfassen, in denen sie sämtliche relevante Fragen, die von den Parteien während des Verfahrens aufgeworfen wurden, ordentlich identifizieren, abwägen und bewerten, und zumindest knapp erläutern, warum sie die übrigen Fragen nicht für relevant erachteten.

CZE [***Standard odůvodnění rozhodčích nálezů***]
Tento článek se zabývá tím, zda existuje požadavek, aby mezinárodní rozhodčí nálezy byly odůvodněné a zda odůvodnění má mít určitou „kvalitu", aby uspokojily určitý minimální „standard" a aby obstály při přezkumu obecným soudem. Autoři nejprve dochází k tomu, že se stalo mezinárodně akceptovaným standardem, aby rozhodčí nálezy odůvodnění obsahovaly. Tento standard je implementován ve většině závazných mezinárodních pramenů upravujících mezinárodní rozhodčí řízení (mezinárodní úmluvy o arbitráži, národní předpisy o rozhodčím řízení a často využívaná rozhodčí pravidla), které výslovně požadují, aby rozhodčí nálezy byly odůvodněné, ačkoli se obvykle strany mohou tohoto požadavku vzdát. Dále autoři zastávají názor, totiž že existuje jeden vágní mezinárodní standard a několik, ačkoli souběžných, národních standardů v zemích přebírajících Vzorový zákon UNCITRAL (se zvláštní pozorností v tomto článku na švýcarský, rakouský a slovenský standard), které určují, co má odůvodnění obsahovat. Nicméně, autoři mají za to, že dokud nebude vytvořen sjednocený společný standard, měli by rozhodci udělat vše pro to, aby vytvořili co nejpodrobnější odůvodnění tak, že řádně identifikují, zváží a vyhodnotí všechny relevantní

otázky vznesené stranami během řízení a stručně vysvětlí, proč ostatní otázky za relevantní nepovažovali.

| | |

POL [***Standard uzasadniania orzeczeń arbitrażowych***]
Autorzy niniejszego artykułu zaczynają od wniosku, że orzeczenia arbitrażowe w ramach uznawanego na arenie międzynarodowej standardu muszą zawierać uzasadnienie. Jest to zasada stosowana w większości wiążących instrumentów prawa regulujących międzynarodowe postępowanie arbitrażowe. Po drugie, autorzy uważają, iż jeżeli chodzi o jakościowy standard uzasadnienia istnieje jeden niejasny standard międzynarodowy i wiele rozmaitych, choć zbieżnych norm krajowych w krajach kierujących się Modelową ustawą UNCITRAL. W podsumowaniu autorzy stwierdzają, że uzasadnienie orzeczenia powinno pomyślnie przejść badanie przez sąd powszechny, jeżeli odpowiednio wskazuje, ocenia i omawia wszystkie kluczowe kwestie oraz krótko wyjaśnia, dlaczego pozostałe kwestie są nieistotne.

FRA [***Les normes relatives à la motivation des sentences arbitrales***]
Nous constatons tout d'abord que les sentences arbitrales, en tant que documents internationalement reconnus, doivent comporter une motivation : ce principe est énoncé dans la plupart des textes juridiques contraignants qui régissent les procédures d'arbitrage internationales. Deuxièmement, nous rappelons que la qualité de cette motivation est régie, d'un côté, par une norme internationale très générale, et, de l'autre côté, par un grand nombre de normes nationales plus ou moins convergentes, en vigueur dans les pays qui ont adopté la Loi type de la CNUDCI. En conclusion, nous émettons l'avis que la motivation de la sentence résistera à l'examen par une juridiction générale dans la mesure où elle identifie et apprécie dûment toutes les questions pertinentes, tout en expliquant les raisons pour lesquelles elle a écarté d'autres questions.

RUS [***Стандарты обоснований арбитражных решений***]
Вначале авторы данной статьи делают вывод о том, что арбитражные решения, как международно признанный стандарт, должны содержать обоснования; этот принцип применяется в подавляющем большинстве обязательных правовых документов, регулирующих международный арбитраж. Авторы также считают, что в связи с

качественным стандартом обоснования существует один неопределенный международный стандарт и ряд различных, хотя и конвергентных национальных стандартов в странах, руководствующихся Типовым законом ЮНСИТРАЛ. В заключение авторы утверждают, что обоснование решения должно приостановить пересмотр судом общей юрисдикции, если это обоснование надлежащим образом определяет, анализирует и рассматривает все важные вопросы, а также, если оно четко поясняет, почему другие вопросы не имеют значения.

ESP [***Estándar de la motivación de los laudos arbitrales***]
Los autores del texto llegan a la conclusión de que los laudos arbitrales como un estándar reconocido a nivel internacional tienen que contener una motivación. Este principio se ha implementado en la gran mayoría de las herramientas jurídicas vinculantes que regulan el procedimiento arbitral internacional. A continuación, expresan su convicción de que existe un estándar internacional poco preciso y una serie de estándares nacionales diferentes, aunque convergentes, en los países que se rigen por la Ley Modelo de CNUDMI en cuanto al estándar cualitativo de la motivación. Al final, exponen que la motivación del laudo debería someterse a la revisión del tribunal ordinario, a condición de que tal motivación identifique debidamente todas las cuestiones decisivas, las evalúe y las examine, explicando brevemente por qué otras cuestiones resultan irrelevantes.

| | |

Bibliography

Bingham, *Reasons and Reasons for Reasons*, 4 ARBITRATION INTERNATIONAL (1988), cited in 3 GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION, the Netherlands: Kluwer Law International 3041 (2nd ed. 2014).

NIGEL BLACKABY, CONSTANTINE PARTASIDES, ALAN REDFERN, MARTIN HUNTER, REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION, Oxford: Oxford University Press (6th ed. 2015).

Kristián Csach, *Prieskum rozhodcovských rozsudkov* ústavným *súdom*, in PRÁVO – OBCHOD – EKONOMIKA 386 (2011).

JASON FRY, SIMON GREENBERG, FRANCESCA MAZZA, THE SECRETARIAT'S GUIDE TO ICC ARBITRATION, Paris: ICC Services, Publications Department (2012).

EMMANUEL GAILLARD, JOHN SAVAGE, FOUCHARD GAILLARD GOLDMAN ON INTERNATIONAL ARBITRATION, the Netherlands: Kluwer Law International (1999).

Murray Gleeson, *Writing Awards in International Commercial Arbitrations*, in ARBITRATION - THE INTERNATIONAL JOURNAL OF ARBITRATION, MEDIATION AND DISPUTE MANAGEMENT, London: Sweet & Maxwell 77 (2015).

JURAJ GYARFÁŠ, MAREK ŠTEVČEK, ZÁKON O ROZHODCOVSKOM KONANÍ KOMENTÁR, Praha: C. H. Beck 459 (2016), and ĽUDOVÍT MIČINSKÝ, MILOŠ OLÍK, DOHOVOR O UZNANÍ A VÝKONE CUDZÍCH ROZHODCOVSKÝCH ROZHODNUTÍ KOMENTÁR, Bratislava: Wolters Kluwer 185 (2016).

Juraj Gyarfáš, *Constitutional Scrutiny of Arbitral Awards: Odd Precedents in Central Europe*, 29 J. INT'L ARB. 391 (2012).

LAWRENCE W. NEWMAN, GRANT HANESSIAN, INTERNATIONAL ARBITRATION CHECKLISTS, New York: JurisNet, LLC (2004).

JEAN F. POUDRET, SÉBASTIEN BESSON, COMPARATIVE LAW OF INTERNATIONAL ARBITRATION, London: Sweet & Maxwell Ltd paragraph (2nd ed., 2007).

1 ROSEMARY RAYFUSE, REPORTS OF CASES DECIDED UNDER THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES, 1965, United Kingdom: Cambridge University Press (1993).

4 ROSEMARY RAYFUSE, REPORTS OF CASES DECIDED UNDER THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES, 1965, United Kingdom: Cambridge University Press (1997).

CHRISTOPH H. SCHREUER, THE ICSID CONVENTION: A COMMENTARY, United Kingdom: Cambridge University Press (2009).

S.I. Strong, *Reasoned Awards in International Commercial Arbitration: Embracing and Exceeding the Common Law-Civil Law Dichotomy*, 37(1) MICHIGAN JOURNAL OF INTERNATIONAL LAW (2015).

RAY TURNER, ARBITRATION AWARDS: A PRACTICAL APPROACH, Oxford: Blackwell Publishing Ltd 35 (2005).

THOMAS H. WEBSTER, MICHAEL W. BÜHLER, HANBOOK OF ICC ARBITRATION, COMMENTARY, PRECEDENTS, MATERIALS, London: Sweet & Maxwell (3rd ed., 2014).

GETTING THE DEAL THROUGH ARBITRATION 2017, London: Law Business Research Ltd, 51, 84, 132, 159, 182, 313, 335, 343 (Gerhard Wegen, Stephan Wilske eds., 2017).

GEROLD ZEILER, SCHIEDSVERFAHREN, Wien: NMV Verlag GmbH (2014).

TOBIAS ZUBERBÜHLER, CHRISTOPH MÜLLER, PHILIP HABEGGER, SWISS RULES OF INTERNATIONAL ARBITRATION COMMENTARY, Zürich: Schulthess (2nd ed. 2013).