
Kluwer Arbitration Blog

The Rising Arbitrator's Challenge: Navigating the Premise and Perils of Your First Appointment(s)

Zuzanna Cieplińska · Wednesday, February 17th, 2021 · Rising Arbitrators Initiative (RAI)

On 27 January 2021, the [Rising Arbitrators Initiative](#) (RAI) hosted the second webinar of its series “The Rising Arbitrator’s Challenge: Navigating the Premise and Perils of Your First Appointment(s)”.

The aim of the series of events is to support practitioners who are seeking or tackling their first appointments and each webinar is focused on a different jurisdiction. The 27 January 2021 event focused on Europe and was moderated by Victoria Pernt (Schoenherr Attorneys at Law). After the opening remarks by Ana Gerda de Borja Mercereau (Derains & Gharavi), co-founder and co-chair of RAI’s Executive Committee, introducing RAI’s initiative, the panel featuring Alice Fremuth-Wolf (VIAC); Milena Djordjevic (University of Belgrade), and Simon Gabriel (Gabriel Arbitration), commenced the discussion.

How to get your first appointment and what criteria do institutions take into account in the selection process?

Alice Fremuth-Wolf gave her insight and practical advice on the issues related to first appointments and the criteria for selection by VIAC. She highlighted that it is one of VIAC’s duties to look for new talents, to increase the arbitrators’ circle and look for more diversity in the arbitration market. It was clear from the discussion that one of the goals of VIAC is to promote young talents and give them the possibility to get their first appointments. Ms. Fremuth-Wolf’s advice on how to get the first appointment was for young practitioners to be confident and make themselves visible by attending conferences or seeking speaking opportunities. This, in her opinion, will make the decision-makers become aware of the new talents. Another important consideration mentioned was for aspiring arbitrators to keep publishing on specific topics, not only procedural, but also particular areas of substantive law. She mentioned that it is good to consider focusing on niche areas such as for example environmental law. In today’s pandemic reality it is important to make use of different online platforms such as LinkedIn and meet online with other peers and engage in discussions.

First appointments are usually realistic after gaining some experience as a party

representative or as a tribunal secretary. Securing an internship with an arbitral institution may also be a valuable experience. Ms. Fremuth-Wolf mentioned that it is worth considering having one's name included on so-called lists of practitioners, such as the one VIAC has, especially designed to make profiles visible.

Is it appropriate for arbitrators to seek support from arbitral institutions?

The discussion also touched upon the importance of asking for support from arbitral institutions. This is because there are many issues that can be raised even in small cases, in particular because these types of cases usually involve numerous procedural issues, less experienced counsel, or non-responsive parties. Ms. Fremuth-Wolf noticed that not only young practitioners seek such advice, but also experienced arbitrators ask many questions, and, as such, there should be no shame in asking for support. Many issues may be related to procedural aspects or best practices as to for example the costs of arbitration, and for which the institutions are well equipped to assist with. Moreover, as Ms. Fremuth-Wolf explained, there is always a designated case manager who is on the top of the case, monitoring and able to step in, in problematic situations. Furthermore, there is, in many institutions, the review procedure (ICC or VIAC) where another look at the arbitral award is taken. Of course, this is without any interference in the legal analysis and the outcome, but, for example, it would concern the issues related to the procedure or a double check on whether all of the issues have been dealt with and the clarity of the dispositive. Ms. Fremuth-Wolf encouraged young practitioners to “fight for their first appointments and be confident that they can do it”. Being young does not mean being inexperienced, she said.

Efficient Setup and Tribunal Secretaries

Milena Djordjevic gave further insights on how to get and keep first arbitral appointments. One of the problems young arbitrators face is big competition in the arbitration job market. It is difficult for practitioners to get the positions they deserve. Ms. Djordjevic highlighted that it is important to take the advantage of the pandemic situation and, in particular, the accessibility of the online events, webinars and conferences. Further, young aspiring arbitrators should seek to enhance their skills, which may include the knowledge of foreign languages. Studying in a different legal system than one's own would be another consideration in terms of first appointments. The mix of common and civil law cultures may be helpful in understanding the arguments brought before the tribunal by the parties. Ms. Djordjevic also referred to a well-known dilemma: which came first: the chicken or the egg, with reference to the vicious circle of the first arbitral appointments. One may not be appointed because of lack of experience but if a person will not get appointed, she or he will not get any experience. However, Ms. Djordjevic believes that positions such as tribunal secretary make it possible for young practitioners to gain experience and become “visible”. She further raised a problem of lack of visibility of the tribunal secretaries and the fact that while institutions have started to publicize the arbitrators sitting in their cases, this has not been done for tribunal secretaries. Milena Djordjevic announced that this

is changing, and as of 1 July 2021, the ICC will publish the names of administrative secretaries.

Regarding keeping the appointments coming, Milena Djordjevic mentioned that arbitrators must maintain efficiency, responsibility, avoidance of conflicts and diligence in ensuring that the award would not be set aside afterwards. Another important aspect to consider according to Ms. Djordjevic is to have a “good start” with counsel representing the parties. It is important to ensure that the relations between the members of the tribunal, between tribunal and counsel and between counsel of both parties are right. This also leads to ensuring that procedural order number one outlines all major issues. An important observation made by Ms. Djordjevic was that being a young arbitrator together with more-experienced arbitrators may be somewhat challenging in terms of trust from other arbitrators, but young arbitrators should be confident and, after prompt analysis of the issues, they should not be afraid to present their opinion.

Defaulting parties

Simon Gabriel continued with considerations related to defaulting parties and first arbitral appointments, which, as he stressed, may be quite disappointing situations for arbitrators in their first appointments. There are different reasons for default, including parties’ lack of experience with arbitration, false belief that arbitration is a dispute resolution similar to mediation, or even a procedural strategy or guerrilla tactic. Arbitrators facing default proceedings should search for guidance in the *lex arbitri*, institutional rules (for example Article 29.2 of VIAC Rules or Article 26.2 of the ICC Rules), legal scholarship, the New York Convention (Article V(1)(b) regarding minimum requirement for notification of the parties) or UNCITRAL Model Law (Article 25, which reflects a broad consensus on the issues of defaulting parties). Mr. Gabriel made reference to the song “The Show Must Go On” (Queen) explaining, that unlike many national courts’ practices, the arbitration must go on and arbitrators cannot simply rule against the defaulting party but consider all the issues at hand together with the evidence and promptly notify and inform both parties during the proceedings. This is of utmost importance especially for purposes of recognition and enforcement of arbitral awards.

Conclusion

The event has been a great opportunity for young practitioners to get an insight on how to seek the first arbitral appointment and how to maintain it. Speakers shared a very personal and practical experience of their own and also talked about the challenges faced along the way. RAI’s initiative is blooming and has a great significance for young arbitrators as well as for aspiring practitioners. Finally, one should follow the speakers’ advice: get yourself out there, be confident and do not think too much of the chicken and egg dilemma!


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