

---

# Kluwer Arbitration Blog

## The Contents of the ASA Bulletin, Volume 39, Issue 2 (June 2021)

Matthias Scherer (Editor in Chief, ASA Bulletin; LALIVE) and Catherine Anne Kunz (LALIVE) · Friday, July 9th, 2021

We are happy to report that the latest issue of the ASA Bulletin is now available and includes the following articles and cases:

### ARTICLES

Felix DASSER, *“Swiss Arbitration” – The New One-Stop Shop And Other Good News*

In his message, ASA President Felix DASSER shares the news of the launch of “Swiss Arbitration”, the one-stop shop for arbitration and mediation in Switzerland, and other exciting developments.

Antoine EIGENMANN, Marc BEUCHAT, *Arbitrage international et succession. L’exécuteur testamentaire face à une clause compromissoire*

Antoine EIGENMANN and Marc BEUCHAT examine whether an arbitration clause can be opposed to an executor, considering the unilateral nature of an executor’s appointment under inheritance law.

Eliseo CASTINEIRA, Thomas LEHMANN, *After Vattenfall: A Science-Based Proposal to Account for Climate Change and Biodiversity in Energy Arbitrations*

Reflecting upon the Vattenfall case, Eliseo CASTINEIRA and Thomas LEHMANN explore how arbitral tribunals may assess the effect of measures adopted by the state in relation to climate change mitigation, biodiversity, natural resources as well as human health.

Johannes LANDBRECHT, *Rechtsschriften an das Bundesgericht in englischer Sprache – nur in welcher?*

Johannes LANDBRECHT reflects on the use of a “Swiss English legal language” for challenges to international arbitral awards before the Swiss Supreme Court.

Jörg RISSE, *The WYSIATI-Effect and Biased Arbitrators*

Jörg RISSE discusses one of the most pernicious and best-researched biases that may affect an arbitrator’s decision-making: the “What you see-is-all-there-is”-Effect (“WYSIATI-Effect”).

Alex LEVIN CANAL, Vanessa ALARCÓN DUVANEL, *Annulment of Commercial Arbitral Awards by State Courts: A Comparative Study of Spain and Switzerland*

Alex LEVIN CANAL, Vanessa ALARCÓN DUVANEL compare the statutory framework and body of case-law in annulment actions of commercial arbitral awards in Switzerland and in Spain and identify the key differences in the application by domestic courts of similar arbitration legislation.

Ya?mur HORTO?LU, *Fraud and Arbitration: The Truth Untold*

Unravelling the thorny topic of fraud in arbitration, Ya?mur HORTO?LU proposes a categorisation of the different types of frauds specific to arbitration and considers the efforts that both arbitrators and state courts will have to make in order to detect and prevent fraudulent arbitrations.

Walid BEN HAMIDA, *L'imprévision et l'arbitrage après la réforme du droit des contrats en France*

Walid BEN HAMIDA analyses the conditions and the treatment of hardship introduced under the new article 1195 of the French Civil Code by arbitrators, the possibility for arbitrators to adapt or revise the contract as a result, as well as the impact of this provision on their mandate.

## DECISIONS OF THE SWISS FEDERAL SUPREME COURT

- [4A\\_318/2018](#) of 4 March 2019 [*Right to be heard – Public policy – Proportionality of a sanction – Federal Tribunal does not review arbitrators’ application of the law, not even Swiss law*]
- [4A\\_244/2020](#) of 16 December 2020 [*Partial waiver of right to seek annulment of award (192 PIL Act) – Admissible conversion of a claim into USD based on an unspecific alternative prayer (... any other sum which the arbitral tribunal considered appropriate)*]
- [4A\\_56/2018](#) of 30 January 2019 [*Lack of any legitimate and current interest to challenge award*]
- [5A\\_1019/2018](#) of 5 November 2019 [*Enforcement of (ICDR) award in Switzerland – New York Convention – Ultra petita – Extension to non-signatory majority shareholder – No enforcement of permanent court injunction*]
- [4A\\_640/2017](#) of 3 May 2018 [*Enforcement in Switzerland of foreign awards against a State –*

*Immunity – Territorial link with Switzerland required – New York Convention]*

- [4A\\_301/2018](#) of 19 November 2018 [*Prohibition to take the parties by surprise*]
- [4A\\_118/2014](#) of 5 February 2020 [*Withdrawal from arbitration and annulment proceedings*]
- [4A\\_198/2020](#) of 1 December 2020 [*Timeliness and signature of appeal to CAS are formal requirements not points of jurisdiction – Ultra petita*]
- [4A\\_248/2020](#) of 20 October 2020 [*General partner bound by arbitration clause entered into by a limited partnership – Liability on the merits does not necessarily warrant an extension of the arbitral agreement*]
- [4A\\_35/2020](#) of 15 May 2020 [*Repudiation of know-how transfer agreement for material error on performance – Attributability of knowledge within a company*]
- [4A\\_58/2020](#) of 3 June 2020 [*Cost advances – Award to claimant on the reimbursement of the cost advance paid in lieu of defendant upheld*]
- [4A\\_324/2020](#) of 18 September 2020 [*Simulated or illegal contract – Art. 18/20 CO – Public policy*]
- **Decisions Briefly Noted:** [4A\\_62/2020](#) of 30 September 2020 [*Right to be heard – Annulment request dismissed*]; [4A\\_215/2020](#) of 5 August 2020; [4A\\_384/2020](#) of 10 December 2020

---

To make sure you do not miss out on regular updates from the *Kluwer Arbitration Blog*, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

### **Profile Navigator and Relationship Indicator**

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated  
*Profile Navigator and Relationship Indicator*



 Wolters Kluwer

---

This entry was posted on Friday, July 9th, 2021 at 7:51 am and is filed under [ASA Bulletin](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.