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# Kluwer Arbitration Blog

## The Contents of the Yearbook Commercial Arbitration, Volume XLVII (2022)

Stephan Schill (General Editor, ICCA Publications; Amsterdam Center for International Law, University of Amsterdam) · Saturday, January 7th, 2023

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The final upload of court decisions from the 2022 Yearbook Commercial Arbitration, shortly to be distributed in print, is now available from the KluwerArbitration database. It contains 15 decisions applying the New York Convention and one decision applying the 1975 Panama Convention, as well as two decisions from the highest courts of France and Switzerland that are of general interest. Here are some highlights.

First, in *Kout v. Kabab Ji*, the Cour de Cassation took the directly opposite approach to the UK Supreme Court on which law applied to determine the scope of an arbitration agreement and its application to a non-signatory. It held that, in the absence of the parties' intention to the contrary, the law of the seat, that is, French law, governed the issue. On that basis, the French Supreme Court considered Kout to be bound by an agreement to arbitrate, whereas the UK Supreme Court had earlier decided to apply English law, the law chosen as applicable law to the main contract, and held Kout not to be bound as a non-signatory.

Second, the [Swiss Federal Supreme Court](#) addressed which procedural safeguards needed to be in place in cases of *de facto* "compulsory" arbitration before the Court of Arbitration for Sport (CAS). The Swiss Court held that in such cases the fair trial principle laid down in Art. 6(1) of the European Convention on Human Rights applied, requiring above all independence and impartiality of the dispute resolution body. Following the decision of the European Court of Human Rights in *Mutu*, the Swiss Court found that CAS as an institution offered those safeguards.

Finally, the [High Court of Justice of the British Virgin Islands](#) rendered a decision dealing with the process of appointing arbitrators in a multi-party dispute. It held that the principle of equality meant that each side to a dispute, rather than each individual party, had the right to appoint an arbitrator, unless the interests of the parties on one side of the dispute diverged. Here, the ICC Court's initial assessment that the arbitration respondents had the same interests was correct, resulting in them having the right to appoint one arbitrator, rather than several.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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