Kluwer Arbitration Blog

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b-Arbitra is the Belgian Review of Arbitration, issued biannually, with publication of judgments, notes and commentaries on arbitration related topics.

2013 was a landmark year for arbitration in Belgium. On 1 January 2013, CEPANI introduced new arbitration rules. On 1 September 2013, a new Belgian arbitration law entered into force. And last but not least, b-Arbitra was launched. Ten years down the road, CEPANI launched new rules on 1 January 2023 and a working group under the auspices of CEPANI provided recommendations on limited improvements to the arbitration law. Thanks to the support of the courts and the help of arbitration practitioners, we are publishing more arbitration-related judgments than ever before. At the same time, we are keeping our eyes open for interesting judgments from other jurisdictions. In addition, we continue to attract excellent contributions in both our doctrine section and our case notes. Finally, through the cooperation with Kluwer and the availability on its kluwerarbitration.com platform, b-Arbitra is also available internationally. While we continue our mission to publish in French, Dutch, German and English, we aim to ensure that the key parts and findings of our contributions is accompanied by English summaries to allow for access also to our foreign readers. As co-editors-in-chief, we believe that b-Arbitra is therefore well-equipped to enter into its teens and are excited to see what the future brings.

In this first of 2023, we again publish contributions and case law on a variety of topics In the doctrine section, Ms. Munkhnaran Munkhtuvshin studies female arbitrators' impression management styles (sometimes referred to as a representation of self or self-representation). Geert De Buyzer and Celine De Buck take a critical look at the possibility for a mediator to decide the dispute as an arbitrator in a study on med-arb.

2023 is also the year in which the Belgian Supreme Court has rendered no less than five judgments in relation to arbitration in five months. We publish four of these in this edition. The first judgment from 10 February 2023 establishes an obligation for the annulment judge to determine whether the ground for setting aside affects only part of the award, and such part can be distinguished from the remainder of the award, to see whether setting aside can be limited to part of the arbitral award. While this decision is based on a rule in the old arbitration law, it may still be of relevance in light of the general *favor arbitrandum* approach in the 2013 law, which includes the principle that the setting aside should be the ultimate remedy. Moreover, the CEPANI working group recommended to reinstate the rule regarding partial setting aside for didactical purposes, in line with practice under the 2013 law. The second judgment of the same date addresses the principle that arbitrators cannot bring actions relating to their own awards in application of the *nemo iudex in causa sua*

rule. The third judgment of 6 April 2023 relates to the *Rawat v. Mauritius* saga, where the Supreme Court confirmed the Court of First Instance's rejection of the application to set aside an award in which the arbitral tribunal declined jurisdiction under the France-Mauritius BIT on consideration that this did not apply to dual nationals of both countries. In this judgment, the Supreme Court gave some interesting guidance on the application of the VCLT. Last but not least, on 24 April 2023, the Supreme Court rejected an application to annul the Court of First Instance judgment which had upheld an arbitral award despite criticism on the role of the administrative secretary. In doing so, the Supreme Court confirmed the cardinal rule of procedural autonomy in Article 1700, §§ 1 and 2 BJC, which enacts Article 19 of the UNCITRAL Model Law.

We then move on to France, where we publish extracts from three judgments of the French Supreme Court. The first two are commented on by Prof. Maximin De Fontmichel and address questions of access to justice in situations where a party refuses to pay its share of the advance on arbitration costs. The third judgment, with a comment by Etienne Marque, is the latest saga in the remarkable string of French cases pursuant to which the annulment judge is granted the power to investigate all the elements of corruption in law and in fact.

Turning back to Belgium, we start off with a decision of the president of the Court of First Instance of Brussels (F) of 10 July 2018 and a subsequent decision of the Court of First Instance of Brussels (F) of 7 February 2020 in the same case, raising questions of multi-contract arbitration, with a note by Guillaume Croisant. Next up, is a decision in summary proceedings dated 23 May 2019, in which the president of the Enterprise Court of Brussels refused to suspend disciplinary proceedings before the Belgian Football Association in the framework of the notorious match fixing case relating to the 2018-2019 season ("Operation Zero" or "Propere Handen"), on consideration that appeal before an arbitral tribunal under the auspices of the Belgian Court of Arbitration for Sports ("BAS") meeting the criteria of Art. 6 ECHR would be available. We publish extracts from the remarkable 200+ page-judgment of 19 November 2021 regarding the setting aside proceedings, which were brought against the BAS arbitral awards, which followed the disciplinary proceedings. In this judgment, which is accompanied by a commentary by Koen Van Den Broek, the Court of First Instance heavily criticized the manner in which the rights of defense of the parties involved were cast aside in the interest of the sportive interests during both the disciplinary proceedings and the arbitral appeal before the BAS tribunal. We further publish a judgment by the Court of First Instance of Brussels (F) dated 24 February 2022 with a note by D. De Meulemeester, who critically assesses the Court's approach to conduct a *de novo* review to determine whether the arbitral tribunal had rightly assumed jurisdiction over a dispute in the framework of an application to set aside the award.

Finally, we publish judgments by the Courts of First Instance of Brussels (F and N), Antwerp and Ghent, dealing with a variety of issues, including the duty to provide reasons, challenges to arbitrators, the duty of impartiality and independence, the duty to disclose, the use of languages in setting aside proceedings, delays in rendering the award, etc.

In the documents section, Maxime Berlingin and Gerard Meijer discuss the initiatives and plans of the BeNeLux Arbitration and ADR Group, which intends to explore the possibility of a uniform BeNeLux Arbitration Act. Werner Eyskens and Sophie Goldman from their part, discuss the work and initiatives of CEPANI's Working Group on Diversity & Inclusion, including the introduction of a change to Article 15 of the CEPANI Arbitration Rules, which sets forth a duty for CEPANI to consider diversity and inclusion when appointing arbitrators.

Finally, Marijn De Ruysscher (on a handbook on arbtiration in the Dutch language) and Nathan Tulkens (on the CEPANI Series book on default in arbtiration) provide book reviews.

We continue to extend our invitation to Belgian arbitration practitioners to reach out with interesting arbitration related cases. We further encourage anyone who is interested in contributing to b-Arbitra or has comments or suggestions to get in touch at b-Arbitra@wolterskluwer.com.

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