

Arbitrage

PROCÉDURES PARALLÈLES et **décisions contradictoires**

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J Elliott



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Operating Law in a Global Context Jean-Sylvestre Bergé, Geneviève Helleringer, 2017-06-30 Lawyers have to adapt their reasoning to the increasingly global nature of the situations they deal with Often rules formulated in a national international or European environment must all be jointly applied to a given case This book maps the analysis lawyers require when confronted by the operation of several laws in different contexts and demonstrates how this enhances legal reasoning

L'efficacité de l'arbitrage OHADA Oumar Bah, 2020-02-24 Consid r comme une r volution juridique en Afrique francophone l espace de l Organisation pour l harmonisation en Afrique du droit des affaires OHADA est depuis sa cr ation un terrain propice la collaboration entre le juge tatique et l arbitre Cependant si dans l arbitrage sp cifique de la Cour commune de justice et d arbitrage CCJA il revient au juge communautaire la charge d administrer la proc dure et d assurer le service apr s vente durant la phase post arbitrale la d termination du juge national dans l arbitrage de droit commun est une op ration complexe En effet le flou lexical entourant l expression g n rique d signant le juge tatique entra ne un morcellement de son champ de comp tence Selon que l on se trouve dans la phase pr paratoire l arbitrage ou durant la phase arbitrale et post arbitrale le juge national n est pas toujours le m me Suivant l organisation judiciaire propre chacun des tats parties il pourra s agir des juridictions d instances dans le cadre d une comp tence exclusive ou des juridictions d appels dans le cadre d une comp tence partag e avec les juridictions d instances avant tout pourvoi en cassation devant la CCJA Cela dit qu il s agisse de l arbitrage sp cifique de la CCJA ou de l arbitrage de droit commun le juge tatique joue d abord un r le d assistance en cas de difficult s Pour ce faire il aide les parties et les arbitres lors de la constitution du tribunal arbitral l administration des pi ces et la prorogation du d lai de l arbitrage De m me si les parties en expriment le besoin le juge tatique en cas d urgence reconnue et motiv e ordonne des mesures provisoires ou conservatoires Enfin lorsque l arbitre prononce la sentence il reviendra encore au juge tatique le soin de veiller son exequatur effectif apr s l puisement des voies de recours devant son office

Les pouvoirs inhérents des arbitres internationaux Sylvain Bollée, 2023-07-03 Au sein des ordres juridiques une multitude de normes habilite les individus exercer des pr rogatives tr s diverses La mati re de l arbitrage international n chappe pas la r gle et les droits tatiques investissent ainsi les arbitres de toute une s rie de pouvoirs Mais en marge de ce ph nom ne banal une id e s est fait jour les arbitres internationaux seraient dot s de pouvoirs inh rents Ces pouvoirs tant de l essence de leur fonction existeraient ind pendamment de toute norme juridique identi e Sont par exemple mentionn s le pouvoir des arbitres de statuer sur leur comp tence de soulever d office la question d une ventuelle atteinte l ordre public de r viser une sentence vici e par la fraude d une partie Dans tous les cas c est l id e de n cessit qui est avanc e pour justifier l existence des pouvoirs en question sans eux le bon accomplissement de la mission des arbitres risquerait d tre compromis L laboration d une th orie de ces pouvoirs inh rents passe par une r flexion sur leur nature et leur tendue Elle suppose aussi de consid rer leur interaction avec la volont des parties et les r gles de droit applicables l arbitrage

Le devoir de l'arbitre

de se conformer à sa mission Paul Giraud, 2017-03-16 Le Code de procédure civile prévoit en ses articles 1492 et 1520 les cas d'ouverture permettant d'obtenir l'annulation d'une sentence ou l'infirmité d'une ordonnance ayant accordé son exequatur. Le troisième de ces cas ouvre les recours lorsque le tribunal arbitral a statué sans se conformer à la mission qui lui avait été confiée. Or le terme de mission est vague rendant imprécises les frontières de ce cas d'ouverture. Cette incertitude fait courir un risque d'inflation des recours et est source d'insécurité juridique. Elle nuit à l'efficacité du droit français de l'arbitrage dans un contexte de forte concurrence entre les places arbitrales. L'analyse de la notion de mission permet de définir celle visée à l'indice 3 des articles précités comme les éléments conventionnels participant directement de l'exercice de la mission juridictionnelle arbitrale. Cette définition dessine en creux les deux critères permettant d'numérer les violations relevant de ce cas d'ouverture. Leur mise en œuvre contribue alors à une conception raisonnée de ce recours et en démontre la pertinence. Saisi d'un recours arguant d'une violation de sa mission par l'arbitre, le juge accompagne ce mouvement de rationalisation tant dans le contrôle qu'il opère que dans la sanction qu'il prononce. Se dégage ainsi un mouvement progressif de délimitation restrictive des frontières du cas d'ouverture de la violation de sa mission par l'arbitre. Tous les stades de l'analyse de la mission de termination des griefs relevant de ce cas d'ouverture contrôlés par le juge et prononcés de la sanction, une conception cohérente, rationnelle et raisonnée se dégage. Elle constitue un rempart efficace contre la dérive expansionniste que faisait craindre sa formulation, une crainte d'ailleurs contredite par l'étude statistique et témoigne de la pertinence et de la légitimité de ce cas d'ouverture.

Arbitrage international Mauro Rubino-Sammartano, 2019-09-09 Cette édition française révisée et mise à jour met l'accent minutieusement sur les aspects procéduraux qui ont créé un arbitrage international plutôt qu'une simple instance dans laquelle les parties sont de nationalités différentes ou qui concerne des rapports transnationaux. L'ouvrage apporte de nouveaux concepts tels que la définition de l'arbitrage international fondée sur le droit procédural différent du droit transnational et une doctrine, la doctrine du tronc commun, pour identifier le droit matériel applicable aux litiges entre les parties appartenant à différents pays et qui suggère qu'un droit de l'arbitrage international s'est développé à travers différentes conventions et lois. Cette édition a été largement enrichie des arbitrages commerciaux internationaux, des arbitrages relatifs aux traités d'investissement, des arbitrages entre des organismes publics et les États et les individus de la loi type de la CNUDCI et des procédures du Tribunal Iran-USA ainsi que l'arbitrage relatif aux marchandises, les procédures d'arbitrage en ligne et d'arbitrage sportif. En plus de traiter tous ces aspects de l'arbitrage, par ailleurs l'auteur présente une troisième génération d'arbitrage qui se fonde sur l'analyse préalable des principaux obstacles au bon fonctionnement d'un arbitrage.

L'arbitrage institutionnel en France Bertrand Moreau, 2016-01-20 Le décret du 13 janvier 2011 modifiant le droit de l'arbitrage interne et international a confié aux institutions d'arbitrage une priorité pour l'organisation de la procédure. L'ouvrage rédigé par les institutions membres de la Fédération des Centres d'Arbitrage a pour objet de décrire les modalités de fonctionnement des 14 institutions qu'elle rassemble et dont le siège est en France, la Cour Internationale d'Arbitrage de la

CCI n'en fait pas partie. Ces institutions ont promu et adopté une Charte éthique applicable à tous les acteurs des arbitrages conduits sous leurs auspices et leurs règlements permettent aux parties d'éviter lescueils de l'arbitrage non institutionnel ad hoc. Cet ouvrage est donc conçu pour familiariser les parties, les chefs d'entreprise et leur service juridique, les conseils, les experts et les arbitres eux-mêmes avec le fonctionnement de ces institutions.

Procédures parallèles et décisions contradictoires, 2015-08-18. Des praticiens et chercheurs revisitent l'occasion d'un colloque le thème des procédures parallèles et de la contradiction des décisions en présence au moins d'une sentence arbitrale.

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