«ICCA STUDY ON DUE PROCESS AND REMOTE HEARINGS»

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NEW LEGAL QUESTIONS

Increased use of fully remote arbitral hearings

One core question:

Does a right to a physical hearing exist in international arbitration?
No single, transnational answer

Arbitrators must look at:

1. The law of the seat (i.e., the law regulating the arbitral proceedings)
2. The law of the place where recognition/enforcement may be sought
4 September 2020: Call for expressions of interest

150 expressions of interest covering 82 New York Convention Contracting States

46 national reports published as of 31 March 2021

https://www.arbitration-icca.org/right-to-a-physical-hearing-international-arbitration
Remote hearings and due process

• The preliminary results confirm the methodological assumption of the project

• This is particularly evident if we look at whether the arbitral tribunal can conduct a remote hearing in the following two scenarios:

  1. Where one party requests/agrees to hold a remote hearing, while the other party objects
  2. Where the parties agree to hold a physical hearing
Remote hearings and due process

Remote hearings incompatible with the law of the seat

Unsettled

Remote hearings per se compatible with the law of the seat

E.g. Tunisia

E.g. Denmark

Sweden

Bahrain

Vietnam

Germany
Article 18. Equal treatment of parties
«The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case».

Article 24(1). Hearings and written proceedings
«Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party».
Remote hearings and due process

Remote hearings incompatible with the law of the seat

- E.g. Tunisia
- Sweden
- Vietnam

Remote hearings compatible with the law of the seat within the limits of due process

- E.g. Denmark
- Bahrain
- Germany

Unsettled

- Majority of jurisdictions

Remote hearings per se compatible with the law of the seat

- Switzerland
- Indonesia