

The Problem of Reconciling the Principle of Confidentiality in Foreign Investment Arbitration with the Public Interest

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Abstract : The economical globalization through the liberalization of the markets and capitals boosted the economical development of the nations and the needs for sorting out the disputes arising from the foreign investment. The arbitration, for all the inherent advantages, such as swiftness, arbitrators's specialise skills and impartiality sets a pacifier tool for the interest in account. Safeguarded the public interest, we face the problem of the confidentiality in the arbitration. The urgent development of impelling mechanisms concerning transparency, guaranty and protection of the interest in account, reveals itself urgent. Through a bibliography review, we will dense the state of art, by going through the several solutions concerning, and pointing out the most suitable. Through the jurisprudential analysis we will point out the solution for the conflict confidentiality/public interest. The transparency, inextricable from the public interest, imposes the arbitration process can be open to all citizens. Transparency rules have been considered at the UNCITRAL in attempting to conciliate the necessity of publicity and the public interest, however still insufficient. The arbitration of foreign investment carries consequences to the citizens of the State. Articulating mechanisms between the arbitral procedures secrecy and the public interest should be adopted. The arbitration of foreign investment, being a *tertius genius* between the international arbitration and the administrative arbitration would claim its own regulation in each and every States where the confidentiality rules and its exceptions could be identified. One should enquiry where the limit of the citizens's individual rights protection and the public interest should give way to the principle of transparency

Keywords : arbitration, foreign investment, transparency, confidentiality, International Centre for Settlement of Investment Disputes UNCITRAL

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