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International Commercial Arbitration (ICA) is the preferred method of dispute resolution for commercial entities.ⁱ The main advantages are perceived to be enforceability, avoidance of specific legal systems and national courts, flexibility, and the ability of parties to select their arbitrators.ⁱⁱ Notwithstanding this, ICA is nowadays tainted with a few negative aspects; for example, the procedure is perceived to be too costly and lacking the expected speed.ⁱⁱⁱ

At the initial stages of the arbitral experience, in the early twentieth century, the procedure was law-oriented, based on trust, and subject to less legal rigidity. Back then, arbitration was still “informal” as opposed to—what has been alleged at least —“court-like” or “judicialized”. When this was the case, cost- and speed efficiency were perceived advantages of the arbitral institution.

The relatively good news is that the supposedly adverse trend of judicialization seems to be reversed with the elaboration of expedited arbitration rules. This is further manifested by making such expedited route the default mechanism for certain low-value and less complex disputes—at least at the

**ICC AND EXPEDITED DIGITAL
ARBITRATION: THE LEADING
ARCHITECTS IN (RE)BUILDING
ADJUDICATORY CIVILIZATION
THROUGH ICA**

ICC and AAA-ICDR.

Furthermore, given the lessons learned during covid-19, we seem to be moving towards a situation where arbitrators can decide to proceed with digital (i.e. remote) arbitration—including expedited digital arbitration—if necessary. Utilizing expedited digital arbitration may help further alleviate the negative aspects of the arbitral development and instead meet the consumer demands of cost-reduction and speed.

ICC - Expedited (Digital) Arbitration

ICA developed primarily in continental Europe (e.g. in France, Switzerland, and Germany). ICA developed to a large extent thanks to the work done by the International Chamber of Commerce (ICC). The ICC was created in 1919 and the International Court of Arbitration was established in 1923. The ICC is seated in Paris, but has branches all over the world, including in Albania. ICC frequently amend the rules to remain contemporary. In 2017, the ICC updated its rules to include the expedited arbitration route for redressing commercial grievances (see Appendix VI). The provisions are aimed at enhancing the time and cost efficiency of the arbitral procedure. Moreover, the rules refer a dispute to a sole arbitrator, further bringing down costs and time. More important and novel perhaps, with the updated rules the ICC made expedited arbitration the default procedure for



disputes of amounts less than USD 2 million (the threshold amount is USD 3 million if the arbitration agreement was concluded after the 2021 rules entered into force). Thus, unless the parties expressly opt-out, any request for arbitration based on an arbitration clause signed post March 2017 is to be arbitrated as an expedited arbitration. The expedited rules provides for a six month time-frame for rendering the award following the date of the case management conference, with a possible extension at the discretion of the court (see Article 4, Appendix VI).

On 1 January 2021 the ICC updated its rules. The updated rules take account the lessons learned in the covid arbitral landscape. In particular, the need for speed and the utility of remote, digital hearings. The new Article 26 reads as follows:

A hearing shall be held if any of the parties so requests or, failing such a request, if the arbitral tribunal on its own motion decides to hear the parties. When a hearing is to be held, the arbitral tribunal, giving reasonable notice, shall summon the parties to appear before it on the day and at the place fixed by it. The arbitral tribunal may decide, after consulting the parties, and on the basis of the relevant facts and circumstances of the case, that any hearing will be conducted by physical attendance or remotely by videoconference, telephone or other appropriate means of communication.

Thus, in the future, expedited digital arbitration may be the new default procedure. Only time will tell.

Concluding Observations

A party choosing ICC arbitration should

carefully consider, among other things, the following:

- that any ICC arbitration clause signed between 2017-2021, and where the amount in dispute does not exceed USD 2 million, will automatically be processed as an expedited arbitration (Article 1, Appendix IV);
- that any ICC arbitration clause signed after 12 January 2021, and where the amount in dispute does not exceed USD 3 million, will automatically be processed as an expedited arbitration (Article 1, Appendix IV);
- that the parties can opt-out of the expedited route (parties should remember that it is not an “opt-in” mechanism, the expedited procedure is a default one);
- that the parties can agree to pursue an expedited arbitration even when the amount of dispute is higher than the threshold amount (but parties should carefully consider the due process aspects of such choice, which may cause enforcement issues);
- that the ICC reserves its discretionary power to appoint a sole arbitrator (even if the arbitration agreement says the contrary, which may cause enforcement issues) (Article 2, Appendix IV);
- that the ICC has discretion to decide whether the matter is appropriate for expedited arbitration (which we feel is a good thing) (Article 1, Appendix IV);
- that the award shall be rendered within six months from the case management conference (Article 4, Appendix IV); and
- that arbitrators have a relative discretion to proceed with digital hearings (the exact scope and extent of the power has yet to be discerned) (Article 26).



DER Legal's Expedited Arbitration Expertise and Services

At DER Legal we have a wide range of expertise regarding arbitrational matters. On the one hand, we have substantial experience with representing clients in expedited arbitration at different international institutions. On the other, we have colleagues actively participating in the academic field by publishing papers, lecturing, and taking part in panel discussions. We expand our expertise on a global scale through international collaborations. For Albanian participants in the international arbitration world, we also have partners that speak the language and have Albanian heritage.

I, Ylli Dautaj, am for example currently scheduled to hold a course on "Expedited arbitration & emergency arbitration" together with arbitration expert Dr. Crina Baltag.^{iv} Earlier this year I and senior counsel Per Magnusson wrote Sweden's contribution to The ICCA Reports 2021: "Does a Right to a Physical Hearing Exist in International Arbitration?". These are but a few examples.

Disclaimer: The views and opinions expressed in this article are solely personal statements of the author and do not necessarily reflect the stance of ICC Albania. The content of the article is the original work of the author. The author takes the responsibility for any infringements of authorship.

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ⁱWhite & Case and Queen Mary School of

International Arbitration, "2018 International Arbitration" Survey: the Evolution of International Arbitration," available at: <https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2018-19.pdf> (accessed 24 April 2021). p. 2.

ⁱⁱIbid.

ⁱⁱⁱIbid.

^{iv}<https://www.nj.se/utbildning/expedited-arbitration-and-emergency-arbitration?date=219547>.

