
CONFIDENTIALITY IN ARBITRAGE

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Countries that assume confidentiality English Law

The English Arbitration Act, which was enacted in 1996, does not contain any explicit provision concerning the confidentiality of the arbitration. In February 1996 the Departmental Advisory Committee in its report on the Arbitration Bill, stated: “there is ...no doubt whatever that the users of commercial arbitration in England place much importance on privacy and confidentiality as an essential features”.¹ Started from 1990 with the case of *Dolling-Baker v Merrett*, English Courts recognize that arbitrations are assumed to be held confidential as it is the nature of this kind of proceedings.² After *Dolling-Baker v Merrett*, line of cases followed, which mainly come to develop the theory of implied confidentiality in English arbitral proceedings. The position taken by English Courts was reaffirmed in the *Ali Shipping Corporation v Shipyard Trogir (1999)*.³ In this case the Court of Appeal went even further: “such an obligation is implied as a corollary and of the privacy of arbitration proceedings....obligation applies to all pleadings, written submissions and the proofs of witnesses as well as transcripts and notes of the evidence given in the arbitration”. In contrast to the first case, in *Ali Shipping* the Court also determined what would the exceptions to this obligation be. The exceptions are:

- “Disclosure pursuant to express or implied consent of the party who originally produced the material:
- Where there is an order of the court for disclosure of the documents generated by an arbitration for the purposes of a later court action:
 - Where leave of court is granted:
 - When, and to the extent to which, it is reasonably necessary for the protection of the legitimate interests of an arbitrating party the court will grant leave for disclosure:
 - Where the “public interest” requires the disclosure”.⁴

Thus, Court of Appeal provides 5 cases in which the implied duty of confidentiality will not be protected. In my opinion the mentioning of such ambigu-

¹ See Robb, Adam, “Confidentiality and arbitration”, May 5th 2004, 39 Essex street, p. 2.

² See Hew R. Dundas, “Confidentiality Rules OK? Recent Developments Affecting the Confidentiality of Arbitration”, *Transnational Dispute Management*, volume 1, issue # 02, May 2004, p. 3.

³ See *supra note* 75, p. 8.

⁴ See Lawrence Teh, “Confidentiality and Disclosure in Arbitration proceedings: A “Win Win” situation?” *Litigation Brief*, March 2009, p. 2.

ous provisions will only harm the established case law. For example, one may interpret the notion of “public interest” widely which will lead to the effect that almost every arbitration proceeding will be deemed to be rather public than private. Also, tribunals any time will try to fit any case to the exceptions of Ali Shipping. Taking into consideration this kind of problems, the case was highly criticized.

The Committee of Privy Council which had to resolve the case Associated Electric & Gas Insurance Service Ltd (AEGIS) v European Reinsurance Company of Zurich (Bermuda)⁵, didn’t refer to the decision of Ali Shipping. In these two cases the situation was almost the same (parties wished to disclose the award of the first arbitration in order to use the findings there in the process of the second case), with only one exception: in the AEGIS case, parties were the same. But this was not the main reason for not referring to that case in the judgment. As the Privy Council stated: “The Committee has reservations about the desirability or merit adopting this approach which both a) ran the risk of failing to distinguish between different types of confidentiality which attach to different types of document or to documents which had been obtained in different ways and b) elided privacy and confidentiality which are not the same”.⁶ In this case in fact the Privy Council made a distinction between the arbitral award and the other documents that can be obtained during the proceedings, so “generalization is inappropriate”. The DAC also in its abovementioned report came to the conclusion that courts should work on the “case-by-case basis”,⁷ which means that the exceptions made in Ali Shipping case are considered as being too wide and cannot be used in every case as an exhaustive list of exceptions. In the AEGIS the Committee also referred to the notions of “privacy” and “confidentiality” (as they are not the same. This is a very important differentiation, determining that though the process is private (i.e. third parties cannot take part), but the documents can be disclosed to the public in special circumstances).⁸

The seemed non consistence between the principle of implied confidentiality and restrictions to it was successfully resolved in Department of Economic Policy and Development of the City of Moscow v Bankers Trust Company.⁹ In this case Moscow won and wished the judgment to be published in details as to show that it was not involved in corruption. The other party resist, having regard that the arbitral proceedings are confidential. In spite of this the neutral summary of the case was published in one of the internet sites. The Court of Appeal decided 1. The proceedings were private and so the award also will have to remain private (the whole text cannot be published) 2. In the internet there was only a brief and which was more important the neutral summary of the judg-

⁵ See *supra* note 74, p. 4.

⁶ See *supra* note 76, p. 4.

⁷ See *supra* note 75, p. 3.

⁸ See **Amy J. Schmitz**, Untangling the Privacy Paradox in Arbitration, Kansas Law Review, vol. 54, p. 1211.

⁹ See **John Bellhouse** and **Anthony Lavers**, International Arbitration-Privacy and Confidentiality, first printed in Asian Dispute Review, July 2005, p. 1.

ment, so it cannot be held inconsistent with the principle of confidentiality.¹⁰ Thus, the Court of Appeal tried to draw a demarcation line and resolve the tension between these principles.

The most recent case concerning the confidentiality of the arbitration was held in 2008 (*Emmott v Michael Wilson and Partners Ltd*).¹¹ In this case the Court of Appeal reinterpreted the *Ali Shipping* case and also provided several points under which the disclosure of the confidential documents will be seen as legal (though the formulation is slightly different than in the first case). The Court found that: “the arbitral tribunal might have been the most appropriate forum for the question of confidentiality to be determined in which case the matter would have been determined in private.....However...it was in the interests of justice to order disclosure of a *limited category of documents* for a limited purpose”.¹² The categories of exceptions laid down in this case are:

- “Where there is an order or leave of the court;
- Where it is in the public interest or interest of justice;
- When and to the extent to which it was reasonably necessary for the establishment or protection of an arbitrating party’s legal rights;
- Where there is express or implied consent of parties”¹³

As I have mentioned in *AEGIS* case Court have already overruled the decision in *Ali Shipping* and with this case seems that the exceptions of *Ali Shipping* are reaffirmed. Though we can find a lot of similarities in both cases in the *Emmott* the Court of Appeal also took into consideration the approach of the Privy Council in *AEGIS* case, stating that:

- “Possible exceptions to confidentiality must be read in context;
- Even if the disclosures are allowed such disclosures need not apply to the whole document because the fact that the document must be reasonably necessary or required for these purposes does not mean that it is reasonably necessary to use the whole of the document;
- It might be important in any future dispute on the subject of confidentiality between the parties to distinguish between different types of confidentiality which attach to different types of document or to documents which have been obtained in different ways”.¹⁴

Taking into account the abovementioned facts, the conclusion can be that the starting point for English Law is the theory of implied confidentiality. Although this principle can be overruled but this can happen only in very restricted situations. Parties most time can be sure that the arbitral proceedings, the problems discussed there and as a general matter of fact documents and arbitral award will be kept confidential and will not be disclosed. Such assurance makes London one of the most desired places for arbitration.

¹⁰ See *Id.* p. 2,

¹¹ See *Michael Wilson and Partners Limited v John Forster Emmott* [2008] EWCA Civ. 184, http://www.dlapiper.com/london_arbitration/

¹² See **Nick Marsh**, *Lifting the cloak of Confidentiality?* London Arbitration, 6 May 2008, International Arbitration Newsletter.

¹³ See *supra note* 78, p. 3.

¹⁴ See *supra note* 78, pp. 3-4.

French Law

Under French Law the rules of implied confidentiality are even stricter than those under English Law, as they do not provide even for a little deviation from the principle. The most famous case concerning the confidentiality is *Aita v Ojeh*.¹⁵ In its Decision the Court of Appeal held, that: "bringing a meritless proceeding to challenge an arbitration award rendered in London, resulting in an award being made public, violated the duty of confidentiality".¹⁶ The Court even penalized the party which had brought the action of annulment.¹⁷

New Zealand Law

New Zealand not only assumes the implied duty not to disclose information gained during the arbitral proceedings, but even codified it. In 1996 New Zealand's Arbitration Act entered into force, where under the Section 14 it is written: "Unless the parties agree otherwise, the parties shall not publish, disclose or communicate any information relating to arbitral proceedings under the agreement or to an award made in those proceedings".¹⁸

Countries that do not assume confidentiality

Australian Law

In 1995 Australian High Court made a decision in the case *Esso Australia resources Ltd et. al. v The Honourable Sidney James Plowman et.al.* 128. A.L.R 391 (1995).¹⁹ This was a very controversial case as the Court had decided that under Australian Law there is no implied duty of confidentiality (the parties always have to include confidentiality clause). The cornerstone of this case was that the dispute arose in the field of gas and electricity (which are in the public domain) and so everyone was really interested in the outcome of the case. Chief Justice Mason C. J. pointed out 3 essential issues: "1. The existence of the implied duty of confidentiality in Australia, 2. The existence of disclosure obligations for the public authorities, 3. The standards for disclosure of the information arising in an arbitration that is of legitimate public interest".²⁰ In connection with the first issue he noted that there is no need for implying duty of confidentiality as parties can always include a clause in the contract in connection with

¹⁵ See 1986, Review of the Arbitrage, 18th February, 1986, Court of Appeal, Paris, printed in the Article of Jeffrey W. Sarles, "Solving the Arbitral Confidentiality Conundrum in International Arbitration", p. 6. <http://www.appellate.net/articles/Confidentiality.pdf>

¹⁶ See S. J. Berwin, "Confidentiality in International Arbitration", *Litigation and Dispute Resolution Articles*, January 2009, <http://www.legal500.com/developments/6090>

¹⁷ See *supra* note 89.

¹⁸ See New Zealand Arbitration Act s. 14 (1996), <http://rangi.knowledgebasket.co.nz/gpacts/public/text/1996/se/099se14.html>

¹⁹ See *Esso Australia resources Ltd et. al. v The Honourable Sidney James Plowman et.al.* 128. A.L.R 391. (1995), read in the article of Michiela Chiricello, "Confidentiality and Public Interest in Mixed International Arbitration", *McGill University, Institute of Comparative Law*, Summer 2003, p. 48.

²⁰ See *Id.* p. 56.

this question. The cornerstone of his view was that the privacy of arbitral hearings had to be distinguished from the confidentiality of the documents.²¹ In connection with the second limb of his statement, Mason C.J stated: “There may be circumstances in which third parties and public have a legitimate interest in knowing what has transpired in an arbitration which would give rise to a “public interest” exceptions. The precise scope of these exceptions remains unclear”.²² So, Chief Justice himself concluded that the scope of the public interest is unclear. Can we assume that in any case where there is a public interest the documents will have to be disclosed to the public authorities? The other unanswered question in this case is that if the parties conclude a confidentiality agreement, but there is a public interest will the documents be disclosed? However, the Court held that the Minister of Energy who has direct obligations to deal with the cases concerned with the Energy and Electricity and who has not taken part in the arbitration has a right to obtain information and documents that were disclosed during the hearings.²³

This Australian case waived controversial discussions among the academics throughout the world. As states P. Neil: “A new weapon has thus been placed in the hands of the Commonwealth, the states, state entities and public utilities as participants in arbitration. Indeed the list of beneficiaries is not so easily confined. Any party to an arbitration is now enabled to run up with the flag labelled “public interest” and to claim the right (or to assert the duty) to communicate to the public at large confidential disclosures obtained as a result of the arbitral process and testimony which has been or is to be advanced in the arbitration by the publicizing party or his opponent”.²⁴

The next case that took place under Australian Law is a case Commonwealth of Australia v Cockatoo Dockyard Pty. Ltd.²⁵ This case was connected with the poisonous waste that was supposedly found in the island of Cockatoo. A journalist during the arbitral procedures asked for permission to obtain the information in accordance with the “Freedom of Information Act” which was enacted in Australia in 1982. The Cockatoo rejected to give any information as they claimed that the documents had to be kept confidential. The arbitrators also after the discussion have decided, that neither of the parties had the right to disclose any information or document obtained during the proceedings. However, the Supreme Court of New South Wales, Australia, referring to the Esso case, ruled that the documents can be publicized if there is a “public interest”. As mentions Kirby P.: “1. The Court has jurisdiction to intervene in an arbitration and review a procedural direction of an arbitrator, 2. Where a government is a part of arbitration, the arbitrator has no right to impose a duty of confidentiality

²¹ See *Ibid.*

²² See *supra* note 92, p. 55.

²³ See *supra* note 92, and also the article of Jeffrey W. Sarles, “Solving the Arbitral Confidentiality Conundrum in International Arbitration”, p. 4.

²⁴ See **Patrick Neil**, Confidentiality in Arbitration, *Arb. Int'*, 12, 1996, p. 1287.

²⁵ See *Commonwealth of Australia v Cockatoo Dockyard Pty. Ltd* (1995), 36 N.S.W.L.R. 662 (CA), written in the article of Michela Chirichiello, “Confidentiality in International Arbitration”, McGillan University, Private Law Institution, Summer 2003, p. 60.

on it”²⁶ What concerns the “public interest” he stated: “For all this Court knows it is both significant and urgent that the material should be made available, for the protection of public health and restoration of the environment both to [different governmental agencies]...or even to public in generally”.²⁷In this case environmental protection and public health were considered as spheres in which public has an urgent interest but the problem of the notion of “public interest” remains. In its decision the Court didn’t rule which spheres could be considered as “public”, nor even gave any criterion for defining it.

Having regarded these 2 important cases of the Australian Law we can draw the main scheme of it. 1. In contrast with English Law, the starting point here is that there is no assumption of confidentiality. 2. A great problem arises in connection with the notion of «public interest» which can be defined in a wide manner. It can include the moral, legal and even philosophical sides.²⁸ 3. The problem can occur when there is an agreement of confidentiality between the parties but still there is a public domain.4. As the precise scope of the «public interest» is not determined the Court has to go on in the case-by-case basis (as it is the case in England).

Swedish Law

On 27th of October 2000, the Swedish Supreme Court made a decision concerning the Al Trade Finance Incorporation v Bulgarian Foreign Trade Bank Ltd case.²⁹ In this case Bulgarian Bank was a respondent and brought an argument that in fact it was not a party to a contract and therefore could be bound by an arbitration clause in it. Its arguments were rejected and the findings of the court were printed in the Mealy’s International Arbitral Report. The Bank appealed and insisted to set aside the contract for the breach of the duty of confidentiality. The Supreme Court upheld the decision of the Court of Appeal and ruled that Swedish Law does not provide a duty of confidentiality unless the parties agreed otherwise and thus the contract cannot be void for the breach of confidentiality.³⁰ This judgment some academics called “extreme”.³¹

Case of the USA

In this paper I will only concentrate on the Federal Acts concerning the confidentiality, though it will be worth mentioning that states also have made

²⁶ See *Ibid.*

²⁷ See *Ibid.*

²⁸ See **Andrew Rogers** and **Duncan Miller**, Non-confidential Arbitral proceedings, 1996, 12, Arb. Int’l, 319.

²⁹ See *supra* note 15, p. 3.

³⁰ See for example, **L. Yves Fortier**, The Occasionally Unwarranted Assumption of Confidentiality, *Arbitration International*, Vol. 15, N 2, 1999, p. 134. <http://kluwerarbitration.com/arbitration/print.aspx?ipn=14324>

³¹ See, for example, **C. Partasides**, Bad news from Stockholm: Bulbank and Confidentiality ad absurdum., *Mealy’s International Arbitration Report*, Vol. 18, 1998, p. 21, quoted in *Id* p. 133.

several crucial decisions.³² In 1996 Administrative Dispute Resolution Act entered into force. Section 574 of the Act provides that: “Neither party, nor arbitrators may be compelled to disclose arbitration communications without consent, prior disclosure, statutory obligation, or judicial determination, that such disclosure is necessary”.³³ The leading case in this matter is the case *US v Panhandle Eastern Corp.* (1988).³⁴ In this case Panhandle Corp. tried to protect the information obtained during the arbitral proceedings held in Switzerland. The US insisted to disclose “all documents relating to the arbitration, including briefs, correspondence and other papers filed with the arbitrator, depositions, transcripts of hearings, settlement proposals, inter- and intra-company documents and other communications”.³⁵ The Panhandle argued that the disclosure was against the nature of the arbitral proceedings and that it would economically harm the party. However, the Court held that Panhandle failed to prove the “good cause” (which also includes the proof of harm to the party) and so the documents can be disclosed. In its decision the Court also ruled that there is no implied duty of confidentiality unless parties expressly agreed upon this term.

Approach of the Institutional Arbitrations International Chamber of Commerce (ICC)

Parties that want to arbitrate usually refer to the ICC rules. The drafters of the ICC could not reach the consensus in connection with the rules of confidentiality. We can find an article on the confidentiality of the process;³⁶ another article provides protection of trade secrets.³⁷ Art. 28.2 in connection with the confidentiality of the awards contains a rule, that: “Additional copies [of the award] certified true by the Secretary General shall be made available on request and at any time to the parties, but to no one else”.³⁸ However, the ICC rules allow publication without prior consent of the parties, after the award is “sanitized”. This means that after all the private information about the parties and details of the case have been deleted, the award can be published.³⁹ When ICC rules were adopted in 1998, Eric Schwartz wrote: “...as international arbitration increasingly becomes the normal forum for the resolution of international commercial disputes, there is an increasing number of participants in the process who question the conventional notion that, simply because it is private, arbitra-

³² See, for example, **D. Idaho R.**, 16.5 (j), 2005, at <http://www.mab.uscourts.gov/pdfdocuments/LR05.pdf>

³³ See section 574 (a) (1,2,3,4) and (b) (2,3,4,5), written in the article of **Richard C. Reuben**, Confidentiality in Arbitration: Beyond the Myth, *Kansas Law Review* 2006, p. 1261-1262.

³⁴ See 118 F.R.D. 346 (D. Del. 1988), see *Ibid.*

³⁵ See *Ibid.*

³⁶ See ICC Arbitration Rules, Art. 21.3 “Saved with the approval of the Arbitral Tribunal and the parties, persons not involved in the proceedings shall not be admitted”. <http://www.iccwbo.org/court/english/arbitration/rules.asp>

³⁷ See ICC Arbitration Rules, Art. 20.7.

³⁸ See *Id* Art. 28.2.

³⁹ See **Cindy G. Buys**, The Tensions between the Confidentiality and Transparency in International Arbitration, *The American Review of the International Arbitration*, vol. 14, 2003, p. 125.

tion must be confidential. Arbitration assuredly gives the parties an opportunity to provide for confidentiality. However, that this ought to be the rule in all circumstances is not universally accepted”.⁴⁰

UNCITRAL Rules

UNCITRAL Model Rules provide that “Hearings shall be held in camera, unless the parties agreed otherwise”.⁴¹ Another article concerning the confidentiality is Art. 32.5: “The award may be made public only with the consent of both parties”.⁴² However it does not provide an explicit answer whether, for example, parties after the hearings have a duty to keep the information and documents confidential.⁴³

London Court of International Arbitration (LCIA)

In contrary to the ICC and UNCITRAL rules, LCIA explicitly provides that parties are under obligation to keep the confidentiality of the arbitration. Art. 30.1 rules: “Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain-save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority”.⁴⁴ Thus, LCIA rules in fact summarize the case law of England. This article contains the duty of confidentiality, in the same time providing for restrictions that were developed in several leading cases. Art. 30.3 mentions that the awards cannot be published without prior consent of the parties (contrary to the ICC rules, where the award without private information can be published).⁴⁵

World Intellectual property Organization (WIPO)

Information concerning the intellectual property is more sensitive than information from any other sphere. Most times parties choose to arbitrate, especially to protect such kind of information and it is not surprising that WIPO provides for the most detailed rules in connection with arbitration process. Article 73 provides that: “The parties may not disclose any information concerning the existence of the arbitration to any third party except to the extent necessary

⁴⁰ See E. A. Schwartz, Comments in The New 1998 ICC Rules of Arbitration; Proceedings of the ICC Conference Presenting the Rules, quoted in the article of L. Yves Fortier see *supra* note 36, p. 132.

⁴¹ See UNCITRAL Arbitration Rule 25.4. <http://www.uncitral.org/en-index.htm>

⁴² See *Id* Art. 32.5.

⁴³ See *supra* note 113, p. 127.

⁴⁴ See LCIA Rules, Art. 30.1 <http://www.lciaarbitration.com/lcia/rulecost/english.htm>

⁴⁵ See *Id*. Art 30.3.

in connection with a court challenge or an action to enforce the award or unless required by law or a regulatory body”.⁴⁶ Art. 52 provides protection for specific information, such as trade secrets. Reading this article, one may assume that only the information that is considered to be a trade secret or is protected by intellectual property rules must be kept confidential. But Art 72 rules, that *any information* must be protected. Art. 75 contains a very important rule concerning the arbitral award. It is confidential in general, but is a subject of restrictions taking into account the consent of the parties, the sphere of public interest, protection of the party’s rights.

American Arbitration Association (AAA)

In 2003 the AAA rules in respect of the confidentiality were changed. Now in the Art. 27.4 we can read: “Unless otherwise agreed by the parties the administrator may publish or otherwise make publicly available selected awards, decisions and rulings that have been edited to conceal the names of the parties and other identifying details or that have been made publicly available in the course of enforcement or otherwise”.⁴⁷ As the rules in the ICC, AAA is also moving toward more transparent approach to the arbitration while protecting the private information about the parties.

Confidentiality in Armenian Law on Arbitration

In both Armenian laws on arbitration (1998 and 2006) there is an article about the confidentiality and to some extent they are similar when we think about consequences, as both call for confidentiality and privacy in the arbitral proceedings. But though the main idea is the same, there are differences. Art. 21 of the 1998 Law, rules: “The dispute is settled in a *camera* arbitration court session unless otherwise provided by the arbitration agreement of the parties. Arbiters are obligated to provide the confidentiality of the information related to the dispute. Arbiters are held responsible for making public any administrative, trade or bank secrets revealed to them during the case proceedings”. (Emphasis added) The word *camera* somehow reminds us about the UNCITRAL Rules. The distinguishing fact of this provision is that it explicitly rules on the responsibility of the arbiters if they breach the confidentiality. This is on one hand understandable as arbiters are playing a major role in the proceedings, but on the other hand parties also have a duty of confidentiality and to oblige only the arbiters to keep the confidentiality in my opinion is not justified.

The Law of 2006 has a more elaborated article on confidentiality. Art. 24 (4): “Unless otherwise specified by the law or by court order, or unless otherwise agreed by the parties, all arbitration proceedings shall be private and closed, and no document or other evidence submitted or statement ever made in any arbitration shall be disclosed to third parties or to any court or other state

⁴⁶ See *supra* note 113, p. 126. <http://arbitr.wipo.int/arbitration/rules/index.html>

⁴⁷ See *Ibid.*

entity or official, except in response to a court order, or as may be necessary in any court proceeding to recognize, enforce or set aside an arbitral award. The provisions specified in this paragraph shall not apply, however, to the extent that documents, other evidence or statements have been previously disclosed without breach of any duty not to disclose". In Armenia thus, the presumption of confidentiality is admitted as a starting point, unless parties agreed otherwise.

Conclusion

Rules on confidentiality differ much as in national laws, also in institutional arbitrations. This is a great risk for parties, as they never know whether the information which was disclosed in the arbitral proceedings will be protected under the notion of "confidential information". Even if they have chosen England as a place of arbitration, doesn't mean that documents will remain undisclosed. How can parties insure their confidential information from being publicized? In my opinion, the best option for them is to include a confidentiality clause in their arbitral agreement which will sound as such: "The arbitrator, any party, any witness and any other participant in the arbitration proceeding shall not disclose, transmit or disseminate (a) anything said or done in the arbitration (b) any documents disclosed or provided during or in connection with the arbitration (c) any information disclosed during or in connection with the arbitration (d) the existence or result of the arbitration, including without limitation the arbitration award and any explanations or reasons for the award".⁴⁸

ԱՍՏՂԻԿ ՍՈԼՈՍՈՆՅԱՆ – Արբիտրաժում գաղտնիության հարցի շուրջ – Հոդվածում քննարկվում է արբիտրաժային լսումների գաղտնիության ապահովման հնարավորության հարցը: Արբիտրաժային լսումների և դատավարության առավելություններն ու թերությունները թվարկելիս գաղտնիությունը դասվում է արբիտրաժի առավելությունների թվին: Թեև դատավարությունը ևս կարող է գաղտնի լինել, շատ երկրներում սա ճիշտ է միայն սահմանափակ դեպքերում, և կողմերը պետք է ապացուցեն, որ կա դժնփակ միստի կարիք (հիմնականում սրանք այն դեպքերն են, երբ գործը վերաբերում է կողմերի անձնական կյանքին, երեխայի որդեգրմանը և այլն): Ի տարբերություն դատավարության՝ արբիտրաժային լսումները հիմնականում տեղի են ունենում փակ սենյակում, որպեսզի պաշտպանվի լսումների ժամանակ քննարկվող ամբողջ տեղեկատվության գաղտնիությունը: Հիմնական պատճառն այն է, որ արբիտրաժային լսումների կողմերը, որպես կանոն, գործարար անձինք են, և տեղեկատվությունը գլխավորապես վերաբերում է առևտրային գաղտնիքին: Հաջորդ պատճառն այն է, որ կողմերն ունեն որոշակի հեղինակություն գործարար շրջանակներում, և արբիտրաժային վարույթի առկայության փաստը կարող է վնասել նրանց: Ըստ այդմ՝ հեղինակը ենթադրում է, որ կողմերը նախընտրում են արբիտրաժը նաև գաղտնիության պատճառով: Այնուամենայնիվ, նրանք պետք է շատ զգույշ լինեն, քանի որ ոչ բոլոր երկրներում է, որ գաղտնիու-

⁴⁸ See <http://www.eckertseamans.com/media center/publications/articles/2003 24 54.asp>

թյունը ենթադրվում է: Հեղինակը ներկայացնում է տարբեր երկրների իրավական համակարգերի համառոտ նկարագիրը՝ ցույց տալով դրանց առավելություններն ու թերությունները:

АСТХИК СОЛОМОНЯН – К вопросу конфиденциальности в арбитраже. – При рассмотрении преимуществ и недостатков арбитражного и судебного процесса конфиденциальность относят к числу преимуществ. Хотя судебный процесс тоже может быть частным, во многих странах его делают конфиденциальным лишь изредка (когда затрагивается личная жизнь сторон, в случаях усыновления/удочерения и т. д.). В арбитражном процессе, наоборот, слушания главным образом проводятся за закрытыми дверями, чтобы защитить обсуждаемую на них информацию. Причина заключается в том, что стороны арбитражного разбирательства – деловые люди и эта информация часто касается коммерческой тайны. Кроме того, сам факт арбитражного процесса может уронить их авторитет в предпринимательской среде. В статье высказано предположение, что стороны арбитража выбирают его именно в силу конфиденциальности. Но далеко не во всех странах арбитражный процесс предполагает конфиденциальность. В статье дано краткое описание правовой системы разных стран, подчеркнуты их преимущества и недостатки.