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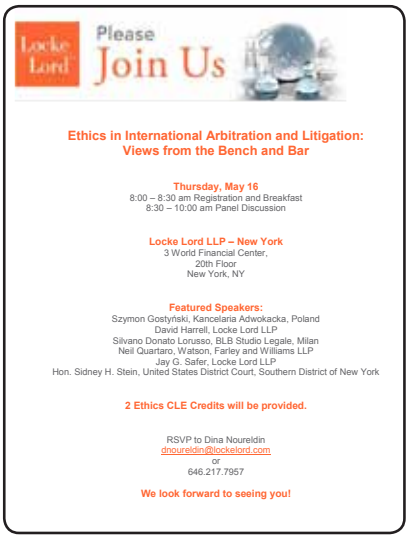
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Ethics in International Arbitration and Litigation:
Views from the Bench and Bar

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We look forward to seeing you!

Arbitrator's Independence and Impartiality in Europe and, in particular, in Italy. My experience as arbitrator of the National and International Chamber of Arbitration of Milan

1. Arbitrators' role in Italy. Duties and obligations deriving from the appointment. A general overview.

Until few years ago, arbitration proceedings conducted in Italy were few, and in the hands of a restricted group of professionals (basically lawyers). So that, essentially because Italian legislation at that time did not particularly favored arbitration. Fortunately, things have changed in recent years, starting with the 1994 reform of Italian arbitration legislation, reinforced in 2006 with the Legislative Decree No. 40. The current legislation, contained in the Italian Code of Civil Procedure has adopted a unitary approach, which means that the same provisions apply to both domestic and international proceedings. The new arbitration regulation has clarified some important features, such as arbitrability, form and scope of the arbitration agreement,rights and duties of the arbitrators. The new regulation seems to be fit to users' needs; this is confirmed by the always growing numbers of cases resolved by the arbitration in Italy. Without prejudice to other arbitration organizations, this trend is clearly demonstrated by the fortunes of the Milan Chamber of Arbitration-CAM, probably the most important arbitration center in Italy. The Milan centre has become the leading ADR institution in Italy; in fact, the number of its proceedings is constantly increasing, up to an average number of 130 to 150 arbitrations per year. The number of international cases is also increasing (currently to around one-third of the annual total amount of proceedings), such as the number of foreign parties making references to a CAM arbitration clause in their contracts. This proves beyond a shadow of a doubt as the reality of arbitration is becoming increasingly popular in a territory such as Italy, deeply and dramatically linked to the inefficiency of the ordinary Courts.
The phenomenon of arbitration in Italy is not a recent "discovery", since even before the aforementioned reforms (that only caused a more widespread diffusion of the same) it was quite frequent the so called "ad hoc arbitration". Especially with regards to international contracts and particularly complex commercial contracts or very high value contracts, Italian lawyers often preferred to refer any disputes arising from the same contracts to arbitration bodies composed, in most cases, by authoritative professors, selected on the basis of their high technical expertise with regard to the most sensitive aspects of the disputed contracts. It was then frequently

the appointment of teachers of private law, international law, commercial law and corporate law. These professional are known to be more experienced and more sensitive to issues relating to substantive rather than procedural law; as a consequence, strictly "ethical" issues as precisely the impartiality and independence of arbitrators, were thought to be less relevant than they are today. This essentially for two reasons: First, the high professional stature of the selected subjects automatically made almost plethoric every survey on the actual impartiality of the same professionals in relation to the parties to the proceedings. In other words, the request for a release of a "declaration of independence" (which, as we shall see, is nowadays the practice even for ad hoc arbitration in Italy) would be regarded as a real affront to the reputation and professionalism of these subjects. In addition, the limited number of subjects who could be engaged in selective processes of ad hoc arbitrations made, if not impossible, however, very difficult to select anyone other than those usually chosen. So any comments on dutifulness of the replacement of an arbitrator were aborted because of the difficulty of finding appropriate substitutes. The aforementioned reforms, therefore, having extended the number of disputes referable to arbitration and having generally favored a greater spread of the arbitration, imposed an involvement of a larger number of professionals, including those having no special authority and therefore more open minded towards issues of an ethical nature. Therefore, the increased use of the arbitration for the settlement of disputes instead of the ordinary ways is causing some beneficial consequences for the legal profession in Italy, even with regards to ethical aspects, not only the strictly professional ones.

With the proliferation of arbitration proceedings, in fact, is always higher the number of lawyers who are called to face the same judgments either as a counsels or as arbitrators. In the first case the differences with the traditional jurisdiction are somewhat limited (it still means to assume the technical defense of a part with respect to the claims of another), but the role is much more "challenging" when the lawyer is appointed as member of the arbitrators' board, or president of the same panel, or sole arbitrator. In this case, the role of technical advisor joins, or is combined with a role of "judge" which although not directly ruling, has a considerable effect on the verdict. In other words, you could say that the appointment matters the crossing "on the other side of the fence." Or at least, this should be the case. In fact, especially in the arbitration in which the parties may appoint one of its members, often lawyers appointed therein tend to forget the function they are supposed to carry out, and they continue, in fact, acting as "lawyers" of the party that appointed them, blindly and uncritically accepting requests of the same. The risk that the arbitration function is debased and sacrificed on the altar of special interests has prompted the Italian class of lawyers to question on current codes of ethics with respect to changes that the arbitration institution may impose to their role. Well, an important first step in this direction has been made by the Italian Bar Council, which recently (December 16th 2011) amended Article 55 of the code of ethics, dedicated precisely to the duties of the lawyer who is appointed as arbitrator. For clarity, we report the text in full: "The lawyer called upon to act as an arbitrator is required to orientate his/her behavior to probity and fairness and to ensure that the procedure is conducted with impartiality and independence. I. A lawyer may not act as an arbitrator when he/she has going on, or has had in the past two years, a professional relationship with one of the parties or, in any case, if one of the cases described in Article 815, first paragraph, of the Italian Code of Civil Procedure occurs. (1) II. A lawyer may not accept appointment as arbitrator if one of the parties to the proceedings is advised, or has been advised in the past two years, by another lawyer who is his/her partner or associate, or engaged in the same questions. In any case, the lawyer must notify the parties in writing about any further factual situation and any relationship with the legal advisors that could affect his/her independence, in order to obtain the consent of the parties themselves carrying out of his/her charge. (2) III. The lawyer who is appointed arbitrator shall act during the proceedings in order to preserve the trust placed in him/her by the parties and must remain immune from the external influences of any kind. He/she also has a duty to maintain the confidentiality of the facts that come to his/her knowledge by reason of the arbitration proceedings; he/she should not provide information on issues relating to the proceedings and must not disclose the decision before it is formally communicated to all parties. IV. A lawyer who has served as an arbitrator may not keep a professional relationship with a party: a) unless at least two years have elapsed from the definition of the procedure b) if the object is not different from that of the same proceeding. Ban extends to associates or lawyers exercising in the same premises."

It is clear, reading the text of the above provision, the most significant rules in arbitrators' charge in Italian legal system, at least from the point of view of ethics (as we could see later, Italian legislator made a different choice):

1) Probity and fairness
2) Impartiality
3) Independence
4) Confidentiality – duty of disclosure.

Among them, impartiality and independence appear to play a more important role from the point of view of ethics, because they are essential to the proper functioning of the task accepted by the appointment, are undoubtedly those of impartiality and independence.

2. Independence and impartiality: general definitions and concepts.

Though the principles of impartiality and independence are generally and universally recognized as proper and essential figure of the arbitrator, as is often also written in the regulations of international arbitration bodies (cf. for example the arbitration rules of the ICC, LCIA, AAA ADR, UNCITRAL), as well as in codes of conduct such as the Italian one, it is hard to recognize a widely accepted definition of these concepts. Firstly, usually the two concepts overlap each other to form a indistinguishable"unique", having as its ultimate purpose to ensure that the subjects called to issue the award have not any type of interest in respect of one of the parties involved in the proceeding. In other words, that means that the arbitrator should really be "third party" accordingly to the above regulations. It must be clarified that the requirement of impartiality and independence is not only inherent to the figure of the arbitrator itself, but in the very nature of the judicial body. This is true at least for the case of the so called administered arbitration, i.e. those for which the procedure is governed by an independent organization. In such cases, the parties cannot agree on the appointment of an arbitrator who is not independent and impartial, because the appointment of "third parties" is a real contractual obligation; furthermore, often arbitration organizations (such as CAM), reserve the possibility of replacing the arbitrators who have clearly stated to have an interest in the matter, even in the case where the charge has already been accepted by the parties. This is because the arbitration institutions have an interest that the proceeding is conducted in the most independent and impartial way. The appointment of an arbitrator "biased" and not independent goes to the detriment of the same party that appointed him/her. In fact, an arbitrator acting so closely compared to the position of the part would see progressively reduced his/her authority within the arbitration panel, because other arbitrators will tend to identify him/her with the same party, rejecting, almost automatically, any instances. It is likely that this will happen also in the issue of the award. The appointment of a non-independent and impartial arbitrator means major repercussions also in economic terms. In fact, if the arbitrators appointed by the parties only play the role of "lawyers" within the judicial body, the judgment of the President will have a decisive role in the issue of the award. In other words, it is the same as if the arbitration had been decided by a single arbitrator instead of a board, and the parties would have paid twice for the same service.

Turning to the problem of the definition of those two concepts of independence and impartiality, it is interesting to determine how the two principles can be individually defined and set forth in the law of self-regulatory bodies of the legal profession. For "independence" we mean the absence of any relationship between the parties and the arbitrator, which can, even theoretically, influence the independent judgment of the same. The concept of independence is related to an objective fact, whereas impartiality, as we shall see later, it is a subjective connotation of acting. The circumstance under which independence is an objective fact means that any assessment of the existence of the same exceeds even the feedback about the experience and the professional preparation of the single arbitrator. In other words, the existence of relationships is sufficient to exclude the existence of the requirement, beyond the actual ability of the professional to "abstract" himself/herself and act objectively. The concept of independence is often related to the "conflict of interest", with which it is confused. In fact, the former has a wider scope than the latter, because the conflict of interest occurs when an individual performs actions within a given area, causing a favorable effect for him/her or others in a different context; independence, however, does not require the existence of a real "interest", but simply the existence of facts potentially capable of influencing the independent judgment of the arbitrator. This could be the case of the arbitrator who has previously worked as a lawyer in favor of the party that appointed him/her. In this case, in fact, there is no interest, but simply an objective circumstance, which is considered to be potentially liable to distort the autonomy of the judging. As mentioned above, just in the objective character of independence lies the main difference with respect to impartiality. This fact is a "psychological" feature of the arbitrator, and implies that the arbitrator does not favor one party (especially the one that appointed him/her); in other words, impartiality means no preconceptions about the position of one or more parts of the process. Since impartiality is a prerogative of subjectivity that must persist for the duration of the trial, it is much more difficult to prove its absence, and it could also happen that a subject "independent" as defined above is more inclined to instances of one of the parties. The only way to ensure that there is no preconception is to verify whether the arbitrator has already expressed its opinion within another process, or in another legal significance context. This fact points out, in fact, because the arbitrator

shall be selected on the basis of not only his/her expertise but also his/her way of approaching the issue; a conscience already "tainted" for expressing an opinion before the trial cannot be considered impartial, because it appears very likely that the person who has given it shall not deny the same later. Nevertheless, the hypothesis that the arbitrator has already decided the issue in another judgment does not automatically mean that the arbitrator is not impartial: it will be necessary to also consider the actual degree of similarity between the issues and the identity of the parties, as well as the degree of "cultural proximity" between the arbitrators and the parties. This additional element occurs, for example in case of international arbitration, where the nationality of the arbitrator, whether identical to that of one of the parties, could give the impression that the arbitrator in question can no longer be impartial. In these cases, the "impasse" is resolved by arbitration bodies (for example the ICC rules and Chamber of Arbitration of Milan rules), which often include in their regulations that arbitrators should be of a different nationality from that of the parties, unless otherwise agreed.

As we said earlier, Italian Bar Organization is increasingly raising awareness with respect to the duties of lawyers invested with the charge of arbitrators, and this is demonstrated by the increasing number of decisions that contribute to rigorously outline the profile of the abovementioned requirements of independence and impartiality. This shows a positive stance of our profession, more and more oriented to protect its credibility with respect to arbitration that also in Italy (in spite of the very well known problems of inefficiency of the judicial system, or perhaps *thanks* to the same..) starts to conquer more and more space. Here we report the most significant rulings concerning the impartiality and independence issues.

"It is an unethical conduct if the lawyer assume the function of arbitrator having or having had a professional relationship with one of the parties" (CNF December 10th , 2007).

"It is an unethical conduct if the lawyer assume the function of arbitrator having or having had a professional relationship with one of the parties which undermine the autonomy and undermine the duties of independence and impartiality of arbitration function, or if one of the parties to the proceedings is advised by other professional associate to the arbitrator or engaged in the same premises of the latter" (CNF September 21st , 2007).

"It is an unethical conduct, because impairing the obligation of independence and impartiality, if the lawyer takes over the function of arbitrator despite being the advisor of one of the parties in other proceedings, no matter if he/she actually did not play defensive functions but it was a simple domiciliary" (CNF November 10th, 2004).

"The precept of ethics in art. 51 does not allow the lawyer to take up duties against former clients, unless it has expired a reasonable period of time, and unless the subject of the new charge is different to those conducted previously and there is no possibility for the professional use of information previously acquired." (CNF October 2010 22nd).

"It is a ethically significant conduct and detrimental to the duty of fairness when a lawyer, appointed as sole arbitrator does not disclose that he/she had previously taken a professional task from one of the two parties, but rather, after the appointment, take another professional assignment on the same side" (CNF November 8th 2011).

3. Duty of disclosure

Reading the above rulings and examining the regulations of the most important arbitration organizations, another duty imposed on arbitrators clearly arises, which is one of transparency. Transparency, understood as an obligation to openly declare the existence of any circumstance able to exclude or limit the autonomy of judgment (or rather, the independence and impartiality) of the arbitrator appointed. This obligation from the practical point of view is reflected in the so called "disclosure obligation", now universally recognized as an ethical principle also by international arbitration bodies (for example, see the IBA Guidelines, and the code of ethics of the CAM). These bodies have in fact found a way to empower attorneys with respect to their duty of disclosure by requiring them to fill out, at the time of appointing, a real declaration of independence, in which they have to mention expressly and in detail every circumstance, relationship, or fact referred not only to the lawyer itself, but also to his/her own professional firm, which can be relevant for the independence and impartiality of the assignment arbitration. It should however be noted that having declared the existence of such facts or circumstances not necessarily entails the replacement of the arbitrator, as the different arbitration bodies will have to make a careful assessment in order to establish the degree of effectiveness and the potential influence that the fact declared could exercise on the professional autonomy of the arbitrator appointed. Nor can we say that any considerations of the parties are sufficient to exclude the appointment, since in any case the final decision about the confirmation of the arbitrator is left to the arbitral body.

4. Elements which should be disclosed

As mentioned above, the duty of disclosure as provided by the regulations of the main Italian arbitration bodies covers all the factual elements able to influencing the independent judgment of the arbitrator and therefore it must be disclosed to the parties. In particular, arbitrators' autonomy are could be affected mainly when the following kind of relations occur:

- Relations with the parties to the proceedings
- Relations between the arbitrator and the arbitration panel
- Relations between the arbitrator and any other entity involved in the arbitration

The above categories all refer to the concept of independence. The Italian main arbitration body (CAM) has exemplified various specific cases in relation to each of the above categories.

For example, it has been considered relevant the presence of relations between the arbitrator and the parties to the proceedings when:

- The arbitrator was a consultant of the party that appointed him/her or another part of the arbitration in another arbitration or judicial proceeding not connected to "main" arbitration;
- The arbitrator is or has been a consultant to an affiliate of one of the parties;
- The arbitrator is or has been the consultant against one of the parties to the arbitration in an unrelated arbitration or ordinary proceeding;
- The arbitrator was appointed more than once from the same part in other arbitrations, even in the case where they are not connected to each other;
- The arbitrator is both the presiding arbitrator in an arbitration between A and B and also arbitrator appointed by A or B in another pending arbitration;
- The arbitrator has relations with both parties of the proceeding;
- The arbitrator has familiarity / friendship with the party who appointed him/her;
- The arbitrator holds shares / interests in a company belonging to the party that appointed him/her.

It is relevant the presence of significant relationships between the arbitrator appointed and the board when:

- The arbitrator and the counsel of one of the parties work together as consultants in other proceedings;
- The arbitrator and the legal counsel of one of the parties are colleagues in the same law firm;
- The arbitrator is doing his/her service in favor of the law firm of the counsel of one of the parties;
- The arbitrator, in other cases, is the counsel of one party against the other party whose counsel is also counsel of a party of arbitration;
- The arbitrator is a part in another case and his/her counterpart is represented by the same counsel representing one of the parties to the arbitration;
- The arbitrator, without being associated, shares the law firm premises with the counsel of one of the parties;
- The arbitrator and the counsel of the party that appointed him/her maintain academic or scientific relationships.

Finally, another type of relationship might be relevant, although statistically much less common, i.e. the relationship between the arbitrator and other parties in any other way involved in the arbitration. Within this category we could find the relationships with other arbitrators of the Arbitration body, relations with the experts / technical experts used by the arbitrator body and relations with the arbitration organization itself.

5. Duty of disclosure: the choice made by the Italian legislator

The disclosure obligation in the Italian context is present within the Italian Bar Association code of ethics, within the code of ethics established by the Italian Association of Arbitration and by the internal regulations of the most important arbitration bodies. At the regulatory level, however, this requirement has not yet been introduced. As we saw before, the reform of the Italian Code of Civil Procedure which came into force with the Legislative Decree no. February 2, 2006, n. 40 has helped to strengthen the effectiveness and spreading of arbitration, making it more compliant with the new requirements of the legal market, but did not expressly introduced the duty of disclosure. The obligation to disclosure is required by most European legal systems and considered an effective means of protecting the impartiality of the arbitration, as it allows the parties to be aware of any circumstances that may compromise it and to choose whether to proceed to the disqualification or whether to accept such circumstances if the same are considered as irrelevant. Italian legislator, rather than identifying specific reasons for objecting, should have introduce the duty the arbitrator to declare the relationships which connect or bind him/her to the parties, leaving the same parties the chance to challenge those arbitrators who do not collect their confidence. The inclusion of this obligation, present during the entire arbi-

tration procedure, also would force the parties to immediately make the statement on the relationship declared by the arbitrator. So that any disapproval of the appointment of an arbitrator, on the one hand, would avoid the latter to be unnecessarily subjected to a judgment of objection, as he/she legitimately could resign, and secondly, would force the parties, right from the beginning of the procedure to take a stand on the issue, rejecting the arbitrator or refusing to enforce the stated reason. In fact, while the State judges are subject to the possibility of a compulsory abstention, this requirement does not exist for the arbitrators. The eventual legislative provision of the duty of disclosure would raise a series of application problems, among which the most important are the identification of situations that need to be covered by the declaration and the consequences of the breach of this duty, but the usefulness of the instrument inside the arbitration seems to be far superior. Such failure within Italian regulation could be bypassed with the use of rules on good faith in the legal relationship, pursuant to art. 1375 of the Italian Civil Code, or the particular duty of care in the performance of the agency contract, pursuant to art. 1710 of the Civil Code. The lack of a duty fixed by law means that the failure by the arbitrators to the duty to declare circumstances able to affect his independence of judgment could force the arbitrator to compensation for damage suffered by the parties, but the award would remain valid and effective. In fact, the causes of action for annulment are expressly provided for by art. 829 Code of Civil Procedure and, among these, a breach of the duty of disclosure is not provided. The award may be canceled if only (among others) spoiled by the willful misconduct of the private judge.

Fortunately, as also demonstrated by the arbitration rules of the most important Italian arbitration institutions, which expressly provide for the duty of disclosure, such inexplicable regulatory gap has been filled by a commendable practice. In fact, I had the opportunity to suggest (as a consultant) or verify (in case of appointment as arbitrator) that the parties often impose a duty of disclosure conventionally in the arbitration agreement or in a subsequent act. In this case, the breach of the obligation will be without doubt a breach of contract, which will expose the private judge to recover damages suffered by the parties, as well as the possible termination of the contract if it is a serious breach. Such violation could also legitimize the action for annulment under Article. 829, n. 7, Italian Code of Civil Procedure, given that the arbitrators had failed to comply, in the conduct of the arbitration proceedings, with the forms prescribed by the Parties. Even in the practice of arbitration which are not managed by arbitration institutions is not uncommon to note that the parties establish a specific questionnaire to be submitted to the arbitrator, indicating the circumstances subjectively deemed to be relevant, and of course with the qualifications considered to be essential for the performance of arbitration commission.

As already told, this commendable practice which has become rule for not administered arbitrations, is provided by the above-mentioned codes of conduct (AIA and CNF), but also by the regulations of the major arbitration bodies. For example, the Milan Chamber of Arbitration has introduced the duty of compliance to the ethical rules to all arbitrators in the procedures administered by itself. In particular, the art. 7 of the code of ethics and art. 18 of the Rules of the Milan Chamber of Arbitration govern the "declaration of impartiality and independence" of the arbitrator. At the time of engagement, the arbitrator must send to the Chamber a written statement specifying the period and duration of the circumstances and relationships identified in the Rules. As earlier specified, an indication of the relationship between the arbitrator and the parties or to the subject of the dispute does not automatically entail the replacement, but it is an issue on which the Chamber has to pronounce. Any doubt about the duty and the opportunity to declare whether or not a fact, circumstance or relationship shall be resolved in favor of disclosure, as the principle is "in dubio pro disclosure." The duty of disclosure is also provided by the rules of Arbitration Chamber of Rome (art. 6), and art. 7 of the Arbitration Chamber of Bologna.

6. The party appointed arbitrator

Examining all the rules of ethics that we have just outlined, we could find a complex of obligations and prohibitions that provides the framework for action by the arbitrator. It could be interesting to wonder how the arbitrator appointed by the party should interpret the same duties. In other words, how can the arbitrator appointed by the party be truly impartial and independent? In fact, you should not overlook the fact that often the arbitrator shall be appointed by the party as it enjoys the confidence of the latter, and it is often in the strictest confidence with the same (subject to the duty to disclose relevant relationship in the declaration of independence, if so provided by the regulation governing the arbitration proceeding). However, as noted above, there are several reasons, including economic, which suggest that part of the arbitrator has not behave like a counsel within the arbitration panel. Therefore, excluding the limiting case of the partial arbitrator, what should be the proper way to play the role of party appointed arbitrator? Well, in the first place, he / she should always try to be always objectively indepen-

dent, avoiding taking partial attitudes for the duration of the proceeding, trying, at the same time to emphasize evidence and arguments produced by the part who appointed him/her so that these are properly considered when the award is drafted. As you can imagine, this is not at all an easy task. So as it is, at the same time, to demonstrate lack of impartiality throughout the duration of the procedure. For example, a possible demonstration of bias could be detected in the case where the dissenting reasons of the award are drafted by the losing party.

We are faced with a problem which may not be solved, in which a key role is played by an element that defies any prior examination, that is, precisely, the professional ethics of the party appointed arbitrator. However, it seems that this requirement so intimate and inscrutable may not represent a valid warranty for parties recurring to the arbitral tribunal. It is not surprising that it has been even suggested to prohibit completely the possibility that the parties appoint their own arbitrator, leaving to arbitration institutions the task to appoint the entire board, or providing that the parties appoint by mutual agreement all of the members of the arbitration panel. What should be safeguarded, in fact, is not so much the right of parties to choose arbitrators themselves, but the right to participate in the appointment of the arbitral tribunal. In any case, we should not forget that each of the legal practitioners (judges, arbitrators, lawyers, consultants, etc.) should orientate their profession to a single end, that is the correct and proper application of the law. Commentators of Italian law often stressed the importance of the role of lawyers in the process as "auxiliary" of the judge in the search and identification of the truth of the case and the proper rule of law applicable to the same case. I think interesting to share with this esteemed audience the preamble to the code of conduct of the Italian Bar Association, which is too often ignored, but it should be meaningful and even more relevant in the case in which a lawyer is appointed as arbitrator: "The lawyer conducts its business in full freedom, autonomy and independence, in order to protect the rights and interests of the person, ensuring the knowledge of laws and thus **contributing to the implementation of the Law for the ends of justice**. In performing its function, the lawyer supervises the conformity of laws with the principles of the Constitution, in accordance with the Convention for the Protection of Human Rights and the European Community regulation; guarantees the right to liberty and security and inviolability of defense; ensures the regularity of the proceedings and correctness of the cross". In some ways, it is a revolutionary vision with respect to the stereotypical view of the opposition net and almost "ideological"between lawyers and between lawyers and judges. In an ideal world we would say that the goal of the process is not the triumph of one party over the other, but the triumph of justice as an universal value. Keeping this essential value, that unites also very different roles between them, you can also try to rethink a new perspective on the role of the party appointed arbitrator, imagining him/her as a valuable co-author of the best possible solution in respect of the general legal system, not only of one of the parties. If, on the contrary, party appointed arbitrator deviates significantly from this principle, the result could only be that of the futility of counsel of the parties (or alternatively, of the arbitrators) in the arbitration proceeding.

7. Conclusions

As you could see by the arguments that I shared with you today, even in Italy we can claim to have achieved a considerable degree of familiarity of the arbitration, and more specifically, with the ethics issues connected to it. In general terms, the liveliness of the doctrinal debate, the ever-increasing number of arbitrations (administered or not) and the interest of the legislator and of the organs of forensic self-government unequivocally demonstrate that in Italy is becoming increasingly popular this means of alternative dispute resolution, whose efficiency and dynamism contrasts dramatically to the cumbersome nature of the traditional justice system. It would be excessive to say that one of the success factors of the arbitration is precisely the collapse of the Italian judicial system, but it certainly is a fact that now even small and medium enterprises, which are the connective tissue of the Italian entrepreneurship and that until a few years ago showed a certain distrust for arbitration (mostly for cost issues) are beginning to understand its benefits, willingly accepting that in their contracts is included an arbitration clause for the resolution of disputes. The reasons for the success of the arbitration, in fact, are to be found in certain strengths in an absolute sense, that are, but not limited to, more quickly decisions, the certainty of the proceedings time, the degree of effectiveness of arbitration awards, etc.. But none of these values would be able to imply the success of the arbitration without, above all, the certainty that arbitral tribunals are able, like the traditional ones, to ensure that a "right" justice is implemented. In other words, a key role in the development of arbitration will continue to be played by lawyers, who will increasingly face the difficulties and apparent contradictions that arise from the appointment as arbitrator. In the context of this inescapable cultural comparison, as well as strictly professional, I believe that the development of our profession must be accompanied by a similar and corresponding development of ethical issues related to the appointing as arbitrator, and a growing

awareness of the great responsibility that lawyer takes with the same, not only to the parties, but especially against and towards the legal system. In this context, the intensification of international relations between arbitrators and arbitration bodies of different countries can be a valid means of spreading core values __and methods of protecting the same values, so that we can contribute, hopefully, to the creation of a body of rules of "best practices" internationally shared for the protection of the rights of defense within the arbitration to be held worldwide.

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