THE ARBITRATOR'S IMMUNITY FROM LIABILITY: A COMPARATIVE SURVEY

There is hardly any aspect of arbitration law and practice more settled, both in domestic and international relations, than the immunity of arbitrators from court actions for their activities in arriving at their award. This concept is originally based on the immunity of the judiciary in order to preserve the integrity and independence of its members and protecting them from harassment through court actions to which they may be otherwise exposed by a dissatisfied party. The application of such a public-policy viewpoint to arbitrators is justified because they are acting in a quasi-judicial capacity. Were the law otherwise, a dissatisfied party could expose an arbitrator to the vexation and hazards of a lawsuit. Any such action could only be destructive to the arbitrator's independence and to the discharge of his duties. It was aptly stated in an early Massachusetts case: "An arbitrator is a quasi-judicial officer ... exercising judicial functions. There is as much reason in his case for protecting and insuring his impartiality, independence, and freedom from undue influences, as in the case of a judge or juror,"1 or, as it was said in a New York decision: "Arbitrators must be free from the fear of reprisals by an unsuccessful litigant. They must of necessity be uninfluenced by any fear of consequences for their acts."

Arbitrators would hardly be inclined to accept their appointment if there would be financial risks involved, or, in other words, if they were aware that their liability would be greater than that of judges of ordinary courts.3 The creation of

an arbitrator's immunity similar to that of ordinary judges, in view of the former's quasi-judicial capacity, prevail in the arbitration practice of many countries, as evidenced by court decisions and legal writings, e.g., in England,4 France,5 Germany,6 Switzerland,7 Austria,8 India,9 and the United States.10

[...]

[...] However, the arbitrator is not immune from court action for damages resulting from his misconduct in the arbitration and negligence in the performance of his duties, outside the (final) rendering of an award. [...]

The immunity of the arbitrator is, of course, confined to civil liability. When criminal acts are involved like bribery, corruption or other unlawful acts, penal law applies34 and no immunity exists. [...]

3 GRIMM-ROCHLITZ, DAS SCHIEDSGERICHT IN DER PRAXIS 68 (Heidelberg 1959); BRUNS, ZIVILPROZESSRECHT 528 (Berlin 1968).
6 BAUMBACH-SCHWAB, SCHIEDSGERICHTSBARKEIT 92 (2d ed. 1960).
Referring Principles:

XIII.2.7 - Immunity of arbitrator

7 GULDENER, SCHWEIZERISCHES ZIVILPROZESSRECHT 585 (2d ed. 1958).
8 WUENSCH, SCHIEDSGERICHTSBARKEIT IN HANDELSSACHEN 50 (1968).