Procedural Decisions in ICC Arbitration

Recourse to Experts

ICC Case 13490

Date of procedural order: July 2006  
Origins of parties: Europe, Middle East  
Place of arbitration: Paris, France  
Summary of issues:  
- method of selection  
- definition of mission  
- powers  
- duties  
- deadline for submission of report  
- allocation of costs

ICC Case 14079

Date of procedural order: May 2007  
Origins of parties: Europe  
Place of arbitration: Zurich, Switzerland  
Summary of issues:  
- method of selection  
- nature of expert (individual/firm)  
- qualities required of expert  
- definition of mission  
- schedule  
- examination of expert’s findings  
- force of expert’s findings  
- budget

Privilege as a Defence against Document Disclosure

ICC Case 13054

Date of procedural order: February 2006  
Origins of parties: Europe, Middle East  
Place of arbitration: Lausanne, Switzerland  
Summary of issues:  
- attorney-client privilege  
- applicable national statutes (England, Switzerland, Lebanon)  
- timeliness of defence  
- scope of protection
ICC Case 13176

Date of procedural order: May 2006
Origins of parties: Europe
Place of arbitration: Paris, France
Summary of issues:
- attorney-client privilege
- without prejudice privilege
- scope
- interpretation
- waiver

Bifurcation

ICC Case 14338

Date of procedural order: March 2008
Origins of parties: Europe
Place of arbitration: Paris, France
Summary of issues:
- arbitrator’s power to order bifurcation under the 1998 ICC Arbitration Rules and applicable national law
- relevance of Articles 15(2) and 20(1) of the 1998 ICC Arbitration Rules
- applicable criteria
- separability of issue
- economic advantage

ICC Case 18175

Date of procedural order: October 2012
Origins of parties: Africa
Place of arbitration: Kigali, Rwanda
Summary of issues:
- arbitrator’s discretion to order bifurcation under the 1998 ICC Arbitration Rules and applicable national law
- discreteness of matter to be decided
- risk of duplication of procedures
- impact on time and cost

ICC Case 18864

Date of procedural order: December 2013
Origins of parties: Asia, Europe
Place of arbitration: Geneva, Switzerland
Summary of issues:
• procedural economy and efficiency
• due process
• decision on bifurcation does not anticipate the decision on the preliminary issues or the merits

New Claims

ICC Case 15634

Date of procedural decision: February 2009
Origins of parties: Europe, Middle East
Place of arbitration: Nicosia, Cyprus
Summary of issues:
• interpretation of Article 19 (now Article 23(4)) of ICC Arbitration Rules
• timing
• impact terms of reference and establishing the facts
• due process
• fairness

ICC Case 19105

Date of procedural order: February 2014
Origins of parties: East Europe
Place of arbitration: Bucharest, Romania
ICC rules of Arbitration: 2012
Summary of issues:
• relevance to issues to be decided in the final award
• timing
• risk of delay and disruption
• compatibility with tribunal’s duty to conduct the proceedings efficiently
• impact on advance on costs

ICC Case 19581

Date of procedural order: March 2014
Origins of parties: East Europe
Place of arbitration: Bucharest, Romania
Summary of issues:
• timing
• newness of claim
• impact on terms of reference
• impact on advance on costs
• appropriateness of leaving claim to be litigated in other proceedings

Multi-Tiered Dispute Resolution

ICC Case 14079
Interim Relief

ICC Case 13856

Date of procedural order: March 2006
Origins of parties: Caribbean, Europe
Place of arbitration: Geneva, Switzerland
Summary of issues:
- jurisdiction to order interim relief
- impact of prior applications in state courts for similar relief
- conditions for ordering interim relief
- form of decision

ICC Case 15219

Date of procedural order: September 2008
Origins of parties: Africa, Europe
Place of arbitration: Brussels, Belgium
Summary of issues:
- jurisdiction
- relationship with the merits of the dispute

ICC Case 15634

Date of procedural decision: February 2009
Origins of parties: Europe, Middle East
Place of arbitration: Nicosia, Cyprus
Summary of issues:
- arbitral tribunal's power to order interim relief
- conditions for ordering interim relief
- attainability of the relief sought

Security for Costs

ICC Case 12732
Date of procedural order: January 2006
Origins of parties: Africa, Europe
Place of arbitration: London, United Kingdom
Summary of issues:
- exceptional nature of remedy
- timing
- inappropriateness in ICC arbitration

ICC Case 13359

Date of procedural order: February 2006
Origins of parties: Asia, Europe
Place of arbitration: Paris, France
Summary of issues:
- timing
- financial weakness as prerequisite
- good faith as prerequisite
- comparison with ICC advance on costs
- burden of proof

ICC Case 13620

Date of procedural order: May 2006
Origins of parties: Africa, Europe
Place of arbitration: London, United Kingdom
Summary of issues:
- arbitral tribunal's discretionary power to order security for costs
- impact of failure to pay ICC advance on costs
- provisional nature of decision

ICC Case 14020

Date of procedural order: November 2006
Origins of parties: Caribbean
Place of arbitration: London, United Kingdom
Summary of issues:
- source of arbitral tribunal's power to order security for costs (*lex arbitri*/ICC Rules)
- timing
- change of circumstances
- arbitral tribunal's power to order security for claims

ICC Case 14355

Date of procedural order: January 2007
Origins of parties: Asia, Europe
Place of arbitration: Zurich, Switzerland
Summary of issues:
- source of arbitrator’s power to order security for costs
- substantiation of need for security for costs
- insufficiency of mere financial difficulties

**ICC Case 14433**

Date of procedural order: October 2008
Origins of parties: America, Europe
Place of arbitration: London, United Kingdom
Summary of issues:
- arbitral tribunal’s discretionary power to order security for costs
- factors to consider when assessing need for security for costs

**ICC Case 14661**

Date of procedural order: December 2007
Origins of parties: Europe
Place of arbitration: Paris, France
Summary of issues:
- change of circumstances
- limitation to future costs

**ICC Case 14661**

Date of procedural order: December 2008
Origins of parties: Europe
Place of arbitration: Paris, France
Summary of issues:
- limitation to future costs

**ICC Case 14993**

Date of procedural order: December 2007
Origins of parties: Europe
Place of arbitration: Vienna, Austria
Summary of issues:
- exceptional nature of circumstances justifying security for costs
- insufficiency of mere financial difficulties

**ICC Case 15218**
Date of procedural order: July 2008
Origins of parties: Europe, Middle East
Place of arbitration: Bern, Switzerland
Summary of issues:
- change of circumstances
- degree of insolvency justifying security for costs
- impact of applicant’s conduct on outcome of application
- determination of amount to be secured

**Anti-Suit/Arbitration Injunctions**

**ICC Case 14581**

Date of procedural order: June 2007
Origins of parties: Europe
Place of arbitration: Geneva, Switzerland
Summary of issues:
- anti-arbitration injunction as interim measure
- prerequisites for an anti-arbitration injunction
- inconclusive force of prima facie examination of arbitration agreement
- no evidence of abuse, irreparable harm

**ICC Case 18563**

Date of procedural order: December 2012
Origins of parties: America, Asia
Place of arbitration: Lausanne, Switzerland
Summary of issues:
- anti-suit injunction as interim measure
- anti-suit injunction not subject to same criteria as interim measures on the merits
- breach of arbitration agreement
- risk of aggravation of the dispute
- provisional nature of decision