



Ethics in Arbitration*

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In the business community the term 'ethics', nowadays, risks being abused as much as the notion of 'philosophy'. A company's 'philosophy' is but its shareholder's policy, its sales strategy or whatever other commercial guideline, has nothing to do with the quest for wisdom - , the 'philosofia', in the tradition of Plato, Descartes or Karl Popper. Similarly, any profession or trade appears to have its own 'ethics' which has not much to do with morality, but boils down most often to mere rules of conduct. Arbitration is no exception thereupon.

As early as 1924 a French writer analysed the specific ethical rules by which arbitrators were bound.¹ In 1983 the Paris Bar included in its Code of Ethics specific rules for avocats acting as arbitrators; Paris avocats who do not respect this Bar Code of Ethics are subject to disciplinary sanctions. There were also some attempts to codify the ethics in arbitration. The American Arbitration Association (AAA) and the American Bar Association (ABA), for instance, jointly adopted a Code of Ethics for Arbitrators in Commercial Disputes in 1977 and slightly amended this code in 2003.² The International Bar Association (IBA) promulgated Rules of Ethics for International Arbitrators in 1987.³ A quick search on the Internet reveals that some other bodies, such as the relatively unknown 'Resolutions Experts of JAMS',⁴ have enacted a Code of Ethics for Arbitrators as well.

To what extent do these texts give an insight into the arbitrator's ethics? To address this question, we first have to define what ethics are.

The notion of ethics was for the first time thoroughly analysed by Aristotle around 350 BC. For the present analysis it is relevant that for Aristotle 'ethics' had to be distinguished from the basic rules. Indeed, from the notion of ethics he excluded all basic rules that are so obvious and essential for society that they have to be respected without questioning, and whose breach had to be directly sanctioned by society. Moreover, for Aristotle, ethics are of a double nature: Either they are the practices in a group that need to be followed to prevent the group from disintegrating. Or they are ideals and values that a virtuous person tries to implement in his life. In other words, ethics consist of objective practices and subjective values.

* Paper presented on November 23, 2004 at the Conference of the Dubai International Arbitration Centre on "Meeting Business Needs in the Middle East".

¹ See J. Salsmans, *Droit et Morale. Déontologie Juridique -Brussels 1924*, p. 191-192.

² See <http://www.adr.org>.

³ See for the text of this Code: M. Hunter and A. Redfern, *Law and Practice of International Commercial Arbitration*, 3d ed. Sweet & Maxwell, Appendix L.

⁴ See the Arbitrators' Ethics Guidelines : <http://www.jamsadr.com/>