Exposé for Doctoral Thesis

with the preliminary working title

Revision of Arbitral Awards Beyond the Model Law

research proposal submitted by

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I. Introduction

Remedies against arbitral awards are necessarily extraordinary remedies since they are directed against decisions that already constitute *res judicata*. Further to the general considerations of public policy and legal certainty,[1] the finality of arbitral awards is also based on the contractual nature of arbitration. The parties agree to arbitrate with respect to a given dispute and once this is resolved, there is no basis for the arbitrators to retain jurisdiction.[2] With the delivery of the award the tribunal becomes *functus officio*.[3] Yet, both the finality of the award and the tribunal's mandate may be affected if a party makes recourse against the award.

Recourse is the means through which a party actively "attacks" an award.[4] The characteristics of arbitration necessitate the possibility of recourse. Arbitral tribunals render decisions which are immediately final and binding and enforceable. At the same time, decisions are rendered in a simplified procedural framework in – ideally – expeditious one-instance proceedings, to the exclusion of remedies that would be available in state court proceedings and, in particular, to the exclusion of the review of decisions on the merits.[5] For these reasons, states provide for basic guarantees by foreseeing recourse against arbitral awards in their arbitration laws.[6]

In order to eliminate the divergence between national arbitration laws as regards recourse against arbitral awards, the UNCITRAL Model Law has adopted only one type of recourse, the application for setting aside,[7] to the exclusion of any other recourse regulated in any procedural law of the

[1] See Alexis Mourre, 'Is There a Life after the Award' in Pierre Tercier (ed), *Post Award Issues, ASA Special Series No. 38* (Juris 2011), 3. 4A_386/2015 of 7 September 2016 (Swiss Federal Tribunal), para 2.1.

[2] See Alexis Mourre, *supra* n 1, 3-4.

[3] See Pierre Tercier (ed), *Post Award Issues: ASA Special Series No. 38* (Juris 2011), xiv-xv. See also Alexis Mourre, *supra* n 1, 2-4; Jeffrey Maurice Waincymer, *Procedure and Evidence in International Arbitration* (Kluwer Law International 2012), ch 16.9, 1345.

[4] See Explanatory Note by the UNCITRAL secretariat on the 1985 Model Law on International Commercial Arbitration as amended in 2006, para 45.

[5] On arbitration in general see e.g. Christian Hausmaninger in Fasching/Konecny, *Kommentar zu den Zivilprozessgesetzen*, vol 4/2 (3rd edn, Manz 2016), paras 1-13.

[6] The remedies foreseen in an arbitration act show the level of tolerance of the state against flawed arbitral proceedings and awards. See Christoph Liebscher, 'Rechtsbehelfe gegen den Schiedsspruch' in Liebscher/Oberhammer/Rechberger (eds), *Schiedsverfahrensrecht II* (2016), para 11/1.

[7] Accordingly, the respective Chapter of the Model Law is entitled "*Recourse against award*" (Chapter VII), while the title of the respective Art. 34 reads "*Application for setting aside as exclusive recourse against the arbitral award*", which is the sole article in the chapter.

State.[8] Applications for setting aside can only be made within a short objective time limit[9] and upon exhaustively listed grounds,[10] which are meant to secure basic procedural guarantees. Applications for setting aside are decided by the competent court in the State where the award was rendered.[11] The court cannot review the merits of the arbitral tribunal's decision and cannot alter the terms of the award, but it can only deny the request for setting aside or annul the award in whole or in part.[12]

Notwithstanding the success of the Model Law in harmonizing arbitration laws, a number of jurisdictions still go further than the Model Law and make it possible to invoke certain grounds for the reopening of court proceedings known from the law of civil procedure against arbitral awards as well. The relevance of the examination of such retrial-type grounds for recourse in the arbitral context is highlighted by recent developments in several arbitration laws.

II. Research project and objectives of the doctoral thesis

The doctoral thesis focuses on recourse against arbitral awards beyond the Model Law and aims, in particular, to explore and show how certain grounds for the reopening of court proceedings may be invoked against arbitral awards in some relevant arbitration laws.[13]

In doing so, the thesis places the comparative law analysis of selected arbitration laws in a broader context.

[8] See Explanatory Note, *supra* n 4, para 44. To be precise, the Model Law says that "[r]***ecourse to a court*** *against an arbitral award may be made only by an application for setting aside.* [emphasis added]." This means that parties are not precluded from agreeing on a second arbitral instance, which in fact means a two-tier arbitration, since usually only the award of the second arbitral tribunal will be final and binding. See Explanatory Note, *supra* n 4, para 45. See also *Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration*, A/CN. 9/264 (25 March 1985), 71 and 'Chapter 10. Challenge of Arbitral Awards', in Nigel Blackaby, Constantine Partasides, et al., *Redfern and Hunter on International Arbitration* (6th edn, Kluwer Law International, Oxford University Press 2015), para 10.08.

[9] Under Art. 34(3) of the Model Law the time limit is three months of receipt of the award (or the correction or interpretation of the award or an additional award).

[10] See Explanatory Note, *supra* n 4, para 46.

[11] Accordingly, setting aside proceedings mean a form of state control over arbitration. See Gottfried Hammer, *Überprüfung von Schiedsverfahren durch staatliche Gerichte in Deutschland*, (C.H. Beck 2018) para 569, n 6, with reference to *Hk-ZPO/Saenger § 1055* para 3 *(„Besondere Kontrollmöglichkeit mit Ausnahmecharakter"* i.e. special possibility of control of extraordinary nature).

[12] Art. 34(4) of the Model Law also enables the court to remit the award to the arbitral tribunal so that the latter may resume the arbitration and modify its award to eliminate the ground for setting aside, thereby preserving the award. Remission, which revives the arbitrators' jurisdictional powers, is not conceived as a separate remedy, but placed in the framework of setting aside proceedings. A precondition for remission is, however, an application for setting aside made within the applicable short time limit. See *Analytical Commentary*, *supra* n 8, 74.

[13] Given its relevance for the topic, thesis also extends the analysis to recourse against awards in the ICSID Convention.

In the **first** introductory **part**, the thesis briefly reflects on the effect of arbitral awards and the necessity and nature of recourse against them. Then, as a starting and reference point, the thesis describes the type of recourse foreseen in the Model Law, i.e. the application for setting aside.

Still before embarking on a comparative analysis, the **second part** of the thesis deals with retrial or the reopening of proceedings as a remedy in general. Following an introductory section on terminology,[14] the thesis describes retrial in the context of court proceedings,[15] identifying the underlying policy considerations (the general tension between the requirements of *res judicata* and legal certainty *vis-à-vis* the expectation of an unbiased decision based on the true facts of the case). Against this background, the thesis turns to the question whether and how these conflicting expectations may be balanced in arbitration, which leads to the comparative analysis of relevant arbitration laws.

According to the approach taken by some jurisdictions, in extreme situations it is justified to break the finality of arbitral awards too, just like in the litigation context, where retrial is an extraordinary remedy against final and enforceable decisions as well.[16] While the underlying policy

[14] The terms "retrial" or "reopening of proceedings" shall refer to the extraordinary remedy that makes it possible to open up already final and enforceable court judgments and proceed on the merits again, typically when it is revealed that the decision was based on or affected by some criminally prosecutable act or when earlier decisions on the same claim with *res judicata* effect or *nova reperta* are discovered. Different statutes and acts use different terms for this remedy. The English language statutes of some international courts use the term "*revision*": Art. 61of the Statute of the International Court of Justice, Art. 44 of the Statute of the Court of Justice of the European Union, Rule 80 of the Rules of Court of the European Court of Human Rights or Art. 51 of the ICSID Convention allow a request for the "*revision*" of the judgment/award based on the discovery of some fact of such nature as to be a decisive factor influencing the decision. Some codes of civil procedure also use the term "*revision*". E.g. pursuant to Art. 328 of the Swiss Code of Civil Procedure ("CCP") revision (in German "*Revision*", in French "*révision*") of a final judgment can be requested *inter alia* in case of the discovery of *nova reperta* or if criminal proceedings have established that the decision was influenced to the detriment of the party requesting revision by a felony or another criminal offence). Swiss law also uses the term "*Revision*" or "*révision*" for the separate remedy against arbitral awards on the same grounds (see *intra* n 20 and 21). The French CCP also uses the term "*révision*" for the corresponding remedy (see *intra* n 25). It is important to refer to the difference in Austrian and German legal terminology, where "*Revision*" is an extraordinary remedy available in case of questions of law. Under § 502(1) of the Austrian CCP and § 543(2) of the German CCP the "*Revision*" of the judgment of the appellate court is admissible in case of a question of law which is significant from the point of view of the development of the law or the uniformity of case law. In these CCPs the remedy against final and binding court judgments, which is admissible *inter alia* e.g. if the final judgment is based on falsely produced or falsified documents, false testimonies or expert reports, if the judgment was procured by criminally prosecutable acts, in case of the judge's violation of its judicial duties subject to prosecution to the detriment of a party, if the decision on which the judgment is based was set aside by another *res judicata* judgment or if party discovers or is enabled to use an earlier judgment with *res judicata* effect on the same claim or legal relationship, is called "*Wiederaufnahme*" i.e. "reopening" or the recommencement of the proceedings. See § 530 *et seq* of the Austrian CCP ("*Wiederaufnahmsklage*") and § 580 *et seq* of the German CCP ("*Restitutionsklage*" i.e. action for "restitution" or "retrial", which is a type of "*Wiederaufnahme*").

[15] In light of examples from the civil procedure law of selected jurisdictions and the rules governing the proceedings of international courts (see *supra* n 14).

[16] See 4A_386/2015 of 7 September 2016 (Swiss Federal Tribunal), para 2.1. See also Nathalie Voser and Anya George, 'Revision of Arbitral Awards' in Pierre Tercier (ed), *Post Award Issues, ASA Special Series No. 38* (Juris 2011), ch 3, 43 and Andreas Reiner, 'International Commercial Arbitration: How International, How Commercial

considerations are similar, great diversity can be observed as to how retrial-type grounds for recourse can be invoked in various jurisdictions. The **third part** of the thesis will compare the different solutions of selected arbitration laws and that of the ICSID Convention in view of the *type of recourse* and the competent *forum*, the applicable *time limits* and the relevant *grounds* themselves (*admissibility* criteria), as well as the relevant *procedure* and the possible *decisions*.

The thesis distinguishes between models with respect to the *type of recourse* and the competent *forum*. Grounds for retrial are typically encompassed by the general *ordre public* ground for setting aside. Yet, some arbitration laws, for example those of Austria and Belgium,[17] have adopted certain retrial-type grounds as additional, self-standing grounds for annulment.[18] (To some extent, the ICSID Convention can also be mentioned within this group.[19]) Swiss arbitration law,[20] to which special attention is devoted in light of recent legislative developments[21] and the availability of a relatively large number of decisions on the subject,[22] foresees the revision and annulment of arbitral awards by the competent state court in view of grounds for retrial as a separate remedy (*revision*), which is subsidiary to setting aside. Similar separate remedies exist in Dutch[23] and Italian[24]

Is It? How Autonomous Is It and Should It Be?' in Martin Schauer and Beate Verschraegen (eds), *General Reports of the XIXth Congress of the International Academy of Comparative Law* (Springer 2017), 587.

[17] § 611(2) no. 6 of the Austrian CCP and Art. 1717 § 3. b) iii) of the Belgian Judicial Code. Both Austria and Belgium are Model Law jurisdictions.

[18] Examples can be found for additional grounds for setting aside which are not included in the given statutory list, but recognized by case law. E.g. „*intentional prejudice*" (§ 823 of the German Civil Code) has been recognized by the German Supreme Court as such an additional ground for setting aside. See BGH 02.11.2000, BGHZ 145, 376 (381) = NJW 2001, 373; see also Jens-Peter Lachmann, *Handbuch für die Schiedsgerichtspraxis* (3rd rev edn, Verlag Dr. Otto Schmidt 2008), paras 2342 to 2345.

[19] Art. 52(1)(c) and (3) of the ICSID Convention. See *intra* n 28 32, and 38.

[20] In Switzerland, currently only domestic arbitration law (regulated in Part 3 of the Swiss CCP) foresees the revision of arbitral awards on retrial-type grounds (*"Revision"* in Arts. 396 to 399 of the Swiss CCP), while Swiss international arbitration law (regulated separately in Chapter 12 of the Swiss Private International Law Act ("PILA")) includes no comparable provisions. Yet, already in 1992, the Swiss Federal Tribunal held that the absence of revision in the Swiss PILA was a lacuna and filled the gap by declaring requests for the revision of international arbitral awards admissible, also vindicating competence for such proceedings. See BGE 118 (1992) II 199 (Swiss Federal Tribunal). See also Andreas Reiner, *supra* n 16, 587.

[21] The recent Preliminary Draft Amendment to Chapter 12 of the Swiss PILA (and related acts) of 2017 already contains black letter rules expressly foreseeing the revision of international arbitral awards as well.

[22] Since 1992 the Swiss Federal Tribunal has confirmed the possibility of the revision of arbitral awards in about thirty decisions.

[23] Art. 1068 of the Dutch CCP.

[24] Art. 831 in conjunction with Art. 395(1) to (3) and (6) of the Italian CCP. This remedy was previously available only against domestic arbitral awards and was extended to international awards by a legislative Decree of 2006. See Nathalie Voser and Anya George, *supra* n 16, 49, n 28.

arbitration laws as well. As a third solution, French[25] and Hungarian[26] arbitration law and the ICSID Convention[27] foresee, also as a separate type of recourse, the revision of the arbitral award by the arbitral tribunal itself that has made the contested award.[28]

The general *ordre public* ground for setting aside comes into play only if a party applies for setting aside within the short objective *time limit*. Jurisdictions that have adopted retrial-type grounds as self-standing grounds for setting aside and that provide for an additional type of recourse usually provide for a short subjective time limit (one to three months from becoming aware of the ground for reopening) and sometimes also a longer objective time limit for invoking such grounds.[29]

[25] Prior to the 2011 reform of French arbitration law, in France statutory arbitration law only foresaw the revision of domestic awards, while such a remedy was excluded in case of international awards. Nevertheless, similarly to the Swiss Federal Tribunal, the Cour de Cassation also found that in case of fraud the revision of international arbitral awards could be permissible too. See *Société Fougerolle v. société Procofrance*, Cour de Cassation (1 Chambre civile), 25 May 1992, (1993) Rev Arb 91. As of the 2011 reform of French arbitration law, Art. 1506(5) of the French CCP expressly renders the provisions on the revision of domestic arbitral awards applicable to international arbitration as well. See Arts. 1502 and 1506(5) of the French CCP ("*révision*" of the arbitral award by the arbitral tribunal). Also see Andreas Reiner, *supra* n 16, 588 and Albert Jan van den Berg, *International commercial arbitration: important contemporary questions* (Kluwer Law International 2003), 303-304.

[26] The new Hungarian Arbitration Act ("HAA"), applicable to arbitrations that commence on or after 1 January 2018, has introduced a new type of recourse against arbitral awards in addition to the application for setting aside called "*eljárásújítás*" i.e. "retrial", which can be requested form the arbitral tribunal (§ 48 to 52 HAA) on the ground of discovery of *nova reperta*.

[27] Revision of the arbitral award by the arbitral tribunal pursuant to Art. 51(1) and (3) of the ICSID Convention.

[28] This is a separate type of recourse in addition to the application for the setting aside of the award by the competent state court (in ICSID arbitration in addition to the annulment of the award by an *ad hoc* Committee of three arbitrators to be appointed in accordance with Art. 52(3) of the ICSID Convention).

[29] Some examples are mentioned here. Austrian arbitration law provides for a four-week subjective and a ten-year objective time limit in case of the setting aside ground related to grounds for retrial, whereas other grounds for setting aside must be invoked within three months of receipt of the award (§ 611(4) in conjunction with § 534(3) of the Austrian CCP). In Swiss arbitration law, revision must be requested within a ninety-day subjective deadline. There is also a general ten-year absolute time limit from the finality of the award, which, nevertheless, does not apply to the criminal offence grounds (Art. 397(1)-(2) of the Swiss CCP and Draft Art. 190a(2) of the Swiss PILS). In one case, the Swiss Federal Tribunal granted a request for revision and annulled the award 12 years after it was made (4A_596/2008 of 6 October 2009 (Swiss Federal Tribunal)). The new Hungarian Arbitration Act only foresees a one-year objective time limit from receipt of the award (§ 49 of the HAA). In French arbitration law, there is a subjective deadline of two months from awareness of the ground for revision (Arts. 1502 and 1506(5) in conjunction with Art. 596 of the French CCP). In ICSID arbitration, an application for revision shall be made within 90 days after the discovery of the ground for revision and in any event within three years after the date on which the award was rendered (Art. 51(2) of the ICSID Convention). Special time limits apply to annulment on the ground that there was corruption on the part of a member of the Tribunal as well: the application for annulment shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered. In case of all other grounds for annulment, the application shall be made within 120 days after the date on which the award was rendered (Art. 52(2) of the ICSID Convention).

The stricter jurisdictions (e.g. Austria[30] and Belgium[31]) only allow recourse on narrow and specific retrial-type *grounds*, in particular, when it is discovered that the award was affected by fraud or other acts that are relevant from a criminal law point of view.[32] In addition to such grounds, some jurisdictions also allow the revision of arbitral awards if, for example, withheld decisive documents are discovered after the award has been made (France,[33] the Netherlands,[34] Italy[35]). Finally, some

[30] Since the 2006 reform, with which Austria became a Model Law country, the additional ground for setting aside incorporates, by reference to the corresponding provisions of the Austrian CCP, certain selected grounds for retrial that can be invoked against final court judgments (§ 611(2) no. 6 in conjunction with § 530(1) nos 1 to 5 of the Austrian CCP). Prior to the 2006 reform, the setting aside of arbitral awards could be requested on the same grounds which could be invoked against final court judgments as grounds for retrial (not only the criminal law related grounds, but also the discovery of an earlier decision with *res iudicata* effect between the parties as well as relevant *nova reperta*). See Andreas Reiner, *The new Austrian Arbitration Law* (Lexis Nexis ARD Orac 2006), 111. Before 1998, the old German arbitration law also included a separate ground for setting aside (§ 1041(1) no. 6 of the German CCP pre-1998), which incorporated selected grounds for retrial (§ 580 nos 1 to 6 of the German CCP pre-1998). On this ground only, setting aside could also be requested after the award has been declared enforceable if the applicant could justify with sufficient certainty that it was not in a position to invoke the ground for setting aside in the earlier proceedings without a fault on its part. In case of both the current Austrian and the earlier German provision, the relevant grounds for retrial include the ones related to falsely produced or falsified documents, false testimonies or expert reports, the procurement of the judgment by criminally prosecutable acts, the judge's violation of its official duties and the setting aside of a decision (in Austria this is restricted to the setting aside of a "*criminal law finding*", in Germany it can be any judgment) on which the judgment was based, but not the *res judicata* and *nova reperta* grounds. Although such a ground for setting aside is no longer included in German arbitration law, the grounds for retrial mentioned in § 1041(1) no. 6 of the German CCP pre-1998 are still considered to be encompassed by the *ordre public* ground for setting aside. See Karl Heinz Schwab and Gerhard Walter, *Schiedsgerichtsbarkeit* (7th rev edn, C.H. Beck 2005), ch 24, para 51 and ch 28, para 22; Jens-Peter Lachmann *supra* n 19, para 2340; Stefan Kröll and Peter Kraft, 'Part II: Commentary on the German Arbitration Law (10th Book of the German Code of Civil Procedure), Chapter VII: Recourse against the Award, § 1059 – Application for Setting Aside', in Patricia Nacimiento, Stefan Kröll, et al. (eds), *Arbitration in Germany: The Model Law in Practice* (2nd edn, Kluwer Law International 2015), paras 91-92.

[31] In Belgian arbitration law, in addition to the grounds adopted from the Model Law, an arbitral award may be set aside *inter alia* also if it was obtained by fraud, which is a ground that may be raised *ex officio* by the competent court (Art. 1717 § 3. b) iii) of the Belgian Judicial Code). See Verbruggen Caroline, 'Commentary on Part VI of the Belgian Judicial Code, Chapter VII: Article 1717', in Niuscha Bassiri and Maarten Draye (eds), *Arbitration in Belgium* (Kluwer Law International 2016), paras 98-101.

[32] Under Art. 52(1)(c) and (3) of the ICSID Convention either party may request the annulment of an ICSID award by an *ad hoc* committee of three arbitrators on the ground that there was corruption on the part of a member of the tribunal. In respect of this ground for annulment ICSID arbitration can also be mentioned with respect to the model in which special grounds for setting aside are foreseen. See *supra* n 19. Cf *intra* n 38.

[33] French arbitration law (Arts. 1502 and 1506(5) in conjunction with Art. 595 of the French CCP) foresees the revision ("*révision*") of arbitral awards on the same grounds on which "*révision*" is available against court judgments (i.e. if it is discovered that the award was obtained by fraud or it is based on documents or testimonies that have been (acknowledged or) judicially declared to be false or if decisive documents were withheld. The lack of the applicant's fault to raise said grounds in the arbitration is also a precondition.

[34] In Dutch arbitration law, the award may be revoked by the court if it is discovered that it is (entirely or partially) based on fraud or forged documents, or a party obtains documents withheld by the other party which would have had an influence on the tribunal's decision (Art. 1068 of the Dutch CCP).

[35] Italian arbitration law provides for the revocation of arbitral awards by the court in case of procedural fraud as well as the discovery of decisive documents which a party was unable to produce during the arbitration without a fault on its part (Art. 831 in conjunction with Art. 395(1) to (3) and (6) of the Italian CCP).

systems go even further and make it possible to invoke the general *nova reperta* ground for retrial against arbitral awards (Switzerland,[36] Hungary,[37] the ICSID Convention[38]).

The thesis discusses *procedural aspects* through the examples from the models which provide for separate remedies. In the Swiss model, if the competent court grants a request for revision, it may only set aside the award (in whole or in part), in which case it remits the case to the arbitral tribunal for a new decision.[39] Under the new Hungarian Arbitration Act, the arbitral tribunal that has made the contested award may proceed on the merits and either uphold the award or repeal it in whole or in part and adopt a new award.[40] Both systems have in common, for example, that the entire arbitration does not need to be repeated[41] and that the competent forum may suspend the enforcement of the award.[42]

[36] In Swiss arbitration law arbitral awards can be revised by the competent court if a party discovers significant facts or decisive evidence that it could not submit in the earlier proceedings or if criminal proceedings have established that the arbitral award was influenced to the detriment of the party requesting revision by a felony or another criminal offence (Art. 396(1) lit. a and b. of the Swiss CCP applicable in case of domestic arbitral awards; cf Art. 396(1) lit. c and (2) of the Swiss CCP foreseeing further grounds for revision in case of domestic arbitral awards). In its practice the Swiss Federal Tribunal has adopted the same two major grounds for revision in case of international awards as well, which have already been included in the text of the Preliminary Draft Amendment to the Swiss PILA (and related acts) of 2017 (Draft Art. 190a(1) lit. a and b of the Swiss PILA; see *supra* n 20-21). Further, the Preliminary Draft also introduces an additional ground for revision into both domestic and international arbitration law, i.e. the discovery of a ground for challenging an arbitrator after the closing of the arbitral proceedings (Draft Art. 180(4) of the Swiss PILA and Draft Art. 369(6) of the Swiss CCP; see also 4A_386/2015 of 7 September 2016 (Swiss Federal Tribunal)).

[37] Under the new Hungarian Arbitration Act, a party may request retrial from the arbitral tribunal relying on a fact or evidence that it did not invoke in the arbitration without any fault on its part, provided that the fact or evidence, if assessed, could have resulted in a more advantageous award for that party (§ 49 and 50(4) of the HAA).

[38] Under Art. 51(1) and (3) of the ICSID Convention the revision of the arbitral award can be requested from the arbitral tribunal *"on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence."*

[39] Art. 399(1) of the Swiss CCP and Draft Art. 119b(3) of the Act of 17 June 2005 on the Swiss Federal Tribunal (in accordance with the Preliminary Draft Amendment to the Swiss PILA and related acts, rules on the proceedings for the revision of international arbitral awards are to be included in the Act on the Swiss Federal Tribunal). In practice, the original arbitration will be resumed upon the request of a party. See Bernhard Berger and Franz Kellerhals, *International and Domestic Arbitration in Switzerland* (3rd edn, Stämpfli Publishers 2015), paras 1942-1943.

[40] § 52 HAA. The arbitral tribunal shall first decide on the admissibility of the request in a separate procedural order, against which there is no remedy (§ 50(1) HAA). The rules governing the main proceedings shall apply *mutatis mutandis* to retrial proceedings (§ 48 HAA.)

[41] The HAA limits the scope of the reopened proceedings to the scope of the request (§ 51 of the HAA). In Switzerland, unless the parties have agreed otherwise, the arbitral tribunal shall determine the procedural steps to be repeated, logically the ones affected by the grounds invoked (Art. 373(2) of the Swiss CCP and Art. 182(2) of the Swiss PILA). See Bernhard Berger and Franz Kellerhals, *supra* n 39, para 1945.

[42] Art. 331 CCP and Draft Art. 119b(2) of the Act of 17 June 2005 on the Swiss Federal Tribunal in conjunction with Art. 126 of the same Act (see Preliminary Draft Amendment to the Swiss PILA and related acts of 2017). See also Art. 51(4) of the ICSID Convention.

In the **fourth part** the thesis addresses further ways of dealing with grounds for retrial discovered after an award has been rendered, covering enforcement proceedings and damages claims.

Following the empirical comparison of the identified models, in the **fifth part** the thesis continues and closes the discussion of "retrial" in the system of remedies against arbitral awards at a more abstract level, in light of the major principles and the evolution of arbitration. In this part, the thesis also assesses the possible solutions from the point of view of arbitral autonomy, placing special emphasis on the significance of the competent forum and examining to what extent parties may shape the system of remedies available against the arbitral award in a concrete case by excluding retrial-type remedies or by broadening the scope of recourse foreseen in the applicable *lex arbitri*.

III. Methodology

Beyond an empirical comparative law analysis of relevant statutory and case laws, the thesis aims to place the research question in a broader context and consider the place of retrial-type grounds for recourse in the system of remedies against arbitral awards, addressing the revision of arbitral awards beyond the Model Law at the level of practice, theory and policy as well.

Accordingly, the thesis does not aim to provide country reports of all jurisdictions that include grounds for retrial in their system of remedies against arbitral awards, but rather aims to identify existing models and compare them in view of key criteria (type of remedy and competent forum, time limits and relevant grounds for retrial, procedural aspects and possible decisions).

Further to the description of the current stage of the law, the thesis will also identify tendencies in the development of arbitration law in the past decades, showing, for example, how the revision of arbitral awards in view of grounds for retrial has found its way from case law into black letter rules in some countries in the past decade[43] and how the legislator has disposed of such grounds for recourse elsewhere.[44]

The thesis will conclude by revisiting the research question at a more abstract level, assessing the identified solutions from the point of view of arbitral autonomy and examining what role party autonomy may play in shaping the system of recourse against arbitral awards.

[43] See France (*supra* n 25) and Switzerland (*supra* n 20 and 36). See also Hungary (*supra* n 26), where, unlike France and Switzerland, there were no such precedents.

[44] See Austria and Germany (*supra* n 30).

IV. Preliminary table of contents

V. Preliminary bibliography (selection)

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VI. Timeline

Winter semester 2017/18	- Lecture on methodology in the field of law - Seminar on judicature or text analysis - Consultation with supervisor and selection of topic - Research
Summer semester 2018	- Seminar in the field of doctoral research to present and discuss the intended doctoral project - Research proposal, preliminary table of contents, preliminary bibliography - Seminar for doctoral students and a further seminar in Switzerland - Research
Winter semester 2018/19	- Further seminars in the field of doctoral research (in Budapest/Vienna and London) - Research and drafting of doctoral thesis - Presentation in the field of doctoral research at an international conference
Summer semester 2019	- Seminar in the field of doctoral research - Research and drafting of doctoral thesis
Winter semester 2019/2020	- Drafting of doctoral thesis
Summer semester 2020	- Completion, submission and defence of doctoral thesis