



Artificial Intelligence in Arbitration: Ethics, Responsibility, and Human Judgment

Applying Established Principles to Emerging Technologies

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Who Is Speaking — and Why This Perspective Matters



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We Do Not Need to Reinvent Ethics

Existing Principles Apply

AI does not require new ethical frameworks—it requires rigorous application of established arbitration principles that have governed the profession for decades.

Human Responsibility Remains

Responsibility, verification, and ultimate judgment must remain firmly within the human domain. Technology serves as an instrument, not an authority.

Assistance, Not Decision-Making

The critical distinction is clear: AI may assist in research, analysis, and organization—but the substantive exercise of judgment belongs exclusively to the arbitrator.

Technology assists — it does not decide

The Arbitrator's Mandate Is Personal and Non-Delegable

Intuitu Personae

Arbitrators are appointed *intuitu personae*—based on personal trust and individual qualities. This appointment creates a mandate that cannot be transferred or delegated to third parties.

Authority Cannot Be Transferred

The decision-making authority vested in an arbitrator is personal and inalienable. While procedural assistance is permissible, the substantive exercise of judgment must remain the arbitrator's own.

Assistance Is Permitted

Support mechanisms—including research assistance, administrative coordination, and technological tools—are legitimate. However, abdication of decision-making responsibility crosses an ethical boundary.

- ❑ **Legal Concept:** *Intuitu personae* refers to appointments made on the basis of personal trust in the specific individual's judgment, expertise, and character.



Early Judicial Recognition of the Non-Delegable Mandate

Courts have long affirmed the principle that arbitrators bear personal responsibility for their decisions. These precedents establish a foundation for understanding AI's proper role.

Cour de cassation (France), 7 June 1989

Société Uni-Kod v. Société Ouralkali

Arbitrators may not delegate the judicial function entrusted to them. The mandate to decide is inherently personal and cannot be assigned to others.

1

2

Swiss Federal Tribunal, ATF 128 III 234 (2002)

The arbitrator must personally exercise the decision-making authority conferred by the parties. This requirement flows from the nature of the arbitral mandate itself.

❏ **Note:** These courts treated the principle as inherent to arbitration, not as a newly created rule. The prohibition on delegation predates modern technological concerns.



Tribunal Secretaries: Practice Preceded Regulation

Historical Development

- Tribunal secretaries were utilized for decades before institutions formalized their role
- Practice evolved organically in response to case complexity and administrative demands
- Ethical concerns emerged only when boundaries were transgressed

The Boundary Principle

- **Assistance** with research, organization, and administration is appropriate
- **Authorship** of substantive reasoning crosses into prohibited territory
- **Decision-making** authority must remain exclusively with the tribunal

AI now occupies a similar stage of development—the technology exists, practice is evolving, and the profession must articulate appropriate boundaries.

Delegation That Crosses the Line: The Yukos Context

1

The Case

Yukos Capital Sàrl v. Rosneft, Cour d'appel de Paris, 17 February 2011

One of several challenges to awards in the Yukos arbitration series, this decision examined the role of tribunal secretaries.

2

Judicial Concern

The court expressed concern regarding excessive reliance on tribunal secretaries in drafting substantive portions of the award, potentially compromising the personal exercise of judgment.

3

The Principle Reaffirmed

The arbitrator must personally exercise judgment and cannot delegate the reasoning process. Excessive reliance on others risks annulment on grounds of irregular composition or procedure.

4

Inference for AI

The court applied existing principles rather than inventing new ones. The same framework governs AI: assistance is permissible; delegation of substantive reasoning is not.



Why AI Feels Different — But Isn't

Perception

- AI appears autonomous and beyond human control
- Technology generates novel outputs that seem "creative"
- Fear of black-box decision-making processes
- Concern about replacing human judgment entirely

Reality

- Arbitrators have always consulted external sources—books, databases, experts
- New ideas or research pathways do not constitute ethical breaches
- Ethical failure occurs only when verification is abandoned
- AI is a research tool, not a decision-maker

The problem is not assistance — it is abdication of responsibility

The Central Risk Is Not AI — It Is Lack of Understanding

Arbitrators do not seek automation of judgment. The genuine concern is that many lack adequate training in AI's capabilities, limitations, and verification requirements.



How AI Generates Output

Large language models predict probable word sequences based on training data. They do not "understand" law—they pattern-match. Arbitrators must grasp this fundamental distinction.




Hallucinations and Fabrication

AI systems confidently generate false citations, non-existent cases, and plausible-sounding but incorrect legal propositions. Every output requires independent verification.



Verification Limits

Some AI outputs cannot be easily verified—particularly novel syntheses or interpretations. Arbitrators must recognize when AI assistance exceeds prudent boundaries.

 **SVAMC Guideline Principle:** Understand the technology before delegating any task to it. Competence in AI's operation is a prerequisite to its ethical use.

Why One-Size-Fits-All Model Orders Fail

Arbitration Is Context-Specific

Each arbitration presents unique evidentiary, procedural, and substantive challenges. Rigid disclosure mandates fail to accommodate the diversity of disputes, governing laws, and party agreements.

Privilege and Confidentiality Concerns

Mandatory AI disclosure orders may compel revelation of attorney work product, litigation strategy, or proprietary methodologies—infringing established protections without clear justification.

Trade Secrets and Competitive Intelligence

In technology and intellectual property disputes, parties may use AI tools that incorporate confidential business information. Blanket disclosure risks undermining the very rights at stake.

Procedural Delay and Tactical Abuse

Expansive AI disclosure requirements invite challenges, satellite disputes, and dilatory tactics—particularly when one party perceives strategic advantage in questioning the other's technological methods.

Key Position: No universal model order for AI evidence exists today. Tribunals must exercise discretion based on the specific circumstances of each case.

The Proper Function of AI Rules

Institutional rules should establish principles rather than prescribe detailed technological protocols. The goal is to enable responsible use while preserving procedural flexibility.

01

Impose a Duty of Competence

Arbitrators and counsel must understand the tools they employ. Competence includes awareness of AI's limitations, risks, and verification requirements.

02

Reinforce Non-Delegation

Rules should explicitly confirm that AI cannot replace the arbitrator's personal exercise of judgment, consistent with longstanding precedent.

03


Require Human Verification

Any AI-generated research, analysis, or draft must be independently verified by the arbitrator. Blind reliance constitutes an abdication of responsibility.

04

Avoid Technology Policing

Rules should not attempt to regulate specific AI applications or mandate disclosure protocols that quickly become obsolete as technology evolves.

 **Reference:** SVAMC Guidelines on AI in Arbitration provide a model framework emphasizing competence, verification, and human accountability.



International Work Ahead — Principles, Not Prohibitions

Institutional Initiatives

Amongst others, the United Nations Commission on International Trade Law is exploring AI's role in dispute resolution, recognizing both opportunities and challenges.

The objective is to develop guidance that respects diverse legal traditions while establishing common standards for responsible AI use in international proceedings.

Essential Focus Areas

- **Education:** Training arbitrators, counsel, and parties in AI literacy and verification practices
- **Consistency:** Harmonizing approaches across institutions to avoid forum shopping based on AI policies
- **Procedural Flexibility:** Preserving tribunal discretion to address AI issues contextually rather than through rigid mandates

Rules should enable judgment, not replace it. The future of AI in arbitration depends on maintaining human responsibility at the center of the process.



AI Does Not Decide — People Do

Ethics Remain Unchanged

Ethics remain unchanged

The fundamental principles governing arbitrator conduct—independence, impartiality, competence, and personal responsibility—are fully adequate to address AI. No new ethical framework is required.

Responsibility remains human

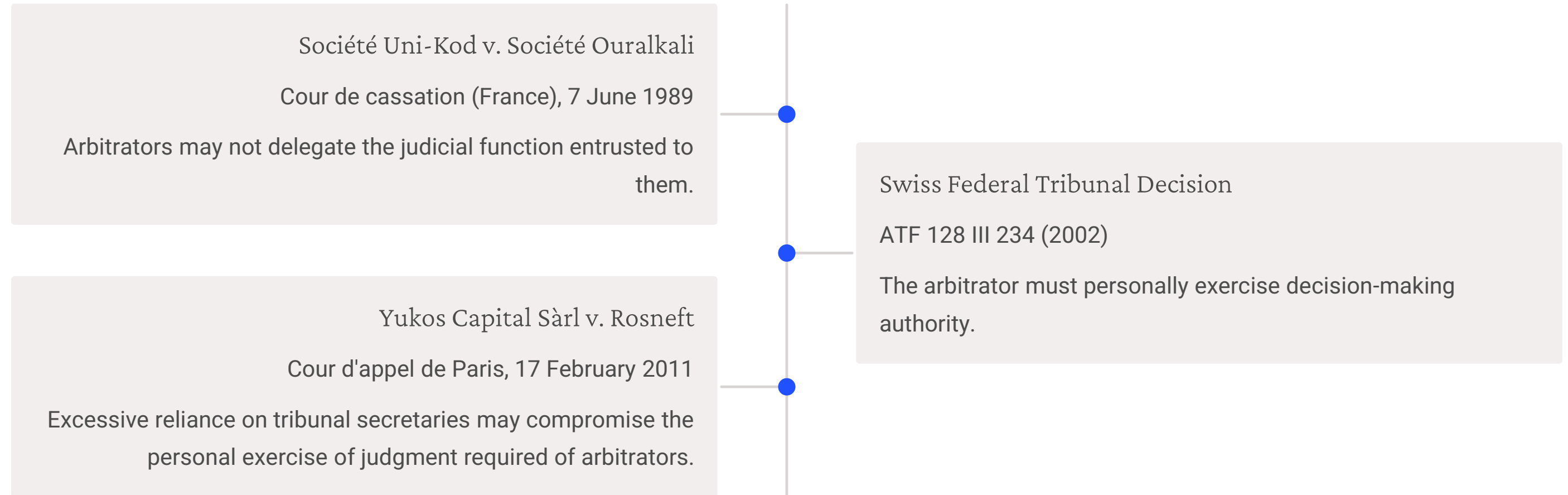
Every award, every procedural decision, every exercise of discretion must be the product of human judgment. AI may inform that judgment, but cannot supplant it.

AI is a tool — nothing more

Like legal databases, research assistants, and tribunal secretaries before it, AI occupies a supporting role. Its value depends entirely on the wisdom and integrity of those who wield it.

Key Judicial Authorities Referenced

The following decisions establish foundational principles regarding the personal, non-delegable nature of the arbitral mandate:



❏ These authorities predate modern AI concerns but establish enduring principles applicable to all forms of assistance in the arbitral process.