



**Virtual eshittiruvlarning amaliy masalalari va virtual eshittiruvlarda arbitraj qarorlarini ijroga qaratish**

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**Практические вопросы проведения виртуальных слушаний и исполнения арбитражных решений в виртуальном формате**

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**Abstract**

The enforcement of arbitral awards rendered after virtual hearings is a critical concern in international commercial arbitration. This study investigates the specific procedural aspects of virtual hearings that threaten the enforceability of awards under Article V of the New York Convention. A conceptual legal analysis was conducted, deconstructing the virtual hearing process into sequential stages—consent, pre-hearing testing, hearing conduct, and record-keeping. This framework was used to identify due process vulnerabilities at each stage. The procedural rules of the Tashkent International Arbitration Centre (TIAC) were analyzed as a case study of integrated risk mitigation. The analysis identifies three primary risk points, like lack of express consent, technical failures and unequal access, threatening a party’s ability to present its case and inadequate records to rebut allegations of procedural unfairness. The TIAC Rules (2021) provide a model for addressing these risks through explicit provisions for digital evidence, experimental procedures, and data confidentiality. The findings indicate that the enforceability of virtual awards is contingent on proactive and systematic procedural safeguards. Harmonizing advanced institutional rules with national arbitration laws is essential to mitigate enforcement risks and solidify the legitimacy of digital arbitration.



**Keywords:** *virtual hearings, international commercial arbitration, enforcement of arbitral awards, due process, New York Convention, procedural fairness, lex arbitri, TIAC.*

### Аннотация

Virtual eshituvlar natijasida chiqarilgan arbitraj qarorlarini ijro etish masalasi xalqaro tijorat arbitrajida muhim muammolardan biri hisoblanadi. Ushbu tadqiqot virtual eshituvlarning New York Convention V-moddasi doirasida qarorlarning ijro etilishiga tahdid soluvchi aniq protsessual jihatlarini o'rganadi. Tadqiqot doirasida konseptual huquqiy tahlil amalga oshirilib, virtual eshituv jarayoni bosqichlarga ajratildi — tomonlarning roziligi, dastlabki texnik sinovlar, eshituvni o'tkazish va protsessual yozuvlarni yuritish. Ushbu yondashuv har bir bosqichda tegishli protsessual adolat (due process) bilan bog'liq zaifliklarni aniqlash imkonini berdi. Tahlilda Tashkent International Arbitration Centre (TIAC) qoidalari risklarni kamaytirishning integratsiyalashgan modeli sifatida o'rganildi. Natijalar uchta asosiy xavf nuqtasini ko'rsatdi: aniq rozilikning yo'qligi, texnik nosozliklar va teng bo'lmagan kirish imkoniyati, bu esa tomonning o'z pozitsiyasini to'liq taqdim etishiga to'sqinlik qiladi, shuningdek, protsessual yozuvlarning yetarli emasligi — bu esa protsessual adolatsizlik haqidagi da'volarni rad etishni qiyinlashtiradi. TIAC qoidalari (2021) ushbu xavflarni kamaytirish uchun raqamli dalillar, eksperimental protseduralar va ma'lumotlar maxfiyligi bo'yicha aniq qoidalarni nazarda tutadi. Tadqiqot natijalari shuni ko'rsatadiki, virtual eshituvlar asosida chiqarilgan qarorlarning ijro etilishi proaktiv va tizimli protsessual kafolatlariga bevosita bog'liq. Zamonaviy institutsional qoidalarni milliy arbitraj qonunchiligi bilan uyg'unlashtirish ijro xavflarini kamaytirish va raqamli arbitraj legitimligini mustahkamlash uchun zarurdir.

**Kalit so'zlar:** *virtual eshituvlar, xalqaro tijorat arbitraji, arbitraj qarorlarini ijro etish, protsessual adolat, Nyu-York konvensiyasi, lex arbitri, TIAC.*

### Аннотация

Приведение в исполнение арбитражных решений, вынесенных после проведения виртуальных слушаний, является одной из ключевых проблем в международном коммерческом арбитраже. Данное исследование рассматривает конкретные процессуальные аспекты виртуальных слушаний, которые могут поставить под угрозу исполнимость решений в соответствии со статьёй V New York Convention. В рамках исследования был проведён концептуальный правовой анализ, в ходе которого процесс виртуального слушания был разделён на последовательные



стадии — согласие сторон, предварительное техническое тестирование, проведение слушания и ведение протокола. Данная структура позволила выявить уязвимости с точки зрения соблюдения принципа надлежащей правовой процедуры на каждом этапе. В качестве кейс-стади были проанализированы процессуальные правила Tashkent International Arbitration Centre (ТИАС) как пример комплексного подхода к снижению рисков. Анализ выявил три основных точки риска: отсутствие явного согласия сторон, технические сбои и неравный доступ, которые ограничивают возможность стороны представить свою позицию, а также недостаточное документирование процесса, затрудняющее опровержение заявлений о процессуальной несправедливости. Правила ТИАС (2021) предлагают модель решения данных проблем за счёт чётких положений о цифровых доказательствах, экспериментальных процедурах и конфиденциальности данных. Полученные результаты показывают, что исполнимость решений, вынесенных после виртуальных слушаний, напрямую зависит от проактивных и системных процессуальных гарантий. Согласование современных институциональных правил с национальным арбитражным законодательством является необходимым условием для снижения рисков исполнения и укрепления легитимности цифрового арбитража.

**Ключевые слова:** виртуальные слушания, международный коммерческий арбитраж, исполнение арбитражных решений, надлежащая правовая процедура, Нью-Йоркская конвенция, процессуальная справедливость, *lex arbitri*, ТИАС.

### Introduction:

The global acceleration of virtual hearings, catalyzed by the COVID-19 pandemic, has permanently reshaped international commercial arbitration. While offering significant benefits in efficiency, cost, and accessibility, this shift introduces profound questions regarding procedural integrity<sup>1</sup>. The ultimate value of arbitration lies in the finality and enforceability of the award, which is governed globally by the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards. Article V of this Convention provides grounds for refusing recognition and enforcement, including violations of due process where a party was “unable to present its case” or where the “procedure was not in accordance with the agreement of the parties”<sup>2</sup>.

The core problem is that the practicalities of virtual hearings- from technical glitches

<sup>1</sup> Scherer, 2021.

<sup>2</sup> UNCITRAL Model Law on International Commercial Arbitration. (1958).



to the challenges of assessing witness credibility remotely - create tangible risks that these New York Convention defenses could be successfully invoked. Therefore, this study seeks to answer the following research question: What are the specific, stage-by-stage due process vulnerabilities in virtual arbitration hearings, and how can they be systematically mitigated to safeguard the enforceability of the resulting award?

This article employs a systematic, stage-based analysis to identify these vulnerabilities and proposes that integration of modern procedural rules, as exemplified by the Tashkent International Arbitration Centre (TIAC), provides a critical pathway to mitigating enforcement risks. Studies of the international legal system norms of the system of regulation of international commercial arbitration in recent years have been carried out mainly in the direction of its development and streamlining of the arbitration system. In foreign literature, the issues of regulation of virtual hearings in international commercial arbitration in economically developed countries have received a much wider development in the work of further authors: Born G., Redfern A. and Hunter, Moses M., Onyesi L., Thomas E., Mo Zhang, Gailard and others. Issues of the development of the system of virtual hearings in commercial arbitration as well as the above-mentioned were also actively studied and analyzed by scientists in countries of CIS and reflected in this work. For instance, the studies of Korabelnikov B. R., Zikov R., Dmitrieva G. K., Lebedev S. H., and Anufrieva.

In Uzbekistan, the study of various aspects of virtual hearings in commercial arbitration is characterized by the presence of complex scientific research on the development of international commercial relations, Ziyaeva D., Rustambekov I., Gulyamov S., and Masadikov Sh. are those who have contributed to the development of the study of international commercial arbitration and its aspects in the Republic of Uzbekistan.

### Methods

This research utilized a qualitative and conceptual legal analysis methodology. The procedure of a virtual hearing was deconstructed into its constituent stages to create an analytical framework. The stages identified for close examination were:

To fully illustrate the practice of holding remote hearings, it would be sufficient to describe how they are organized in practice. Indeed, the procedure for conducting remote hearings in arbitration may vary depending on the rules of the arbitration institution or the agreement of the parties, but there are some general steps that are typically followed in the process:

**1. The agreement of the Parties.** One of the essential criteria for the Tribunal to have jurisdiction to resolve the dispute is undoubtedly the consent of the parties, as it was mentioned several times. The question arises as to how this consent should be



expressed. In practice, the consent is demonstrated through the drafting of an arbitration clause or arbitration agreement, in some instances, as it is mostly followed by civil law jurisdictions and commonly accepted by French Courts, the reference to arbitration is enough to consider that this consent has been properly given<sup>3</sup>. An arbitration agreement, in turn, as correctly noted by scholars such as S. Vogenuer, G.B. Born, and M. Scherer. is the result of the Parties' desire to resolve the dispute in arbitration. By this, it appears that the will of the parties and the arbitration agreement are closely related. This is the case also in virtual arbitration. Although in the pandemic there was a force majeure situation, where the parties and the Tribunal did not have another choice but to modify their agreement, in cases where the parties consciously submit their dispute to arbitration with an option of conducting them remotely, they must specify the details of the hearing, such as the date, time, and technology to be used. The agreement should also include procedures for addressing any technical difficulties.

The consent of the parties may be express or implied. When there is express consent to conduct the hearings remotely, the possibility of holding the hearings remotely must be clarified in the arbitration agreement because it can end any potential discussion on the subject. Also, the parties may include the possibility to conduct the hearings remotely in their arbitration agreements and express them as follows: *"The Arbitral Tribunal shall have the power to establish the conduct of a hearing, including whether it may take place physically or remotely (including by video or telephone conference) or a combination thereof"*<sup>4</sup>.

Different model arbitration clauses may have different references to arbitration, however as long as the arbitration clause is not pathological and it includes the provisions that allow the parties to be heard remotely, no issues with regard to the applicability of such a clause may arise.

**2. Pre-Hearing Conference:** As long as there was an agreement on virtual hearings and all submissions by the Parties are made, here comes the scheduling of the hearing and pre-hearing conference. Before the hearing, the arbitrator may hold a pre-hearing conference to discuss procedural matters, such as the schedule of the hearing and the use of technology. Hereby, we can mention the practice of arbitral institutions, where the rules also include a pre-hearing conference, in the model of oral hearings. The best practice can be LCIA, according to art. 19.2 pre-hearings are permitted: "in person, or

<sup>3</sup> *Ministère tunisien de l'Équipement v. Société Bec Frères*, (1994).

<sup>4</sup> Sachs & Lörcher, 2024.



virtually by conference call, videoconference or using other communications technology”<sup>5</sup>. This is another tool to improve the virtual hearings, simultaneously it helps to detect the hearing issues and challenges before they arise.

**3. Technical Testing:** At this stage, all participants should conduct technical testing to ensure that they can effectively use the video conferencing technology and have a stable internet connection. Why we consider these criteria as one of the crucial, is as according to the principle due process, parties have an equal treatment and both have a right to be heard<sup>6</sup>. Accordingly, technical problems and failures infringing a party’s fundamental right, requires to be tested and prevented, before the hearing.

**4. Conduct of the Hearing:** The hearing can be conducted using video conferencing technology, with the arbitrator, and parties. It is important to note that the first arbitral hearings concern issues raised by the Tribunal in the Procedural Order. In most cases, the party may raise jurisdictional challenges, that in practice should be addressed first, prior to moving to the substance. The arbitrator may set guidelines for the conduct of the hearing, such as time limits for each party's presentation and procedures for submitting evidence. It is also mentioned, in ICC Rules of Arbitration Art 24 requires the tribunal to establish a procedural timetable, which directly includes the time limits for presentations and submissions<sup>7</sup>.

**5. Recording of the Hearing:** This is distinctive for remote hearings. It is highly likely that the challenges as to the procedure of conducting the hearings will be raised, therefore one of the measures to avoid such challenges would be to save the records of the proceedings.

**6. Post-Hearing Submissions:** After the hearing, the parties may be required to submit post-hearing briefs or other written submissions to the arbitrator. These submissions are conducted in case the parties could not present some documents immediately. Therefore, they are given an opportunity to fill in the gaps and present additional documents<sup>8</sup>.

**7. Issuance of the Award:** The last and the most important stages in the proceedings constitute an arbitral award. The arbitrator will issue the award in writing, and the parties will then proceed with recognizing and enforcing the award. Nevertheless, this stage might not be the last since party or parties who were not satisfied and found some procedural breaches may challenge the award for annulment at the seat of arbitration.

<sup>5</sup> LCIA Rules (2020).

<sup>6</sup> UNCITRAL Model Law on International Commercial Arbitration. (1958).

<sup>7</sup> ICC Rules of Arbitration (2021).

<sup>8</sup> TIAC Rules, 2021.



Although the final award has binding nature and can be appealed, there is a possibility to challenge the procedural aspects of the proceedings, and in practice, most of the parties use their rights in this regard.

It is important to note that the above-mentioned procedure is common and general whereas the procedures for remote hearings in arbitration may differ depending on the arbitration institution or the parties' agreement. Parties must consult the relevant rules and seek the arbitrator's guidance to ensure the remote hearing is conducted fairly and effectively in order to avoid further issues at the final enforcement and recognition stage.

As the issue of due process is touched upon, this concept is understood as a fundamental aspect of the rule of law and refers to the procedural requirements that must be met in legal proceedings to ensure fairness, impartiality, and equality. These requirements include the right to notice and a hearing, the right to be heard and present evidence, the right to a fair and impartial tribunal, and the right to an effective remedy that has been already addressed in this study the question of whether remote hearings fulfill due process requirements has been the subject of much debate and academic research.

Some group scholars have argued that virtual hearings can satisfy due process requirements if certain conditions are met, such as ensuring that all parties have equal access to information and evidence and that there is a fair and impartial tribunal. Whereas, other scholars have expressed concerns about using remote hearings and their impact on due process requirements. They have argued that virtual hearings can compromise the fairness and impartiality of proceedings, particularly if parties do not have equal access to technology or technical difficulties disrupt the proceedings<sup>9</sup>.

In his recent book “International Commercial Arbitration”, Gary Born notes that while remote hearings may pose challenges to fulfilling due process requirements, they can also offer certain benefits, such as increased efficiency and accessibility<sup>10</sup>. He suggests that careful planning and preparation, including selecting a reliable technology platform and establishing clear protocols for the proceedings, can help to ensure that due process requirements are met in remote hearings.

For each stage, potential violations of due process principles under the UNCITRAL Model Law Article 18 and corresponding enforcement challenges under the New York Convention Article V were identified. To ground the analysis in a practical context, the

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<sup>9</sup> Scherer, M. (2021).

<sup>10</sup> G.B.Born (2020).



2021 Rules of the Tashkent International Arbitration Centre were selected as a case study. These rules were subjected to a doctrinal analysis, with a focus on provisions specifically designed to address digital and procedural challenges, such as Article 20 (Documents, Confidentiality and Digital Data) and Article 21 (Experimental Evidence). This allowed for the evaluation of a real-world model that operationalizes the theoretical safeguards necessary for secure virtual proceedings.

The stage-based analysis revealed a sequence of critical due process vulnerabilities, each directly correlating with potential enforcement challenges under the New York Convention. First, at the foundational jurisdictional stage, the results indicate that conducting a virtual hearing without the express consent of all parties creates a primary enforcement risk; a compelled party can challenge the award under Article V(1)(d), arguing the procedure deviated from their agreement. Subsequently, the pre-hearing stage presents a major threat of technical failure, where issues such as unstable connectivity or inadequate hardware can prevent effective participation. Consequently, this creates a direct pathway for a challenge under Article V(1)(b) for being “unable to present case,” a vulnerability that remains high without mandatory testing and disruption protocols. Finally, during the hearing itself, the integrity of the proceedings is compromised by two interconnected risks: the tribunal's diminished control over the remote environment, complicating the prevention of witness coaching and the assessment of credibility, and the frequent insufficiency of the evidentiary record. Without a verbatim transcript or video recording, the tribunal lacks definitive evidence to refute later allegations of procedural irregularity, thereby rendering the award highly vulnerable to challenges based on contested facts.

### **Case Study Results: The TIAC Model**

The analysis of the TIAC Rules (2021) demonstrates a systematic approach to mitigating these risks:

1. Article 20: explicitly empowers tribunals to manage “digital data and algorithms”, preventing disputes over admissibility and providing clear procedures for handling confidential information, thus pre-empting claims of unfair surprise or data misuse.
2. Article 21: on “Experimental Evidence” mandates strict due process adherence, requiring early discussion and fair notice, which neutralizes potential “trial by ambush” challenges.

These integrated provisions transform abstract due process principles into enforceable procedural commands, directly addressing the vulnerabilities identified in the stage-based analysis.



Diving deeper into this article, first, the rules directly address vulnerabilities in evidence handling and pre-hearing uncertainty. Article 20 explicitly empowers tribunals to manage “digital data and algorithms”, thereby pre-emptively resolving potential disputes over the admissibility of modern forms of evidence. More significantly, it provides a structured framework for handling objections based on confidentiality and commercial sensitivity, and even allows for the use of a third-party advisor to evaluate privileged information. This comprehensive approach mitigates the risks of procedural battles and allegations of unfair surprise during the evidence phase, which could otherwise form the basis of an enforcement challenge.

Second, the rules target the risk of procedural unfairness during the hearing itself. Article 21, governing "Experimental Evidence," mandates strict due process adherence by requiring early discussion and fair notice of such evidence. This provision effectively neutralizes the threat of "trial by ambush," ensuring that no party is prejudiced by the sudden introduction of complex evidence they are unprepared to address. By compelling these issues to be resolved at a preliminary stage, TIAC's framework enhances the overall integrity and fairness of the hearing, thereby fortifying the resulting award against challenges.

In essence, the TIAC model does not merely react to problems but constructs a procedural ecosystem that prevents them. By codifying solutions to the specific vulnerabilities of virtual proceedings - from digital evidence management to complex testimony protocols - the rules transform due process from a theoretical obligation into a series of enforceable, operational requirements, directly strengthening the enforceability of awards rendered under its auspices.

The results confirm that the enforceability of an arbitral award is intrinsically linked to the procedural integrity of the hearing process. The identified vulnerabilities are not mere inconveniences but are potential grounds for nullifying the award's value at the enforcement stage. This discussion connects these findings to the broader legal and practical context.

Theoretically, this study reinforces that due process is a dynamic standard. What constitutes a “full opportunity to present one's case” must be reinterpreted for the digital age. Practically, it imposes a higher duty of care on arbitrators and counsel. Meticulous planning, documented consent, and robust contingency plans are no longer best practices but necessary components of a defensible procedure.

The efficacy of the TIAC model supports the proposition that institutional rules are the most effective vehicle for standardizing these safeguards. By codifying procedures for digital evidence and complex testimony, institutions can provide the certainty that



parties and tribunals need to proceed with confidence. A key implication is the need for harmonization between progressive institutional rules and often-outdated national arbitration laws (*lex arbitri*). To minimize global enforcement risks, national legislatures should consider modernizing their statutes to explicitly recognize and validate well-conducted virtual proceedings. Future research should focus on empirical analysis of enforcement challenges related to virtual hearings. Tracking court decisions on New York Convention Article V defenses that cite virtual hearing deficiencies would provide valuable data to further refine best practices and institutional rules.

### Conclusion

This study has systematically delineated the pathway through which practical issues in virtual hearings can lead to the refusal of enforcement of an arbitral award. By analyzing the process from consent to record-keeping, it has identified specific due process vulnerabilities at each stage and linked them directly to the defense mechanisms of the New York Convention. The findings demonstrate that the perceived efficiency of virtual arbitration is sustainable only if it is built upon a foundation of scrupulous procedural integrity. The analysis of the TIAC Rules provides a replicable model for integrating necessary safeguards into arbitral procedure. For virtual awards to be as secure and final as traditional ones, the arbitration community must prioritize the systematic mitigation of enforcement risks through conscious design, explicit rules, and harmonious legal reform.

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