Italian arbitration day looks at abuse

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The latest Italian Arbitration Day in Milan featured keynote speakers including **David W Rivkin** and **Gabrielle Kaufmann-Kohler**, alongside other Italian and international speakers, and explored the evolving notion of abuse in international arbitration and how efficiency, fairness and integrity can be balanced in the face of growing procedural complexity.

In an opening keynote address at the event on 10 June, **David W Rivkin,** a New York-basedarbitrator affiliated with Arbitration Chambers, argued that arbitration must refocus on the parties' interests and reclaim its original flexibility, treating every case as a "blank page" to design a tailored procedure.

He argued that the case management conference should be an opportunity for parties to present their dispute early, allowing arbitrators to actively shape proceedings rather than accept generic timetables.

He also encouraged the more effective use of early determination and preliminary issue tools and warned against the misuse of due process claims. In sum, arbitrators must balance rigour with creativity, making proceedings as efficient and party-centric as possible, he said.

In a later keynote, **Gabrielle Kaufmann-Kohler**, founding partner at Lévy Kaufmann-Kohler in Geneva, broadened the discussion to procedural inflation in arbitration.

She warned that growing sophistication and complexity in arbitration proceedings often undermine efficiency and fuel procedural excesses, with no empirical data showing a link to better outcomes.

Symptoms range from increased litigiousness and more procedural incidents to longer hearings and more disqualification requests. Causes include busy or hands-off arbitrators, due process paranoia, overworked counsel, and a tendency to "dump it all in" as advocated by the legal industry.

While some cases are genuinely complex, many are over-lawyered, she said.

The solution, Kaufmann-Kohler suggested, lies in arbitrators shaping proceedings early and assertively: issuing a detailed Procedural Order No. 1 and imposing page limits and applying self restraint to balance due process, equal treatment and efficiency.

In short, arbitrators must set the tone and take a firm hand to overcome these procedural burdens.

The conference attracted over 200 participants from 17 countries and brought together speakers to discuss emerging risks and practices in international arbitration.

The first panel, on use and abuse of state court remedies, was moderated by **Angelo Anglani**,partner at Advant NCTM in Rome,and featured **Lara Hammoud**, **Isabelle Michou** and **Hussein Haeri KC**.

Haeri, partner and co-head of international arbitration at Withers in London, spoke about the role of antisuit and anti-antisuit injunctions, explaining that their legitimacy depends on the law applicable to the arbitration agreement.

He mentioned the the UK Supreme Court's judgment in *Unicredit Bank v RusChemAlliance,* highlighting tensions between national courts and arbitration.

Michou, partner at Quinn Emanuel Urquhart & Sullivan in Paris, added that, in France, anti-arbitration injunctions are not used because they oppose party autonomy and no reform is proposed. She also explained how recent European Union sanctions affect enforcement of Russian court decisions.

Hammoud, an Abu Dhabi-based arbitrator at Arbitra International, addressed arbitrators' civil and criminal liability, focusing on how arbitrators can be held personally liable for gross negligence, bad faith or misconduct, although she noted that courts must balance accountability with preserving the arbitration process.

Michou also spoke about the creeping trend of judicial review of arbitral awards, especially in France, where courts have extended review to public policy grounds. She gave examples like the *Schooner v Poland* case, over an ICSID Additional Facility case rendered in Paris and the *Belmont v Slovakia* case, over a Paris-seated ICC case, in which judges examined challenges of awards on public policy grounds more closely.

A reverse debate followed, conducted by **Niccolò Landi**, an Italian arbitrator at Arbitration Chambers.

The debate explored how national courts and party tactics affect arbitration, focusing first on creeping judicial review, which corporate users largely oppose, preferring a narrow and quick review.

Speakers highlighted examples of misuse, such as employing criminal proceedings to pressure parties and debated antisuit and anti-arbitration injunctions as tools that can both protect arbitration proceedings and risk creating delays or overreach.

They also addressed the tension between arbitrators' accountability and their immunity, noting instances where arbitrators came under scrutiny or pressure and underscoring the role of disclosure.

The panel considered whether increased scrutiny strengthens arbitration or threatens its core values, questioning if the trend toward "creeping review" is truly widespread or just a perception.

Ultimately, it was agreed that national courts must balance respecting procedural public policy with preserving arbitration's autonomy.

The second panel, on use and abuse of procedural tools and rights, was moderated by **Cecilia Carrara,** partner at Legance in Rome, and featured **Melissa Magliana, Dyalá Jiménez** and **Carlos Alberto Carmona**.

The speakers debated the role of profiling and party responsibility in arbitrator appointments.

Magliana, partner at Lalive in Geneva, emphasised that parties should consider language, culture and nationality when selecting arbitrators and proactively investigate potential conflicts rather than relying solely on their disclosures.

Jiménez, a Costa Rica-based independent arbitrator and vice president of the ICCA governing board, noted institutions are increasingly requiring arbitrators to adhere to higher disclosure standards.

The speakers disagreed on the role institutions should play, with **Carlos Alberto Carmona**, partner at Marques Rosado Toledo Cesar e Carmona Advogados in São Paulo, arguing institutions should not bear responsibility, while Carrara advocated for more scrutiny at the confirmation stage.

The panel also examined arbitrators' freedom to resign, the early beginnings of decision-making, the risk of pre-judgment and the role of the chair. They stressed the importance of arbitrators being assertive and fair and acknowledged that requests for extensions aren't always dilatory but must remain the exception.

The consensus was that while party autonomy is vital, arbitrators must balance this with their duty to control proceedings and preserve their integrity throughout long-running cases.

A final reverse debate, led by **Roberto Calabresi**, founding partner at SLCG in Milan, explored where robust arbitration ends and abuse begins: from appointing "persuasive" arbitrators for a tactical edge, to delays disguised as procedural objections.

The debate covered the efficiency of sole arbitrators versus three-member tribunals and the binding nature of multi-tiered dispute clauses. It also examined the arbitrators' role in managing proceedings, including offering preliminary views and guiding settlement discussions, highlighting the delicate balance between party autonomy, due process, and procedural efficiency.

The event was held at Palazzo della Borsa in Milan and organised by theMilan Chamber of Arbitration (CAM) and Italian Association for Arbitration (AIA). It was introduced by **Maria Beatrice Deli,** the AIA secretary general, and **Stefano Azzali**, CAM director general, and closed by **Andrea Carlevaris**, AIA president.

In his closing remarks, Carlevaris reminded attendees that not all procedural frictions are abusive and called on arbitrators and institutions to develop sharper tools to distinguish between genuine procedural concerns and tactics aimed at disrupting proceedings.

The next Italian Arbitration Day will take place in Rome on 11 June 2026.