



Preselecție pentru Concursul Willem Vis (ediția 2024-2025)

Concursul Willem Vis este **cel mai prestigios concurs internațional de drept privat din lume**, având peste 400 de universități participante. Concursul Willem Vis vizează dreptul contractelor internaționale și arbitrajul comercial internațional. Fazele orale au loc la **Hong Kong și Viena**. Preselecția pentru echipa care va reprezenta Universitatea din București la ediția 2024-2025 a concursului Willem Vis se va desfășura **începând cu data de luni, 15 aprilie 2024 și va continua până la ocuparea, progresivă, a tuturor locurilor disponibile (8 locuri minim)**.

Sunt eligibili studenții care **vor fi în anul II, III, IV sau master** în anul universitar 2024-2025.

Pentru a vă înscrie la preselecție vă rugăm să transmiteți următoarele documente la adresa de email raluca.papadima@drept.unibuc.ro:

1. Scrisoare de prezentare și motivare, în limba engleză, în care să indicați (i) de ce doriți să participați la concursul Willem Vis, (ii) dacă ați participat la alte concursuri de pledoarii sau debate, și (iii) dacă și unde ați efectuat stagii de practică.
2. CV, în limba engleză, cu poză și date de contact (telefon și email). Nu vă recomandăm folosirea formatului Europass pentru CV.
3. Document care să indice; (a) media obținută în fiecare din anii de studii anteriori la Facultatea de Drept și (dacă este cazul) la Colegiul Juridic Franco-Român și (b) notele obținute la toate materiile studiate la Facultatea de Drept și (dacă este cazul) la Colegiul Juridic Franco-Român. Nu este nevoie de o foaie matricolă în original (extras ADMA ok).
4. Concluzii scrise, în limba engleză, prin care ați susținut argumentele reclamantului la o audiere în fața tribunalului arbitral pe baza problemei de mai jos (5-10 pagini).

După transmiterea documentelor indicate mai sus, veți fi invitați la un interviu oral, care se va desfășura online, la o dată și oră stabilite ulterior. Interviul va testa în principal capacitățile de raționament juridic, capacitățile de lucru în echipă și facilitatea exprimării în limba engleză.

Studenții din echipele anterioare au beneficiat de **sprijin pentru obținerea de stagii și contracte de muncă** în societăți de avocatură de prestigiu din România și din străinătate, precum și de **sprijin pentru admiterea la programe de master** din România și din străinătate.

Echipa este pregătită de un colectiv coordonat de lector univ. dr. Raluca Papadima, alcătuit din foști participanți la concurs. Studenții beneficiază de asemenea în mod tradițional de sprijin pedagogic și financiar din partea celor mai importante case de avocatură din România.

Sponsorii echipei care a participat la ediția 2023-2024 a concursului au fost: **CMS Cameron McKenna, Doru Trăilă & Asociații (TAMC), Filip & Company, Guia Naghi & Partners, Mihalcea & Asociații, Nestor Nestor Diculescu Kingston Petersen, CI Raluca Papadima, CI Horia Rădulescu, Reff & Asociații (Deloitte), Schoenherr, Stoica & Asociații, Prof. Camelia Toader, Țuca Zbârcea & Asociații** precum și numeroase alte persoane fizice.

SELECTION FOR WILLEM C. VIS TEAM (2024-2025)

Procedural Order No. 1

After receiving the Request for Arbitration (“RA”) of Kaihari Waina Ltd. (“Kaihari” or “Claimant”) on 1 February 2024 and the Answer to the Request for Arbitration (“ARA”) of Vino Veritas Ltd. (“Vino Veritas” or “Respondent”) on 1 March 2024, this arbitral tribunal of the Finland Arbitration Institute (“FAI”) appointed by the parties (the “Tribunal”) has issued this Procedural Order No. 1 on 1 April 2024, which summarizes the dispute and the undisputed facts and evidence presented so far.

1. Kaihari, established in Equatoriana (a common law country), is a wine merchant specialized in top quality wines for the collectors’ and high-end gastronomy markets. It is a medium sized business, with revenues of EUR 40 million per year and a profit of EUR 1.2 million. Kaihari has a particular expertise in Mata Weltin wines and a reputation of being a particularly reliable source. Because of its high-end customer base, Kaihari only sells Mata Weltin wines of diamond quality. Certainty of supply is crucial and part of its business model and success. The selected group of collectors and high-end restaurants around the world which form the majority of Kaihari’s customers want a quasi-guarantee that they will be supplied with the quantities they order annually.
2. Vino Veritas, established in Mediterraneo (a civil law country), is a medium size high quality wine producer. It is a private, family-owned, business. Vino Veritas won the Mediterranean gold medal for its diamond Mata Weltin in each of the last 5 years. It has had an annual production of around 100,000 bottles per year since 2010 (except in 2015, when the production, due to a bad harvest, was only 75,000 bottles). 40% of its production is sold to a number of selected customers including most of the leading restaurants in Mediterraneo, and many of these customers have been buying Vino Veritas’s wines for 40 years. The remaining 60% is sold to major foreign wine merchants for high end wines which distribute the wines to customers all over the world.
3. Towards the end of 2017, Vino Veritas’s biggest customer (LiquorLoja, a major wine merchant) went insolvent due to an exodus of its best people, including its manager, Mr. Barolo, a reputable wine critic. To replace LiquorLoja, Vino Veritas selected Kaihari, who had tried to get into business with Vino Veritas for several years. Kaihari had also been trying to get into business with the other two top end producers of Mata Weltin wine from Mediterraneo, Vignobilia and Winenoble. Kaihari and Vino Veritas concluded a written framework contract on 1 April 2018.
4. Because reliability of supply is crucial for Kaihari, it insisted on entering into a written framework contract, with a guaranteed minimum of supply, as it does with its other suppliers. Contracts are normally concluded orally in the high-end wine business, as the top vineyards do not want to commit themselves to binding delivery obligations, limiting their freedom to allocate production the way they like. Despite this, Vino Veritas agreed to Kaihari’s request due to the special situation at the time (LiquorLoja’s insolvency). In return, Kaihari committed to a minimum purchase. Kaihari is Vino Veritas’s only customer with a guaranteed minimum number of bottles.
5. The framework contract was negotiated by Mr. Friedensreich, the COO of Kaihari, and by Mr. Weinbauer, the CEO of Vino Veritas, who has been running Vino Veritas for the last 20 years and has a reputation of being very impulsive and easy to annoy. Once negotiations concluded, the written framework agreement was drafted in its entirety by Mr. Friedensreich.
6. The written framework agreement provides, in essence, that, every year, Kaihari would buy a minimum of 7,500 bottles from Vino Veritas which in return committed to deliver up to a maximum of 10,000 bottles. Kaihari originally wanted the option to order a larger quantity but Vino Veritas resisted. Over the years, Kaihari ordered between 7,500 and 8,500 bottles. The price for the bottles would be negotiated between the parties each year. The contract could be terminated by either party upon providing written notice to the other party, such termination to be effective with the following year’s harvest. The framework agreement further provides, in art. 20:

“All disputes shall be settled amicably and in good faith between the parties. If no agreement can be reached, the dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the Finland Arbitration Institute, which are deemed to be incorporated by reference into this clause, in accordance with international practice. The number of arbitrators shall be three, to be appointed in accordance with those Rules. The proceedings shall be conducted in a fast and cost-efficient way and the parties agree that no discovery shall be allowed. The award shall be binding and each party shall comply with the award. This contract is governed by the national law of Equatoriana.”

7. In September 2022, it rained so much that nearly half of the grapes rotted on the vine. In October 2022, the grapes were selected and the first reliable statements about quantity and quality of the vintage could be made. Quality-wise, the remaining grapes were excellent and promised an absolutely extraordinary year. Quantity-wise, a production of only approximately 65,000 bottles was expected, an all-time low for Vino Veritas.
8. On 3 November 2022, Vino Veritas informed its customers by fax about the bad harvest, announcing them that Vino Veritas would try to negotiate smaller quantities with each of its customers. Vino Veritas’s customers generally showed understanding towards the situation and subsequently entered into negotiations resulting in reduced quantities for each of them, consistent with the prevailing practice in the wine industry to have recourse to a pro-rata allocation.
9. However, on 4 November 2022, Kaihari ordered from Vino Veritas the maximum amount of guaranteed bottles under the contract (10,000) and indicated that it would be willing to buy more and expand the cooperation with Vino Veritas further.
10. On 25 November 2022, a meeting took place between Ms. Buharit, Kaihari’s development manager, and Mr. Weinbauer. The meeting had been scheduled to discuss Kaihari’s new marketing strategy, which included using Vino Veritas’s facilities for promotional events. At that meeting, Mr. Weinbauer told Ms. Buharit that after receiving Kaihari’s order he had been inclined to deliver no bottles to Kaihari, given that Kaihari had showed no understanding of the industry practice to proceed to a pro-rata allocation, and to immediately terminate the framework contract. Ms. Buharit explained to Mr. Weinbauer why it was crucial for Kaihari to receive the bottles ordered and reiterated that Kaihari needed as a minimum the full quantity of the 10,000 bottles ordered, but preferably more. Mr. Weinbauer promised to give “a favorable consideration” to the request, but left no doubts that no quantity larger than 10,000 bottles could be delivered.
11. After the meeting, Ms. Buharit took a walk around the adjacent vineyard and the cellar to test out a few ideas for photo shots. As she was just about to get into her car, a Mercedes-Benz with SuperWines logos on both doors pulled up beside her in the car park and she recognized Mr. Barolo, the former manager of LiquorLoja, who had since become the CEO of SuperWines.
12. SuperWines is an international wine wholesaler, which had recently started to expand into the high-end market. On 30 January 2022, at the awards banquet following the Mediterraneo Wine Day, Mr. Barolo met Mr. Weinbauer with whom he had been a friend since his time at LiquorLoja. They talked about Mr. Barolo’s plan to use the market force of SuperWines and its distribution network to make top class wines from Mediterraneo more popular in emerging markets. At that time, Mr. Barolo indicated that he would naturally approach Mr. Weinbauer once his new strategy had been approved internally. Mr. Weinbauer was very pleased to hear this and promised to be open to discussions, given that there were rumors at the end of 2021 regarding the poor financial health of Vinexzell, Vino Veritas’ then biggest client. In June 2022, the internal approval was obtained and Mr. Barolo and Mr. Weinbauer started more specific discussions which lasted during the months of July and August 2022. In August 2022 it became clear that Vinexzell had overcome its financial problems and that SuperWines could not merely take over the 13,000 bottles which had been delivered to Vinexzell in previous years.

13. On 25 November 2022, after Ms. Buharit left, Mr. Barolo met with Mr. Weinbauer and submitted an offer to buy 15,000 bottles of Mata Weltin 2022. On 1 December 2022, another meeting between them took place to discuss the price and, after that meeting, Mr. Barolo received a notice from Vino Veritas that only 5,000 bottles would be available to SuperWines at the price previously agreed. Industry journals immediately reported on these discussions, suggesting that SuperWines was willing to pay a considerable premium to Vino Veritas.
14. On 1 December 2022, Kaihari also received a letter from Vino Veritas stating that, due to the bad harvest, it would only be able to deliver 5,000 bottles, for EUR 50 per bottle.
15. On 2 December 2022, Mr. Barolo called Mr. Weinbauer and accepted the offer for the 5,000 bottles, expressing his willingness to buy any other quantity which may become available later for the same price. There was no contract signed by SuperWines and Vino Veritas and no express or formal confidentiality agreement, but both parties assumed that the other would not disclose details of their contract. They had, however, exchanged several emails summarizing meetings and setting out details of their cooperation. Furthermore, Vino Veritas had created several internal memoranda and minutes discussing the cooperation with SuperWines. Vino Veritas was aware that SuperWines was Kaihari's biggest competitor because Mr. Barolo had told Mr. Weinbauer that one of the new fields SuperWines wanted to get into was the collectors' market, with a business model close to that of Kaihari's. While the actual price paid by SuperWines to Vino Veritas is not known to anyone but the two parties, there are (unconfirmed) rumors in the industry that SuperWines paid EUR 60 per bottle.
16. On 2 December 2022, Kaihari sent an email to Mr. Weinbauer and demanded the delivery of 10,000 bottles, as guaranteed under the framework contract (accepting the price of EUR 50 per bottle proposed by Vino Veritas), while noting that it was not willing to give up some of the bottles to SuperWines. On 4 December 2022, Mr. Weinbauer responded, accusing Kaihari of outrageous behavior and noting that no amount of bottles would be delivered. Subsequently, Vino Veritas delivered no bottles of wine to Kaihari in 2022 or any subsequent year, despite several and prolonged attempts to resolve the dispute amicably.
17. On 1 February 2024, Kaihari, as Claimant, filed its RA, and requested (i) that this Tribunal find that Vino Veritas, Respondent, fundamentally breached the framework contract, by refusing to deliver the full amount of bottles guaranteed under such contract (10,000 bottles) in 2022, and (ii) that this Tribunal award damages "calculated as 10,000 bottles multiplied by the difference between the purchase price offered by Vino Veritas (EUR 50) and the price that Kaihari could have achieved by selling the 10,000 bottles (at a minimum EUR 60, which was the price rumored in the industry as having been paid by SuperWines for the bottles that rightfully belonged to Kaihari), therefore at least EUR 100,000." Kaihari also requested this Tribunal, as a procedural matter, "to order Vino Veritas to disclose any and all documents and other records from 2022 reflecting the negotiations between Vino Veritas and SuperWines, including the actual price paid by SuperWines, because such documents and records are necessary in order to facilitate the calculation of damages for lost profits, which would otherwise be very difficult, if not impossible."
18. After the FAI received the RA, this Tribunal was properly appointed. Each of the arbitrators submitted a declaration of acceptance of the appointment, including a declaration of independence.
19. On 1 March 2024, Vino Veritas, as Respondent, filed its ARA, and requested this Tribunal to deny all of Kaihari's requests because (i) Vino Veritas was facing hardship and/or force majeure due to the bad harvest, (ii) Vino Veritas offered to make a partial delivery of 50% of the maximum number of guaranteed bottles under the framework contract, such that there can be no fundamental breach, and (iii) Kaihari failed to mitigate its damages, such that it should not be entitled to any recovery, or, at the very least, its damages should be reduced. Additionally, with respect to Kaihari's procedural request, Vino Veritas argued that this Tribunal lacks the power to compel Vino Veritas to produce the requested documents and records, due to art. 20 of the framework contract, which was drafted by Kaihari's representative, and which prohibits granting the request

because it requires the proceedings to be “conducted in a fast and cost-efficient manner,” prohibits “discovery,” and references “international arbitration practice”.

20. Equatoriana and Mediterraneo are Contracting States of the United Nations Convention on Contracts for the International Sale of Goods (1980) (the “CISG”).
21. As counsel for Claimant, prepare written conclusions on behalf of Claimant, based on what Claimant argued in the RA, including responses to Respondent’s arguments outlined in the ARA. In developing your legal arguments, you are not allowed to add any factual information or assume any facts which are not expressly stated in this Procedural Order No. 1 (except common knowledge). You may use the CISG: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf and the FAI Rules (2024): <https://arbitration.fi/en/arbitration/rules-and-guidelines/>.