

INFORMACJE

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Court of Arbitration for Art (CAfA): Webinar on Settling Art Disputes by Alternative Dispute Resolutions: Future and Challenges in Poland and worldwide

On September 26, 2023 at 5 PM CEST an online webinar was held under the title: „Court of Arbitration for Art (CAfA): Webinar on Settling Art Disputes by Alternative Dispute Resolution: Future and Challenges in Poland and worldwide”. The leading art law experts from around the world joined this interactive meeting on dispute resolution in the art world to listen to the discussion of the following distinguished **panelists**:

- Camilla Perera-de Wit (Secretary-General, Director General Netherlands Arbitration Institut),
- Dr. hab. Piotr Stec (University of Opole).
- Dr. hab. Alicja Jagielska-Burduk (University of Opole),
- Prof. dr. hab. Kamil Zeidler (University of Gdańsk),
- Natalia Mikołajczyk (Linklaters Managing Associate).

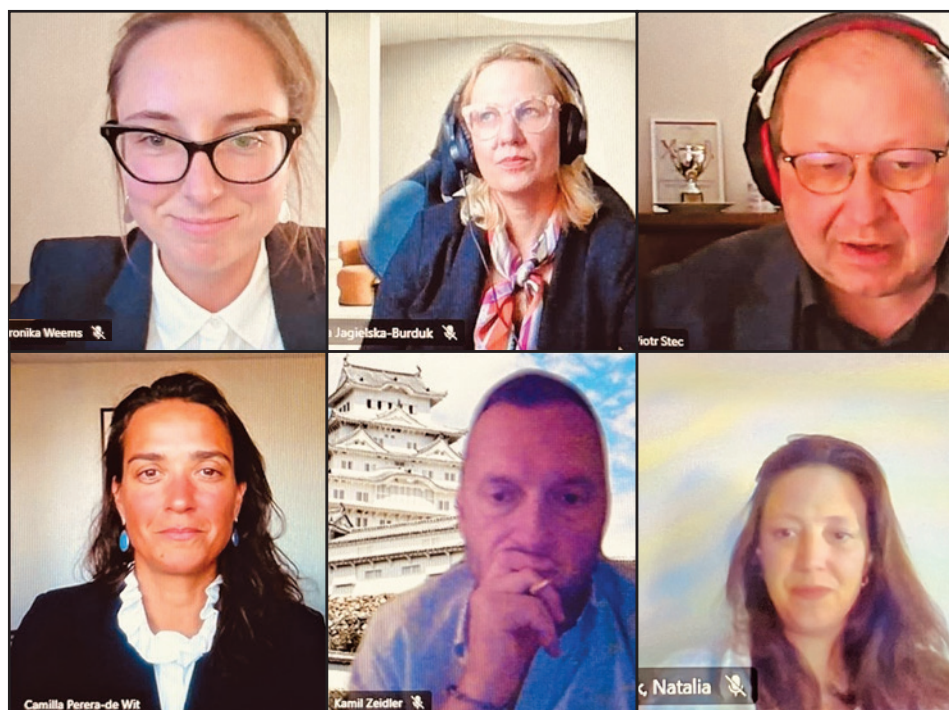
Moderator: Dr. Weronika Weems, CAfA Executive Officer, Legal Counsel.

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Camilla Perera-de Wit opened the roundtable with a presentation regarding the history, organization and goals of CAfA. After the presentation, the initial discussion began with panelists addressing the following topics:

- Pros/Cons of an international arbitration institution for the art business,
- The critical challenges of national litigations to resolve art disputes,
- National solutions for art disputes in Poland,
- How to encourage the parties to choose an arbitration instead of a traditional litigation,
- The arbitration clause in art purchase agreements,
- How disputes related to the artworks have been affected by the COVID-19 pandemic,
- How CAfA will change the art market,
- The likelihood or probability of the first case to come to CAfA from Poland.



Il. 1. Moderator Weronika Weems with panellists: Alicja Jagielska-Burduk, Piotr Stec, Camilla Perera-de Wit, Kamil Zeidler, Natalia Mikojczyk

The panelists gave colorful examples from their practices referencing *inter alia*, art market actors and private collectors. They shared their insights and expectations with the webinar participants and explained the prospects and challenges of settling art disputes via the Alternative Dispute Resolution (ADR) in Po-

land and in a global perspective. In this context, Camilla Perera-de Wit explored the idea to offer the CAfA as a specialized institution for art dispute resolution and its potential impact.

Whether the first case comes to CAfA from Poland or any other country depends on several factors, including awareness of CAfA's existence.

With this short article we would like to encourage you to visit the CAfA website and to become better acquainted with our content.

Website: <https://www.cafa.world/>

The image shows two presentation slides from Camilla Perera-de Wit's presentation on CAfA. The top slide is titled "Court Of Arbitration for Art (CAfA)" and features a screenshot of a New York Times article. The article is titled "Leonardo da Vinci Painting Sells for \$450.3 Million, Shattering Auction Highs" and includes the sub-headline "ART & DESIGN". The article is by Robert Pasquarelli and Emily Richman, dated Nov. 8, 2017. The slide also includes the NAI (Netherlands Arbitration Institute) logo and the CAfA logo. The bottom slide is also titled "Court Of Arbitration for Art (CAfA)" and features a quote from Judge Charles Ramos. The quote is: "I have never seen an industry more ripe with fraud and misconduct than the art business. To say there's such a thing as artistic ethics is an oxymoron. Most of the cases I've had involving art dealers involve fraud outright. Just plain old fraud. This is not a nice business." The quote is dated January 9, 2018. The slide also includes the NAI logo and the CAfA logo. Both slides are attributed to Camilla Perera-de Wit (extern).

The Court of Arbitration for Art (also known as „CAfA”), the first arbitration forum exclusively devoted to art disputes¹, was created in 2018 thanks to the joint initiative of the Netherlands Arbitration Institute and Authentication in Art. CAfA is founded to resolve disputes in the wider art community through mediation and arbitration.² It offers parties to administrate their proceedings with the assistance of the Secretariat of the Netherlands Arbitration Institute.³

CAfA’s aims, as a non-profit organisation, are to promote arbitration and mediation and other lawful means to prevent, reduce and resolve disputes that arise in the wider art community.⁴

Over the years, the art world has recognized the limitations of traditional litigation for resolving art-related disputes. There are many shortcomings of national litigation, e.g. costs and time, lack of neutrality in restitution cases, art disputes are highly technical, & domestic court rulings are not confidential.⁵ As a result, there has been a growing trend in the art world to turn to Alternative Dispute Resolution (ADR). CAfA’s creation is a unique response to the need for specialized dispute resolution services in the art world. It’s designed to offer a forum specifically tailored to art-related disputes, acknowledging the intricacies of art transactions, provenance or authenticity. Therefore, CAfA is such a step in light of a new era for art law disputes.⁶

The CAfA Arbitration Rules came into force on the 1st of January 2019. According to Tara Braultte, the CAfA’s main goal is to mitigate the gap between the tribunal’s decisions and the market expert’s eye and make the tribunals decisions more acceptable to the art community. Thus, CAfA promotes itself as being specifically designed to address technical issues and to involve experienced art practitioners in the proceedings.⁷ The existence of a pool of experts and arbitrators is CAfA’s defining feature.⁸ Furthermore, the CAfA aims to provide neutrality to the parties. Let’s list a few more significant advantages of the CAfA Arbitration Rules: the arbitral tribunal may decide to conduct the hearing at any other then the Hague location in the world (in principle, the arbitral tribunal is seated in the Hague, the Netherlands), the CAfA Arbitration Rules aim to preserve the time and cost

¹ T. Braultte, *Art Law Dispute Resolution and the Court of Arbitration for Art*, „b-Arbitra. Belgian Review of Arbitration” 2022, vol. 2, pp. 218-237.

² https://www.cafa.world/cafa/about_us/ [accessed: 12.04.2024].

³ https://www.cafa.world/cafa/about_us/ [accessed: 12.04.2024].

⁴ https://www.cafa.world/cafa/about_us/ [accessed: 12.04.2024].

⁵ Comprehensive on the subject of shortcomings of national litigation to resolve art disputes: T. Braultte, op. cit.

⁶ S. Bhutoria, S. Ghaffari, A. Motamedi, *Art Disputes and the Court of Arbitration for Art: Evolution or Revolution?*, January 21, 2021, <https://aria.law.columbia.edu/art-disputes-and-the-court-of-arbitration-for-art-evolution-or-revolution/?cn-reloaded=1> [accessed: 12.04.2024].

⁷ T. Braultte, op. cit.

⁸ S. Bhutoria, S. Ghaffari, A. Motamedi, op. cit.

efficiency of the proceedings, they provide confidentiality of proceedings (which is fundamental in the art world) and international enforcement of the award.⁹

We strongly believe establishing the CAfA can truly play a 'game changing' role in how art law disputes are resolved. If you would like to be a part of this story, we encourage you to be inspired its potential benefit to our industry and bring your candidates for the first CAfA case!

⁹ Comprehensive on the subject of pros of CAfA Arbitration Rules: T. Braultotte, op. cit.