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December 18 2007

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Sections 8 and 9 of the Swedish Arbitration Act provide that an arbitrator must be impartial and that a potential arbitrator must disclose all circumstances which might prevent him or her from serving as arbitrator. In a judgment dated May 5 2006, the Svea Court of Appeal had found that an arbitrator who was a consultant for and shared offices with a law firm which had a client relationship with the group of companies to which one of the parties belonged could not be regarded as biased; he disclosed that he was a consultant for the law firm but should also have disclosed the client relationship (for further details please see "[Court of Appeal Rules on Arbitrator's Impartiality](#)"). Following the leave to appeal granted by the court of appeal, the Supreme Court has now set aside the award.

Facts

In 2002 Ericsson AB terminated its employment contract with Anders Jilkén, who requested arbitration in accordance with the parties' arbitration agreement. The two party-appointed arbitrators appointed a former Supreme Court judge, Johan Lind, as the third arbitrator and chairman of the panel pursuant to Sections 13 and 20 of the act. According to the award made in Stockholm in June 2004, Jilkén's claims were dismissed and he was directed to pay Ericsson AB's arbitration costs.

Jilkén challenged the award in the court of appeal under Section 34 of the act on the grounds of the chairman's lack of impartiality, claiming that the award should be set aside. The court dismissed Jilkén's claim, although it had initially issued an interim order preventing the enforcement of the award.

Decision

In its judgment dated November 19 2007, the Supreme Court set aside the award.⁽¹⁾

Regarding the factual issue of whether Jilkén was aware of the facts relied on as grounds for the challenge long before it was submitted, the court found that Ericsson AB had not, against the evidence submitted by Jilkén, established that Jilkén had such knowledge. Therefore, he was not precluded from relying on the facts in question.

The court noted that the preparatory works to the 1999 Arbitration Act stressed that arbitrations often have an international connection and that when drafting the Swedish act it was considered important to take into account in each issue the provisions of the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration. It was considered unnecessary to mention explicitly in the act that an arbitrator must be independent, which is mentioned in the Model Law, as that followed from the wording of the act. The court also noted that arbitration institutes in many countries, such as the International Chamber of Commerce and the Arbitration Institute of the Stockholm Chamber of Commerce, have arbitration rules containing provisions on bias with substantially the same content as the provision on impartiality in the act. In addition, the court mentioned the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration and added that there were reasons to take such arbitration rules and guidelines into account, given the international connection mentioned. The court also referred to an opinion submitted by the Arbitration Institute of the Stockholm Chamber of Commerce that it would probably have found the chairman to be partial.

The court stated that the impartiality requirement must be strongly upheld in arbitrations as the arbitrators' factual and legal determinations are not subject to court review.

The court held that Ericsson AB should not be distinguished from the Ericsson group of companies in

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this context and that, at the least, when the relationship between the law firm and the client is commercially important to the law firm, the arbitrator shall be deemed to be partial. It did not matter that the chairman worked for the law firm on a part-time basis or that he was not dependent on his revenue from the law firm. Likewise, it did not matter whether:

- he had had any direct contact with the client;
- he had run his arbitration business separately from the law firm's business; or
- the arbitration concerned issues other than those normally dealt with in the client relationship.

According to the court, its position was supported by the IBA guidelines and the practice of the Arbitration Institute of the Stockholm Chamber of Commerce.

Comment

The Supreme Court judgment deserves a warm welcome by the international arbitration community. It is of special interest that the court clearly took into account the legitimate expectations of the users of international arbitration conducted in Sweden, although the arbitration in this case was a Swedish domestic arbitration. Furthermore, it is significant that the arbitration in question was an *ad hoc* arbitration, as the court, despite that fact, relied heavily on the opinion of the Arbitration Institute of the Stockholm Chamber of Commerce. This means that parties opting for *ad hoc* arbitration in Sweden will not risk any unpleasant surprises with respect to what may constitute arbitrator bias.

It is to be commended that the court did not engage in an extensive, in-depth analysis of the details of the relationship between the arbitrator and the law firm, as such details were not accessible to Jilkén as a party to the arbitration.

As the court found that the main facts on which Jilkén relied constituted bias, the court did not have to address whether the arbitrator's failure to disclose the client relationship in itself affected his appearance of impartiality.

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Endnotes

(1) Case T 2448-06.

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