

Final Decision on Arbitrator's Impartiality

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The Stockholm City Court and the Court of Appeal have rejected an appeal by a party to an arbitration against a decision by an arbitration institute not to dismiss an arbitrator. The grounds for rejection were that Section 11 of the Swedish Arbitration Act allowed the parties to decide that questions about the arbitrator's impartiality would be finally resolved by the arbitration institute. The courts also found that the section does not breach the European Convention on Human Rights.

Facts

A party appealed a decision by the Stockholm Chamber of Commerce Arbitration Institute not to dismiss an arbitrator. The party claimed that the decision was subject to appeal in a court since Article 18 of the Stockholm Chamber of Commerce Rules was incompatible with Section 11 of the Swedish Arbitration Act and the European Convention on Human Rights. Section 11 of the Swedish Arbitration Act provides that the parties can decide that a final decision on the arbitrator's impartiality be given by an arbitration institute. Article 18 of the Stockholm Chamber of Commerce Rules provides that the Stockholm Chamber of Commerce will make the final decision on whether to dismiss the arbitrator.

The party claimed that the word 'final' in Section 11 of the Swedish Arbitration Act should be understood to mean only that the decision is final for the arbitrators and not for the courts. Any other interpretation would, according to the party, be incompatible with the European Convention on Human Rights, which provides that each party is entitled to a second trial by appeal.

Decision

The Stockholm City Court rejected the appeal. The court first stated that Section 11 of the Swedish Arbitration Act allowed the parties to decide that questions about an arbitrator's impartiality would be finally resolved by an arbitration institute and not appealed to a court. However, according to the court, such agreement or rules of an arbitration institute must be clear and specific on the issue of whether the decision is final. Article 18 of the

Stockholm Chamber of Commerce Rules was found to meet this requirement. The court also stated that Section 11 of the Swedish Arbitration Act does not breach the European Convention on Human Rights.

Following an appeal, the Court of Appeal confirmed the decision of the Stockholm City Court, stating that the facts did not give rise to any other determination than that made by the lower court.

Comment

The outcome of the case was not surprising, taking the wording as well as the legal history of Section 11 of the Swedish Arbitration Act into account. A basic principle in arbitration is that the parties' self-determination of procedural issues should be respected, albeit within certain important limits reflecting other basic principles of due process. None of these were in danger in the case.

Furthermore, in this context, Article 18 of the Stockholm Chamber of Commerce Rules does not invite reasonable doubt as to its correct interpretation.

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