



INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS IN LITHUANIA

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THE LAW ON COMMERCIAL ARBITRATION OF THE REPUBLIC OF LITHUANIA

- The Law on Commercial Arbitration is mainly based on the UNCITRAL Model Law on International Commercial Arbitration (1985 version, including the 2006 amendments).
- This law regulates arbitration proceedings, arbitral awards, enforcement of foreign arbitral awards, the authority of Lithuanian courts in the sphere of arbitration, etc.
- The Law on Commercial Arbitration of the Republic of Lithuania governs both domestic and international arbitration.

THE RULES OF THE VILNIUS COURT OF COMMERCIAL ARBITRATION

- At the end of October 2003, two main Lithuanian permanent arbitration institutions - the Arbitration Court at the Association of International Chamber of Commerce in Lithuania and the Vilnius International Commercial Arbitration were merged into one institution - the Vilnius Court of Commercial Arbitration (VCCA).
- Active since 1996 as the Vilnius International Commercial Arbitration

OBLIGATION OF IMPARTIALITY AND INDEPENDENCE THROUGHOUT THE PROCEEDINGS (I)

- Article 8 (1) of the Law on Commercial Arbitration
 - An arbitral tribunal, permanent arbitral institution and its chair **shall be independent** in handling issues governed by this Law.
- Article 16 (1) of the Rules of the VCCA
 - The parties may agree on the number of arbitrators and the procedure for appointing them. The number of arbitrators shall be uneven. **An arbitrator shall be independent and impartial.**
- There is no an exhaustive list of circumstances under which it is considered that arbitrator is impartial or independence.

OBLIGATION OF IMPARTIALITY AND INDEPENDENCE THROUGHOUT THE PROCEEDINGS (II)

- Article 17 of the Rules of the VCCA - in cases where an arbitrator is appointed by the Chair of the VCCA
 - An arbitrator shall be appointed in view of the substance of the dispute, the circumstances ensuring **independence and impartiality** of the arbitrator and the requirements established by the parties for an arbitrator. In appointing an arbitrator, the prospective arbitrator's experience and a possibility to appoint as arbitrator a person of other citizenship or national status than that of the parties may be taken into consideration.
- Article 14 (7) of the Law on Commercial Arbitration
 - When appointing an arbitrator/arbitrators, the chair of a permanent arbitral institution or Vilnius Regional Court must take into consideration the substance of the dispute, requirements for the arbitrator set by the agreement of the parties and **circumstances securing independence and impartiality of the arbitrator/arbitrators.**

ARBITRATOR'S STATEMENT OF INDEPENDENCE AND IMPARTIALITY - SUBJECTIVE TEST

- Article 15 (1) of the Law on Commercial Arbitration and Article 18 (1) of the Rules of the VCCA
 - Article 18. When a person is approached in connection with his possible appointment as an arbitrator, he must, before accepting to act as an arbitrator, **disclose in writing** to the parties, a permanent arbitral institution, Vilnius Regional Court (or other entity, where he is obliged to do so by an agreement of the parties or arbitration rules chosen by the parties) **any circumstances likely to give rise to justifiable doubts as to his independence and impartiality.**
 - The arbitrator must, **from the time of his appointment and throughout the arbitral proceedings**, also disclose any such circumstances, unless he did so before or if the circumstances occurred after his appointment or during arbitral proceedings.
- No specific rules or codes of conduct concerning conflicts of interest for arbitrators. **The IBA Guidelines on Conflicts of Interest in International Arbitration are not mandatory, but Lithuanian courts refer to as an authoritative source.**

THE CONDITIONAL INDEPENDENCE

- Article 18 (3) of the Rules of the VCCA
 - In exceptional cases, having heard the opinion of the parties, the Chair of the VCCA may refuse to sign an agreement with the arbitrator appointed by the party, **if a conditional statement on the arbitrator's impartiality and acceptance to act as an arbitrator in the case is presented to the Secretariat.** In such case the party is proposed to appoint another arbitrator. If the party for the second time appoints an arbitrator who presents to the Secretariat a conditional statement on the arbitrator's impartiality and acceptance to act as an arbitrator in the case, the Chair of the VCCA shall refuse to sign an agreement with such arbitrator and shall personally appoint an arbitrator.

DEFINITION OF IMPARTIALITY AND INDEPENDENCE

- **Impartiality** is a legal category of **subjective character** predetermining the arbitrator's inner state which implies absence of the preconceived opinion on the legal relations/parties to the dispute. Consequently, being one of the subjective criteria, the impartiality (or its absence) may most often be established solely judging from the arbitrator's behaviour in the course of the proceedings (case No. 2T-84/2014 of the Court of Appeal dated 29 September 2014).
- **Independence** is a legal category of **objective character**, capable of being identified. The independence involves absence of personal, social, financial, business, superior-subordinate, etc. relationship between the arbitrator and the party and/or the party's representative or any other closely related person (case No. 2T-84/2014 of the Court of Appeal dated 29 September 2014).

GROUNDS FOR CHALLENGING AN ARBITRATOR - OBJECTIVE TEST

- Article 15 (2) of the Law on Commercial Arbitration and Article 19(1) of the Rules of the VCCA
 - (art. 19 (1) An arbitrator may be challenged, if there are circumstances giving rise to reasonable doubts as to the arbitrator's independence or impartiality or the arbitrator has no qualification agreed upon by the parties.
 - (art. 15 (2) An arbitrator may be challenged only if justifiable doubts arise as to his independence or impartiality, or if he does not possess qualifications agreed to by the parties.

GOOD FAITH REQUIREMENT - ART. 15 (3) OF THE LAW ON COMMERCIAL ARBITRATION AND ART. 19 (5) OF THE RULES OF THE VCCA

- A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which the party becomes aware after the appointment has been made.

PROCEDURE FOR CHALLENGING AN ARBITRATOR UNDER THE RULES OF THE VCCA

- Article 19(4) - 19(7) of the Rules of the VCCA
 - 4. The party intending to challenge an arbitrator may make the **challenge within 15 days after it has become aware of the circumstances** <...>. If the party fails to present its request within the set time limit, **the party shall be deemed to have waived its right to challenge the arbitrator.**
 - 5. The party which appointed an arbitrator or otherwise participated in the appointment of an arbitrator may challenge the arbitrator only for the circumstances of which the party **becomes aware after the appointment has been made.**
 - 6. The Vilnius Court of Commercial Arbitration shall present copies of the received request for challenging the arbitrator to the other party to the dispute and the Arbitral Tribunal in order for them to express their opinion in respect of the challenge within the indicated time limit.
 - 7. The Chair of the VCCA shall **make a final decision, which is not subject to appeal,** regarding the challenge of the arbitrator, by adopting an order which does not require justification.

PROCEDURE FOR CHALLENGING AN ARBITRATOR UNDER THE LAW ON COMMERCIAL ARBITRATION

- Article 19
- Firstly, the issue of the challenge shall be decided by the arbitrator/arbitrators himself/themselves.
- Secondly, if a challenge is rejected by the arbitral tribunal itself, the challenging party may request, within 20 days after the receipt of the notice of the decision rejecting the challenge, **Vilnius Regional Court to issue an order concerning the challenge of the arbitrator. The order issued by Vilnius Regional Court in this respect shall be final and not subject to appeal.**

EXAMPLE - CASE NO. 2T-84/2014 OF THE COURT OF APPEAL DATED 29 SEPTEMBER 2014

- Lithuanian Court of Appeal refused to recognize and enforce the ad-hoc Arbitration Tribunal's decision in the Republic of Lithuania. The case arose out of the dispute on the contract concluded in the Republic of Estonia between company of the Republic of Estonia "Sativa Group" OÜ and private limited company "Galinta ir partneriai", according to which interim measures were applied to the assets of the private limited company "Galinta ir partneriai".
- E.N. has already been appointed as an arbitrator. Although he has drafted some procedural documents on behalf of one of the party against the other party. Also, he submitted those documents to the Courts of the Republic of Estonia and represented the party in the proceedings before the Estonian courts.
- The Court stated:
 - The same requirements of independence and impartiality for judges and arbitrators shall be applied;
 - Previous representation of one of the parties is the basis for challenging the arbitrators in arbitration case;
 - An arbitrator is not a representative of the party;
 - By analogy, Article 48 of the Law on Courts is applicable - being both the judge and the representative of the party at the same time is impossible in general.

STATISTICS OF THE VCCA

- Number of arbitration cases per year - around 40-30
- Number of recommended arbitrators - around 130
- Cases with final judgement - around 53 percent
- Origin of cases - around 52 percent from Central or Eastern Europe
- Length of the proceedings - around 7,2 months