

Russia: Impartiality Test for Arbitrators

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In 2007, the Russian Supreme Arbitrazh (State Commercial) Court in OAO NK Rosneft v. Yukos Capital S.a.r.l ruled that arbitrators must disclose their connection to the legal counsel of the other party at the time of their appointment. The facts of the case suggested that one of the arbitrators spoke at a conference organized and sponsored by the law firm representing Yukos Capital S.a.r.l. in the arbitral proceedings.

Russian law stipulates that an arbitrator must disclose any circumstances which may give rise to justifiable doubts as to his impartiality or independence. Based on such disclosure, a party to the arbitration may decide whether to challenge the arbitrator. The arbitrator's failure to provide such information at the time of his appointment may serve as grounds for appealing an arbitral award in the future.

Departing from the law and the facts of the case, the court set aside the arbitral award. However, the court did not explicitly rule whether the participation in the conferences may per se speak for the partiality of the arbitrators. This led to a vivid discussion regarding whether the arbitrators are biased if they appear at academic events organized and sponsored by the opposite party's counsel (law firm).

There was no subsequent case law regarding this matter until the Court of Cassation of the Moscow Federal Circuit recently rejected the claim of the partiality

of an arbitrator based on a similar set of facts. In *Erick van Egeraat Associated Architects B.V. (Netherlands) v Capital Group LLC (Russia)* (Case No. A40-51596/09-68-437), Capital Group LLC alleged that a co-arbitrator once spoke at a conference organized and sponsored by the law firm of the opposite party's counsel. In addition, Capital Group LLC reported that the counsel representing Erick van Egeraat also spoke at the same conference.

The court rejected Capital Group LLC's claim and based its ruling on two specific arguments. Firstly, it was established that the law firm acted only as a so-called 'information sponsor' (promoting the conference among its clients and partners) and certainly had no influence on either the program of the conference or on the speakers' list. Secondly, the participation of the co-arbitrator in the conference did not create any dependence or commercial interest with the counsel (law firm). Therefore, the arbitrator fulfilled the impartiality criteria set forth by international laws and the SCC Arbitration Rules.

The decision of the Court of Cassation of the Moscow Federal Circuit is timely and welcomed as it brings some clarity to the issues of arbitrators' impartiality.

Russian courts adopted the position that an arbitrator's involvement in academic events must be made known to the other party, otherwise this is a ground for setting aside awards. Yet, the courts did not answer the main question of whether the mere participation in a conference biases an arbitrator.

The recent decision illustrates that the impartiality test is based on establishing whether or not any interaction creates dependence or commercial interest between the counsel (law firm) and the arbitrator. Therefore, it is at the court's discretion whether or not to define in each individual case whether any form of sponsorship may speak for an arbitrator's partiality. In this particular case, the court ruled that 'information sponsorship' does not create any special relationship between the counsel (law firm) and arbitrator.

Furthermore, the court held that the fact that the arbitrator and counsel spoke at the same conference does not necessarily lead to the partiality of the arbitrator.

The court also underlined another important aspect in that the standards of impartiality should also be found in the applicable arbitration rules. In our opinion, any relevant guidelines by arbitration institutes on the impartiality of arbitrators would be of a significant value in cases concerning setting aside awards or in

enforcement procedures in Russia.