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100 Years of Institutional Arbitration in Helsinki

Over a century ago, business life actors started to discuss the need to have a special body to resolve disputes between entrepreneurs. The reason for this was that there were product quality problems in foreign trade. So it was that, at the Tradesmen`s Meeting held in Vaasa in 1909, it was proposed that an arbitration board be set up. The project proceeded swiftly. The Helsinki Arbitration Board of Commerce, Industry and Shipping started operations in 1911 with rules adopted the previous year.

These steps towards establishing a Finnish arbitration institute were taken quite early, even viewed from an international perspective,. This is likely due to the solution-focused approach to solve problems regarded as typical of the Finns. As stated in the Final Report of the Finnish Country Brand Delegation of 25 November 2010, "Finland`s greatest strength is the unbiased, solution-focused approach to solve problems." At present the Arbitration Institute works under the auspices of the Finland Chamber of Commerce and its name is "The Arbitration Institute of the Finland Chamber of Commerce".

The Arbitration Institute was given birth in Vaasa

In 1909, the Vaasa Tradesmen`s Association proposed to the Preparatory Committee for the Tradesmen`s Meeting that an arbitration board be established in Helsinki. The Committee also proposed that rural tradesmen`s associations establish local arbitration boards, each in their own town for local needs.

The idea was that the arbitration board to be established in Helsinki would primarily be used in disputes arisen in foreign trade. The feeling at the meeting was that importers would gladly welcome an arbitration institute in Helsinki and that also foreigners would soon get used to it.

The Helsinki Arbitration Institute: gaining the confidence of foreigners

The Chairman of the Vaasa Tradesmen`s Meeting, Mr. Hjalmar Schildt, submitted that, at least in the beginning, it would be sufficient to establish one single arbitration institute in Finland. Mr. Schildt grounded his proposal on the fact that countries comparable to Finland, like Denmark, Norway and Sweden, had only one or two arbitration institutes. He referred to his discussion with the Chairman of the Copenhagen Grosserer Handelsociete, who said that in Copenhagen it was considered that, to have the acceptance of the big business community, an arbitration institute had to be established in localities where fully impartial judges could be found. . In the minutes of the meeting, it was stated that there were no impartial arbitrators in towns with a small number of tradesmen because they were, in one way or another, partial or non-independent, for example, due to family relationships or their participation in business.

Mr. Gustaf Svanljung from Vaasa emphasised at the meeting that a single arbitration institute located in Helsinki would be enough for Finland. In his opinion, in Helsinki there would be better possibilities for resolving disputes quickly. He further stated that foreign good suppliers would specifically accept Helsinki. After a short discussion, the Tradesmen`s General Meeting entrusted the Central Committee of the Finnish Commerce Delegation the task of establishing an arbitration institute. The rules of the arbitration institute were adopted on 26 November 1910, and the institute was named "The Helsinki Arbitration Board of Commerce, Industry and Shipping".

Statements on trade practices and resolution of disputes by arbitration

In addition to resolving commercial disputes, the Helsinki Arbitration Board issued statements on trade practice until the 1930s. During its first thirty years of operations, the Arbitration Board issued 60 statements on trade practices. If the statement was of special importance, it was submitted to the Central Chamber of Commerce of Finland (currently known as the "Finland Chamber of Commerce" for a final decision. In the same period, the Arbitration Board decided 300 disputes in arbitration. Between 1920 and 1923, the annual number of arbitration cases was as high as 20 to 30. The number of cases was much lower in the 1930s and 1940s and remained low until the end of the 1980s. In the 1990s, the number of cases increased significantly, a trend that has continued. During the last decade (2001-2010), the Arbitration Institute appointed arbitral tribunals for more than 500 disputes.¹

¹ This number does not include statutory arbitration cases based on the Finnish Limited Liability Companies Act.

Members of the Arbitration Board as arbitrators

According to the 1910 Rules, it was the task of the Arbitration Board to resolve disputes in the areas of commerce, industry and shipping. Under the Rules, the number of Board members had to be at least 50. They had to be people held in general esteem and have experience in the areas of commerce, industry and shipping. Members were elected annually, and a resigning member could be re-elected.

Members of the Arbitration Board were elected for the first time in 1911. The Central Committee of the Tradesmen`s Meeting and the General Association of Finnish Employers elected a total of 60 members to the Arbitration Board. Thirty-five of them were from Helsinki. The other members were from Turku (7), Tampere (3), Viipuri (3), Oulu (2), Vaasa (2), Hanko (1), Hämeenlinna (1), Karhula (1), Kokkola (1), Kuopio (1), Lahti (1), Nokia (1) and Pori (1). Several of the members were well-known actors in the commerce sector, and are so even today, like Stockmann, Tallberg, Ek, Wiklund and Sinebrychoff.

When comparing the early days of the Arbitration Board with its present operation, attention should be paid to the significant difference that, under the 1910 Rules, the arbitrators were selected from among the members of the Arbitration Board. The selection was made by the Board of Directors in charge of day-to-day matters. The Board comprised the Chairman, Vice Chairman and three deputy members. The Board was assisted by a secretary with a law degree, who also acted as the Secretary of the Board.

The Annual Report of the Central Committee for 1911 tells us that, at the meeting of the arbitrators held in Helsinki on 17 May 1911, Mr. Hjalmar Schildt was elected as Chairman of the Institute, Mr. Gösta Björkenheim as First Vice Chairman and Mr. Aug. H. Soini as Second Vice Chairman. In addition, tradesman Mr. Julius Tallberg, the head of commercial school Mr. Kyösti Järvinen, and commercial counsellor Mr. Viktor Ek were elected as deputies.

Nowadays, under the current Rules of the Arbitration Institute, a member of the Board of the Arbitration Institute may not act as an arbitrator nor be appointed as arbitrator by the Board in arbitral proceedings governed by the Rules. A member may, however, act and be appointed as a sole arbitrator or Chairman of an Arbitral Tribunal, provided this is requested by the parties or by the party-appointed arbitrators. According to the present Rules, the members of the Board of the Arbitration Institute shall be persons of good repute and be familiar with business life. The Chairman, the Vice Chairman and at least two other members shall be lawyers, and at least two of

them shall be qualified to serve as a judge. In practice, all the members of the Arbitration Institute are lawyers.

The 1910 Rules: even nine-member arbitral tribunals

The 1910 Rules required *inter alia* that the arbitration agreement be in writing. Under these Rules, the request for arbitration had to be made in a similar way as today: The application addressed to the Arbitration Institute had to be sent to the Board of Directors of the Institute. It had to be accompanied by the arbitration agreement and other relevant appendices. When the application was received, the Board had to handle the request in a speedy manner. The Board had a duty to hear the respondent and request that the respondent submit a written reply in the matter, "under threat that failure to comply with it, would, nevertheless, result in the matter being referred to arbitrators".

Under the 1910 Rules, an arbitral tribunal consisted of three members. The Board of the Arbitration Institute appointed the arbitrators from among its members and the arbitrators elected a chairman from among themselves. An arbitrator had to be impartial and independent.

Under Section 11 of the 1910 Rules, the arbitrators had to resolve the dispute "most expediently". The same section included a provision on the principles of hearing and evidence.

The Chairman of the Arbitration Institute had the right to demand that the parties provide a security deposit for the costs of the arbitration. The minimum amount of the security deposit was 50 Finnish marks.

Under Section 13 of the Rules, the arbitrators had to notify the Board of the Arbitration Institute, if they were not unanimous on the award. In that case, the Board appointed two more arbitrators. The five-member arbitral tribunal decided that matter, provided that at least four arbitrators concurred. Otherwise the Board selected four more arbitrators, and, as stated in the 1910 Rules, "the decision made by the majority of these nine members shall be the arbitral award".

The party not complying with an award ended up on the bulletin board of the Stock Exchange

Section 18 of the 1910 Rules had detailed provisions on the enforcement of an arbitral award. If the losing party did not voluntarily comply with the arbitral award, the Chairman of the Arbitration Institute was to notify the party in writing that if it did not comply with the arbitral award within

eight days,, the failure to comply would be made public on the bulletin board of the Helsinki Stock Exchange. For a party living outside Helsinki, the period in question was 14 days.

If the losing party complied with the award within 48 hours of its posting on the bulletin board, it had to pay 300 Finnish marks to the treasury of the Arbitration Institute. After payment had been made, the notice was removed from the bulletin board. For the second non-compliance, the party had to pay 600 Finnish marks, and, for the third non-compliance, 900 Finnish marks. In case of subsequent non-compliance, the notice that had been on the bulletin board three times already was left on the bulletin board for one year.

If a party failed to comply with the award within 48 hours from the posting of the notice, the notice would stay on the bulletin board for one year. If the same party failed to comply in the same manner again, the notice would stay on the bulletin board for three years. For the third non-compliance, the notice would stay on the bulletin board for five years.

The Arbitration Board moved under the auspices of the Finland Chamber of Commerce

The Central Chamber of Commerce of Finland was established in 1918. Soon thereafter, the Arbitration Board started working under its auspices. In 1920, the original Rules were revised, but the name of the Institute remained the Helsinki Arbitration Board until 1928. The next revision of the Rules took place when the Finnish Arbitration Act of 1928 was enacted. At that point, also the name was changed to "The Board of Arbitration of the Central Chamber of Commerce of Finland". Thereafter, the Rules of the Arbitration Institute were revised in 1961, 1979 and 1993.

The present Finnish Arbitration Act (967/1992) dates from 1992 and the provisions of the UNCITRAL Model Law have been taken into account in its drafting.

The current Rules of the Arbitration Institute were adopted in 1993. The Rules are currently under revision and the new Rules are likely to be adopted in 2012.

At present, the Arbitration Institute appoints arbitrators for arbitration proceedings under its Rules and the Institute can also act as the appointing authority referred to in the UNCITRAL Arbitration Rules. The Institute has also Rules for Expedited Arbitration, under which a dispute is resolved by one arbitrator and the award has to be issued within three months from the date the case file has been sent by the Arbitration institute to the arbitral tribunal. The Arbitration Institute can also appoint conciliators for disputes in the conduct of business when the parties have so agreed.

As of April 2011, the Central Chamber of Commerce of Finland has changed its name in English to the Finland Chamber of Commerce. As a consequence, the name of the Institute in English has been changed to "The Arbitration Institute of the Finland Chamber of Commerce".

Although part of the Finland Chamber of Commerce, the Arbitration Institute is totally independent from the Chamber of Commerce in the exercise of its functions.

Summaries of awards were published in the early 1900s

In its early days, the Arbitration Institute published summaries of the arbitral awards. The first publication containing summaries came out in 1916. The publication describes disputes handled and resolved in the period 1911-1915. During those years, the total number of arbitral awards was fifteen. The summaries of these awards were also published in the magazines "Kauppalehti" and "Mercator".

A more extensive publication edited by Gustaf Norrmén in 1922, "Kokoelma Helsingin välityslautakunnan tuomioita vuosina 1911 - 1922" ("A Collection of Awards of the Helsinki Arbitration Board 1911-1922"), contains summaries of altogether one hundred arbitral awards. This means an average of nine disputes per year. Cases are discussed in chronological order and in the language of the award, i.e., in Finnish or Swedish.

A further publication edited by Niilo A. Mannio in 1937 summarises 99 arbitral awards. Again the summary is in the language of the award.

However, the summaries do not mention the costs ordered to be paid. As specifically stated in the introduction, "they are hardly likely to be of more general interest".

Nowadays the Arbitration Institute does not publish summaries of arbitral awards. The reason is that in a country of the size of Finland it would most likely be easy to identify the parties even if the summaries did not mention their names.

At present, the arbitrator has to sign a statement of acceptance, availability, impartiality and independence, in which he or she also undertakes to keep the information obtained during arbitral proceedings and the arbitral award confidential. In addition, the arbitrator undertakes not to disclose the arbitral award to third parties or submit it, for example, for publication.

Justice Gustaf Möller and his contribution to the development of the Arbitration Institute

Justice Gustaf Möller has been a member of the Arbitration Institute since 1989. He was Vice Chairman in the period 1999-2001 and has been Chairman of the Institute since 2002.

As Chairman of the Arbitration Institute, Justice Gustaf Möller has contributed his knowledge and experience to the development of the Arbitration Institute. Thanks to him and his incomparable expertise in the area of arbitration it has been possible to develop the work of the Institute to comply with international practice. His extensive international network and experience in international arbitration have been of practical assistance on numerous occasions. In addition, he has always been available to discuss with the Secretariat of the Institute even during his holidays—topics that arise from our work. Last but not least, it is a great pleasure and honor to work with Justice Gustaf Möller.

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