

# Do parties have an absolute right to dispute in person in Sweden?

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## Introduction

Until recently, virtual hearings were an unusual sight in Swedish arbitration. However, due to the ongoing COVID-19 pandemic, in a short time virtual hearings have become a common alternative to in-person hearings globally. To conduct a hearing online is not a problem under Swedish arbitration law, as long as both parties consent to it. On the other hand, it has been debated whether an arbitral tribunal can mandate that a hearing should be virtual instead of in person if one of the parties objects. The matter is currently being reviewed in a case in the Svea Court of Appeal.<sup>(1)</sup>

## Background

According to Section 24 of the Arbitration Act, an oral hearing will be held prior to the determination of an issue referred to the arbitrators if a party requests it, provided that the parties have not agreed otherwise.

Similar regulations are set out in Article 32 of the Arbitration Rules of the Stockholm Chamber of Commerce (SCC); an oral hearing will be held if requested by a party or if the arbitral tribunal deems it appropriate.

## Facts

In May 2019 the supplier filed a request for arbitration under the SCC rules against the buyer of its products. An oral hearing was scheduled to be held in May 2020. In March 2020, when it became clear that the COVID-19 pandemic posed a risk to the possibility of arranging the hearing, the arbitral tribunal's chair (a former justice of the Supreme Court) brought the issue to the parties' attention. Consequently, an alternative date was reserved in August 2020 in case it proved impossible to conduct the hearing in May 2020. In April 2020 the arbitral tribunal decided, against the objection of the buyer, that the hearing would be held as planned in May 2020 virtually. The hearing was later conducted virtually (ie, the counsels, witnesses and arbitral tribunal all participated through videoconferencing). In June 2020 the award was delivered.

The buyer challenged the award and requested the Svea Court of Appeal to set it aside due to:

- the arbitral tribunal exceeding its mandate; and
- irregularities in the proceedings.

The buyer elaborated on several arguments why it was inappropriate to convert the oral hearing into a virtual hearing. This included, among other things, that the buyer's representatives and witnesses were hindered from sitting in the same room as its counsel during the hearing,<sup>(2)</sup> whereas the supplier's representatives and witnesses shared the room with its counsel which disturbed the equality between the parties.

While the case may be ongoing, the Svea Court of Appeal has dismissed the buyer's request for preliminary injunction to render the award unenforceable.

## Comment

It has been debated in Swedish literature whether an arbitral tribunal can mandate that a hearing will be held virtually against the will of one of the parties. Former President of the Supreme Court Stefan Lindskog stated, in a newly released edition of a book regarding arbitration in Sweden, that a virtual hearing does not fulfil the requirements in the Arbitration Act that each party has an absolute right to an oral hearing.<sup>(3)</sup> In this matter,

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Lindskog is in conflict with his former colleague, justice Lars Edlund, who was the chair of the arbitral tribunal.

According to the Arbitration Act and the SCC rules, an arbitral tribunal has a duty to conduct the process in an impartial, appropriate and expeditious manner. Further, statements in the *travaux préparatoires* to procedural acts in Sweden imply that a hearing could be held virtually. In addition, having witnesses, counsels or parties attend through videoconference has been a common part of procedure in the Swedish courts for over a decade.

Provided that the Svea Court of Appeal does not find that it was inappropriate due to the specific circumstances of the case, it would be surprising if the court set aside the award due to the arbitral tribunal's decision to conduct the hearing virtually.

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## **Endnotes**

- (1) Svea Court of Appeal case T 7158-20.
- (2) This was in accordance with the buyer's internal restrictions due to the pandemic.
- (3) S Lindskog, *Skiljeförfarande*, 3 ed, 2002 (updated in May 2020).

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