SVEA COURT OF APPEAL	**JUDGMENT**	Case No.
Department 02	22 April 2013	T 6123-12
Division 0207	Stockholm	

CLAIMANT

Mr. L
[INFORMATION OMITTED]

Counsel: Advokaten E
[INFORMATION OMITTED]

RESPONDENT

Telefonaktiebolaget LM Ericsson (publ), Reg. No. 556016-0680
16483 Stockholm

Counsel: Advokaten Christer Danielsson
Frank Advokatbyrå AB
Box 7099
103 87 Stockholm

MATTER
Challenge of arbitral award

CHALLENGED ARBITRAL AWARD

Arbitral award rendered in Stockholm on 5 April 2012

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JUDGMENT OF THE COURT OF APPEAL

1. The Court of Appeal dismisses the ground referenced by Mr. L that the arbitral tribunal exceeded its mandate by reviewing whether Mr. L's actions constituted criminal activity.

2. The Court of Appeal rejects the claims of the claimant.

3. Mr. L is ordered to compensate Telefonaktiebolaget LM Ericsson (publ) for its litigation costs before the Court of Appeal in the amount of SEK 195,000 all comprising costs for legal counsel plus interest thereon pursuant to Section 6 of the Swedish Interest Act from the day of the judgment of the Court of Appeal until the day of payment.

4. Advokat E is ordered to compensate Telefonaktiebolaget LM Ericsson (publ) for its litigation costs before the Court of Appeal in the amount of SEK 30,000, plus interest thereon pursuant to Section 6 of the Swedish Interest Act from the day of the judgment of the Court of Appeal until the day of payment.

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BACKGROUND

Mr. L is a former employee of the Ericsson group of which Telefonaktiebolaget LM Ericsson (publ) (LME) is the parent company. In 1996, Mr. L commenced a foreign placement as head of the Ericsson group's Romanian business. As a result of this, on 29 May 1996, a so-called Long-Term Services Abroad Contract (the Contract) was entered. The Contract provides that certain other provisions, "General Conditions for Long-Term Service Abroad" (the GCE), also form part of the Contract. On 25 May 2010, LME requested arbitration and maintained that Mr. L had without permission and without LME's awareness collaborated in funds belonging to LME being transferred to him, and that he in any event had received and used the funds without LME's awareness and without being entitled to them. LME moved for repayment. Mr. L disputed all of LME's claims. Former Senior Judge G and advokat F were appointed as arbitrators, who in their turn appointed Chief Judge H as third arbitrator and chairman. An arbitral award in the case was rendered on 5 April 2012. The arbitral award ordered Mr. L to pay to LME USD 7,119,110 and EUR 252,840 plus interest.

On 5 February 2013, the Court of Appeal declared inadmissible some of the evidence referenced by Mr. L at that time.

MOTIONS BEFORE THE COURT OF APPEAL

Mr. L has moved that the Court of Appeal shall annul the arbitral award rendered between the parties on 5 April 2012.

LME has objected to any amendments to the arbitral award. LME has moved that the ground, below called challenge ground 6, to which Mr. L has objected.

The parties have claimed compensation for their respective litigation costs before the Court of Appeal. In this context, LME has moved that advokat E shall be held jointly and severally liable with Mr. L for LME's litigation costs.

Advokat E has objected to the motion on the joint and several liability to compensate litigation costs.

THE PARTIES' GROUNDS

Mr. L

Mr. L has referenced the following in support of his challenge.

1. The arbitral tribunal has, in its treatment of the witness Mr. E, exceeded its mandate by creating new legal rules and by basing its decision, at least in part, on a circumstance that had not been referenced by LME. (Item 2 of the first paragraph of Section 34 of the Swedish Arbitration Act (SFS 1999:116))

2. The arbitral tribunal based its decision on information provided by Mr. E which has not been referenced by LME, which breaches the principle set out in Section 24 of the Swedish Arbitration Act that a party shall be awarded the opportunity to present its case to the extent required. (Item 6 of the first paragraph of Section 34 of the Swedish Arbitration Act)

3. In breach of the principle of fair and equal treatment set out in Section 21 of the Swedish Arbitration Act the arbitral tribunal has not reviewed the case impartially, which constitutes a procedural error. The arbitral tribunal has failed to comply with fundamental procedural principles such as to actually, neutrally and impartially evaluate the evidence referenced in the case, which has constituted an excess of mandate. (Items 2 and 6 of the first paragraph of Section 34 of the Swedish Arbitration Act)

4. It has been outside the scope of the arbitral tribunal's mandate to consider the non-referenced circumstance that Mr. L's alleged bribes or "kickbacks" must have been beneficial to LME for them to be considered in Mr. L's favor. (Item 2 of the first paragraph of Section 34 of the Swedish Arbitration Act)

5. The arbitral tribunal has, with respect to the grounds referenced by LME, reached a conclusion that does not include a review of the grounds. This constitutes an excess of mandate or a procedural error. (Items 2 and 6 of the first paragraph of Section 34 of the Swedish Arbitration Act)

6. The arbitral tribunal has exceeded its mandate by considering whether Mr. L's actions constituted criminal activity. (Item 2 of the first paragraph of Section 34 of the Swedish Arbitration Act)

LME

LME has disputed that the arbitral tribunal has exceeded its mandate or that any procedural errors occurred that likely affected the outcome of the case.

With respect to challenge ground 2, it is maintained that it is precluded.

Challenge ground 6 has been submitted after the expiration of the challengeability period (the last sentence of the third paragraph of Section 34 of the Swedish Arbitration Act). Further, the issue of the arbitral tribunal's mandate has been finally determined by the judgment of Solna District Court of 31 October 2011. Thus, the challenge ground should be dismissed.

THE PARTIES' FURTHER DETAILS ON THEIR RESPECTIVE CASES

In support of their respective cases, the parties have referenced mainly the following.

Mr. L

The first and second challenge grounds

One of the people to be heard as witnesses in the case, Mr. E, requested by LME, in his statement addressed a number of issues that had not previously been discussed between the parties, whether in the arbitration proceedings or otherwise, and which had not been touched upon in any of the parties' many submissions in the case. The information provided by Mr. E during the final hearing was so unexpected that Mr. L's counsel, advokat E, devoted much of the cross-examination of Mr. E on these matters. Precisely because the information was entirely new, and was or could potentially be deciding to the case, it was important to clarify the chronology of these events in relation to the already known facts of the case. Mr. E was consequently on several

occasions questioned as to when the relevant event transpired, and he repeated his response to the question on several separate occasions.

The information provided by Mr. E was of particular importance to certain aspects of LME's motions, but had immediate effect also to other aspects. In appendices to LME's Request for Arbitration it was stated from which legal entity that a payment had been made to Mr. L's account. Among the legal entities listed in the relevant appendices was the Cypriot company, which in the arbitration proceedings was named TelworldAG. If LME was unsuccessful with its claims against Mr. L in this part, then at least the entire claim for EUR 252,840 would falter. Further, at least an amount of USD 719,323 of the other claim would also falter. This, in its turn, would in any event have affected the allocation of litigation costs, partially because it related to large portions of the amounts, and partially because substantial portions of the investigation efforts had been directed at these issues.

Mr. L consistently denied having had any dealings with a company named TelworldAG.

LME requested to hear Mr. E as witness only at a late stage, as a supplement to its final Statement of Evidence. At this stage, it was maintained that the purpose of the witness statement was to investigate the background of why an agency agreement was entered between LME and TelworldAG, but otherwise the purpose of his statement did not cover that which he later during the hearing actually claimed. When he provided his witness statement at the hearing, Mr. E suddenly claimed to have called Mr. L to inquire about TelworldAG, upon which Mr. L, according to Mr. E, responded "How is that any of your business?".

It was important to insert this alleged conversation between Mr. E and Mr. L in the chronology of events. An important point therein was the only physical meeting that took place between Mr. E and Mr. L, held at a conference hotel in Stockholm, in which also the former General Counsel of LME, Mr. B,

participated. Against this background, Mr. L's counsel queried Mr. E if the telephone conversation took place before or after the meeting at the hotel. Mr. E unambiguously responded that the telephone conversation took place prior to the meeting. Further, Mr. E maintained that the telephone conversation and what had transpired then was not discussed during the meeting, which Mr. L's counsel found curious.

Since the information provided by Mr. E was entirely new, and was not part of the file and since he was unable to explain why such an important issue had not been discussed during the subsequent meeting at the hotel, there were grounds for the arbitral tribunal to treat the information provided by Mr. E with the utmost caution. Not even after Mr. E's witness statement did LME amend its motions and it failed to reference the information provided by Mr. E.

The arbitral tribunal dealt with these new circumstances by autonomously placing the telephone conversation in time to the year following the hotel meeting as opposed to the year prior to the meeting. Dealing with the evidence in such a manner (or rather disregarding it), it is not difficult to reach the conclusion reached by the arbitral tribunal on page 38 of the arbitral award:

> Mr. E provided this information spontaneously during the hearing and despite several questions thereon, he maintained it with credibility. Therefore, the arbitral tribunal finds it established that Mr. L has expressed himself along the lines claimed by Mr. E. Such a statement is not reconcilable with Mr. L's statements in the present case that he had had no dealings with TelworldAG.
>
> Thus, LME has had the claims as maintained in the present case.

Thus, the arbitral tribunal has without support in agreement or in law awarded LME a claim based on the information in Mr. E's statements, meaning that the arbitral tribunal has created previously non-existing legal provisions,

which lies entirely beyond the mandate of the arbitral tribunal. The mandate of the arbitral tribunal was to review the case based on applicable provisions of the applicable law, which was in fact Swedish law. Swedish law does not include the type of provisions created by the arbitral tribunal in the case.

Further, the arbitral tribunal based its decision in the case on the now relevant information. Thereby, the arbitral tribunal further exceeded its mandate by basing its decision, at least in part, on circumstances that were never referenced by LME.

It has not been fully clarified whether an arbitral tribunal, which has considered a circumstance that was not referenced – in addition to having exceeded its mandate – has also breached the fundamental principle set out in Section 24 of the Swedish Arbitration Act that a party shall be awarded the opportunity to present its case to the extent required. It was undeniably difficult for Mr. L to defend against a circumstance upon which the arbitral tribunal based its decision, despite LME never having referenced the relevant circumstance.

The third challenge ground

When Mr. L took over as manager for LME's Romanian business in 1996, Romania was a poor and underdeveloped country permeated by corruption. There was corruption in all walks of society, and a precondition to running any form of business in Romania was the willingness to pay bribes.

In the arbitration proceedings, Mr. E referenced a written witness statement issued by Mr. P, in which Mr. P, as member of the board of directors of Ericsson's Romanian subsidiary during the relevant period, declared that the board of directors, and thereby LME, was aware that it was impossible to conduct business in Romania without making payments to, amongst others, Securitate. Further, Mr. E in his witness statement admitted that LME had

paid several millions to a member of parliament in Algeria. This information was not disputed by LME.

Mr. L also referenced other evidence to prove that he had worked in a country which required bribes to be paid to enable any LME business therein whatsoever.

It is obvious, having regard to amongst other things the arbitral tribunal's starting point in its grounds, the extent to which the parties' positions are accounted for, and not least that the arbitral tribunal entirely disregards to consider referenced evidence, that such a procedural error has occurred, without it having been caused by Mr. L, that the outcome of the case was affected and that there are grounds to annul the arbitral award. An arbitral tribunal shall carry out an evaluation of the evidence, in which certain referenced evidence is weighed against other referenced evidence, and the arbitral tribunal shall autonomously evaluate that evidence. An arbitral tribunal may not, however, when there is no counter evidence or when circumstances have been attested or not been disputed, entirely disregard this. Such a manner of dealing with the dispute of the parties does not fall under the scope of evaluation of evidence. Instead, it constitutes a procedural error under item 6 of the first paragraph of Section 34 of the Swedish Arbitration Act.

That the arbitral tribunal despite Mr. L's evidence chose to affix overriding credibility to LME forcefully establishes that the arbitral tribunal has acted in breach of the principle of fair and equal treatment.

In the alternative, or additionally, the procedural error could also constitute an excess of mandate. The expression "excess of mandate" ought reasonably to include also an "excess of mandate" in cases where the arbitral tribunal entirely or partially fails to complete its task. The parties had not authorized the arbitral tribunal to freely disregard referenced evidence, which is not supported by counter evidence [*sic!*] or to disregard attested circumstances.

The fourth challenge ground

The recitals produced by the arbitral tribunal prior to the final hearing discusses neither the grounds nor the circumstances referenced by LME that LME objected that the arbitral tribunal's review should include whether the payments to a recipient appointed by Mr. L must have been beneficial to LME. By the arbitral tribunal nevertheless having included this requirement in its review and moreover combined it with an unfounded claim, the arbitral tribunal has in each separate case as well as combined exceeded its mandate and grounds for annulling the entire arbitral award are at hand. The arbitral tribunal's insertion and consideration of a circumstance that was not referenced has affected the outcome of the case.

The fifth challenge ground

As main grounds in the arbitration proceedings, LME maintained that Mr. L without authorization and without LME's awareness had contributed to funds having been paid to him. The arbitral tribunal has not reviewed or identified the individual or individuals that together with Mr. L allegedly were behind the payments. Further, the type of involvement of Mr. L therein is not reviewed or identified.

Further, LME has interlinked its main and alternative grounds with the parties' agreement and applicable law, and maintains that the collaboration under the main grounds or the accepting of the funds constitutes both a breach of the Contract as well as criminal act under Swedish law. Therefore, the arbitral tribunal must review them both in conjunction, and not only if collaboration or accepting the funds occurred. However, the arbitral tribunal failed to review if collaboration or accepting the funds in breach of the Contract also constituted a crime under Swedish law.

The sixth challenge ground

The starting point to establish whether the mandate has been exceeded must be what the arbitral tribunal has been asked to decide. In the present case, the arbitral tribunal has been asked to decide on issues of the interpretation and application of "the Contract" and "CGE". LME cannot, based on the arbitration clause, bring claims based on non-contractual grounds. LME's main grounds claim that Mr. L's actions constitute a crime. However, a review thereof falls outside the scope of the arbitral tribunal's review as framed by the arbitration clause. A criminal action does not fall within the scope of the interpretation and application of "the Contract" and "CGE", whether lexically or otherwise. The capital amounts awarded by the arbitral tribunal to LME must be deemed as compensation for damages awarded by the arbitral tribunal because it found it established that a crime with criminal intent had taken place.

LME

The first challenge ground

The now relevant statement by Mr. E constitutes evidential fact, and not background circumstances that must be referenced. Further, Mr. E's statement was relevant only to about one tenth of the dispute value. Even if Mr. L would have grounds for his claims, an annulment of the entire arbitral award would never be relevant, but only the parts thereof relating to the payments to Mr. L from TelworldAG.

If the Court of Appeal would find that a procedural error has been committed, it has nevertheless not affected the outcome of the case. Mr. E's statement was not the deciding factor for the arbitral tribunal's decision in this respect. In this context, there was, amongst other things, a detailed written witness statement from the in-house legal counsel Mr. M on what had been established through LME's investigations of TelworldAG and its payments to Mr. L's accounts.

The second challenge ground

Mr. L's counsel was awarded the opportunity to cross-examine Mr. E. Further, it was moved that Mr. L should be heard again, which was accepted by the arbitral tribunal. The arbitral tribunal's procedural handling of the case was correct. Since Mr. L did not in any way object to the handling of the case, his right to challenge the arbitral award is now in any event precluded.

The third challenge ground

The arbitral tribunal did consider Mr. L's statements and thoroughly accounted for its opinion on the connected issues. The arbitral tribunal evaluated the evidence, but decided not to attach credibility to Mr. L's evidence, which mainly comprised his own statement. The arbitral tribunal has not "exceeded its mandate" and it has not been partial.

The fourth challenge ground

The grounds of LME's case included that LME had incurred a loss as a result of Mr. L's actions. One of Mr. L's grounds for objection was that LME had not incurred any losses and that received funds had been used in a manner beneficial to LME's business. LME's claim that it has incurred a loss implies that Mr. L's actions were not beneficial to or for the benefit of LME; otherwise there would have been loss to compensate. The arbitral tribunal held that Mr. L's actions had not been beneficial to LME, or as the tribunal phrased it, not for the benefit of LME. The conclusion of the arbitral tribunal was in fact that LME had established that it had incurred a loss to be compensated.

Irrespective of the issue of whether any "kickbacks" had been beneficial to LME or not is irrelevant, because the arbitral tribunal held that no

"kickbacks" had been established. If you find that no "kickbacks" had occurred, then the issue of whether they are beneficial never arises.

The fifth challenge ground

LME's main ground in the arbitration proceedings was the following:

> Mr. L has without authorization and without LME's awareness collaborated in the transfer of LME's funds corresponding to those claimed by LME. In any event, Mr. L has received and used those funds without LME's awareness, and without being entitled to do so. Hereby, Mr. L has breached the Contract and CGE. In addition, his actions are criminal. Mr. L is liable to compensate the losses incurred by LME. The losses amount to the claimed amount.

This ground includes several legally relevant facts. However, not all of these must be established to grant the claim. For example, it is sufficient that Mr. L has received and used the funds without LME's awareness and without the right to do so. It is not required, to be able to grant LME's claim, that it is also established that Mr. L collaborated in transferring the funds (the first sentence).

However, the arbitral tribunal found it had not only been established that Mr. L had received and used LME's funds without LME's awareness and without being entitled to do so, but also that he had collaborated in the carrying out the transfers. The latter was, in the arbitral tribunal's opinion, established by evaluating all of the referenced evidence in the case.

In its grounds, the arbitral tribunal has reviewed and found that several of the legally relevant circumstances in the main grounds have been established and thus rejected Mr. L's objections in these parts and reached the conclusion that the consequence must be that Mr. L is liable to compensate LME in the

claimed amount. It is not required that the arbitral tribunal's review goes further.

The sixth challenge ground

The period for challenges expired on 5 July 2012. Mr. L's challenge was received by the Court of Appeal on 4 July 2012. The claims on excesses of mandate of this challenge ground cannot be pinned to any of the challenge grounds submitted in the submission of 4 July 2012, and thereby deemed submitted prior to the expiry of the challengeability period.

Early in the arbitration proceedings Mr. L objected that the arbitral tribunal lacked jurisdiction to try LME's case. One of the grounds was that the alleged lacking jurisdiction was due to "the arbitration clause, with its purposefully narrow scope, cannot be applied to the case now brought by LME". However, the arbitral tribunal found that the arbitration clause did cover LME's case and that it did not lack jurisdiction based on any of the other grounds referenced by Mr. L.

Thereafter, Mr. L submitted an application for a summons to the Solna District Court, moving that the District Court should declare that the arbitral tribunal lacked jurisdiction to try the dispute. The District Court rejected Mr. L's case. Now, Mr. L again apparently maintains that the arbitration clause does not cover the dispute tried by the arbitral tribunal. However, the arbitral tribunal's jurisdiction to try LME's case has been finally determined through Solna District Court's judgment, which became final and unappealable when the Swedish Labor Court on 16 December 2011 did not grant leave to appeal.

The issue of joint and several liability for litigation costs

Already from the fact that all of Mr. L's evidence has been declared inadmissible it is clear that Mr. L's challenge is unfounded. This must Mr. E, who is an experienced litigator, have realized. Nevertheless, he agreed to

litigate the case. It could be held that this fact alone should render him personally liable for the litigation costs. Further, the manner in which Mr. E has carried out his task should render him personally liable. Mr. E has again and again twisted what LME has maintained and what the arbitral tribunal has found. LME has been forced to deal with the matter and clarify to the Court of Appeal the actual state of affairs. This has resulted in higher litigation costs for LME than normally required. Add to this the new challenge ground, submitted long after the expiry of the challengeability period, resulting in additional costs for LME.

Mr. L has added the following:

The sixth challenge ground

Mr. L has disputed that what has been maintained should be deemed as a new and separate challenge ground, in the sense set out in the third paragraph of Section 34 of the Swedish Arbitration Act. In fact, it is a more detailed account of what was maintained in the application for a summons. The principles established by the Swedish Supreme Court in NJA 1996 p. 751 on the term challenge grounds applies to the current situation. The Supreme Court did not hold that challenge grounds and legally relevant circumstance giving cause for a challenge are the same. Support for the Supreme Court's interpretation can be found in the legislative history to the Swedish Arbitration Act. The legislative history clarifies that a party may, after the expiry of the challengeability period, freely adjust its case within a specific set of factual circumstances (Government Bill 1998/99:35 p. 149). What Mr. L has done is, at the very most, to be deemed as an adjustment within a specific set of factual circumstances and thusly permitted.

As alternative grounds for dismissal, LME has maintained that the issue has been finally decided through Solna District Court's judgment of 31 October 2011 in case No. T 3491-11. The binding effect of that judgment cannot, however, be more far reaching than what was tried by the District Court. The

issue that the District Court tried was whether the arbitral tribunal had any jurisdiction whatsoever to try the dispute between the parties. The District Court found this to be the case, and that matter has been finally decided. However, the District Court has neither tried nor decided whether the arbitral tribunal had jurisdiction to decide whether Mr. L had committed a crime. After all, LME's case against Mr. L is based on commercial private law. Thus, the now relevant issue has not been finally decided by Solna District Court. In any event, LME has through the response to questions on the scope and extent of the arbitration clause excluded the review of criminal actions from the arbitral tribunal's mandate. It is due to the arbitral tribunal's review of criminal activity that it could award interest under the fifth paragraph of Section 5 of the Swedish Act on Interest, which requires that a crime has been established. Since interest was awarded based on the said provision, also the capital amount must have been awarded on the same grounds.

The issue of joint and several liability for litigation costs

LME apparently maintains that Mr. L's counsel already by accepting to litigate the case rendered himself liable for litigation costs. Mr. L has disputed that there are grounds to hold Mr. L's counsel liable already for the measure of submitting the application for a summons.

There are no precedents in Swedish case law on the issue of whether an arbitral tribunal is entirely free to treat the evidence as it pleases, and even change the contents of provided statements. That Mr. L reacts to a Swedish arbitral tribunal taking such liberties and asks whether such a course of action constitutes grounds for challenge is hardly surprising. That Mr. L's counsel supports such a review does not under any circumstances constitute grounds for rendering him personally liable for litigation costs. Also the remaining challenge grounds are well founded. LME has moved that, in any event and even if Mr. L's counsel cannot be held personally liable for litigation costs already on the grounds of initiating the challenge proceedings, then the manner in which he has carried out his task should render him so liable. The

applicability of Section 7 of Chapter 18 of the Swedish Code of Judicial Procedure hinges on the counsel's negligence or recklessness in the manner in which the case was litigated. Thus, there must be causality between alleged negligence and recklessness and the cost it has caused. For this, it is an absolute minimum to clearly state the measures that were of such nature that they could cause liability and what costs those negligent measures caused.

As LME's motion has been worded it covers its entire claim for compensation for litigation costs and not only a part thereof. The consequence thereof is that it covers the costs as from the statement of defense. Thus, in reality there is no actual difference between LME's first claim that already the initiating of the challenge proceedings should cause liability compared to the claim that the manner in which the case was litigated caused costs. Already due to this, LME's motion shall be rejected.

GROUNDS OF THE COURT OF APPEAL

The investigation

The Court of Appeal has pursuant to item 5 of the first paragraph of Section 18 of Chapter 42 and Section 1 of Chapter 53 of the Swedish Code of Judicial Procedure rendered its judgment without holding a main hearing.

The parties have referenced certain documentary evidence.

The findings of the Court of Appeal

The first challenge ground

If an arbitral tribunal considers a circumstance which has not been referenced, then it has exceeded its mandate (cf. Lindskog, Skiljeförfarande En kommentar, 2nd ed., p. 872). However, it is only legally relevant circumstances, i.e. circumstances of immediate importance to the legal effect, which must be referenced for the arbitral tribunal to be permitted to consider them.

Mr. L has maintained that the information provided by Mr. E constituted legally relevant circumstances and that the arbitral tribunal based its decision upon them, which constituted an excess of mandate.

As LME has formulated its motions in the arbitration proceedings the information provided by Mr. E in his witness statement, including the time of the alleged telephone conversation between him and Mr. L, does not have immediate importance to the legal effect, and does therefore not constitute legally relevant circumstances. Consequently, the arbitral tribunal's consideration of the circumstances cannot be deemed to constitute a mandateal excess.

Mr. L has further claimed that the arbitral tribunal has created new legal provisions. In this context, Mr. L has referenced that the arbitral tribunal, after having clarified its view on Mr. E's information and its credibility, has used the word "thus" when it stated that LME was the creditor of the claims relevant in the case.

In the opinion of the Court of Appeal, it is clear that the arbitral tribunal, when it found that LME was the creditor of the claims relevant in the arbitration proceedings, did not base this conclusion solely on the information provided by Mr. E. The arbitral tribunal states on p. 38 of the arbitral award

that through the documentary evidence referenced by LME it has been established that "[i]t is LME's funds that also in this context has been channeled through companies to ultimately end up in accounts belonging to Mr. L". In addition thereto, the arbitral tribunal accounts for the information provided by Mr. E and its opinion of Mr. E's credibility. Thereafter, the arbitral tribunal, again, sums up that LME was the creditor of the claims relevant in the case and that Mr. L's objection that LME was not the creditor was therefore rejected. Thus, the Court of Appeal finds that the arbitral award cannot be interpreted in the manner maintained by Mr. L.

It could further be noted that the Court of Appeal in its review should not review the arbitral award on its merits, and shall consequently not review what legal provisions that the arbitral tribunal applied. Thus, there are no grounds to grant Mr. L's motion on the now relevant ground.

Mr. L's motions cannot be granted based on the first challenge ground.

The second challenge ground

It is evident already from Mr. L's account of the circumstances surrounding the hearing of the witness Mr. E that he was awarded to present his case to the extent required. Thus, there occurred no procedural error in this context, and Mr. L's motions cannot be granted based on the now relevant ground.

The third challenge ground

Mr. L has maintained that the arbitral tribunal was partial and entirely disregarded the evidence referenced by him and that the arbitral tribunal thereby committed a procedural error, or in the alternative or in addition, exceeded its mandate.

Section 21 of the Swedish Arbitration Act provides, amongst other things, that the arbitrators shall handle the dispute in an impartial, practical, and

speedy manner. . If the arbitrators breaches this so-called principle of fair and equal treatment, that could constitute a procedural error (Madsen, Skiljeförfarande i Sverige, 2nd ed., p. 278). Further, the arbitral tribunal could commit a procedural error if it fails to properly consider certain referenced evidence (Lindskog, Skiljeförfarande En kommentar, 2nd ed., p. 896).

In its grounds, the arbitral tribunal explicitly states how it has evaluated the evidence referenced by the parties, including Mr. L's documentary and oral evidence. That the arbitral tribunal editorially has chosen to early in its award establish that it finds LME's referenced evidence generally convincing does not entail that it has breached the principle of fair and equal treatment. In other words, the arbitral tribunal has neither committed a procedural error nor exceeded its mandate, and Mr. L's motions cannot be granted based on this ground either.

The fourth challenge ground

Mr. L has maintained that the arbitral tribunal has decided on matters that had not been referenced by introducing that alleged bribery by Mr. L as well as "kickbacks" were required to be beneficial to LME in order to be considered by the arbitral tribunal. One of Mr. L's objections during the arbitration proceedings was that LME had not incurred any losses that rendered liability and that the funds he had received had been used in a manner beneficial to LME's business in Romania.

When the arbitral tribunal reviewed whether the relevant payments were "beneficial" to LME, it merely reviewed Mr. L's objection in this context. Thus, the arbitral tribunal has not exceeded its mandate and Mr. L's motions cannot be granted on the now relevant ground.

The fifth challenge ground

Mr. L has maintained that the arbitral tribunal has failed to review whether he collaborated in having the funds transferred to him and that the arbitral tribunal did not identify the individual or individuals that together with Mr. L supposedly carried out the relevant transfers.

The Court of Appeal finds that the arbitral tribunal has reviewed and found that Mr. L has collaborated in the relevant transfers. The arbitral tribunal was not required to identify possible collaborators or to establish in more detail how Mr. L collaborated in this context.

Further, Mr. L has maintained that the arbitral tribunal failed to review if his collaboration breached the Contract and Swedish law.

In its arbitral award, the arbitral tribunal has held that Mr. L without authorization and without LME's awareness collaborated in the relevant transfers as well as having received and used those funds without LME's awareness and without being entitled to the funds. Thereafter, the arbitral tribunal found that LME has established that it has incurred a loss giving rise to liability. Through these findings the arbitral tribunal held that Mr. L was liable to compensate what LME claimed in the case.

The arbitral award does not explicitly state that Mr. L has breached the Contract or Swedish law. However, it must be deemed that the arbitral tribunal has decided thereon by finding, after having established that Mr. L had committed the actions alleged by LME and after having rejected Mr. L's objections, that Mr. L was liable to pay the amounts claimed by LME in the case. In the opinion of the Court of Appeal, it is clear that the arbitral tribunal was of the opinion that the actions of Mr. L constituted a breach of his employment agreement (the Contract). Thereby, the arbitral tribunal must be deemed to have considered all the grounds required for it to reach its conclusion.

Thus, there has been no excess of mandate or procedural error in this context and the motions shall not be granted on the fifth challenge ground.

The sixth challenge ground

Mr. L has disputed that what has been referenced in this context shall be deemed a new challenge ground in the sense set out in the third paragraph of Section 34 of the Swedish Arbitration Act. In fact, it is a fleshing out of what was maintained in the application for a summons.

In the legislative history of the second sentence of the third paragraph of Section 34 of the Swedish Arbitration Act, it is stated that by challenge ground is not meant the individual items of the first paragraph, but rather legal facts that give rise to a challenge (Government Bill 1998/99:35 p. 149).

What Mr. L has maintained following the expiry of the challengeability period about the arbitral tribunal's exceeding its mandate by reviewing whether Mr. L's actions constituted criminal activity is not an adjustment of the original case within the scope of an already referenced set of circumstances. Instead, it is a new challenge ground that has been referenced after the expiry of the challengeability period. Thus, LME's motion that the new challenge ground shall be dismissed due to having been presented too late shall be granted.

Summary and litigation costs

In light of the above, the outcome is that all Mr. L's motions shall be rejected and that the challenge ground presented after the expiry of the challengeability period shall be dismissed. Upon this outcome, Mr. L shall be ordered to compensate LME for its litigation costs before the Court of Appeal. Mr. L has not objected to LME's claim in this respect. In the opinion of the Court of Appeal, the amount is reasonable.

Joint and several liability for advokat E

LME has moved that advokat E shall be held jointly and severally liable with Mr. L to compensate LME's litigation costs. Advokat E has objected that there are no grounds to hold him jointly and severally liable.

The Court of Appeal initially notes that the issue of joint and several liability for counsel under Section 7 of Chapter 18 of the Swedish Code of Judicial Procedure may be considered at the court's own initiative and irrespective of any motion thereon by the other party (Gärde, Nya Rättegångsbalken jämte lagen om dess införande Med kommentar, p. 210).

The mere fact that a party's case lacks a solid foundation can obviously not lead to that party's counsel being held liable for costs thereby incurred by the counterparty. Thus, advokat E cannot be held liable for all of LME's litigation costs.

In the opinion of the Court of Appeal, advokat E has in litigating the case showed a lack of forethought and certain nonchalance. However, this in itself is not sufficient for liability. In two instances, advokat E has been negligent in his litigating of the case in such a manner as set out in Section 6 of Chapter 18 of the Swedish Code of Judicial Procedure, to which reference is made in Section 7 of Chapter 18. He has referenced oral evidence, which has been considered by the arbitral tribunal and which was not relevant for the review of the challenge to be undertaken by the Court of Appeal and he presented a new challenge ground after the expiry of the challengeability period. LME responded to these actions and thus incurred additional costs. Advokat E must, particularly having regard to his experience in arbitration, have realized that these actions were unfounded. The Court of Appeal estimates that these additional costs amount to SEK 30,000. Advokat E shall be ordered to jointly and severally with Mr. L compensate LME in this amount.

The judgment of the Court of Appeal may not be appealed under the second paragraph of Section 43 of the Swedish Arbitration Act.

[ILLEGIBLE SIGNATURES]

The decision has been made by: Senior Judge of Appeal CR and Judge of Appeal KÅ, reporting Judge of Appeal, and Deputy Associate Judge AC.