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Ted Greeno

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Markus Kokko & Vilma Markkola
Borenius Attorneys Ltd

Efficiency of process

In Finland, disputes are primarily resolved in state courts. Arbitration is common in business-to-business disputes, although it remains the dispute resolution mechanism of choice for large businesses. Businesses that are involved in cross-border trade also usually opt for arbitration as a dispute-resolution mechanism, due, *inter alia*, to the international enforceability of arbitral awards. Other alternative dispute resolution methods such as mediation are not very common, although mediation has won ground in academic discussion, and even among practising lawyers.

There are three instances of state courts: the District Courts; the Courts of Appeal; and the Supreme Court. Only a limited number of cases reach the Supreme Court, as a case usually has to be valuable as a precedent in order to qualify for leave to appeal before the Supreme Court. There are also some specialist courts, which handle business-related disputes, such as the Market Court (e.g. IPR and Public Procurement), the Insurance Court and the Labour Court (applicability of collective bargaining agreements). The Average Adjuster, an official appointed by the Ministry of Trade and Industry, issues rulings on maritime insurance cases in the event of an average.

Finland has a parallel court system for administrative disputes that consists of the Administrative Courts as a first instance and the Supreme Administrative Court as the second and last instance. The Administrative Courts resolve issues concerning, e.g., taxation, land use and customs, as well as competition law issues such as public enforcement of cartel prohibition and merger control.

Court proceedings are not burdened by common law concepts such as juries or pre-trial discovery proceedings. Legal codification is abundant, as is the norm for civil law legal systems, and is fairly understandable to laymen. Legal precedent is also quite easily retrievable and so does not burden the parties' legal costs unreasonably, as might be the case in some common law jurisdictions. Prolonged hearings due to deliberation on procedural issues are quite uncommon, as deliberate obstruction by advocacy is quite rare.

Most submissions and almost all correspondence with the courts, including documentary evidence, can be filed electronically and with the support of the Ministry of Justice, the courts have made significant progress in striving for paperless proceedings.

A business dispute takes on average a year in the District Court and another year in the Court of Appeal, although averages vary locally, and one should not be surprised if a dispute takes up to three years to resolve in a state court. Arbitration proceedings usually take roughly a year from the formal initiation of arbitration.

The Ministry of Justice continuously examines various means by which the procedure in the courts can be streamlined and expedited in response to the continuous calls for efficiency and expedience. In the past few years, reforms have concentrated on the production of evidence.

If court proceedings take an exceptionally long time to conclude, a party may seek compensation from the state. With respect to time spent on proceedings, Finland is, compared to other European jurisdictions, not inefficient but can hardly be considered efficient either. Judges and courts have nevertheless taken a special interest in expediency and in recent years, judges have been noticeably more proactive in facilitating the examination of cases in order to minimise the total amount of time spent on the proceedings.

Integrity of process

Judges are impartial and their independence is reasonably protected by law. Judges are not formally bound by precedent or doctrine, only by law. In practice, judges will nevertheless apply precedent, established doctrine and other sources of law as well, unless there are grounds for deviating from them based on the facts of the case.

The concept of natural justice is not accepted by the Finnish legal system, although courts have a certain tendency to strive for fair and equitable outcomes. The legal conclusions reached by the courts are therefore generally predictable, and uncertainty is usually based on the parties' abilities or inabilities to present evidence in support of their claims. The state court system is generally considered to have integrity, and is considered fair and impartial with regard to foreign parties. Corruption and bribery are relatively unheard of with regard to judges in the Finnish court system.

State courts do lack business and industry experience. To that extent, they might not always be aware of the impact of special circumstances in the case at hand. Nevertheless, the adjudication has generally been considered fair and on a par with fact by practising lawyers and academics alike. Practising attorneys often recommend arbitration as a dispute resolution mechanism for business-to-business, high-value and complex disputes involving industry-specific circumstances, due to the possibility of arbitrator selection by either of the parties or the appointing institute, in addition to the other advantages of arbitration.

Privilege and disclosure

The rules on privilege in the production of documents are for the most part similar to the exemptions of giving testimony in the main hearing. Some information and documentation (such as business and trade secrets) are protected by law and are therefore not be subject to an order.

A public official, physician, pharmacist or midwife, or the assistant of such a person, an attorney or counsel, a court-appointed mediator or auxiliary mediator, or priest, may not present a document if it can be assumed that the document contains something on which he or she may not be heard as a witness.

In addition, a witness may refuse to give a statement that would reveal a business or professional secret, unless very important reasons require that the witness be heard on the subject matter. Similarly, a party may refuse to provide a document containing this kind of information. The court will examine the grounds for refusal prior to deciding on the issue. Partial production of a document may also be ordered.

There is an exception to the confidentiality obligation and right of an attorney. An attorney

may be ordered to testify and produce documents if he has not acted for the client in court proceedings (i.e. only acted in an advisory role). In-house counsels are considered regular employees of a company and as such do not enjoy any special confidentiality rights or obligations.

Settlement negotiations are protected by customary confidentiality agreements to the fact. Finnish law does not provide any special protection in this respect. Nevertheless, an attorney is not allowed to invoke a settlement offer in court, due to the Ethical Rules of the Finnish Bar Association (unless the offering party invokes it first or allows it).

Evidence

No specific provisions on standard of proof exist. In each case, the court will assess the relevance, materiality and weight of the evidence that the parties present during the proceedings. The court determines the outcome by applying the relevant law to the facts that have been established by the parties. Thus, evaluation of the evidence is based on the principle of free evaluation of evidence. Oral testimonies of the parties and witnesses are heard in the main hearing.

The main rule is that a party must be able to present its own evidence in support of its claims. As a rule, witnesses may not refuse to give evidence, but there are some exceptions to this rule. The statements made by witnesses are oral. Witnesses are not allowed to submit any written statements to the court during their hearing.

If a case may be settled out of court, the party must list all the items of evidence during the preparatory stage of the proceedings. No additional evidence may be referred to once the main hearing has been initiated.

Finland is considered a civil law country and does not have extensive discovery or disclosure proceedings concerning evidence in civil law disputes. The court may nevertheless order a party to present a document or another piece of evidence that may be relevant as evidence in the dispute when petitioned by a party. Refusal may be sanctioned with a fine and the court may also order an executive officer (bailiff) to execute the order.

A party to an arbitration may, if the arbitral tribunal considers it appropriate, petition a court to order the production of documents for the purpose of the arbitration, in which case the court will apply the Code of Judicial Procedure on the matter.

The Code of Judicial Procedure is based on the notion that the requested evidence must be specified and relevant as evidence in the case. Usually, the requirement of specificity is quite strictly interpreted. A petition concerning a narrow category of documents may nevertheless be successful, as courts have been somewhat more flexible during the last decade. However, as a rule of thumb, it may be stated that the petition and the subsequent order to produce should be specific enough for an executive officer to be able to enforce the order by executing it himself. The court may order a third party to produce the evidence as well.

The courts and arbitral tribunals may draw adverse inferences if a party refuses to produce the requested evidence (drawing adverse inferences naturally beset by its own set of problems concerning the conclusions one might be able to draw).

Electronic production of documents has not surfaced as a real problem, due to a restrictive view on document production in general. At the moment, the matter has raised some awareness but so far no concrete steps are being taken to prepare for possible problems concerning electronic production that might surface in the future.

Costs

Costs consist of attorneys' fees, witness fees and other miscellaneous costs. The courts charge a nominal amount for initiating proceedings.

The basic principle in the Code of Judicial Procedure is that the loser pays the reasonable and necessary costs of the winning party. What is considered reasonable is evaluated *in casu*. In business-to-business disputes, most of the costs are usually retrievable. The evaluation of whether legal costs have been reasonable is accentuated in proceedings involving private individuals, and the evaluation usually takes into account the complexity and value of the case at hand.

The costs shall be claimed alongside the substantial claims of the case, and the courts will decide on the allocation of costs in their judgments. When the judgment is final, the costs may be retrieved when enforcing the actual judgment.

Attorneys usually work based on hourly rates, and the costs are usually invoiced regularly. Conditional fees are not prohibited *per se*, but they are quite rare, as they are somewhat difficult to reconcile with the system and traditions in place. Fee caps are very rare in litigation assignments, but are sometimes employed in the appeals stage of court proceedings, as costs are significantly easier to predict at that stage.

Cost issues in arbitration follow the same principles, although arbitration tribunals tend to be somewhat more tolerant of the amount of legal costs claimed.

Litigation funding

Third-party funding is possible, and the most common way in which this is realised is by way of insurance. Other third-party funding is quite uncommon, although not unheard of, and has been used in landmark cases which concern entire industries or cases with multiple claimants.

The Finnish Bar Association's Rules on Ethics apply to attorneys-at-law. Conditional fees and contingency fees are not prohibited by the Bar, but are, nevertheless, quite uncommon.

Class actions

In Finland, class action lawsuits have been available since 2007. To this day, no class action cases have been filed. Class actions are only available to consumers in civil cases between consumers and businesses. Consumers must opt in in order to become class members. Only the Consumer Ombudsman, which also represents the class, has the authority to bring a class action. A case may be heard as a class action if: (i) several consumers have claims against the same defendant, based on the same or similar circumstances; (ii) the hearing of the case as a class action is expedient in view of the size of the class, the subject matter of the claims presented and the proof offered; and (iii) the class has been defined with adequate precision.

Interim relief

The courts may grant interim relief based on the Code of Judicial Procedure. Usually, the party petitioning for interim relief must post security for the potential damage an injunction may cause the other party.

The court may order the seizure of property if the petitioner establishes its receivable to be likely, and there is a danger that the other party hides or otherwise acts in a manner that endangers the receivable.

If the petitioner establishes the likelihood of him having some other enforceable right and there is a danger that the other party, by doing or neglecting to do something, endangers or otherwise diminishes the right from being realised, the court may: (i) under the threat of a fine, order the other party to refrain from doing something; (ii) under the threat of a fine, order the other party to do something; (iii) entitle the petitioner to do something or have something done; (iv) order the property of the other party to be set into the custody of an agent (trustee); or (v) order any other measure that is necessary to safeguard the right that needs to be protected.

The order must be proportional to the right that is to be safeguarded, and may not cause unreasonable harm to the other party. The system for interim relief is quite flexible in that it recognises different kinds of rights and the need to protect them, and has been successfully employed, for instance, to prevent strikes by labour unions.

Proceedings for interim relief are usually quite fast and effective and are handled as priority cases if so requested by the applicant. After the ruling on the interim relief, the order must be enforced by an Executive Officer, which will require security for possible damage that the order can cause. One can expect the application and enforcement of an urgent interim relief to take approximately three to five days.

It should be noted that a plaintiff applying for interim relief in Finland faces the risk of liability for damages if the interim relief is later found to be groundless and to have caused the subject of the order damage. The claim for damages shall be pursued in regular court proceedings.

Enforcement of judgments/awards

The local executive officers enforce domestic judgments. Enforcement may be initiated even though there is a pending appeals process ongoing. A judgment will also include a decision on legal costs, if either party has claimed costs. If an applicant requests enforcement before a final judgment from the Court of Appeals, it must post security for the eventuality that an appeals court changes the judgment.

Foreign court judgments cannot be enforced without an international convention or a national provision forming the basis of the enforcement action. Enforcement procedures vary depending on the international rules applicable.

For example, if a judgment has been rendered by a court in a Member State of the European Union, the recognition and enforcement is performed in accordance with the rules set out in Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

In addition, there are conventions allowing for the enforcement of judgments within specific fields depending on the subject matter, such as the Luxembourg Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

The enforcement of arbitral awards is decided on by the state courts. As a rule, the state court will apply the *in favorem pro validitate* rule on its deliberation, and the threshold for setting the award aside is quite high. However, as most arbitral proceedings take place in Helsinki, other District Courts might not be as familiar with arbitral law, in which case it is recommended to seat the arbitration in Helsinki. Finland has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and foreign arbitral awards are therefore enforceable in Finland.

An arbitral award can be set aside by the court based on either invalidity or nullity. The award is considered invalid if: (i) the case was inarbitrable; (ii) the award contradicts the foundations of the judicial system (*ordre public*); (iii) the award is so unclear and incoherent it cannot serve as a basis for enforcement; or (iv) the award has not been signed by the arbitrators (majority suffices, but an explanation must be provided for why the minority has not signed the award). The award is considered null if: (i) the arbitrators have exceeded their powers; (ii) the arbitrators have been appointed in the wrong manner; (iii) an arbitrator has been incompetent due to bias; or (iv) the arbitral tribunal has not afforded a party a sufficient opportunity to present its case.

Enforcement of a foreign arbitral award can be denied by the court if: (i) the arbitration agreement has been invalid (due to certain grounds); (ii) a party has not been informed of the proceedings or has otherwise been inhibited or unable to present its case; (iii) the arbitral tribunal has exceeded its powers; (iv) the composition of the arbitral tribunal or the arbitration itself has significantly deviated from the arbitration agreement; or (v) arbitral award has not yet become binding in the country in which it was given, or if it has been set aside in that country. The arbitral award may not be enforced to the extent that the arbitral award contradicts the foundations of the Finnish legal system (*ordre public*).

The party enforcing the award or the judgment always bears the risk for the other party's insolvency. If the execution is unsuccessful due to lack of assets, the party enforcing the award will have to pay its own legal costs, in addition to not being able to retrieve the claimed amount.

Cross-border litigation

As Finland is a Member State of the European Union, Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is applied in Finland, and may be considered one of the main instruments for international procedural law. In addition to this regulation, Finland is also bound by other applicable regulations such as EC No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. With regard to notices and evidence, Finland applies the Hague convention(s), although common law discovery or disclosure proceedings are not permissible. Enforcement of a foreign judgment must always be based on a convention or national provision.

International arbitration

Arbitration is governed by the Finnish Arbitration Act of 1992. The enactment was largely inspired by the UNCITRAL Model Law in place at the time. Only minor amendments have been made since its enactment. The legal community in Finland has been calling for a revision of the Arbitration Act in order for it to correspond to contemporary international standards. As a result, in January 2019, the Finnish Ministry of Justice launched a project to revise the Finnish arbitration legislation.

The main institutional body in arbitration is the Arbitration Institute of the Finland Chamber of Commerce. The Arbitration Rules of the Institute have been updated to conform to international best practice. The Rules address issues such as expediency and cost efficiency, multi-party administration, arbitrator-ordered interim relief and increased confidentiality. The Institute has a good reputation internationally, and both domestic and international disputes are regularly arbitrated under the auspices of its Rules. The Board of Directors includes highly recognised international practitioners, whose expertise benefits the institution.

The judiciary's attitude towards arbitration is quite positive, and attorneys tend to recommend arbitration in business-to-business disputes due to the advantages afforded by arbitration. The fact that state courts often lack knowledge of industry realities, despite otherwise being quite competent, also plays a role in attorneys' positive attitude towards arbitration. Finland is party to and has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

As a general rule, if a civil law case may be settled outside of court, the case is arbitrable. The exception is that consumers are not bound by arbitration agreements concluded before the dispute has arisen. Arbitration is not applicable to non-discretionary (indispositive) matters. The arbitral award may not be appealed, although it can be set aside based on the set of grounds elaborated above.

Although it has not been stated *expressis verbis* in the Arbitration Act, arbitrators are generally considered to have the power to estimate damages when a party is unable to bear its burden of proof to the full extent. Guidance on the powers of the arbitrators may be found in the Code of Judicial Procedure.

Arbitration proceedings are supported by the state courts if necessary. Although the majority of proceedings are institutional, some proceedings are *ad hoc*, and therefore may need court assistance to a greater extent, although even in these cases, court assistance is quite uncommon.

A party may petition a state court to appoint one or more arbitrators to the tribunal. Correspondingly, a court may relieve an arbitrator when requested to do so by the parties. A court may also enforce the production of evidence (including witness testimony) if it is considered necessary by the arbitral tribunal.

Notwithstanding the *lis pendens* rule applicable to the relationship between the arbitration proceedings and court proceedings, a state court may grant interim relief when petitioned to do so by a party. The Code of Judicial Procedure is applicable to the application for interim relief.

Mediation and ADR

State court judges are obligated to inquire into the parties' willingness to settle cases, and a case may also be referred to judge-led mediation proceedings if both parties agree to it. Judge-led mediation has garnered some success in low-value disputes, but has yet to become a major method of dispute resolution.

Mediation has not evolved into a noteworthy method of dispute resolution in Finland. Some industries, such as the construction industry, have developed dispute resolution mechanisms similar to mediation, but these are rarely agreed on in advance and usually deal with low-value disputes and single issues at once.

The advantages of mediation have been recognised among practising jurists and academics alike. Training is also offered by, *inter alia*, the Finnish Bar Association. The University of Helsinki has also founded a Conflict Management Institute aiming to research and develop alternative dispute resolution methods. Mediation and ADR has nevertheless not succeeded in making a breakthrough in Finland. Parties usually try to resolve their disputes amicably before retaining counsel. Due to the cooperative business climate in Finland, parties often succeed in their efforts and disputes subsequently are not referred to outside counsel until negotiations have deadlocked.

State courts and arbitration still lead the field when parties are unwilling to settle on their own, and the popularity of arbitration has increased in recent years.

Regulatory investigations

In Finland, regulations are often supported by criminal statutes and many criminal offences only require negligence (as opposed to intent) by the offender. These kinds of criminal statutes may be found in regulations covering, *inter alia*, the financial sector, work safety, tax and environmental issues. In recent years, authorities have concentrated especially on environmental cases and transfer pricing (tax), while investigations into the financial sector and other sectors have evened out to a steady stream of relatively standard cases.

The authorities are usually quite cooperative in their environmental supervision and the objective has been to minimise the impact of industry on the environment. Environmental permits are issued once the authorities are satisfied that all reasonable efforts are made to minimise the impact on the environment.

The number of environmental prosecutions has nevertheless grown during recent years and this development has culminated in the largest environmental criminal case in Finnish history, concerning a nickel mine in northern Finland. In that case, it was evident that cooperation between the industry, the supervising authorities, non-governmental organisations and the courts in charge presented a challenge to everyone involved.

Governmental bodies have been afforded rather broad powers of discretion by law with regard to their supervision of industry sectors, and they are in principle supported by the courts. It is therefore advisable to retain external counsel in the early stages of business operations in order to ensure that all regulations are taken into account and that business operations continuously monitor their regulatory obligations. External counsels have also proven themselves very useful when conflicts between businesses and regulatory bodies have surfaced. It is recommended that regular compliance reviews are performed of the business operations covered by extensive regulation in order to minimise the effects of any regulatory violations.

Markus Kokko
Tel: +358 20 713 3482 / Email: markus.kokko@borenius.com

Markus advises major domestic and international clients on dispute resolution and corporate crime cases.

Markus has in-depth experience of domestic and international corporate and commercial disputes and he has acted as lead counsel in numerous extensive cases. His field of experience encompasses cases related to a wide variety of business sectors, such as the chemicals industry, financial markets, international trade, retail and wholesale and mining. Markus also has an exceptional track record in handling a broad range of litigation and arbitration cases.

Markus frequently advises in complex corporate crime cases and criminal investigations regarding, *inter alia*, insider trading, environmental violations and tax.

Markus' efficient and client-oriented approach has earned him an excellent reputation which has been recognised by rankings in *Chambers Global*, *Chambers Europe*, *The Legal 500* and *Best Lawyers*.

Markus heads the Litigation & Arbitration and Corporate Crime teams at Borenius.

Vilma Markkola
Tel: +358 20 713 3302 / Email: vilma.markkola@borenius.com

Vilma is specialised in dispute resolution related matters. Vilma has assisted clients in several domestic and international corporate and commercial disputes. In addition to litigation, arbitration and corporate crime-related cases, Vilma also advises clients on employment and insolvency law.

Borenius Attorneys Ltd

Eteläesplanadi 2, FI-00130, Helsinki, Finland
Tel: +358 20 713 33 / Fax: +358 20 713 3499 / URL: www.borenius.com

www.globallegalinsights.com

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