

**BRIEF OVERVIEW OF A RECENT PORTUGUESE STATE COURT’S DECISION REGARDING THE APPLICATION OF IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION**

In a recent decision rendered in 1<sup>st</sup> February 2018<sup>1</sup>, in a patent arbitration, the Lisbon Court of Appeal declined a request for disqualification of an arbitrator, made on the grounds of multiple nomination (11 times) in similar cases, by the same law firm, within the previous three years and of publication of several books and scientific articles regarding the legal subject matter of the arbitration.

Although the fulfilment of the duty of disclosure was not questioned, the Court expressed its view about the standard of that duty stating that the *“duty of disclosure implies the consideration, in the view of the parties, of all the facts and circumstances that could rise justifiable doubts about the independence and impartiality”*, using the same standard foreseen in General Standard 3 (a) of the Guidelines (*“in the eyes of the parties”*).

Entering in the analysis of the grounds of the request, and regarding the books and scientific articles published by the arbitrator, the Court argued that the fact of the arbitrator has a certain thought regarding the question does not imply by itself lack of independence and impartiality and declined the request of disqualification. The Court explained that in a highly specialized area it is inevitable that the arbitrators have already expressed their thoughts about the legal questions in discussion in the arbitration. In addition, the Court stated that the reasons of suspicion about the impartiality of the judge can only lead to disqualification when objectively assessed, following the standard for disqualification adopted in the Guidelines (Explanation (b) to General Standard 2).

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<sup>1</sup> Decision of the Lisbon Court of Appeal of 01.02.2018, in the case nr. 1320/17.OYRLSB-8, available at [www.dgsi.pt](http://www.dgsi.pt).

Finally, the Court also declined the request of disqualification on the ground of multiple nomination. According to the reasoning, that circumstance itself would not be reason enough for removal of the arbitrator, since in certain areas of specialization the number of specialists is limited and the nomination can become frequent without jeopardizing the independence and impartiality of the arbitrator (similar stand is seen in the footnote 5 to 3.1.3 of the orange list of the Guidelines).

This recent Portuguese case law in matter of conflicts of interest in arbitration shows that the use of IBA Guidelines on Conflicts of Interests in International Arbitration by the state courts is more and more common when deciding challenges to arbitrators.

A clear influence of the Guidelines can be seen when addressing the standard for disclosure, as well as the standard for disqualification of the arbitrator, with express reference in the decisions to the IBA Guidelines.

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