

## **Finnish Supreme Court, Roulas v. Professor J Tepora**

### Member State

+ Finland

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### Topic

Accountability of arbitrators

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### Deciding Court Original Language

Korkein oikeus

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### Deciding Court English translation

Finnish Supreme Court

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### Registration N

Case KKO 2005:14

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### Date Decision

31 January 2005

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### ECLI (if available)

N/A

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### National Follow Up Of (when relevant)

N/A

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### EU legal sources and CJEU jurisprudence

N/A

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## ECtHR Jurisprudence

N/A

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## Subject Matter

The main issue concerned the non-disclosure by the presiding arbitrator that he had previously provided an expert opinion to the respondent.

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## Legal issue(s)

Accountability

Can arbitrators be held liable for negligence under Finnish contract law?

What is the legal relationship between parties and arbitrators in *ad hoc* arbitration and can this trigger liability of arbitrators?

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## Request for expedited/PPU procedures

N/A

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## Interim Relief

1. Indicate if the national court/applicant asked the CJEU/ECtHR for interim relief and a short summary of the reasons put forward
  2. Indicate if the CJEU/ECtHR granted the interim relief
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## Facts of the case

The *ad hoc* arbitration underlying this court proceeding arose from the share purchase agreement between three sellers and a company owned by a Finnish bank. The parties appointed two arbitrators, who then chose a chair of the panel, Mr Tepora. The panel issued an arbitral award against the sellers in 1995. This award has been annulled by the Helsinki Court of Appeal on the grounds that Mr Tepora should have been disqualified due to conflict of interest with the

respondent company because he provided an expert opinion to that company and other members of the group prior to and during the arbitration proceedings without disclosure. The sellers initiated another arbitration proceeding and sued Mr Tepora in court for damages. The case was heard by the District Court and then the Helsinki Court of Appeal that decided that the potential liability of Mr Tepora should be based on tort. This resulted in the dismissal of the claim.

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#### Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Supreme Court of Finland analysed the nature of the relationship between parties and arbitrators and ruled that it was contractual in nature.

The Court then decided that the annulment of the award following the arbitration proceedings was based on a fault which should result in the monetary contractual compensation of Mr Tepora to the parties. Mr Tepora was requested to pay around 81,000 EUR to the parties.

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#### Relation of the case to the EU Charter

N/A

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#### Relation between the EU Charter and ECHR

N/A

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#### Use of Judicial Interaction technique(s)

N/A

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#### Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/A

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#### Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

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#### Strategic use of judicial interaction technique (purpose aimed by the national court)

N/A

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#### Impact on Legislation / Policy

This decision clarifies the nature of the relationship between parties and arbitrators in *ad hoc* arbitration under Finnish law, which is based on the contract. As such, it may result in monetary compensation for the breach of the contractual duties by arbitrators.

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#### Notes on the national implementation of the preliminary ruling by the referring court

N/A

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#### Impact on national case law from the same Member State or other Member States

N/A

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#### Connected national caselaw / templates

N/A

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#### (Link to) full text

<https://finlex.fi/fi/oikeus/kko/kko/2005/20050014>

The summary originates in the following sources:

a) Emilia Onyema, *International Commercial Arbitration and the Arbitrator's Contract* (Routledge, 2010), 170;

b) Matti S. Kurkela, *Decision of the Finish Supreme Court in Case KKO 2005:14*, SIAR 2007 (1) <https://arbitrationlaw.com/library/decision-finnish-supreme-court-rendered-2005-case-kko-200514-stockholm-international>; and

c) UN CLOUT database:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/V09/810/25/PDF/V0981025.pdf?OpenElement>

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