SUPREME COURT OF NORWAY

J U D G M E N T

given on 19 May 2025 by the Supreme Court composed of

Chief Justice Toril Marie Øie
Justice Ingvald Falch
Justice Kine Steinsvik
Justice Knut Erik Sæther
Justice Eyvin Sivertsen

HR-2025-921-A, (case no. 24-159248SIV-HRET)
Appeal against Hålogaland Court of Appeal 3 July 2024

Øijord & Aanes AS	(Counsel Lars Nygaard)
Celsa Armeringsstål AS (intervener)	(Counsel Ole Rasmus Asbjørnsen)
v.	
Helgeland Invest AS Helgeland Industriutvikling AS	(Counsel Martin Aspaas)

(1) Justice **Sivertsen:**

Issues and background

(2) The case concerns the validity of an arbitral award and raises the issue of whether one of the arbitrators should have been disqualified due to a conflict of interest.

(3) Mo Industripark AS is a property and infrastructure company located in Mo i Rana. In 2020, the company had three shareholders. Øijord & Aanes AS held 20.4 percent, Celsa Armeringsstål AS – hereafter also referred to as Celsa – held 30.3 percent, and Helgeland Invest AS held 49.3 percent of the shares.

(4) In a demerger completed in September 2021, Helgeland Invest AS transferred its shares in Mo Industripark to a newly established company, Helgeland Industriutvikling AS. This share transfer has led to a series of disputes, some of which have been resolved by arbitral tribunals, and others by the ordinary courts.

(5) The case before the Supreme Court concerns the validity of an arbitral award rendered on 3 February 2023. In the award, Helgeland Invest and Helgeland Industriutvikling succeeded in their claim that Øijord & Aanes and Celsa:

> "acted unlawfully under the Shareholders Agreement of 19 June 2017 at the extraordinary general meeting of Mo Industripark AS on 8 February 2022, by voting against the board's proposed resolution on a capital increase under item 5."

(6) One of the three arbitrators was advocate Stephan Lange Jervell. Mr. Jervell was appointed as arbitrator by Helgeland District Court in February 2022, see section 13 subsection 4 of the Arbitration Act.

(7) In March 2023, Øijord & Aanes and Celsa brought an action in Helgeland District Court challenging the validity of the arbitral award. Both argued that the award was invalid due to a lack of legal interest. They also asserted flaws in the tribunal's reasoning.

(8) Moreover, Øijord & Aanes argued before the District Court that Mr. Jervell was disqualified from serving as an arbitrator in the case. The basis for this claim was that Wiersholm AS (hereafter Wiersholm), the law firm where Mr. Jervell is an advocate and partner, had an ongoing engagement with one of the parties – Celsa – during the arbitration proceedings. Øijord & Aanes only became aware of this engagement after the arbitral award had been rendered.

(9) Since Celsa was aware of the client relationship with Wiersholm, it is undisputed that the objection to Mr. Jervell's impartiality is precluded in Celsa's case, see section 14 subsection 2 second sentence of the Arbitration Act. Celsa has informed the Supreme Court that the relationship was not known to those representing Celsa in the arbitration proceedings.

(10) On 3 November 2023, the District Court handed down a judgment in favour of Helgeland Invest and Helgeland Industriutvikling:

> "1. Oslo District Court finds in favour of Helgeland Industriutvikling AS and Helgeland Invest AS.
>
> 2. Celsa Armeringsstål AS and Øijord & Aanes AS are jointly and severally liable to pay costs totalling NOK 1,650,000 to Helgeland Industriutvikling AS and Helgeland Invest AS within two weeks of service of this judgment."

(11) Øijord & Aanes and Celsa appealed to Hålogaland Court of Appeal, which, on 3 July 2024, ruled as follows:

> "1. The appeal is dismissed.
>
> 2. Øijord & Aanes AS and Celsa Armeringsstål AS are, jointly and severally, to pay costs of NOK 1,441,126 to Helgeland Industriutvikling AS and Helgeland Invest AS, within two weeks of service of this judgment."

(12) The Court of Appeal unanimously found that the arbitral award could not be set aside on the grounds of lack of legal interest. The majority of the Court also found that Mr. Jervell was not disqualified from serving as an arbitrator. One judge dissented, voting to invalidate the arbitral award on the grounds that Mr. Jervell was disqualified.

(13) Øijord & Aanes and Celsa have appealed to the Supreme Court. They have submitted a joint appeal on the issue of legal interest. In addition, Øijord & Aanes have independently appealed on the issue of Jervell's impartiality. Both appeals concern the findings of fact and the application of law.

(14) By decision of the Supreme Court's Appeals Selection Committee on 27 November 2024, the appeal from Øijord & Aanes on the issue of disqualification due to a conflict of interest was allowed to proceed to a hearing. The joint appeal from Øijord & Aanes and Celsa did not proceed. Celsa has been granted permission to act as an intervener in support of Øijord & Aanes, in accordance with section 15-7 subsection 1 (a) of the Dispute Act.

(15) A written statement from Mr. Jervell has been submitted to the Supreme Court. Apart from this, the case remains unchanged from that before the Court of Appeal.

The parties' contentions

(16) The appellant – Øijord & Aanes AS – argues that the arbitral award must be set aside as invalid due to a lack of impartiality, see section 43 subsection 1 (d) of the Arbitration Act.

(17) The standard for assessing impartiality should be stricter for arbitrators than for judges in the ordinary courts. This is necessary to maintain confidence in the arbitration system.

(18) The law firm Wiersholm, where Mr. Jervell is a partner, has had an ongoing client relationship with Celsa for several years. Although Mr. Jervell was not personally involved in the client relationship, this creates reasonable doubt about his impartiality and independence

in the arbitration case. The key issue is how the relationship appears externally, based on an objective assessment.

(19) Given the scope, duration and invoiced amount, the engagement for Celsa was substantial. It is incorrect to assess the extent of the engagement in relation to Wiersholm's overall business. If that were the standard, disqualification would rarely occur for large law firms.

(20) Mr. Jervell breached his duty of disclosure by failing to disclose the client relationship prior to his appointment as arbitrator. The Court of Appeal made no error in its findings of fact on this matter. This breach is, in itself, a factor that weighs in favour of disqualification.

(21) Øijord & Aanes AS asks the Supreme Court to rule as follows:

> "1. The arbitral award dated 3 February 2023 is set aside on the grounds of disqualification.
>
> 2. Øijord & Aanes AS is awarded costs before the District Court, the Court of Appeal and the Supreme Court."

(22) The intervener – Celsa Armeringsstål AS – agrees that the arbitral award is invalid due to Mr. Jervell's disqualification and his breach of the duty of disclosure. Mr. Jervell would not have been appointed as arbitrator had he disclosed Celsa's client relationship with Wiersholm.

(23) The arbitral award must be set aside in its entirety, not only in relation to Øijord & Aanes. This applies even if Celsa if precluded from raising an objection. Partial setting aside is not permitted when the tribunal was not lawfully constituted. This is a ground for invalidity that affects the entire award. Moreover, Øijord & Aanes and Celsa are co-parties in a case involving the same legal issue for both of them, which necessitates a consistent outcome for both.

(24) Celsa Armeringsstål AS asks the Supreme Court to rule as follows:

> "1. The arbitral award dated 3 February 2023 is set aside on the grounds of invalidity.
>
> 2. Celsa Armeringsstål AS is awarded costs."

(25) The respondents – *Helgeland Invest AS and Helgeland Industriutvikling AS* – contend that the Court of Appeal's judgment is correct.

(26) The standard of impartiality should not be applied as strictly to arbitrators as to judges in the ordinary courts. In arbitration, public trust plays a less central role, as emphasis is placed on the parties. Accordingly, the decisive factor in assessing impartiality must be how a reasonable and well-informed third party would view the circumstances.

(27) Wiersholm's engagement for Celsa does not disqualify Mr. Jervell from serving as an arbitrator. The engagement was limited in scope and handled by other advocates at Wiersholm. Mr. Jervell was not personally involved in the client relationship.

(28) It must be assumed that Mr. Jervell informed Helgeland District Court about the client relationship prior to his appointment as arbitrator. It was the Court's responsibility to pass this information on to the parties. Accordingly, Mr. Jervell fulfilled his duty of disclosure. On this point, the Court of Appeal erred in its findings of fact. In any event, Øijord & Aanes must be identified with Celsa's knowledge of the matter due to their closely aligned interests.

(29) In the alternative, the arbitral award can only be set aside with respect to the claim against Øijord & Aanes, and not the claim against Celsa. For Celsa, the matter has been finally resolved, as the appeal against the Court of Appeal's judgment was not admitted for hearing.

(30) Helgeland Invest AS and Helgeland Industriutvikling AS ask the Supreme Court to rule as follows:

> "1. The appeal is dismissed.
>
> 2. Øijord & Aanes AS and Celsa Armeringsstål AS are – jointly and severally – to compensate Helgeland Industriutvikling AS's costs before the Supreme Court."

My opinion

The law

(31) An arbitral award may only be set aside by the ordinary courts on the grounds specified in section 43 of the Arbitration Act, in conjunction with section 42. One such ground is that "the composition of the arbitral tribunal was incorrect," see section 43 subsection 1 (d). The wording of the provision, as well as the preparatory works, confirms that this includes the disqualification of members of the arbitral tribunal, see Proposition to the Odelsting No. 27 (2003–2004), page 111.

(32) The requirement of impartiality is set out in section 13 subsection 1 of the Arbitration Act, which states that arbitrators "shall be impartial and independent of the parties". Section 14 subsection 2, first sentence, further clarifies this requirement:

> "An arbitrator may only be challenged if there are circumstances that give rise to justifiable doubts about his impartiality or independence … ."

(33) Disqualification thus arises if there is "justifiable doubt" as to the arbitrator's impartiality or independence.

(34) Section 43 subsection 1 (d) of the Arbitration Act does not establish a requirement of causality. In other words, it is not a condition for setting aside the award that the disqualification may have influenced its content, see Norwegian Official Report 2001: 33 *Arbitration*, special remarks on the draft provision section 8-2, page 114.

(35) For judges in the ordinary courts, the requirement of impartiality is governed by sections 106 to 108 of the Courts of Justice Act. One of the questions in this case is whether the threshold for disqualification differs under the two Acts, or whether there are other differences in the assessment. Øijord & Aanes, supported by Celsa, argue that the impartiality requirement

under the Arbitration Act must be applied more strictly than under the Courts of Justice Act, whereas Helgeland Invest and Helgeland Industriutvikling argue the opposite – that the standard under the Arbitration Act is more lenient and flexible.

(36) I see no basis for concluding that there is, in general, a difference in the threshold for disqualification under the two Acts. Section 14 subsection 2 of the Arbitration Act is worded differently and uses different terminology, but this does not necessarily imply a difference in substance. I note that Article 6 (1) of the European Convention on Human Rights (ECHR) also uses the terms "independent and impartial" to describe the requirement of impartiality. According to established case law, section 108 of the Courts of Justice Act must be interpreted and applied in accordance with the requirements of the ECHR, see for example HR-2020-2079-P, paragraph 18. The assessment is often framed as the question of whether there are "reasonable and justifiable doubts about the judge's impartiality", see HR-2025-699-A, paragraph 13 with further references. This closely aligns with the wording of the Arbitration Act.

(37) I add that the requirement in Article 6 (1) of the ECHR of independence and impartiality also applies to arbitration, unless the parties have, "in an unequivocal manner", waived this protection voluntarily, see the judgment of the European Court of Human Rights (ECtHR) in *Beg S.p.a. v. Italy* of 20 May 2021, paragraph 135 et seq. As far as I can see, neither this judgment nor other ECtHR case law on arbitration suggests that the substance of the impartiality requirement generally differs from what applies to the ordinary courts. As this case stands, I see no reason to address ECtHR case law further.

(38) The legislative history supports the view that the impartiality requirements in the Courts of Justice Act and the Arbitration Act are largely aligned.

(39) The 1915 Civil Procedure Act contained provisions on arbitration in Chapter 32. Under this Act, the disqualification rules in sections 106 to 108 of the Courts of Justice Act also applied to arbitrators. This followed from section 456 subsection 1, which referred to those rules.

(40) This was changed with the introduction of the Arbitration Act. This Act replaced the arbitration provisions of the Civil Procedure Act and is based on a Model Law developed by a UN body, the United Nations Commission on International Trade Law (UNCITRAL). Although the Model Law is not binding, it has served as a template for arbitration legislation in many countries. The purpose of applying the Model Law in the revision of Norwegian arbitration legislation was to facilitate international arbitration in Norway by relying on widely recognised rules common to various legal systems, see Norwegian Official Report (NOU) 2001: 33, Part II, section 8.4, pages 49–50, and Proposition to the Odelsting No. 27 (2003–2004), page 25.

(41) The impartiality rules in the Arbitration Act are based on Article 12 of the UNCITRAL Model Law on "impartiality" and "independence". The Civil Procedure Committee considered whether the impartiality requirement should continue to be governed by the Courts of Justice Act, but chose to adopt the Model Law in this area as well, in consideration of "international disputes where the parties and counsel may be unfamiliar with Norwegian procedural law", see Norwegian Official Report 2001: 33, Part II, section 8.8.4, page 66. The same section states the following regarding the drafting of the provision:

> "It must be required that arbitrators are impartial and independent. These terms should not be further defined in the statutory text itself. It is difficult to formulate precise requirements, and doing so would in any case give rise to additional questions of interpretation. The Committee has considered whether the text should include examples of situations covered by these terms. However, such a list would not be exhaustive. In the Committee's view, listing examples in the provision would not significantly clarify the content beyond what already follows from a natural linguistic understanding."

(42) The Ministry endorsed the Committee's proposal for a separate provision on impartiality, but proceeded on the basis that the substance of the requirement of impartiality would be "largely" the same as under the Courts of Justice Act, see Proposition to the Odelsting no. 27 (2003–2004), page 94. This was elaborated as follows:

> "Under section 456 subsection 1 of the Dispute Act, the rules in sections 106 to 108 of the Courts of Justice Act apply directly through their reference to the disqualification requirements for judges. According to section 14 subsection 2 of the Arbitration Act, the rules in the Courts of Justice Act cannot be applied directly. However, most of the typical cases under sections 106–108 of the Courts of Justice Act will also give rise to justifiable doubt as to whether the arbitrator is impartial and independent. The same applies where a judge would have been disqualified under section 108 due to 'other special circumstances."

(43) The preparatory works can be summarised to indicate that the impartiality requirement for arbitrators is, to a large extent, intended to align with that applicable to ordinary judges. Since the Model Law is not binding, this guidance from the preparatory works must be taken into account when interpreting and applying the impartiality requirement. Deviations may occur – for example due to the specific characteristics of arbitration or the goal of achieving a uniform international practice – but the preparatory works do not address such deviations.

(44) International sources may also be relevant for interpreting and applying the impartiality requirement under the Arbitration Act. This includes the guidelines from the International Bar Association (IBA), IBA Guidelines on Conflicts of Interest in International Arbitration, most recently revised in 2024. These guidelines provide recommendations based on what is regarded as sound international practice and may serve to supplement and nuance the standards established through case law under the Courts of Justice Act. Particular weight may be given to the guidelines in cases involving issues unique to arbitration, for example the appointment of advocates as arbitrators, which is the issue in this case.

(45) I do not find that the considerations underlying the impartiality requirement justify a general difference in the threshold for disqualification between arbitrators and ordinary judges, as argued by the parties in opposite directions. In the ordinary courts, public confidence is a central concern. This is linked to the judiciary's role as a branch of government responsible for upholding societal norms. In line with this, the decisive factor under section 108 of the Courts of Justice Act is whether there are circumstances that may cause "the parties or the public to question the judge's impartiality", see HR-2025-699-A paragraph 12 with further references. In arbitration, where the parties are primarily professional users, the concern for how the situation appears to the public, carries less weight. For arbitration, the IBA Guidelines suggest a different standard, namely whether a reasonable and well-informed third person would find grounds for doubting impartiality, see Part I paragraph 2 (c):

> "Doubts are justifiable if a reasonable third person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case…"

(46) In my view, however, this does not imply that more should generally be required to establish disqualification in arbitration than under the Courts of Justice Act. The arbitration system also serves society's need for dispute resolution and depends on the trust of its users and the public at large. In this regard, I refer to Recommendation to the Odelsting No. 51 (2003–2004), page 10, where the Justice Committee emphasised that "there is a public interest in ensuring that arbitration is a sound method of dispute resolution". A robust and trustworthy arbitration system requires strict enforcement of the impartiality requirement, just as in the ordinary courts.

(47) Against this background, I conclude that there is no general basis for applying a different threshold for disqualification between arbitrators and ordinary judges. However, deviations may occur where justified by the specific characteristics of arbitration or the objective of a uniform international practice.

Advocates as arbitrators

(48) When an advocate is appointed as an arbitrator, questions of impartiality may arise if the advocate or his or her firm has an existing client relationship with one of the parties – as in the present case.

(49) This issue does not arise for professional judges, as they are prohibited from simultaneously practicing as advocates, see section 27 subsection 2 of the Advocates Act. However, similar concerns may arise for lay judges in the ordinary courts. In Rt-2011-20, an expert lay judge was found to be disqualified due to his employment with a consulting firm that had engagements with one of the parties in the case. It was emphasised that the assignments were slightly related to the case pending in court, and that the expert had been personally involved in the client relationship. Paragraph 40 of the judgment states:

> "Whether a business relationship between a party and a company in which a lay judge is employed may result in disqualification, depends on the nature and scope of the business relationship and the circumstances in general. For example, a person employed by a business connection may be disqualified if, through that relationship, he has developed close personal contact with the party or someone employed by him, or has become involved in the relevant dispute through the engagement."

(50) Beyond this ruling, I have found little concrete guidance in Supreme Court case law under the Courts of Justice Act. However, the IBA Guidelines provide relatively detailed comments on issues of impartiality in the context of appointing advocates as arbitrators. The Guidelines also include illustrative examples, categorised into red, orange and green lists. The red list concerns situations that generally give rise to disqualification due to a conflict of interest, whereas the orange list includes circumstances requiring individual assessment. The green list covers situations that are normally unproblematic. I will base the following on the 2024 version of the Guidelines, which does not differ in any material respect from the version in force at the time of the arbitration proceedings.

(51) Regarding situations where it is not the arbitrator personally, but his or her law firm that has a client relationship with one of the parties, the IBA Guidelines, Part I paragraph 6 (a) state:

> "The arbitrator is in principle considered to bear the identity of the arbitrator's law firm or employer, but when considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists, … the activities of an arbitrator's law firm or employer, if any, the law firm's or employer's organisational structure and mode of practice, and the relationship of the arbitrator with the law firm or employer, should be considered in each individual case. The fact that the activities of the arbitrator's law firm or employer involve one of the parties shall not necessarily constitute a source of such conflict …"

(52) The starting point is thus that the advocate bears the identity of his or her firm in the impartiality assessment, but this is not automatic. An individual assessment must be carried out, and relevant factors are described in the commentary to Part I paragraph 6 (a) of the IBA Guidelines:

> "The relevance of (i) the activities of the arbitrator's law firm or employer, such as the nature, timing, and scope of the work by the law firm or employer; (ii) the law firm's or employer's organisational structure and mode of practice; and (iii) the relationship of the arbitrator with the law firm or employer, should be considered in each case."

(53) As regards the scope of the work, the general rule is that the conflict of interest extends to all advocates in the firm if the commercial relationship is significant. Where the relationship is too limited in scope to be considered significant for the firm, an individual assessment is required. This follows from the fact that the two scenarios are included on the red list and orange list, respectively – see the Guidelines Part II, paragraphs 2.3.6 and 3.1.7.

(54) What I have cited from the IBA Guidelines are consistent with general case law under the Courts of Justice Act and provide the basis for the following summary:

(55) Whether an advocate should be disqualified from serving as an arbitrator due to a client relationship with one of the parties depends on an overall assessment taking into account the nature, scope and duration of the client relationship, see Rt-2011-20, paragraph 40. Relevant in the individual assessment is whether the advocate personally handled the engagement, or whether it was managed by others within the firm. In the latter case, factors such as the size and organisational structure of the firm, as well as the advocate's role within it, may be significant. Attention must also be given to whether the client relationship is ongoing or has been terminated, and, if so, how long ago it ceased, see HR-2016-2311-P, paragraphs 27 and 28, with further references.

(56) In my view, the starting point must be that if the firm with which the advocate is affiliated – whether as a partner or employee – has a significant engagement for a party during the arbitration proceedings, the advocate is disqualified from serving as arbitrator. This applies even if the client relationship is handled by other advocates within the same firm. The advocate is thus identified with the firm as a whole. This position is consistent with the IBA Guidelines and reflects what appears to be the prevailing view in arbitration literature. It is based on the premise that advocates within a firm, at least from an external perspective, form a community of shared interests. Moreover, it is easy for outsiders to imagine that informal discussions and exchanges of information may occur within the collegial environment,

particularly in smaller firms lacking clear organisational divisions, see HR-2016-681-A, paragraphs 19 to 21, with further references.

(57) There may be grounds for departing from the presumption that the advocate is identified with the firm, particularly where the engagement is of a more limited nature. This must be determined through an individual assessment, in which the scope and commercial significance of the engagement – viewed in relation to the firm's overall business – are relevant factors. Any points of connection between the advocate and the specific client relationship must also be taken into account, as any such point may easily lead to disqualification.

The content of the duty of disclosure

(58) In arbitration, the general rule is that the parties themselves appoint the arbitrators, see section 13 subsection 2 of the Arbitration Act. However, the parties have limited means of identifying connections that may render a proposed arbitrator disqualified. For this reason, section 14 subsection 1 of the Arbitration Act imposes a duty of disclosure on the proposed arbitrator:

> "When a person is approached in connection with his possible appointment as an arbitrator, he shall of his own accord disclose any circumstances likely to give rise to justifiable doubts about his impartiality or independence. From the time of his appointment and throughout the arbitral proceedings, an arbitrator shall immediately disclose any new such circumstances to the parties."

(59) The duty of disclosure is broad and requires the disclosure of "any circumstances that may reasonably give rise to doubts about impartiality, even if it is uncertain whether the circumstance would actually lead to disqualification", see Proposition to the Odelsting No. 27 (2003–2004), page 93. The purpose is to clarify any potential impartiality issues at an early stage, thereby avoiding delays or tactical obstruction, see Norwegian Official Report 2001: 33, Part II, section 8.8.4, page 67. The Proposition further states on page 93:

> "The arbitrator must personally ensure to inform the parties. It is not sufficient that the parties have received the information from other sources."

(60) The arbitrator is therefore personally responsible for providing the necessary disclosures. This must be done in a manner that ensures verifiability of what information has been disclosed, and that all parties receive the same information. This will normally require the disclosures to be made in writing.

(61) The statement in the preparatory works that the proposed arbitrator must disclose information to "the parties", should in my view be understood as referring to the typical situation where the parties appoint the arbitrator. Where, as in Mr. Jervell's case, the appointment is made by the District Court in accordance with section 13 subsection 4 of the Arbitration Act, I consider the duty of disclosure to be fulfilled if the information is provided to the District Court. It is the Court's responsibility to present the information to the parties for comment before the appointment is made. This follows from the fundamental principle of giving the parties the opportunity to express their views, see section 11-1 subsection 3 of the Dispute Act, in conjunction with section 6 subsection 3 first sentence of the Arbitration Act.

(62) While it may be expedient for the arbitrator to also mention the matter to the parties after the appointment, I do not see that section 14 subsection 1 of the Arbitration Act imposes a duty to do so. Exceptions may arise where there are clear indications that the District Court has failed to pass on the information to the parties. This situation bears resemblance to cases where new circumstances arise after the appointment, which the arbitrator is obliged to disclose to the parties under the second sentence of section 14 subsection 1. I will not go further into this, as it is not a relevant issue in the present case.

(63) A breach of the duty of disclosure may, in itself, undermine confidence in the arbitrator and may therefore be relevant in the assessment of impartiality, see Norwegian Official Report 2001: 33, special remarks on the draft provision section 3-3, page 93, and Proposition to the Odelsting No. 27 (2003–2004), page 94. However, such a breach will generally only have an independent impact on the outcome of the impartiality assessment in borderline cases. As I understand it, this view is also expressed in the IBA Guidelines, Part I, paragraph 3(g):

> "An arbitrator's failure to disclose certain facts and circumstances that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, does not necessarily mean that a conflict of interest exists, or that a disqualification should ensue."

The individual case

(64) Wiersholm's assistance to Celsa concerned an environmental law matter, arising from a decision by the Norwegian Environment Agency regarding pollution from Celsa's factory. Wiersholm advised in the appeal process and in following up the final outcome. The engagement commenced in April 2017 and was concluded in August 2023. This period encompasses both the appointment of Mr. Jervell and the arbitration proceedings in the present case. According to the information provided, Wiersholm has had no other engagements for Celsa.

(65) In my assessment, the client relationship with Wiersholm does not provide sufficient grounds for doubting Mr. Jervell's impartiality and independence in the arbitration proceedings.

(66) Although the engagement spanned several years, I proceed on the basis that work on the matter was carried out only sporadically. A total of NOK 1.9 million including VAT was invoiced over the course of more than six years. This must be regarded as insignificant in relation to Wiersholm's overall operations. It has been stated that, in 2022, Wiersholm employed over 240 advocates, including 46 partners, and had a turnover exceeding NOK 1 billion. It is also relevant that the engagement concerned advice in a specialised legal field, rather than strategic advisory services, which are more likely to create ties to the client and broader insight into their situation. The *nature and scope* of the engagement therefore weigh against disqualification. This is by no means the kind of "significant" engagement for the firm that, under the IBA Guidelines, would normally give rise to disqualification.

(67) The absence of any *points of connection* between Mr. Jervell and the client relationship also weighs against disqualification. The engagement for Celsa had no relevance to the subject matter of the arbitration and was handled by an advocate in a different department at Wiersholm. Mr. Jervell has no affiliation with the relevant area of law or with the responsible advocate beyond a collegial relationship. Wiersholm is a large firm, where the risk of

informal information flow is minimal in a case such as this, see HR-2016-681-A, as previously mentioned.

(68) Mr. Jervell has a longstanding affiliation with Wiersholm. He is a prominent figure within the firm, having served as a partner for over two decades and held various board positions. However, this affiliation is not, in itself, sufficient to outweigh the factors that weigh against identifying him with the firm in relation to the engagement for Celsa. I also note that Mr. Jervell currently holds the position of Managing Partner at Wiersholm, although he assumed this role only after the arbitral appointment in question.

(69) The parties disagree as to whether Mr. Jervell informed the District Court of Wiersholm's engagement with Celsa.

(70) It is undisputed that Mr. Jervell submitted a written statement to the District Court, in which he declared himself "impartial" in the arbitration proceedings. Following an immediate evidentiary hearing, the Court of Appeal found it "clear" that he did not disclose Wiersholm's engagement for Celsa. The Supreme Court has been presented with a written statement from Mr. Jervell, which I do not consider to provide grounds for departing from the Court of Appeal's findings of fact on this point.

(71) It must therefore be assumed that Mr. Jervell failed to comply with the duty of disclosure under section 14 (1) of the Arbitration Act. In this context, I note that the client relationship falls within the orange list of the IBA Guidelines on Conflicts of Interest in International Arbitration – circumstances which, depending on an individual assessment, may give rise to doubts as to impartiality or independence, and which the arbitrator is therefore obliged to disclose, see Part II, paragraph 3.1.7, in conjunction with Part I, paragraph 3 of the Guidelines.

(72) As previously mentioned, a breach of the duty of disclosure may, in itself, carry weight in the assessment of impartiality. However, in the present case, I do not find that this breach is decisive for the overall assessment of impartiality.

Conclusion and costs

(73) I therefore conclude that Mr. Jervell was not disqualified from serving as an arbitrator. Against this background, the appeal is dismissed.

(74) Helgeland Invest and Helgeland Industriutvikling have prevailed before the Supreme Court and are entitled to compensation for costs under section 20-2 (1) of the Dispute Act, in conjunction with section 20-5 (1). There are no compelling reasons to justify exempting Øijord & Aanes from liability for costs under the exception provided in section 20-2 (3).

(75) Counsel Aspaas, on behalf of Helgeland Industriutvikling, has submitted a claim for costs of NOK 1,350,925. The claim consists entirely of fees for a total of 256.75 hours of legal work, at an average hourly rate of NOK 5,262. In addition, VAT of NOK 337,731 is claimed, bringing the total to NOK 1,688,656. It is noted that four advocates were involved in the preparation of the case before the Supreme Court.

(76) The assessment of what constitutes necessary costs, is based on an overall evaluation of what is reasonable to incur in the particular case. This includes a requirement of proportionality, see HR-2023-1157-A, paragraph 52. In my view, the fee claim is excessive in the light of the issues raised. This remains the case even when taking into account that the dispute is between commercial parties. The oral hearing before the Supreme Court lasted one and a half days. The legal framework is not especially complex, and, as previously noted, the case remains substantially unchanged from that before the Court of Appeal. While it is natural for a case to be thoroughly prepared for the Supreme Court, it must be expected that a considerable portion of the work from earlier instances may be reused, see HR-2023-1157-A, paragraph 53. On this basis, I find that the number of hours is beyond the scope what may be regarded necessary and reasonable.

(77) I have concluded that, given the nature and complexity of the case, necessary legal costs may appropriately be set at NOK 1,100,000 including VAT. This corresponds to approximately 170 hours of work at the average hourly rate indicated. In making this assessment, I have taken into account that the statement of costs also encompasses work related to certain procedural matters during the preparation of the case for the Supreme Court.

(78) According to section 20-6 (1) of the Dispute Act, the liability for costs of the intervener, Celsa, must be determined separately, see also section 20-1 (3). Celsa has closely cooperated with Øijord & Aanes in the conduct of the case and has submitted identical claims. In my view, Celsa must therefore be held jointly and severally liable for costs, see section 20-6 (2). Nor are there any grounds for exempting Celsa from liability for costs.

(79) I find no grounds for altering the lower instances' rulings on costs.

(80) I vote for this:

J U D G M E N T :

1. The appeal is dismissed.

2. In costs before the Supreme Court, Øijord & Aanes AS and Celsa Armeringsstål AS are – jointly and severally – to pay Helgeland Industriutvikling AS NOK 1,100,000 within two weeks of service of this judgment.

(81) Justice **Falch:**

Special remark

(82) I agree with Justice Sivertsen in all material respects and with his conclusion.

(83) However, I do not share his view that the duty of disclosure imposed on arbitrators under section 14 subsection 1 of the Arbitration Act is fulfilled merely by the arbitrator providing information of relevance to his impartiality to the District Court judge who appoints him. In my view, the arbitrator must *ensure that such information is communicated to the parties* to

the arbitration, as also expressed in the preparatory works, see Proposition to the Odelsting No. 27 (2003–2004) at page 93, which Justice Sivertsen has cited.

(84) The purpose of section 14 subsection 1 is "to ensure that circumstances which may form the basis for an objection [against an arbitrator] are disclosed as early as possible", see Proposition to the Odelsting No. 27 (2003–2004), pages 53 and 55. The provision is therefore ineffective if the relevant information is not communicated to the parties, typically to their counsel. In my opinion, the preparatory works and legislative intent must be decisive in this context, although the wording of the first sentence of section 14 subsection 1 is somewhat open. In practice, this means that if the arbitrator is not certain that all parties received the information prior to the appointment, he himself must provide it to the parties immediately after being appointed.

(85) This means that Mr. Jervell did not fulfil his duty of disclosure, as he failed to ensure that the parties to the arbitration were made aware of Wiersholm's engagement with Celsa. I therefore do not need to consider whether he provided the information to the District Court judge. As for the significance of this breach of duty in the assessment of impartiality, I agree with Justice Sivertsen in all material respects.

(86) Justice **Sæther**: I agree with Justice Sivertsen in all material respects and with his conclusion.

(87) Justice **Steinsvik**: Likewise.

(88) Justice **Øie**: Likewise.

(89) Following the voting, the Supreme Court gave this

J U D G M E N T :

1. The appeal is dismissed.

2. In costs before the Supreme Court, Øijord & Aanes AS and Celsa Armeringsstål AS are – jointly and severally – to pay Helgeland Industriutvikling AS NOK 1,100,000 within two weeks of service of this judgment.