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Personal liability of Dutch arbitrators for wrongful decisions

Arbitration is a popular means to resolve business disputes in The Netherlands. Several arbitration institutions have been set up, offering tailor made arbitration solutions for (among others) the maritime, construction and securities sectors. These arbitration institutions include TAMARA (Transport And Maritime Arbitration Rotterdam Amsterdam), the NAI (Netherlands Arbitration Institution) and the Arbitration Board for the Building Industry in The Netherlands (“Raad van Arbitrage voor de Bouw”).

The Netherlands is a party to the New York Convention on Arbitration, and this convention has been implemented in Dutch law. Dutch courts will therefore honour arbitration clauses in national and in international agreements, and will refer cases with regard to these agreements to arbitrators.

In 2009, the Netherlands Supreme Court (“Hoge Raad der Nederlanden”) delivered a landmark decision about the personal liability of arbitrators who had wrongfully decided that parties in certain proceedings agreed upon a valid arbitration clause.

A company by the name of Sagro initiated institutional arbitration proceedings under the rules of the Netherlands Arbitration Institute against a German company and against a Dutch company called ASB Greenworld. ASB Greenworld appeared in the arbitral proceedings and raised the plea that the arbitral tribunal lacked jurisdiction because there was no valid arbitration agreement. Arbitrators dismissed the plea and awarded the claim as filed by Sagro. Subsequently Greenworld filed an application to the Court in order to set the arbitral award aside for absence of a valid arbitration agreement. The Court denied the application but the Court of Appeals later indeed quashed the arbitral award for absence of a valid arbitration agreement. Later appeals by Sagro to the Netherlands Supreme Court were dismissed.

This did not end proceedings. Greenworld subsequently held the Netherlands Arbitration Institute liable, and also sued the arbitrators personally, reasoning that the arbitrators committed an unlawful act (or tort) under Dutch law. The claim was dismissed in two instances and Greenworld appealed to the Netherlands Supreme Court, which led to a landmark decision on arbitrator liability in The Netherlands.

The Supreme Court decided that the mere fact that a decision is set aside does not make the decision wrong. Arbitrators render judicial or quasi-judicial functions that render them comparable to judges. Like judges, arbitrators should be at liberty to judge cases. When arbitral awards are set aside, this does not necessarily mean the decisions were wrong and decisions can only be held to be unlawful in exceptional cases.

As a general rule formulated by the Netherlands Supreme Court, arbitrators can only incur personal liability in the event of intent, wilful misconduct or if arbitrators manifestly failed to exercise due care and skill.

For more information, please see the following articles on our website:

[Arbitration in The Netherlands](#)

[Netherlands Supreme Court: ASB Greenworld v. NAI and arbitrators](#)