SWEDEN
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with an
ADDENDUM by
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UPDATE by
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a. Parties’ Right to a Physical Hearing in the *Lex Arbitri*

1. *Does the lex arbitri of your jurisdiction expressly provide for a right to a physical hearing in arbitration? If so, what are its requirements (e.g., can witness testimony be given remotely, etc.)*?

**Short answer:** Not expressly.

International arbitration in Sweden is governed by the Swedish Arbitration Act (the “SAA”). The SAA does not expressly address whether parties have a right to a physical arbitration hearing.

2. *If not, can a right to a physical hearing in arbitration be inferred or excluded by way of interpretation of other procedural rules of your jurisdiction’s lex arbitri (e.g., a rule providing for the arbitration hearings to be “oral”; a rule allowing the tribunal to decide the case solely on the documents submitted by the parties)?*

**Short answer:** Yes, such a right can likely be inferred, but some would disagree.

A *per se* right to a physical hearing is in our view implied and is indeed embedded in the Swedish arbitration framework. The starting point on whether the right to a physical hearing exists can be found in Section 24 of the SAA, which provides parties with the right to request an *oral* hearing. Thus, we must start the analysis by discerning what is meant by the right to request an oral hearing. This enquiry, for the purposes of Swedish law, must be done by looking at Swedish law specifically, and not necessarily through a comparative legal analysis, no matter how persuasive or tempting such enquiry may be for an international arbitration practitioner or scholar.

Guidance on what constitutes an oral arbitration hearing in Sweden can be found in the SAA itself, in the preparatory work, as well as in the commentary to the SAA and

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3 Stefan LINDSKOG, *Skiljeförfarande: en kommentar* (Norstedts Juridik AB 2020). In Sweden, the previous Chief Justice of the Supreme Court, Stefan Lindskog, is also the most reputable arbitration scholar. It is well-known in Swedish arbitration circles that his scholarship on the subject matter is to be treated not merely as plausible *de lege ferenda*, but
in other leading scholarship. To some extent, analogies or inferences can possibly be
drawn by looking at the Code of Judicial Procedure and the European Convention on
Human Rights (“ECHR”) (see more below).

Reading Section 24 of the SAA in light of the preparatory work and the commentary
to the SAA sheds sufficient light on whether parties have the right to request a physical
hearing in Sweden. The relevant part of Section 24 of the SAA reads as follows:

“The arbitrators shall afford the parties, to the extent necessary, an opportunity to
present their respective cases in writing or orally. If a party so requests, and provided
that the parties have not otherwise agreed, an oral hearing shall be held prior to the
determination of an issue referred to the arbitrators for resolution”.

The preparatory work, in turn, expressly provides for the option to hear witnesses
remotely in certain circumstances, but it does not mention any right to conduct a remote
hearing, let alone at one party’s objection. The relevant part reads as follows:

“One can also use written witness testimony and hearings through phone or a TV-
monitor. The ultimate limitations are, as this enquiry explains it, not a matter of any
legal obstacles but rather dependent on the available technology”.

This section should be read together with the part of the preparatory work that
discusses whether a party can be denied an oral hearing:

“The enquiry’s proposal means that a party cannot be denied an oral hearing on the
main issue, if he so requests. This proposal contains the important limitation that a
party cannot request an oral hearing in e.g. procedural issues or other issues that
cannot be described as the main issue. This limitation reduces the risk of delays in
the procedure. Some foreign experts have also touched on this particular problem
formulation. Furthermore, in the Government’s opinion, it is of great importance that
the preparatory work leaves it open for the parties to derogate the right to an oral
hearing from the arbitration agreement with binding effect. In this sense, party
autonomy is thus left untouched. In view of what has been said and as the preparatory

almost as de lege lata. Thus, his commentary to the SAA has received an elevated standing
and is treated almost as a primary source of law. It essentially fills in the gaps of the SAA.

4 For other excellent scholarship that indeed informs the interpretation and application of the
SAA in case of an ambiguity in international commercial arbitration in Sweden, see Kaj
HOBÉR, International Commercial Arbitration in Sweden (Oxford 2011) and Finn
MADSEN, Commercial Arbitration in Sweden (Jure 2020).


work is in line with the Model Law’s regulation, the Government finds that there are compelling reasons in favor of this enquiries proposal.”

The fact that witnesses are explicitly mentioned, but not the overall right to an oral hearing, and the fact that a party cannot be denied an oral hearing but can be forced to deliberate certain procedural issues remotely, should, through the principle of expressio unius est exclusio alterius, lead to the conclusion that the right to a physical hearing is an integral and vital right pursuant to the SAA. Notwithstanding this right, certain modifications can evidently be done vis-à-vis certain procedural features in the name of procedural efficacy and the avoidance of dilatory tactics.

Thus, the preparatory work further entrenches the inference that (i) a party cannot be denied an oral hearing, and (ii) an oral hearing is best understood as referring to a physical hearing. Furthermore, in order to put this inference beyond doubt, former Chief Justice Stefan Lindskog writes as follows in his seminal commentary to the SAA:

“Oral hearing means a meeting at which the arbitrators and the parties meet and the parties are given the opportunity to develop their action before the arbitrators. A videoconference may in some instances streamline an arbitration process. However, a hearing held through such a conference is not to be regarded as oral in the sense referred to in section 1, 2nd sentence in paragraph 24 in the Swedish Arbitration Act. Thus, if a party requests an oral hearing on the basis of that provision, he does not have to be satisfied with a video conference”.

In fn. 528, Lindskog elaborates further and states as follows:

“The legal text must, however, be considered to be clear. And in my opinion, a video conference cannot adequately replace an oral hearing. The arbitral tribunal may, of course, be authorized to decide that the final hearing shall be conducted via video. This can be done, for example, by means of a regulation in an arbitration order. However, a general regulation to the effect that the arbitral tribunal decides on the proceedings according to what it deems appropriate should not suffice. The right to a final hearing with personal presence is so essential that an abstention requires explicitness. An authorization should also have a distinct character of the exception rule and be accompanied by a clear suitability requirement (mark section 1, 1st sentence). A rule of such kind may be justified in light of the pandemic that broke out in 2020. – Different in the case of an oral hearing according to section 1, 1st sentence; where the arbitral tribunal decides what may be necessary”.

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8 S. LINDSKOG, Skiljeförfarande: en kommentar, fn. 3 above, p. 699 (free translation by the Authors).
9 Ibid. at fn. 528 (free translation by the Authors).
This methodology culminates in our view to a resounding “yes,” i.e., parties that are subject to arbitration in Sweden do indeed have the right to a physical arbitration hearing if they so request, or alternatively to protest against the suggestion of replacing the default physical procedure for a remote one.

The counterargument would emphasise arbitrators’ already existent powers, jurisdiction, and duties as manifested in general principles of procedural efficacy, i.e., the fact that (i) arbitrators have a duty under Section 21 of the SAA to “handle the dispute in an impartial, practical, and speedy manner”, and (ii) there is no express right to a physical hearing but that there is at least an express right to hear *inter alia* witnesses remotely, and that therefore oral hearings include remote hearings by inference when and if the technology so allows.10

Those who disagree with the perception that a right to a physical hearing exists include other prominent arbitration scholars and practitioners. In an online seminar series, Professor Maxi Scherer explained that the silence inherent in many arbitration laws and rules should lead tribunals to take guidance from certain general principles, which afford arbitrators “broad powers to determine the procedure as they consider appropriate”, including “when and where [e.g. remotely] a hearing is to be held”.11 Scherer explains that a right to an oral hearing does not translate to mean “a physical hearing” and that arguments exchanged orally and simultaneously over video link are the same.12 In the same seminar, Kristoffer Löf has also “dispelled the notion that Swedish law requires any such hearing to take place physically”.13

That said, no matter how influential these scholars are, the ultimate judges on whether the right to a physical hearing exists (or should exist) will be just that, judges. The Svea Court of Appeal is currently hearing matters on this topic, and it is likely that the Supreme Court will eventually be asked to determine the matter once and for all.14

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10 See Preparatory Work to the SAA (1998/99:35) p. 114: “One can also use written witness testimony and hearings through phone or a TV-monitor. The ultimate limitations are, as this enquiry explains it, not a matter of any legal obstacles but rather dependent on the available technology” (free translation by the Authors).


14 Note that one of the co-authors of this report, Mr. Magnusson, is counsel representing one of the parties in this litigation, and arguing in favour of the right to a physical hearing.
courts will have to decide on one of two possible approaches when navigating this rather uncharted territory; that is, (i) go along with the “Lindskog-reasoning”, i.e., that the right to a physical hearing indeed exists and is per se guaranteed by the current arbitration framework, or (ii) reach the conclusion that there is a current ambiguity in the SAA, which does not expressly, nor by inference, answer the question on whether the right to a physical hearing exists, and therefore that each objection to a remote hearing should be analyzed on a case-by-case basis whereby arbitrators (and eventually judges) have to determine whether the lack of a physical hearing could cause a violation of the procedural guarantees protected as mandatory rules (e.g., due process and the principle of equality). The latter approach is informed by several fundamental elements of international arbitration, inter alia, (i) party autonomy, (ii) the right to present one’s case, (iii) the right to equality, and (iv) the arbitrators’ obligation to proceed in a practical and speedy manner. It is true that the latter approach has certain benefits in avoiding a potential stream of “do-overs” while simultaneously preserving procedural justice and fairness for the instant case. Thus, the decision to proceed with an arbitration hearing remotely may be compatible with the current law if one attributes enough weight to potential adverse consequences. Such interpretation is, however, unlikely in Sweden. Conversely, it is probably true that the former approach (accepting the Lindskog-reasoning) is legally correct and even more in line with the purpose of the SAA. We are of the opinion that the meaning in Section 24 of the SAA has not changed due to, for example, technological enhancements nor as a result of other circumstantial realities (e.g., pandemic consequences).

Thus, according to the current discourse we will either be left with a “blanket rule” or a “case-by-case rule”. Both are indeed viable. However, this binary choice may rest on a misconception. The current debate is focused primarily on either the inferred right in Section 24 or the possible discretion found in the first paragraph of Section 21. Such analysis completely circumvents the second paragraph in Section 21, namely, that the arbitrator shall preserve party autonomy “unless they are impeded from doing so”. Thus, even if there is a per se right to a physical hearing, such right may be limited under exceptional circumstances. Accordingly, the general right to a physical hearing would not be unqualified. That is, however, completely different from accepting a general rule that arbitrators have an open-ended discretion to conduct arbitral hearings remotely. Indeed, such an approach would significantly limit the situations in which an arbitrator could decide to proceed remotely, albeit not excluding the option entirely. In this light,

15 Global health issues such as those presented by a pandemic may at some point prove to be such an exception, but there could be other less severe situations too. See, e.g., Ylli DAUTAJ and Per MAGNUSSON, “An SCC Perspective: What Happens When the Expedited Arbitration Provisions No Longer Remain Practical?”, J.T. (forthcoming 2021), where the Authors conclude that arbitrators may have the power to find that the agreement to expedited arbitration is not practical, and therefore that such an impediment could lead an arbitrator to disregard the decisions of the parties in exceptional circumstances.

16 In a recent conference, former Chief Justice Stefan Lindskog opined that the strongest argument to carving-out an exception to the per se right to a physical hearing would be on a
a scholarly analysis on a possible doctrine of “procedural impossibility” merits further attention in international arbitration.  

b. Parties’ Right to a Physical Hearing in Litigation and its Potential Application to Arbitration

3. In case the lex arbitri does not offer a conclusive answer to the question whether a right to a physical hearing in arbitration exists or can be excluded, does your jurisdiction, either expressly or by inference, provide for a right to a physical hearing in the general rules of civil procedure?

Short answer: While not explicit, we believe there is a right to a physical hearing in litigation, although there are many exceptions.

Parties have the right to an oral hearing according to Section 5, Chapter 43 of the Code of Judicial Procedure (muntlighetsprincipen). Whether that means a physical hearing is another story. Exceptions to the right to a physical hearing exist, e.g., where summary procedures are applicable or where only the legal issue is disputed and can be decided on written submissions alone. Moreover, there are also exceptions to a requirement of physical presence during the proceeding, such as the ability to hear witnesses through phone or video is nowadays unquestioned and is further reinforced by the incorporation of the ECHR into Swedish law.

“normative conflict” theory, i.e., carefully balancing the right to a physical hearing against the right of access to justice within a reasonable period of time (the latter encapsulating the idea that “justice delayed, is justice denied”). Moreover, when treating the right to a physical hearing as a rule with possible exceptions, the carve-outs to the rule will naturally be limited and therefore demand a higher threshold in balancing competing interests. The conference was held by the Stockholm Centre for Commercial Arbitration (“SCCL”) on 22 February 2021.

17 With respect to this doctrine, we would like to thank Professor Emeritus Lars Heuman for his contribution on the topic in Lars HEUMAN, “Finns det en Processuell omöjlighetslära?” in Lars EDLUND et al., eds., Festskrift till Stefan Lindskog (Jure 2018), in general, and for bringing it to one of the Authors’ attention, in particular.

18 For a good discussion on oral hearings in Sweden, see Cecilia RENFORS, “Varför muntlighet?” Sv.J.T. (2016) p. 322. See also K. HOBÉR, International Commercial Arbitration in Sweden, fn. 4 above, p. 201: “The three cardinal principles of the new judicial process were orality, immediacy, and concentration”.

19 Preparatory Work (2004/05:131) p. 89 (a party can participate remotely and inter alia obtaining of evidence can be conducted by utilizing available technology). It should be mentioned that, apart from the Code of Judicial Procedure, the preparatory work to the SAA also investigates the right to an oral hearing in light of article 6 in the ECHR (i.e., the rule on “access to justice”). Preparatory Work to the SAA (1998/99:35) p. 110.
It is in these exceptions and analogies that practitioners have argued that the use of technology in case conferences and for obtaining and hearing witnesses extends to the actual hearing itself. We argue that such an extension should not be taken for granted just because it is “logical”.

The actual crux of the matter is whether a right to a physical hearing exists per se. The question is not whether a party “may” participate remotely. It is, rather, whether in certain instances such party “must” participate remotely. It is true that in Swedish litigation (as in arbitration) a party “may” participate remotely.20 That is neither here nor there, it is besides the crux of the matter dealt with in this report.

In a word, the option to pursue an oral hearing remotely can in no way, shape, or form mean that a party “must” (i.e., be compelled to) participate remotely. It is our firmly entrenched view that a party should indeed have the right to request a physical hearing in Swedish litigation (apart of course from the express exceptions already mentioned).

As in the arbitration context, this question is open to interpretation. Relevant preparatory work on the modernization of the Code of Judicial Procedure has dealt with this issue to some extent.21 The resulting report suggested “that parties always have the right to [physically] be present in the courtroom”.22 However, the report also concludes that the court can determine that a person shall participate through a videoconference if there are compelling reasons and the person so requests.23 Such reasons seem, however, to be focusing on a situation in which a party voluntarily proposes participating remotely and whether it would be practical and/or beneficial to do so. In this context, expressio unius est exclusio alterius should lead us to conclude that had the drafters of the Code of Judicial Procedure intended to allow judges to waive the right to a physical hearing, they would have done so explicitly in the Code or, at a minimum, have addressed the issue in the preparatory work as was done with respect to permitting the exceptions to a physical presence in the courtroom, e.g., with respect to summary procedures and witness video conferences.

In any event, it seems that the direction being taken by Swedish courts is dictated more by a desire to embrace the available technology rather than by fundamental procedural virtues traditionally conceptualized as vital and integral to fairness and justice.24 It is not unlikely that courts will eventually conclude that the right to a physical

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20 See Section 10, Chapter 5 of the Code of Judicial Procedure (if there are reasons for such, the court may determine that a party shall participate remotely).
21 In 2004, the Government released its report on efforts to modernize the Swedish judicial procedure. This included the efforts to make permanent – and keep developing – the use of modern technologies, such as videoconferencing. See Preparatory Work (2004/05:131). This work resulted in the understanding that parties and witnesses can be heard remotely. But whether a party has the right to a physical hearing was left unaddressed, let alone if such right can then be denied due to, for example, exceptional circumstances.
23 Ibid. at p. 92.
24 Preparatory work (2018/19:81) p. 28, approving the use of inter alia videoconferences for the obtaining of evidence in court procedures.
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hearing does not exist *per se* and that compelling or exceptional circumstances may mandate a remote hearing. If that happens, it can be questioned whether such reasoning is anchored in law and legal science, or instead in supposed practicality. If that happens, it is also likely that the European Court on Human Rights will be asked to render a final judgment on whether the right to a physical hearing in litigation exists and when and how exceptions can manifest.

4. If yes, does such right extend to arbitration? To what extent (e.g., does it also bar witness testimony from being given remotely)?

**Short answer:** While litigation practice and procedure may sometimes guide arbitral practice, it is unnecessary to do so in this context.

In the course of the COVID-19 pandemic, lawyers and scholars have looked to courts to infer that an oral hearing can indeed be held remotely. Often the reasoning rests on empirical evidence that courts have increasingly been forced to hold such remote hearings. We feel that this is absolutely a misunderstanding of the fundamental and bedrock element of international arbitration, namely, party autonomy. Apart from that, it is not even definitive that a court can conduct a hearing remotely over the objection of one party (except for the situations identified in the preceding section).

That caveat mentioned, courts are forced to act in order to redress societal grievances, and in that mission, judges may have some authority to curtail or modify certain rights traditionally belonging to the procedure. On the other hand, arbitration is a freely undertaken enterprise, which essentially is a service that the parties shape in the manner they wish. The parties “own” the procedure – for better or worse.

Comparing the Code of Judicial Procedure and the SAA may prove important when crafting new rules or comparing advantages and disadvantages of each respective regime. This is often motivated by scholarly or policy purposes, and sometimes for practical purposes too. In practice, arbitrators “are free to look to the Procedural Code for guidance where the SAA is silent and the parties have not reached agreement with respect to the conduct of the arbitration”. However, such guidance “must not be mistaken for a general acceptance of applying the Procedural Code in arbitrations”.

It is true that the preparatory work invites some form of analogical reasoning as it demands that the SAA meets certain minimal procedural requirements. However, any

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28 See Preparatory Work to the SAA (1998/99:35) p. 42. The legislative work makes it clear that the SAA was drafted with careful attention to fundamental principles of justice and
such analogy should be considered with caution. There are indeed elements of the Code of Judicial Procedure that an arbitrator in Sweden must or could consider and should be aware of, e.g., rules of res judicata and the principle of jura novit curia.\textsuperscript{29}

In an online seminar, Kristoffer Löf expressed his view that “courts are themselves well advanced in their own reliance on video hearings: they are likely to look to their own practices if, and when, the matter arises in setting aside proceedings”.\textsuperscript{30} While this may be true, we respectfully disagree with the sentiment and subtle suggestion that judges should take into account their own familiarity with remote hearings in considering whether an arbitral award should be set aside on an issue of arbitration law and procedure.

Further, with respect to the foregoing comment on familiarity with remote hearing procedures, the Authors, again with all due respect, reject as irrelevant any suggestion that the right to a physical hearing does not exist because “remote hearings work” or because important and well-known scholars, practitioners, or arbitrators “have had good experiences” with remote hearings. Such experiences should be shared in order to inform parties as to why they should agree to a remote hearing during these troubled times, or help inform policy makers and arbitration institutions vis-à-vis potential new laws and rules, but it does not in and of itself reform or reshape the legal framework as it currently stands. In other words, too often these debates are unintentionally tainted with subjective experiences or retroactive re-construction of law and legal procedure.

The bottom line is that the purposes behind the Code of Judicial Procedure and the SAA are fundamentally different and that the two cannot easily be compared in order to draw inferences. Any inference from the Code of Judicial Procedure that an arbitral proceeding can be held remotely should be dismissed in its entirety. Further, judicial experience with remote hearings should not inform the development of arbitral law and procedure, which unlike litigation has at its core the fundamental principle of party autonomy.\textsuperscript{31}

c. **Mandatory v. Default Rule and Inherent Powers of the Arbitral Tribunal**

fairness in mind. It was said that such principles reflect the rules applicable to the courts and other enforcement and execution authorities.

\textsuperscript{29} For example, an arbitrator can ask questions in order to streamline the procedure. Notwithstanding this, an arbitrator should nearly never undercut party autonomy and such fundamental rights belonging to the party, which likely include the right to a physical hearing. See however K. Hobér, *International Commercial Arbitration in Sweden*, fn. 4 above, p. 213: “Most arbitrators would be reluctant to apply the principle in an international case”.

\textsuperscript{30} V. Hristova and M. Robach, “Legal and Practical Aspects of Virtual Hearings During (and After?) the Pandemic”, fn. 11 above.

\textsuperscript{31} In fact, the preparatory work shows that the SAA was crafted to adopt international pro-arbitration standards (such as with respect to party autonomy) and thereby, among other things, promote Sweden’s position as an international venue for commercial disputes. See Preparatory Work to the SAA (1998/99:35) p. 42.
5. *To the extent that a right to a physical hearing in arbitration does exist in your jurisdiction, could the parties waive such right (including by adopting institutional rules that allow remote hearings) and can they do so in advance of the dispute?*

Short answer: Yes, to the extent any such right exists, party autonomy gives parties the right to waive non-mandatory rules.

If the right to a physical hearing exists, it is not a mandatory rule and therefore does not limit party autonomy *ipso facto*. Thus, parties can jointly agree to conduct a remote arbitration hearing by instructions or by adopting institutional rules that allow remote hearings, as long as the decision to conduct a remote hearing (conversely, non-physical hearing) does not undercut mandatory rules, such as the ability to present one’s case or the principle of equality. Parties cannot waive these mandatory rules.

The SAA provides very few mandatory rules. Therefore, it would be highly unlikely that the inferred right to a physical hearing would be mandatory. A mandatory rule is not one that parties can request or protest, it is binding regardless of party choice.

Apart from mandatory rules, parties are free to agree on any rules and principles for their procedure. Thus, if the arbitration rules adopted provide an arbitrator with sufficient power and jurisdiction to decide to conduct the hearings remotely, the parties have already waived their right to a physical hearing by incorporating those rules. However, that does not mean that a remote hearing cannot be challenged for other reasons, e.g., that it would violate due process under the particular circumstances of the case.

To conclude, in Sweden most arbitrations are conducted pursuant to the Stockholm Chamber of Commerce Arbitration Rules (the “SCC Rules”). Thus, an SCC arbitrator may believe that Section 21 of the SAA, in conjunction with Articles 23 and 32 of the SCC Rules, empowers the arbitrator to conclude that a remote hearing indeed qualifies as an oral hearing. A party may argue that the SCC Rules are to be treated as *lex superior* compared to Section 24 of the SAA. The relevant parts of the aforementioned Section and Articles read as follows:

“The arbitrators shall handle the dispute in an impartial, practical, and speedy manner. They shall act in accordance with the decisions of the parties, unless they are impeded from doing so”.

“(1) The Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, subject to these Rules and any agreement between the parties.

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32 SAA, Section 21.
(2) In all cases, the Arbitral Tribunal shall conduct the arbitration in an impartial, efficient and expeditious manner, giving each party an equal and reasonable opportunity to present its case”.  

“(1) A hearing shall be held if requested by a party, or if the Arbitral Tribunal deems it appropriate.  
(2) The Arbitral Tribunal shall, in consultation with the parties, determine the date, time and location of any hearing and shall provide the parties with reasonable notice thereof.  
(3) Unless otherwise agreed by the parties, hearings will be held in private”. 

In the Authors’ opinion, it is highly unlikely that Article 23 and Article 32 of the SCC Rules would somehow trump Section 24 in the SAA. The discretion to conduct the hearing in an “appropriate” manner cannot be interpreted to undercut the inferred right to a physical hearing. Put at its highest, the arbitrators’ discretion as to “appropriateness” may be interpreted as allowing, in exceptional circumstances, orders that constitute an exception to the rule embedded in Section 24 of the SAA. However, such an exceptional situation would presumably be rare and highly fact-specific.

6. To the extent that a right to a physical hearing in arbitration is not mandatory or does not exist in your jurisdiction, could the arbitral tribunal decide to hold a remote hearing even if the parties had agreed to a physical hearing? What would be the legal consequences of such an order?

Short answer: Probably not.

According to Section 21 of the SAA, arbitrators “shall act in accordance with the decisions of the parties, unless they are impeded from doing so”. If the arbitrator has outright ignored instructions by the parties, there may be a valid case for challenging the award pursuant to Section 34 of the SAA. Whether and when arbitrators would be “impeded” from honouring an explicit agreement of the parties to hold a physical hearing is more cumbersome to discern and any answer on whether the COVID-19 pandemic would constitute such an impediment would be highly speculative. However, it merits to say that a discussion on a possible doctrine of “procedural impossibility” in international arbitration needs imminent scholarly focus. In this respect, note also that arbitrators are not required to comply with procedural instructions that are inter alia

33 SCC Rules, Article 23 (“Conduct of the arbitration by the Arbitral Tribunal”).  
34 SCC Rules, Article 32 (“Hearings”).  
35 Free translation by the Authors. For a good discussion on this part of Section 21 of the SAA’s applicability see, e.g., Y. DAUTAJ and P. MAGNUSSON, “An SCC Perspective”, fn. 15 above.  
36 See, e.g., L. HEUMAN, “Finns det en Processuell omöjlighetslära?”, fn. 17 above.
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“impossible to implement, or substantially change the basis upon which the arbitrators accepted their mandate, e.g. in respect of timing and scope”.37

d. Setting Aside Proceedings

7. If a party fails to raise a breach of the abovementioned right to a physical hearing during the arbitral proceeding, does that failure prevent that party from using it as a ground for challenging the award in your jurisdiction?

Short answer: Yes.

A party should promptly object to a suggested remote hearing and should ideally let the record reflect that a future challenge is reserved on that basis. A leading Swedish law firm rightly noted as follows in their concise guide to arbitration in Sweden:

“To preserve the right to invoke a challengeable circumstance, a party must make its protest clear to the arbitral tribunal. A party is thus generally well advised to request that its protest be formally noted on the record. Although no specific time limits are stipulated in the Arbitration Act, the objection should be raised promptly”.38

8. To the extent that your jurisdiction recognizes a right to a physical hearing, does a breach thereof constitute per se a ground for setting aside (e.g., does it constitute per se a violation of public policy or of the due process principle) or must the party prove that such breach has translated into a material violation of the public policy/due process principle, or has otherwise caused actual prejudice?

Short answer: Yes.

A breach of the right to a physical hearing could manifest either as an “excess of mandate” (less likely) or as an “irregularity in the course of the proceedings” (more likely) for purposes of setting aside a subsequent award. The relevant parts of Section 34 of the SAA read as follows:

“An award that may not be challenged under Section 36 shall, following an application, be wholly or partially set aside upon the request of a party:

[…]

38 Ibid. at p. 109.
3. if the arbitrators have exceeded their mandate, in a manner that probably influenced the outcome;  
[...] 
7. if, without fault of the party, there otherwise occurred an irregularity in the course of the proceedings which probably influenced the outcome of the case.  
[...]

Holding a remote hearing could mean (i) that the arbitration procedure was not conducted in accordance with the mandatory due process requirements, i.e., that the “ remoteness” was incompatible with the procedural guarantees for the matter at hand (case-specific), or (ii) that the right to a physical hearing exists per se and any departure from it over a party’s objection is an excess of their mandate or else an irregularity in the course of the proceedings (a blanket rule). In either scenario, the award may be set aside on the basis of an irregularity in the course of the proceedings which probably influenced the outcome of the case.  

There are presently no cases finally decided on the foregoing. If the blanket rule is adopted, the breach will be a per se violation. If the case-specific rule is adopted, the breach will need to be established by proving violation of a mandatory rule. Most importantly, in the case-specific situation the challenging party must demonstrate that the decision to proceed with a remote hearing materially affected the party’s procedural guarantees, e.g., the party’s ability to present its case (due process) or that the remote hearing created an imbalance in which the parties were treated unequally (equal treatment).

9. In case a right to a physical hearing in arbitration is not provided for in your jurisdiction, could the failure to conduct a physical hearing by the arbitral tribunal nevertheless constitute a basis for setting aside the award? 

Short answer: Yes.

As explained above, the Authors are of the view that a right to a physical hearing does exist. If, however, that is not the case, the award may still be set aside if it infringes a mandatory rule, e.g., if the decision to pursue a remote hearing has negatively affected the challenging party’s procedural guarantees. This will be determined on a case-by-case basis and the court’s determination will be informed by several fundamental elements of international arbitration, inter alia, (i) party autonomy, (ii) the right to present one’s case, (iii) the right to equality, and (iv) the arbitrators’ obligation to proceed in a practical and speedy manner. Here it should be mentioned that neither party autonomy nor the arbitrators’ obligation to proceed in a practical and speedy manner can excuse a denial

39 The requirement of a probable influence of the outcome is likely easier to prove as it may be presumed when a mandatory rule is undercut. See, e.g., S. LINDSKOG, Skiljeförfarande: en kommentar, fn. 3 above, para 5.1.9. See also Lars HEUMAN, Skiljemannarätt (Norstedt 1999).
of mandatory rights. The right to due process and the principle of equality are unqualified, categorical, and unequivocal rights in the SAA.

e. Recognition/Enforcement

10. Would a breach of a right to a physical hearing (irrespective of whether the breach is assessed pursuant to the law of your jurisdiction or otherwise) constitute in your jurisdiction a ground for refusing recognition and enforcement of a foreign award under Articles V(1)(b) (right of the party to present its case), V(1)(d) (irregularity in the procedure) and/or V(2)(b) (violation of public policy of the country where enforcement is sought) of the New York Convention?

Short answer: It depends.

If, as the Authors argue, the right to a physical hearing exists and a tribunal seated in Sweden decides to conduct the arbitral hearing remotely, the award may be challenged and eventually set aside. However, where a foreign arbitral award is not set aside in a foreign jurisdiction (e.g., because there is no right to a physical hearing there), a Swedish court should be hesitant to set aside the award on the ground of public policy in Article V(2)(b) of the New York Convention. It is true that a foreign arbitral award cannot be recognized if “the court finds that it would be manifestly incompatible with the fundamental principles of the Swedish legal system”. However, it would be rather safe to say that conducting a remote hearing in a jurisdiction where it is allowed would not manifest such an incompatibility with the fundamental principles of the Swedish legal system, especially since “Swedish law adopts a restrictive approach to the interpretation of public policy”.

On the other hand, quite apart from whether a right to a physical hearing exists in the lex arbitri of the seat of arbitration, a Swedish court will still consider whether the award should not be enforced on the basis of Article V(1)(b) of the New York Convention. In this respect, the success of such a challenge to enforcement will be determined on a case-by-case basis and the judge will be informed by, inter alia, (i) whether party autonomy has been infringed, (ii) whether the right to present one’s case has been infringed (e.g., that it was crucial to cross-examine witnesses physically in the case at hand), (iii) whether the right to equality has been displaced (e.g., that one party was not allowed to present expert witness testimony), and (iv) whether the procedure was motivated by the arbitrators’ obligation to proceed in a practical and speedy manner.

40 K. HOBÉR, International Commercial Arbitration in Sweden, fn. 4 above, p. 370. Article V(2)(b) can be found in Section 55(2) of the SAA.
41 Ibid.
42 Found in Section 54(2) of the SAA.
One can say that even if a right to a physical hearing does exist at the seat of arbitration, the courts would likely not find a per se violation of procedural due process nor public policy vis-à-vis a foreign arbitral award. It is more likely that the court would undertake an analysis of whether such breach has caused actual prejudice, i.e., a material violation of due process pursuant to Article V(1)(b). This conclusion is based on reasonable comparative legal analysis, whereby the Authors are of the view that conducting an international commercial arbitration in Sweden is to be distinguished from the more limited scope of enforcing foreign arbitral awards in Sweden.

f. COVID-Specific Initiatives

11. To the extent not otherwise addressed above, how has your jurisdiction addressed the challenges presented to holding physical hearings during the COVID pandemic? Are there any interesting initiatives or innovations in the legal order that stand out?

Short answer: N/A

Some initiatives are generic and not at all novel, such as general pronouncements explaining to parties why it may be wise to choose the “remote alternative”. However, one particular initiative does stand out, namely, the “Arbitration-alternative” (Skiljenämndsalternativet). The Arbitration-alternative offers parties that have dispositive matters in litigation an alternative venue for redress if their hearing has been postponed or cancelled. It offers an accelerated route that cuts out certain elements that traditionally belong to the arbitral procedure. The Arbitration-alternative truly utilizes the flexibility inherent in arbitration by adapting to the current times. Whether the particular case at hand is suitable for a speedy and seriously modified arbitration procedure is determined by a group of highly prominent arbitration figures in Sweden. The actual arbitrators in the pool are another group of prominent arbitration practitioners. The hearing can be either a hybrid hearing or a completely remote one.

43 Ibid.
44 There is very limited case law in Sweden on Article V(1)(d) of the Convention and its potential application in the context of the COVID-19 pandemic would be speculative.
a. Parties’ Right to a Physical Hearing in the Lex Arbitri

2. If not, can a right to a physical hearing in arbitration be inferred or excluded by way of interpretation of other procedural rules of your jurisdiction’s lex arbitri (e.g., a rule providing for the arbitration hearings to be “oral”; a rule allowing the tribunal to decide the case solely on the documents submitted by the parties)?

Short answer: No right to a physical hearing can be inferred. Swedish courts have confirmed that statutory requirements that an oral hearing be held are not to be misunderstood to require a physical hearing (although a Swedish court has still to confirm this in relation to the specific statute of the Arbitration Act).

In the main chapter on Sweden above, the authors argue that a right to a physical hearing can be inferred by way of interpretation of the right to request an oral hearing (Section 24 of the Swedish Arbitration Act). This is, in my understanding, a minority opinion advanced without support from ordinary sources of law.¹

In this addendum I will offer the opposite, prevalent, view on this issue: That a right to a physical hearing cannot be inferred by way of interpretation of other procedural rules of the lex arbitri of Sweden (the Swedish Arbitration Act).²

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² This minority view is championed by retired Justice Stefan Lindskog, who bases his view primarily on what he asserts to be the purpose of the rule requiring a hearing (i.e., to meet physically). His view is elaborated in a Swedish language article, see Stefan LINDSKOG, “Virtuella slutförhandlingar i skiljeförfaranden mot parts bestridande”, SvJT (2021) p. 293. This view is the subject of a pending litigation in which one of the grounds for challenging the award is that the tribunal ordered a remote hearing over the objection of the challenging party. The case is presently before the Svea Court of Appeal and counsel for the challenging party includes one of the co-authors of the main Sweden report in this volume, Per Magnusson. The president of the Tribunal that rendered the award that is now the subject of this challenge is another retired Supreme Court Justice, Lars Edlund. He has presented his analysis of the status of Swedish law – and confirmed that a remote hearing does qualify as a hearing: Lars EDLUND, “Om virtuell förhandling – en replik” [On virtual hearings – a reply], SvJT (2021) p. 401.

² I have already written an article on this issue in the Swedish legal journal Svensk juristtidning (“SvJT”) and this addendum is largely based on that article, see Kristoffer Löf,
The bone of contention is whether the right to request an “oral hearing” in Section 24 of the Swedish Arbitration Act includes a right to request a physical hearing or not. As this addendum will show, it does not. The right to an oral hearing can be satisfied by having a remote hearing.

To understand the meaning of the term “oral hearing” one can start by reading the first paragraph of Section 24 of the Swedish Arbitration Act:

“The arbitrators shall afford the parties, to the extent necessary, an opportunity to present their respective cases in writing or orally. If a party so requests, and provided that the parties have not otherwise agreed, an oral hearing shall be held prior to the determination of an issue referred to the arbitrators for resolution”.

The first sentence states that the parties must be given an opportunity to present their cases in writing or orally. A literal reading of the first sentence implies that “orally” is to be understood as opposed to “in writing”. The second sentence does not give any further guidance regarding the meaning of “oral hearing”, neither does any other section of the Arbitration Act.

In the travaux préparatoires to the Arbitration Act, the legislator does not explicitly discuss whether an oral hearing can be held remotely or if it must be physical. There is a simple explanation for the lack of discussion: the main travaux préparatoires were written in 1998, before the advent of user-friendly video conferencing solutions such as Teams and Zoom. Nonetheless, the legislator mentions the possibility of having examination of witnesses conducted “via telephone or TV-monitor” and recognises that “the boundaries are not determined by law, but by the available technology”. Moreover, in the travaux préparatoires the legislator also clarifies that if the parties should not agree on the manner in which the hearing is to be conducted, it is for the arbitral tribunal to decide the manner instead.


3 See Govt. bill 1998/99:35.
4 Govt. bill 1998/99:35, p. 114. In unofficial translation, the relevant passage reads as follows: “In this context, there may be reasons to recall that there are no statutory principles of concentration and immediacy of evidence applicable to arbitration [as opposed to in Swedish litigation]. If a witness is not present, the hearing can still take place with the witnesses present being heard, while the absent witness is heard at a later point in time. One can also use written testimonies and examination by telephone or TV-monitor. The outer limits are set, as the legislative committee [for the arbitration act] expresses this, not by any rules of law, but by the available technology”.
5 Govt. bill 1998/99:35, 110 f. and Swedish Government Report SOU 1994:81, p. 144. In the Report (referred to in the Govt. bill), the legislative committee stated the following, in
DOES A RIGHT TO A PHYSICAL HEARING EXIST IN INTERNATIONAL ARBITRATION?

In light of a literal reading of the Arbitration Act and the travaux préparatoires, there is nothing that suggests that an oral hearing could not be held remotely.

In the general rules of civil procedure (the Code of Judicial Procedure) there is also a requirement for a hearing to be held. Even though the main rule is that the participants should be physically present in the court room, the Code explicitly acknowledges participation via audio and video transmission as an alternative. Remote participation is allowed despite the fact that an oral hearing is far more important in cases under the Code than in arbitration. In Sweden, litigation is governed by the principles of oral proceedings and immediateness and the court may only rule on facts and evidence presented at the hearing. Hence, since a remote hearing may qualify as an oral hearing pursuant to the Code, it would be surprising indeed if it would not qualify as an oral hearing pursuant to the Swedish Arbitration Act.

Although a Swedish court has yet to rule on the specific issue of the legality of remote hearings in arbitration absent consent, courts have confirmed that hearing requirements in other contexts may be satisfied by means of remote hearings. In September 2020, the Court of Appeal for Western Sweden ruled that a district court had erred by cancelling a hearing in a commercial dispute with reference to the Covid-19 pandemic. The Court

unofficial translation: “The right to an oral hearing in accordance with Article 6 of the European Convention on Human Rights has received increasing attention in Swedish case law in recent years, see e.g. the cases NJA 1988 p. 572, 1991 p.188 and 1992 p. 363 I-III and p. 513. According to the Model Law (Article 24), it is primarily for the parties to decide whether an oral hearing shall be held. In the absence of such an agreement, the arbitrators may decide whether an oral hearing shall take place. If the parties have agreed that an oral hearing shall not take place, the arbitrators shall be bound by this agreement. Otherwise, an oral hearing shall be held at the request of a party. Belgian law provides for an oral hearing while the Dutch law is content to provide that an oral hearing is to be held at the request of a party. The Finnish law as well as the [1929] Swedish arbitration law contains only a general provision that the parties must be given necessary opportunity to present their cases. The right to an oral hearing has thus been regulated in several other laws and is also mentioned as a subject of special attention with regard to the procedure before Swedish courts. Admittedly, a starting point for arbitration legislation should be, to the greatest extent possible, to leave it to the parties and arbitrators to design the procedure as appropriately as possible. However, one cannot neglect the development that has taken place in the area. A party should therefore have the right to an oral hearing if he so requests. The unconditional right should be limited to a hearing before deciding on the merits, i.e. the hearing equivalent to a merits hearing under the Code of Judicial Procedure. When the hearing is to be held and how it should be conducted in more detail is up to the arbitrators to decide, if the parties cannot agree” (emphasis added).


7 There is a limited possibility to summarily refer to the written record at the hearing (Chapter 17, Section 2 of the Code of Judicial Procedure).
of Appeal found that the district court should have consulted the parties and taken appropriate measures to proceed with the hearing, instead of cancelling it. The Court of Appeal specifically mentioned as one such appropriate measure, using technology that allows for remote participation. The Court of Appeal based its decision on the district court’s obligation to conduct proceedings in an expeditious manner. There is even more emphasis on this obligation in arbitration (which often includes set, but extendable, time-limits for the proceedings) than in litigation. The Court of Appeal’s reasoning should also be applicable to arbitrations in Sweden. In my view, the ruling confirms that a remote hearing qualifies as a hearing under Swedish law.

Importantly, the Supreme Court of Sweden has also ruled on the issue of remote hearings. In March 2020, the Supreme Court confirmed that a statutory right to a hearing can be satisfied with a remote hearing. In an extradition case, the question arose whether a hearing under the Extradition Act needed to be physical. The defendant was held in custody in Helsingborg and wanted to be physically present before the Supreme Court (in Stockholm) for the hearing. He argued that the quality of the hearing would suffer if he participated via audio and video transmission. Referring to Chapter 5, Section 10 of the Code of Judicial Procedure, the Supreme Court concluded that the court may decide that a participant in a proceeding should participate via audio or audio-visually. Considering other aspects, such as whether remote participation would be inappropriate, the Supreme Court found remote participation to be satisfactory in that case.

The ruling confirms that a statutory right to a hearing can be satisfied by means of a video conference even over a party’s objection. Thus, although concerning the statutory hearing requirement in the Extradition Act, this case should be of relevance when interpreting a statutory requirement that a hearing be held also in other Swedish statutes, including the requirement in the Arbitration Act. Both the Extradition Act and the

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8 See Hovrätten för Västra Sverige [Court of Appeal for Western Sweden] 4 September 2020, Ö 4485-20, Valbruna Nordic AB v. Consto AB.

9 Chapter 5, Section 10 of the Code of Judicial Procedure, in unofficial translation, reads as follows: “Anyone who is to take part in a session [sammanträde] before the court must appear in the courtroom or where the session is otherwise held. / If there are reasons for it, the court may decide that the person who is to participate in a session shall participate by audio transmission or audio and video transmission. The chairman of the court may decide on the question if it arises during a session. / In assessing whether there are grounds for participation through audio transmission or audio and video transmission, the court, or the chairman of the court, shall pay special attention to (1) the costs or inconveniences that would arise if the person to attend the session had to appear in the courtroom; (2) if a person present at the session feels afraid to be present in the courtroom; (3) if it can be assumed that someone who is to attend the session is under pressure, and (4) if necessary for safety reasons. / Participation in accordance with the second paragraph may not take place if it is inappropriate with regard to the purpose of the person’s participation and other circumstances. / Anyone who participates in a session by audio transmission or audio and video transmission shall be deemed to have appeared before the court. Act (2019: 298)”.

Arbitration Act merely establish a right to a ‘hearing’, without giving any direction as to how it is to be conducted. Since the Supreme Court has confirmed that a remote hearing satisfies the requirement of a hearing under one of the statutes, it would be inconsistent law if an identical requirement in the Arbitration Act were not treated in the same way.

Lastly, it is worth noting that in the *travaux préparatoires* to the Arbitration Act the legislator explains that the introduction of the hearing requirement in the Arbitration Act was motivated by the right to a fair trial in Article 6 of the European Convention on Human Rights, and the European Court of Human Rights has accepted video conferencing as a means of fulfilling the requirements for a fair trial. Furthermore, as former Supreme Court Justice Edlund has observed, the following text can be found on the European Court of Human Rights’ website:

“On account of the COVID-19 pandemic, some hearings may be held by video-conference, by decision of the President of the Grand Chamber or the relevant Chamber”.

In summary, this addendum to the Sweden national report shows that the legal requirement to have an oral hearing in the Swedish Arbitration Act can be satisfied by holding a remote hearing. There is no right to a physical hearing in the Swedish Arbitration Act. The *travaux préparatoires* to the Arbitration Act support this conclusion. In Swedish litigation, where hearings play a far more important role than in arbitration, the Code of Judicial Procedure expressly accepts remote participation in hearings. This is also in line with rulings from courts in Sweden, including the Supreme Court, as well as with rulings from the European Court of Human Rights. In my opinion, this is in reality a legal non-issue in Sweden and the general Sweden contribution to this ICCA report does not give a correct account of Swedish law.

b. Parties’ Right to a Physical Hearing in Litigation and its Potential Application to Arbitration

3. *In case the lex arbitri does not offer a conclusive answer to the question whether a right to a physical hearing in arbitration exists or can be excluded, does your jurisdiction, either expressly or by inference, provide for a right to a physical hearing in the general rules of civil procedure?*

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11 See *Schtschaschwill v. Germany*, No. 9154/10, ECtHR 2015, and *Al-Khawaja and Tahery v. The United Kingdom*, Nos. 26766/05 and 22228/06, ECtHR 2011.

Short answer: No, there is no right to a physical hearing in litigation. See references in answer to question a.2 above.
On 30 June 2022, in Case T 7158-20, the Svea Court of Appeal (“the Court”) ruled *inter alia* on whether an arbitration may proceed remotely over the objection of one party.¹ This then pending appeal had been noted in the original Sweden national report.²

The award-debtor challenged the arbitral award on two grounds, i.e., (i) invalidity and (ii) procedural irregularity. Put differently, it was argued that the award should be either declared invalid or set aside.

The award-debtor argued that the Tribunal failed to provide for an “oral hearing” as that term is used in Section 24 of the Swedish Arbitration Act (“SAA”) and Article 32 of the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (“SCC Rules”). It was argued that a remote, digital hearing does not satisfy the objectives and purpose of an “oral hearing” and thus the award was invalid (on public policy). In addition, it was argued the award should be set aside because, *inter alia*, the decision to proceed remotely had significant consequences on due process, e.g., (i) it was not possible for the award-debtor to meet with their attorney, (ii) neither the attorney nor the award-debtor could meet the witnesses, (iii) witness credibility was of utmost importance, and (iv) due to COVID-related restrictions, the award-creditor could sit with counsel and witnesses in the hearing, but the award-debtor could not.

The award-creditor argued that the Tribunal had provided both parties with due process. It argued, *inter alia*, that (i) both parties had been treated equally, (ii) the right

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² See Ylli DAUTAJ and Per MAGNUSSON, “National Report Sweden” and Kristoffer LÖF, “Addendum” in ICCA Does a Right to a Physical Hearing Exist in International Arbitration? (henceforth Does a Right to a Physical Hearing Exist?). As noted therein, one of the co-authors of the original report was counsel representing the appellant. See DAUTAJ and MAGNUSSON, “National Report Sweden” in Does a Right to a Physical Hearing Exist?, fn. 14.
to an “oral hearing” had not been denied, (iii) there was no frustration to party autonomy, (iv) the decision to proceed digitally had not affected the outcome, etc.

The Court analyzed Sections 21 and 24 of the SAA and Articles 23 and 32 of the SCC Rules. The Court noted that as there is no definition of “oral hearing” in the SAA, it would seek guidance from the preparatory work, Article 6 ECHR, and the Code of Judicial Procedure. In this light, it was concluded that matters regarding when a hearing should take place and how it should be organized and conducted should be decided by the arbitrators absent party agreement. The Court noted that pursuant to the Swedish Code of Judicial Procedure, there is no absolute right to appear in person. Rather, a Swedish court has the right – when appropriate and under certain circumstances – to conduct the hearing through digital means. It was observed that a similar, firm rule excluding a remote hearing, is absent with respect to the SAA. Accordingly, the Court concluded that, considering the objectives and purpose of Section 24, the provision should be understood as “technology neutral”. The same goes for Article 32 of the SCC Rules. Thus, neither provision excludes digital means as properly satisfying the requirements of conducting an oral hearing.

The Court continued and reasoned that if the parties cannot agree on the format of the hearing, it is properly within the Tribunal’s authority and powers to decide whether the hearing should be held remotely through digital means. The fact that a party objects does not alter the Tribunal’s authority and powers in this respect. However, the Tribunal is bound to consider, case-by-case, whether a digital hearing is appropriate considering, inter alia, due process, impartiality, practicality, and speed (see Sections 21 and 24 of the SAA). Moreover, the Tribunal should consider the technological conditions in light of enabling effective and adequate means of communication.

In conclusion, the Court held that the procedure in the underlying case satisfied the due process requirements in that it was conducted in an impartial, practical, and speedy manner. There was no irregularity in the course of the procedure that would justify setting aside the award.

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3 Svea Hovrättens [Svea Court of Appeals] 30 June 2022, T 7158-20, p. 15. For more on the rules, see DAUTAJ and MAGNUSSON, “National Report Sweden” in Does a Right to a Physical Hearing Exist?.
4 Ibid., p. 15-16.
5 Ibid., p. 16.
6 Ibid.
7 Ibid.
8 Ibid.
9 Ibid.
10 Ibid.
11 Ibid.
12 Ibid.
13 Ibid., p. 18.
14 Ibid.
On similar reasoning, the court rejected the award-debtor’s plea of invalidity of the award on public policy grounds.\(^\text{15}\)

Interestingly, the award-debtor’s plea, specifically focused on unequal treatment of the parties due to the fact that the award-creditor could sit in the room with counsel and witnesses but the award-debtor could not, was found to have been waived due to an untimely objection and, as such, was not considered by the Court. Accordingly, one can only speculate about whether such circumstance would be considered an infringement of the equal treatment principle sufficiently serious to justify setting aside.

Notwithstanding the judgment, as the saying goes, it ain’t over until… the Supreme Court speaks. The Court did (somewhat unusually) note the possibility that the judgment may be appealed, although leave to appeal is a matter for the Supreme Court only. Ultimately, however, the award-debtor chose not to appeal. Accordingly, the law as it currently stands (\textit{de lege lata}) is that delivered by the Court in Case T 7158-20. For readers of the Sweden report in the ICCA Project, this also means that, unless and until there is any contrary pronouncement by the Swedish courts, the Lindskog-based analysis in the original report has to surrender to the analysis provided by Kristoffer Löf in the Addendum published in March 2022.

\(^{15}\) \textit{Ibid.}, p. 21.