

14 March 2018

## Party representatives are not arbitrators - Hochtaunus Kliniken win with Luther at the Federal Court of Justice

**Judging in one's own case is not compatible with the legal system. This constitutionally secured principle was confirmed by the Federal Court of Justice in its decision of 11 October 2017, which has now been published. The reason for this was a dispute between a hospital operator and a project company, in which the parties themselves were by far the majority of the alleged arbitration court. Luther Rechtsanwaltsgesellschaft successfully represented the hospital operator Hochtaunus Kliniken in this case.**

No one is allowed to be a judge in their own case. This principle is accorded constitutional status by anchoring it in the rule of law principle of Article 20 (3) of the Basic Law. In the current case, the composition of a so-called contractual advisory board, which also acted as an arbitral tribunal, raised the fundamental question: To what extent may parties themselves, through their bodies, judge disputes in arbitration proceedings? The case law of the Supreme Court has so far rarely had to deal with this question. However, the Federal Court of Justice has now issued a clear rejection of such regulations. "The consequence is that, on the basis of such ineffective clauses, no binding effect can be attributed to judgments given," says Dr. Kuuya Chibanguza, lawyer at Luther.

At the beginning of 2017, Luther successfully represented Hochtaunus Kliniken in front of the Higher Regional Court of Frankfurt am Main and, together with Supreme Court lawyer Dr. Gottfried Hammer,

accompanied his client to Karlsruhe. There, the Frankfurt ruling was comprehensively confirmed.

“In the design of dispute resolution mechanisms, it is essential to ensure that the neutrality of the persons called to make a decision is guaranteed. A closer link between the parties is possible in mediation negotiations,” says Jens-Uwe Heuer-James, partner of Luther Rechtsanwalts-gesellschaft.

The background to the dispute was the different views of the parties on the decisions of a contractual advisory board. In 2011, Hochtaunus Kliniken and a private project company signed a long-term contract for a public-private partnership (PPP) with the project company to take over construction, financing and cleaning of the new clinic in Bad Homburg. The public hospital operator was no longer satisfied with facility management and cleaning services at an early stage.

The contracting parties had made provision for the settlement of all disputes and had arranged an internal advisory board consisting of two managing directors and an independent member in advance. In a second step, the Advisory Council should take on the role of an arbitral tribunal if the parties were unable to reach an agreement. In practice, however, the decisions of the advisory council and arbitral tribunal were usually not made independently, but against the hospital operator. The project proved to be a failure - Hochtaunus Kliniken and Luther went to court.

### **For Hochtaunus Kliniken**

Luther, Commercial: Jens-Uwe Heuer-James (Partner, Lead), Henner-Matthias Puppel (Partner), Dr. Kuuya Chibanguza, LL.B. (Senior Associate)

Dr. Gottfried Hammer, Supreme Court lawyer

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### **Brief Profile Luther**

Luther is a leading German commercial law firm that offers comprehensive legal and tax services. The full-service law firm employs more than 350 lawyers and tax advisors and is represented at 10 German economic centres and at important investment locations and financial centres in Europe and Asia with international offices in Brussels, London, Luxembourg, Shanghai, Singapore and Yangon. Our clients are medium-sized enterprises and large corporations, as well as the public sector.

Luther works closely with other commercial law firms in all the prevailing jurisdictions worldwide. On the Continent, Luther is part of a group of independent leading law firms who have worked together for many years on joint cross-border projects.

Luther Rechtsanwalts-gesellschaft mbH is a law firm with a business approach: our innovative awareness aspires us to provide our clients with customised legal advice that addresses individual needs and delivers the greatest possible economic benefit.

Our lawyers and tax advisors have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks. Further information is available at: [www.luther-lawfirm.com](http://www.luther-lawfirm.com)

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