



SVEA COURT
OF APPEAL
Division 02
Rotel 020101

MINUTES
2020-01-31
Reported in
Stockholm

File exhibit 180
Case no T 12462-19

THE BENCH

Head of the division Per Carlson and judges Hanna Carysdotter, judge-rapporteur, and Adrian Engman

RAPPORTEUR

Assistant judge Per Samuelsson

AT THE MINUTES

Judge-rapporteur

PARTIES

Claimant

Republic of Kazakhstan
Ministry of Justice
8 Mangilik El Avenue
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Kazakhstan

Counsel: Attorneys at law Alexander Foerster, Fredrik Ringquist, Ludwig Metz and Malin Berggren as well as jur. kand. Daniel Piran
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Respondents

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Chisinau, MD-2009 Moldavien
2. Anatolie Stati
20 Dragomirna Street
Chisinau, MD-2008, Moldavien
3. Gabriel Stati
1A Ghiocailor Street
Chisinau, MD-2008, Moldavien
4. Terra Raf Trans Traiding Ltd.
Don House, Suite 31
30–38 Main Street, Gibraltar

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Declared as counsel for 1–4: Attorneys at law Bo G H Nilsson, Therese Isaksson and Ginta Ahrel as well as jur. kand. Kristians Goldsteins Westerberg & Partners Advokatbyrå AB
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THE MATTER

Invalidity of the award made in Stockholm on 19 December 2013 with correction on 17 January 2014; now question on dismissal of summons application

The Republic of Kazakhstan (Kazakhstan) has submitted its summons application and requested that the Court of Appeal, in accordance with Section 33, paragraph 1 or 2 of the Swedish Arbitration Act (1999:116) (the SAA), shall declare invalid the arbitral award issued by the Arbitration Institute of Stockholm Chamber of Commerce in Stockholm on 19 December 2013 (with correction of 17 January 2014) between Kazakhstan and Anatolie Stati, Gabriel Stati, Ascom Group SA and Terra Raf Trans Trading Ltd. (the award). As a legal basis for its action, Kazakhstan contends that the arbitration is invalid because it involves determination of an issue which under Swedish law may not be decided by arbitrators and that the manner in which the award arose is manifestly incompatible with the basic principles of the Swedish legal system.

A question has now arisen as to whether the summons application should be rejected due to a procedural impediment (*res judicata*).

Svea Court of Appeal dismissed Kazakhstan's action against the award by way of judgment on 9 December 2016 in Case No. T 2675-14. The judgment has acquired legal force. In that case, Kazakhstan's primary request for relief was that the Court of Appeal should declare the award invalid in its entirety or at least in those parts of the award referred to the so-called LPG facility and, alternatively, that the Svea Court of Appeal should set aside the award in its entirety or in part. Kazakhstan invoked as a legal basis for its invalidity claim that the award and the manner in which it arose was manifestly incompatible with the basic principles of the Swedish legal system, i.e. that it contravenes *ordre public* and is therefore in whole or in part invalid according to Section 33, first paragraph, item 2 of the SAA.

Kazakhstan and Anatolie Stati *et al* have pleaded their cases.

After presentation to the panel of judges, the Court of Appeal takes the following

DECISION (to be rendered on 9 March 2020)

The Court of Appeal rejects the summons application of the Republic of Kazakhstan.

Reasons for the decision

Chapter 17, Section 11, paragraphs 1 and 3 of the Swedish Code of Judicial Procedure provide that, upon the expiration of the time for appeal, a judgment acquires legal force to the extent that it determines the matter at issue in respect of which the action was instituted, and furthermore that a question thus determined may not be adjudicated again. Legal force can, simply put, be described as that the case which has been determined in a judgment shall not to be adjudicated again in a new trial. If a new action is brought in respect of the same issue that was tried in trial number 1, the action in trial number 2 must be rejected due to a procedural impediment. The rules for legal force satisfy *inter alia* the winning party's need for certainty that a final decision in a dispute shall not be disrupted by a new trial. However, the fourth paragraph of the provision provides that there are extraordinary remedies, including a relief for a substantive defect, that pierce the legal force. The legal force is thus not absolute.

It is a widespread view in the doctrine that it is the requested legal consequence that determines the scope of the legal force (see *inter alia* Ekelöf et al., Rättegång, 8 ed., pp. 140 ff.). The fact that the legal consequence is the starting point in assessing whether a subsequent case relates to the same issue has also been confirmed by the Supreme Court in its case law developed during the 1990s (see, e.g., NJA 1999 p. 520 and NJA 1999 p. 656, cf. NJA 1984 p. 783). According to the Court of Appeal, there is no reason to apply the rules of legal force in other way when the case concerns an action for invalidity against an arbitral award.

On the contrary, the fact that the legislator did not impose any time limit for the possibility of bringing an action for invalidity rather speaks for a strict application of the rules of legal force. Unlike what usually applies to dispositive disputes where time limits for challenge, notice of defect or statutory period of limitation apply, a person who wishes to bring an action for invalidity against an arbitral award may bide his time and make the necessary investigation before the action is brought. In this context, according to the Court of Appeal, it should also be borne in mind that one of the fundamental reasons behind the Swedish Arbitration Act is that a dispute should in principle be finally settled with the arbitral award.

In the previous case, Kazakhstan requested that the Court of Appeal should declare the award invalid in its entirety. In this case, Kazakhstan again requests that the award shall be declared invalid. The award that is the subject of the invalidity action is the same in both cases and the parties are also the same. The legal consequence in the present case is thus identical to that sought in the previous case and determined by a judgment that has acquired legal force. In addition, the information provided by Kazakhstan shows that the action is based on circumstances which could have been relied on in the previous case.

The Court of Appeal finds that, under these circumstances, it is clear that the issue is the same in both cases and that there is a procedural impediment. Kazakhstan's summons application must therefore be rejected.

Appeal

According to Section 43, paragraph 2 of the SAA, the decision of the Court of Appeal may only be appealed if it is of importance as a matter of precedent that the appeal is considered by the Supreme Court.

The Court of Appeal considers that there is no reason to allow the decision to be appealed.

The decision of the Court of Appeal must not be appealed.

Hanna Carysdotter

Minutes shown/