



SVEA COURT OF
APPEAL
Division 02
Section 020101

MINUTES
2020-01-31
Presentation in
Stockholm

File appendix 180
Case no. T 12462-19

THE COURT

Hovrättslagmannen Per Carlsson and hovrättsråden Hanna Carysdotter, reporting judge, and Adrian Engman

PRESENTOR

Hovrättsfiskalen Per Samuelsson

KEEPER OF THE MINUTES

The reporting judge

PARTIES

Claimant

The Republic of Kazakhstan
Ministry of Justice
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House of Ministries, 13 Entrance
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Kazakhstan

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Respondents

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2. Anatolie Stati
20 Dragomirna Street
Chisinau, MD-2008, Moldova
3. Gabriel Stati
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Chisinau, MD-2008, Moldova
4. Terra Raf Trans Traiding Ltd
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THE MATTER

Invalidity of arbitral award rendered in Stockholm on 19 December 2013, with correction on 17 January 2014; now a question of dismissal of application for summons

The Republic of Kazakhstan (Kazakhstan) has applied for summons and requested that the Court of Appeal, under section 33, first paragraph, subsection 1 or subsection 2 of the Arbitration Act (1999:116) (*Sw. lagen om skiljeförfande*), declares an arbitral award rendered by the Arbitration Institute of the Stockholm Chamber of Commerce in Stockholm on 19 December 2013 (with correction on 17 January 2014) between Kazakhstan and Anatolie Stati, Gabriel Stati, Ascom Group S.A. and Terra Raf Trans Trading Ltd. (the Award) invalid. As legal grounds for its action, Kazakhstan has stated that the Award is invalid because it involves an examination of a question which may not be decided by an arbitral tribunal according to Swedish law and that the manner in which it has come about is clearly incompatible with the basis of the legal system in Sweden.

Question has now arisen as to whether the application for summons must be dismissed because of procedural impediment (*res judicata*).

By way of its judgment on 9 December 2016 in case no. T 2675-14 the Court of Appeal dismissed an action against the Award brought by Kazakhstan. The judgment has become final. In that case, Kazakhstan requested that the Court of Appeal primarily declared the award invalid in its entirety or, in any event, those parts of the Award relating to the so-called LPG plant, and, in alternative, that the Court of Appeal set aside the award, in its entirety or in part. As legal grounds Kazakhstan stated, concerning the invalidation claim, that the Award and the manner in which it has come about is clearly incompatible with the basis of the legal system in Sweden, i.e. violates

public policy and therefore it is wholly or partially invalid under section 33, first paragraph, subsection 2 of the Arbitration Act.

Kazakhstan and Anatolie Stati et.al. have provided their observations.

After presentation, the Court of Appeal renders the following

DECISION (to be rendered on 2020-03-09)

The Court of Appeal dismisses the Republic of Kazakhstan's application for summons.

Reasons for the decision

Under Chapter 17 Section 11 first and third paragraph of the Swedish Code of Judicial Procedure a judgment, upon the expiration of the time for appeal, acquires legal force to the extent that it determines the matter at issue in respect of which the action was instituted, and an issue thus determined may not be adjudicated again. Simplified, the legal force can be described as that the matter determined by way of a judgment must not be tried again in a new trial. If a new action is brought on the same matter that was tried in trial no. 1, the action in trial no. 2 must be dismissed because of procedural impediment. By way of the rules on legal force the winning party's need for security concerning the fact that a final judgment of a dispute cannot be changed through a new trial is met. However, it is stated in the fourth paragraph of the section that the extraordinary remedies, amongst them petition for a new trial, breaks through the legal force. Therefore, the legal force is not absolute.

It is a widespread view that the requested legal consequence determines the width of the legal force (see *inter alia* Ekelöf et.al., *Rättegång III*, 8 edition, p. 140 ff). The fact that the legal consequence constitutes the basis for determining whether a subsequent action concerns the same matter has been confirmed by the Supreme Court in the precedent that was developed during the 1990s (see *inter alia* NJA 1999 s. 520 and NJA 1999 s. 656, *cf.* NJA 1984 s. 733). According to the Court of Appeal, there is no reason to apply the rules

on legal force differently for an invalidation claim against an arbitrational award.

On the contrary, the fact that the legislator has not instituted a time limit for when it is possible to bring an action on invalidation suggest a strict application of the rules on legal force. Unlike what usually applies in disputes amenable to out-of-court settlement concerning time limits for challenge, complaint or limitation, the one who wants to bring an invalidation claim against an arbitral award can take his or her time and conduct necessary investigation before the action is brought. In this part it should also be considered, according to the Court of Appeal, that one of the essential ideas behind the Arbitration Act is that a dispute, in principle, is to be finally determined by way of the arbitral award.

In the previous case Kazakhstan requested that the Court of Appeal declared the Award invalid in its entirety. In this case, Kazakhstan once again requests that the Award is declared invalid. The award that is the subject of the invalidation claim is the same in both cases and the parties are also the same. The requested legal consequence in this case is thus identical with the one requested in the previous case and which was determined by way of a judgment that has become final. Also, it is clear from what has been submitted by Kazakhstan that the action is based on circumstances that could have been invoked in the previous case.

Under these circumstances it is, according to the Court of Appeal, clear that the matter is the same in both cases and that procedural impediment is at hand. Therefore, Kazakhstan's application for summons must be dismissed.

Appeal

Under Section 43, second paragraph of the Arbitration Act, the Court of Appeal's judgment may only be appealed if the court considers it to be of importance for guidance in the application of law that the appeal be tried by the Supreme Court.

The Court of Appeal considers that there are no reasons to allow the decision to be appealed.

The Court of Appeal's decision may not be appealed.

Hanna Carysdotter

Minutes presented/