The arbitral tribunal ordered Belgor to pay compensation for machinery and equipment without support from the evidence

Koca did not invoke any evidence in support of its claim for compensation for machinery and equipment, and, moreover, had no right to such compensation under the Construction Agreement. The arbitral tribunal nevertheless awarded Koca compensation despite the lack of evidence, which is clear from the dissenting opinion.

The arbitral tribunal rejected requests for extension and appointment of a non-partisan expert

Koca was awarded compensation for works carried out in the mineshafts. One of Belgor's grounds for objection in the arbitration was that Koca's work was defective and that Koca was not entitled to compensation claimed in this respect. Koca's work was defective and the mineshafts could not be used. Defectiveness of the work was also referenced among the grounds for Belgor's claim for damages in its counterclaim.

Technical evidence was required to establish that Koca's work was defective. In order to produce such evidence, Belgor requested time extensions, but the requests were rejected.

In October 2013, Belgor requested a time extension to investigate the mineshafts and stated that an expert report could be submitted in June of 2014. However, it was impossible to investigate the mineshafts as planned because Koca's defective work had caused the mineshafts to be flooded completely. Therefore, Belgor requested a further extension in July 2014. Belgor later repeated its request in September 2014, but it was again rejected by the arbitral tribunal. In January 2015, Belgor also requested a non-partisan expert to be appointed. The arbitral tribunal rejected this request as well.

Belgor clarified why the company required more time. In order for the shafts to be investigated, they first had to be emptied of water. This required that the ground surrounding the shafts was first frozen, which would take no less than 18 months to complete.

The arbitral tribunal's rejection incorrectly states that the expert witness would be relevant only for the counterclaim. The defectiveness of works was the main issue disputed in the arbitration. It was these defects that caused Belgor to terminate the agreement. Hereby, the arbitral tribunal deprived Belgor of the opportunity to argue its case; both the opportunity to defend the main case and also to argue the counterclaim. Thus, the arbitral tribunal's error affected the outcome.

Koca

Koca won the procurement and thereafter commenced its works. Later, Belgor decided that a different technique had to be used to make the shafts, which was the reason behind Belgor's termination.

Belgor terminated the agreement unilaterally without providing any grounds for termination. In accordance with the provisions of the Construction Agreement, a "working committee" was formed to approve the completed works and to determine the parties' respective obligations. In the minutes of the committee's meeting of 28 January 2013, the contents of which the parties agreed on, the compensation Belgor was to pay to Koca was determined, amongst other things. The amounts set out in the minutes are the same amounts as awarded by the arbitral tribunal.

The arbitral award is covered by a valid arbitration agreement between the parties

On 28 November 2012, Belgor sent a draft of the final agreement between the parties as a result of termination of the Construction Agreement. The draft included an arbitration clause, which would cover all issues in the committee's final decision. On 5 December 2012, Koca sent a revised draft to Belgor. Koca appended a list of additional works, i.e. the five dealt with in the arbitral award, to the revised draft. Koca proposed that the additional works should be settled within the scope of the parties' respective obligations.

The committee met also on 18-19 December 2012. Minutes from the meeting were drafted, but never signed. Belgor has not, however, ever disputed the accuracy of the minutes. Belgor has also confirmed that this concerns works additional to the Construction Agreement.

It was the intention of the parties to produce written agreements for the now relevant additional works, but this never happened. The additional works are set forth in the minutes of the committee's meeting of 28 January 2013. The parties also agreed that these works were covered by the Construction Agreement, and thus the arbitration agreement.

The arbitral tribunal did not fail to review the objection concerning interest

In the arbitration, Koca claimed interest in accordance with the provisions of the Construction Agreement. According to the Construction Agreement, Belgor was not obliged to pay until the invoice had been approved.

In the arbitration, Koca invoked an expert report from Deloitte, and Belgor invoked an expert report from KPMG. KPMG had access to Belgor's books and the Construction Agreement. Deloitte's and KPMG's reports contain the same calculation method for interest. Both reports take into account, amongst other things, the stipulation that the obligation to pay arises only once the invoice is approved.

The arbitral tribunal's statement to the effect that the parties agreed was based on the evidence the parties themselves had submitted in the arbitration. The arbitral tribunal committed no error. If the arbitral tribunal did commit an error, it had no effect on the outcome of the arbitration. In the arbitration, Belgor asserted in respect of one invoice that it was received on 8 November 2012. However, Belgor could not have received it on 8 November 2012, because KPMG's report states that the interest on this invoice commenced to accrue on 7 November 2012. If any error occurred, then Belgor caused it.

The arbitral tribunal correctly concluded that Koca was entitled to compensation for machinery and equipment

Koca's case in these respects was based on the fact that the parties had agreed that Belgor would take over the machinery and equipment and that Belgor would pay the agreed compensation. In the arbitration, Koca invoked, among other things, minutes of the committee meetings as evidence, which is also set out in the arbitral award. The arbitral tribunal made a review based on Koca's invoked evidence and also reviewed Belgor's objection to the claim. Thus, the arbitral tribunal reviewed the merits of the issue and did not commit any procedural error which could be subject to challenge.

The arbitral tribunal did not commit a procedural error by rejecting Belgor's requests for extension and appointment of a non-partisan expert

In the arbitration, Koca maintained that Belgor could no longer invoke any defects against Koca, because Belgor had unilaterally terminated the Construction Agreement.

Only in connection with Koca requesting arbitration did Belgor claim that the work had been defective and then requested, prior to submitting a Statement of Defense, an extension for providing its statement of evidence. Hereafter, Belgor repeated its request three times. As grounds, Belgor

always referenced that the mineshafts were flooded and that the freezing process was not completed. However, Belgor gave no specific reason as to why a further extension was required.

Initially, Belgor was granted an extension until 1 December 2013. Thereafter, the arbitral tribunal rejected Belgor's request for a further extension until 29 July 2014, but at the same time it gave Belgor the opportunity to submit an expert report before 11 August 2014. However, Belgor never submitted any such expert report and gave no reason why. The arbitral tribunal's decision was entirely compliant with the rules applicable to the arbitration and to which the parties had agreed.

THE INVESTIGATION BEFORE THE COURT OF APPEAL

The case has been decided after a main hearing. At the main hearing, the parties invoked documentary as well as oral evidence. On Belgor's request, testimonies of legal director Mr. VS, attorney Ms. ON, and geotechnical engineer Mr. RW were heard. On Koca's request, testimonies of CEO Mr. CK and attorney Ms. SE were heard.

GROUNDS OF THE COURT OF APPEAL

The Court of Appeal's review of the grounds for challenge

Is the arbitral award covered by a valid arbitration agreement between the parties?

In this context, Belgor maintained that the arbitral tribunal decided on the claim for compensation for additional works, which were not covered by the arbitration clause of the Construction Agreement. If the challenging party asserts that no valid arbitration agreement covers the alleged legal relationship, it is for the respondent – Koca in the case at issue – to establish that such an agreement exists.

In the case at issue, the arbitration is governed by Swedish law and procedural issues should thus be settled according to Swedish law. According to Section 2 of the Swedish Arbitration Act, the arbitral tribunal is entitled to determine its own jurisdiction. In this determination, it is established case-law that the claims doctrine should be applied. However, the claims doctrine assumes the existence of a binding arbitration agreement. Thus, under the said doctrine, a party who has not entered into an arbitration agreement cannot be bound to arbitrate. If the existence of the arbitration agreement is in dispute, the arbitral tribunal should decide that issue as a question of jurisdiction. Correspondingly, the legal relationship that the claimant in the arbitration proceedings invokes among the grounds for a claim should be covered by the arbitration agreement. If the parties do not agree as to whether an issue is covered by the arbitration agreement, this question must be settled through dispute resolution. If the parties in the arbitration cannot agree on the scope of the arbitration agreement, that dispute cannot be settled by application of the claims doctrine. Instead, the scope must be decided as a question of jurisdiction (see, e.g., NJA 2008 p. 406).

The arbitration clause in a contract generally covers only the legal relationship governed by the contract, even if it is connected to other legal relationships. It is considered that not only the legal facts that constitute the basis of the legal relationship form part of that legal relationship, but also

subsequent legal facts altering or somehow affecting the said relationship form part thereof. This includes explicit or implied adjustments of a contractual relationship, actions in breach of a contractual obligation or failures to notify of known breaches. The determining factor as to whether an arbitration clause covers a specific action is whether the action is based on the contractual legal relationship covered by the arbitration clause (see NJA 2017 p. 266).

As regards the possibility of extending an arbitration clause to cover also other legal relationships than those intended by the arbitration clause, the Supreme Court stated in its 2017 decision as follows.

> "However, one must distinguish an instance where the invoked circumstances relate to a legal relationship covered by the arbitration clause and instances where the circumstances relate to the other legal relationship, not covered by the arbitration clause. In the former instance, the clause is applicable. As the Supreme Court stated in "Tupperware" NJA 2010 p. 734, as regards the latter instance, *the existence of a connection cannot s lead to the expansion of the clause to cover the second legal relationship in cases other than specific ones and under extraordinary circumstances* [italics here]."

The Court of Appeal concludes as follows.

Koca maintained before the Court of Appeal that the parties had agreed that the now relevant additional works should be covered by the arbitration clause of the Construction Agreement, or at least, that such an agreement came into existence because of Belgor's passivity and implied actions. Belgor disputed both these assertions.

The arbitral award provides that Koca maintained that Belgor was liable for five specific additional works set out in the arbitral award, which Belgor had ordered and Koca completed. According to Koca, these works had been carried out "within the scope of the original Contract and are confirmed by their inclusion in the acts of Delivery of the Shafts, signed on 6 December 2012, Clause 7 and 10 of the Protocol of Acceptance of Delivery of the Shafts, dated 10 December 2012, and the minutes of the working committee meetings of 18-19 December 2012 and 28 January 2013" (paragraph 40).

For its part, Belgor asserted, among other things, the following in the arbitration "[…] Additional works performed by Claimant were under five separate service contracts, unrelated to the Contract, and these service contracts do not contain arbitration clauses or any agreement to extend any other

arbitration clause to cover these contracts. Thus, any disputes related to them should be resolved in the Economic Courts of Minsk as provided for in these agreements" (paragraph 42).

Deciding on its jurisdiction, the arbitral tribunal concluded that additional works "[…] cannot be said to arise out of the Contract". However, having turned to what the arbitration agreement says on "in connection with", the arbitral tribunal concluded in its continued reasons that "In the view of the Arbitral Tribunal, the Additional Works were performed *in connection with* the Contract […]". Therefore, the arbitral tribunal's conclusion was that "[…] the claims concerning Additional Works are covered by the arbitration clause in the contract" (paragraphs 81-83). As can be gathered from the arbitral award, the arbitral tribunal thereafter concluded that "It is undisputed that the Additional Works were performed on the basis of five separate contracts which did not have arbitration clauses, but which stipulated that the Parties had the right to refer disputes to the Economic court in Minsk". Finally, the arbitral tribunal reviewed the issue of whether the reference to the Minsk court replaced the arbitration clause in the agreement and concluded based on, among other things, arguments concerning the parties' intentions that this was not the case (paragraphs 84-86).

In support of the agreement of the parties that additional works are covered by the arbitration clause in the Construction Agreement, Koca has mainly invoked the minutes of the committee meetings and the documents drafted in connection with those deliberations – Koca invoked those documents also in the arbitration. The invoked documentation does not provide any substantial support for Koca's assertion. Moreover, oral evidence also does not provide that support, alone or together with the documentary evidence. Mr. CK has stated that he participated in the first and second committee meetings. In respect of these, he has merely provided general information and has not provided any details as to whether the parties agreed that the arbitration clause would apply also to additional works. Ms. SE, who also participated in the said meetings, has indeed stated that the parties did not discuss any alternative dispute resolution to the arbitration clause. However, she did not state that the parties agreed that additional works would be covered by the arbitration clause of the Construction Agreement. Thus, Koca has not succeeded in establishing that the parties explicitly agreed that the arbitration clause would cover also the additional works. Moreover, Koca has not shown that such an agreement has been reached by way of Belgor's passivity or implied actions.

Therefore, the Court of Appeal will proceed to review whether the arbitration clause could be applicable on other grounds. First, the Court of Appeal will review the circumstances invoked by Koca in support of the assertion that additional works relate to the legal relationship covered by the

arbitration clause of the Construction Agreement or – if this is not the case – that the circumstances have a connection to the Construction Agreement of such a nature that the arbitration clause nevertheless becomes applicable.

The Court of Appeal first notes that Koca has not presented any detailed account of what the relevant additional works involved or how they were related to the Construction Agreement. Thus, the Court of Appeal is not in a position to make a more general assessment of the connection between the Construction Agreement and the additional works. Based on the available information, it can be concluded that the parties' roles are somewhat different in the Construction Agreement as compared to the additional works. This is so, because in addition to the parties to the present case there is a third party involved in the Construction Agreement. Further, additional works are based on several different order placements, of which at least one does not have an apparent connection to the Construction Agreement (the order for works because of the visit by the President of Turkmenistan). In addition, all orders were placed after Belgor had terminated the Construction Agreement (paragraph 82). The aforementioned circumstances imply that additional works are covered by later, autonomous legal relationships and not by the Construction Agreement. In view of the foregoing and in the absence of any evidence indicating the opposite, Koca cannot, against Belgor's objections, be deemed to have shown that additional works fall under the legal relationship which is governed by the arbitration clause of the Construction Agreement.

Based on Swedish case-law – at least nowadays – it is only in exceptional cases possible to extend the scope of an arbitration clause based on a connection with the legal relationship covered by the arbitration clause, and the Court of Appeal therefore concludes that it is impossible to extend the scope of the arbitration clause of the Construction Agreement to cover the relevant additional works.

The conclusions of the Court of Appeal entail that the arbitral tribunal, in respect of the compensation for the relevant additional works, decided an issue, which was not covered by a valid arbitration agreement between the parties. The Court of Appeal will revert to the issue of annulment below.

Excess of mandate and procedural error

General starting points

It is the arbitration agreement, any agreements between the parties on the proceedings and the manner in which the parties argue their respective cases that frame the arbitral tribunal's mandate. As regards the prerequisites for concluding that an error should be deemed an excess of mandate or a procedural error, the Supreme Court has stated the following in NJA 2009 p. 128.

> "The provision in item 2 of the first paragraph of Section 34 of the Swedish Arbitration Act on excesses of mandate is aimed at framing the arbitral tribunal's review of the merits of the dispute submitted for arbitration. Examples of excesses of mandate are when the arbitral tribunal goes beyond the claims of the parties and when it bases its decision on a legal fact, which has not been invoked by the parties (Government Bill 1998/99:35 p. 145; cf., among others, Lindskog, Skiljeförfarande En kommentar, 2005, p. 960 f.) […]
>
> The situation is different in respect of instructions that are aimed at how the arbitration should be carried out within the frame set up by the arbitration agreement, the claims, the invoked circumstances and the referenced evidence. If the arbitral tribunal does not comply with such instructions, this would generally constitute a procedural error under item 6 of the first paragraph of Section 34 of the Swedish Arbitration Act (see, e.g., Heuman, *op. cit.*, p. 652 f., and Lindskog, *op. cit*., 965 f.) […]"

Did the arbitral tribunal fail to review the disputed circumstances?

In this respect, Belgor has maintained that the arbitral tribunal incorrectly assumed that the parties agreed that interest should commence to accrue on the invoice date. Therefore, the arbitral tribunal failed to review Belgor's objection that interest should commence to accrue as from when Belgor took receipt of the invoice. Koca has, for its part, maintained that the arbitral tribunal reviewed the merits when determining interest.

The arbitral award states that Koca based its claim for interest on Section 1, Articles 3.19, 3.21 and 12.3 of the Construction Agreement and that the due date, and thus interest, should be the date when the invoice was provided to Belgor (the "Submission Date"). Nothing has been stated to indicate that Belgor had different legal starting points for its calculation of interest (paragraphs 45-48).

However, the expert reports invoked by both parties clarify that both Deloitte and KPMG had determined the "Due Date" based on the "Invoice Date", instead of the *Submission Date*.[1] Ms. SE has stated that the invoices were submitted to Belgor on the same date they were issued, and that there consequently was no difference between the *Invoice Date* and the *Submission Date*.

However, the arbitral award states that Belgor objected to the interest calculation made by Koca's expert (Deloitte) in its report because the interest calculation was based on the *Invoice Date* instead of the *Submission Date* (paragraph 48). The investigation has established that Belgor made this objection, *inter alia*, in connection with the submission of its own expert report (KPMG) to the arbitral tribunal, and also at the oral hearing. The invoked transcripts from the hearing provides as follows.

> "[…] So we think that in order to calculate interest K should prove the date of submission of the invoice. And we provided the Tribunal with *one exhibit evidencing that at least once this calculation was wrong* [italics here]."

In respect of the issue of whether there was any difference between the Invoice Date and the Submission Date, Belgor has invoked, as far as has been gathered, the same analysis before the Court of Appeal as before the arbitral tribunal. The invoked analysis puts emphasis on invoice CWP No:16, dated 2 November 2012, which according to a stamp on the invoice indicates that it was received (Submission Date), approved (Approval Date), or both by Belgor on 8 November 2012. Thereby the Due Date would be no earlier than 23 November 2012,[2] which is one day later than the basis for interest calculations taken by Deloitte and KPMG.

Despite the above, the arbitral tribunal has in its arbitral award obviously taken into account and based its decision on an incorrect assumption, namely that the parties agreed that interest calculation should be made based on the *Invoice Date* (paragraph 102). Thus, the arbitral tribunal has not taken Belgor's aforementioned objection into account.

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[1] Based on the Invoice Date, the due date has been determined, first by adding three business days as per Article 3.21 (Approval Date) and thereafter by adding another fifteen calendar days as per Article 3.19 (Due Date).

[2] Determined based on Approval Date + 15 calendar days. Alternatively, the calculation should be based on Submission Date + 3 business days + 15 calendar days, which means an even later due date.

The arbitral tribunal's incorrect assumption appears to be based on the agreement between the calculations of interest by Deloitte and KPMG, as far as is now relevant. Even if it could be argued that Belgor, by submitting and invoking KPMG's report without reservations, contributed to the arbitral tribunal's incorrect assumption, the analysis reveals that Belgor's position was made clear both when submitting the expert report and during the hearing. As noted above, the arbitral tribunal has in fact correctly stated Belgor's position in the recitals. The contradiction which obviously existed between the circumstances Belgor invoked in the arbitration and the circumstances upon which KPMG based its interest calculations, is something that the arbitral tribunal possibly could clarify. In any event, the arbitral tribunal was not entitled to base its decision, as it in fact did, on other circumstances than those duly invoked by Belgor.

An incorrect assumption of a due date of an invoice usually leads to incorrect interest calculations, in this case the amount of interest has become too high. This fact is confirmed by the evidence Belgor has invoked.

In sum, the Court of Appeal concludes that a procedural error which likely affected the outcome had occurred without being caused by Belgor. The Court of Appeal will revert to the issue of annulment.

Did the arbitral tribunal order Belgor to pay for machinery and equipment without support from the evidence?

Belgor has maintained that the company has been ordered to pay compensation for machinery and equipment, despite that the right to compensation was not stipulated in the Construction Agreement or elsewhere. By granting this portion of Koca's case, despite Koca not having presented any evidence concerning the ownership rights to the equipment or its value, the arbitral tribunal committed a procedural error.

Koca has maintained that the company did reference evidence in support of its claim for compensation in this respect, including minutes of the committee meetings, and that the arbitral tribunal made its analysis based on the presented evidence.

The reasons for the arbitral award clarify that the arbitral tribunal's conclusion was based on the interpretation of the contents of the Construction Agreement and that the tribunal considered the contents of other documentary evidence as well. The tribunal appears to also have taken into account such circumstances as the tribunal understood were undisputed between the parties.

The Court of Appeal concludes that the arbitral tribunal has, based on what the tribunal considered to constitute the investigation in the arbitration, provided grounds for what it considered had been established concerning, among other things, ownership rights and the value of property. The Court of Appeal is not entitled to carry out a review of the conclusions of the arbitral tribunal in this respect. Thus, there are no grounds to annul the arbitral award on the grounds of a procedural error in this respect.

Did the arbitral tribunal commit a procedural error by rejecting Belgor's requests for extension or appointment of a non-partisan expert?

Belgor has maintained that the arbitral tribunal did not grant the company the opportunity to argue its case *partly* by rejecting Belgor's requests for extension, *and partly* by rejecting Belgor's request that a non-partisan expert should be appointed. Koca has disputed that any error giving grounds for challenge occurred.

The first paragraph of Section 24 of the Swedish Arbitration Act provides that the arbitral tribunal should give the parties the opportunity to argue their cases sufficiently, in writing or orally. The arbitral tribunal should always manage the proceedings in an unbiased and impartial manner, which gives the parties equal opportunity to argue their cases reasonably (Article 19.2 of the SCC's Arbitration Rules).

The investigation has established, among other things, the following. On 24 October 2012, Belgor lodged its first request for an extension of time – until 5 June 2014. The arbitral tribunal granted an extension until 1 December 2013. On 11 July 2014, Belgor lodged another request for an extension of time – this time until November of 2014. The arbitral tribunal rejected the request on 29 July 2014 and stated that Belgor was given the opportunity to submit an expert report no later than 11 August 2014. The oral hearing was held on 10-12 September 2014. During the last day of the hearing, Belgor for the third time requested an extension of time, which was rejected on 18 September 2014. On 29 January 2015, Belgor instead requested that a non-partisan expert should be appointed. On 6 February 2015, the arbitral tribunal rejected Belgor's request and gave the following grounds.

> ”According to Respondent, testing could begin in May 2014 and take up to one month to complete. Subsequently, nine months after the first request and two months after the expected date of testing Respondent renewed its request for extension to submit an expert report. Respondent relied on the same argument, i.e. that the Shafts were not yet

> frozen and could not be tested. The Arbitral Tribunal allowed Respondent to submit an expert report, if possible, by 11 August 2014. Respondent did not submit an expert report, nor did it provide any update as to the status of the freezing of the Shafts. In fact, Respondent did not raise this issue at all until the third day of the Final Hearing, a month after the time allotted for the initial extension had expired. Since the Final Hearing, Respondent has had five additional months to conduct freezing on the Shafts and/or begin preliminary steps with Claimant to agree on testing methods."

Mr. RW has stated, among other things, that he became involved in the project early in 2014 and that the total time required to investigate the mineshafts was a year and a half, plus another 13-18 weeks thereafter.

Thus, the investigation shows that the investigations of the mineshafts were very extensive and complex, and took a long time to complete. Despite this, the investigation does not support that it would have been substantially burdensome for Belgor to keep the arbitral tribunal informed on which measures were required, the total time required, and the alternatives that would potentially be available. Moreover, Belgor appears not to have attempted to open any communication channel with the arbitral tribunal in between the rejections. In these circumstances, the arbitral tribunal cannot be held to have failed in its management of the proceeding by not granting extensions of time to Belgor or rejecting its request for the appointment of a non-partisan expert. Thus, there are no grounds for annulment of the arbitral award due to procedural errors.

Should the arbitral **award be wholly or partially annulled?**

In sum, the Court of Appeal has concluded that Belgor should be successful with two of its motions, namely, the first two. Therefore, the arbitral award should be annulled, wholly or partially (item 2 of the first paragraph of Section 34 of the Swedish Arbitration Act). Upon this outcome, Belgor has in the main moved that the arbitral award should be annulled in its entirety. Koca, for its part and upon this outcome, is of the opinion that the arbitral award should instead be annulled pursuant to Belgor's alternative motion.

Opinions in jurisprudence vary in respect of the possibility to partially annul an arbitral award.[3] According to the Court of Appeal, it is best in line with the general alignment of the Arbitration Act

[3] In support of its main motion, Belgor has referenced, among other things, Heuman's statements in *Skiljemannarätt*, 1999, p. 610. In the referenced section, another primary issue is discussed, namely whether and to what extent an excess of mandate should have affected the outcome in order to be successful grounds for challenge. See further Heuman's

to promote the finality of arbitral awards by annulling only those parts of the arbitral award that are directly covered by the grounds for annulment (Government Bill 1998/99:35 p. 43). Only if it is impossible to annul the award partially without affecting also other parts of the award, does the Court of Appeal consider it reasonable to review what other parts of the award are affected and should also be annulled.

In the action at issue, it is undisputed that the awarded compensation for additional works plus interest and other interest amounts to USD 900,875 and USD 1,662,794, i.e. separable parts of compensation awarded in item (i) of the operative part of the award. The relevant compensation is also clearly separable from other parts of the award. The analysis of other claims for compensation – which are reflected in item (iv) and parts of item (i) – was not connected to the analysis of the part that is now subject to annulment. Moreover, the arbitral tribunal's allocation of the parties' litigation costs in the arbitration – item (iii) – is not affected by this partial annulment. Partial annulment does not mean that Belgor would have been entitled to any compensation for its costs in the arbitration. Finally, the Court of Appeal notes that a party's obligation to pay an advance – item (ii) – would not be affected, either.

Thus, there are no impediments to limiting the annulment in the manner Belgor has moved in its alternative motion, namely that to the extent item (i) of the operative part of the award deals with the amount USD 2,563,669 (USD 900,875 + USD 1,662,794). The aforementioned means that Belgor's liability under item (i) of the operative part of the arbitral award is limited to USD 6,603,733.52 (USD 9,167,402.52 – USD 2,563,669).

Litigation costs

The conclusions of the Court of Appeal entail that Belgor has been successful to such an extent that Belgor should be liable for only half of Koca's litigation costs.

Koca has claimed compensation for litigation costs in the amount of EUR 103,850, of which EUR 97,250 comprises costs for legal counsel and EUR 6,600 comprises expenses.

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statements, p. 612 f., Madsen, *Commercial Arbitration in Sweden*, 2016, p. 351. Compare Lindskog's more fleshed out reasoning on partial annulments in *Skiljeförfarande, En kommentar*, Zeteo May 2016, section 8.1.

Belgor has not attested the reasonableness of the claimed amounts.

The Court of Appeal concludes that compensation should reasonably be determined as EUR 51,925, of which EUR 48,625 comprises costs for legal counsel.

APPEALS

The Court of Appeal concludes that the action at issue contains elements, where a review by the Supreme Court would be valuable for the guidance of case-law. Therefore, the Court of Appeal grants leave to appeal the judgment (second paragraph of Section 43 of the Swedish Arbitration Act).

HOW TO APPEAL, see appendix A

Appeals to be submitted by 28 November 2017

The decision has been made by: Judges of Appeal CS, MJ (reporting) and GS.