

SVEA COURT OF APPEAL
Department 02
Division 020101

MINUTES
31 January 2020
Report in Stockholm

Case document no. 180
Case No.
T 12462-19

THE COURT

Senior Judge of Appeal PC and Judges of Appeal HC, reporting, and AE

REPORTING CLERK

Legal clerk PS

RECORDING

The reporting judge

PARTIES

Claimant

The Republic of Kazakhstan
Ministry of Justice
8 Mangilik El Avenue
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Kazakhstan

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Respondents

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2. Anatolie Stati
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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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MATTER

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

The Republic of Kazakhstan (Kazakhstan) has applied for a summons, moving that the Court of Appeal as per item 1, alternatively item 2, of the first paragraph of Section 33 of the Swedish Arbitration Act (SFS 1999:116) shall declare invalid an arbitral award rendered by the Arbitration Institute of the Stockholm Chamber of Commerce on 19 December 2013 (including correction thereof on 17 January 2014) between Kazakhstan and Anatolie Stati, Gabriel Stati, Ascom Group S.A. and Terra Raf Transtrading Ltd. (the Arbitral Award). As legal grounds for its motion, Kazakhstan has argued that the Arbitral Award is invalid because it includes the review of a matter which, under Swedish law, may not be decided by an arbitral tribunal and that the manner in which the Arbitral Award was rendered is obviously in violation of fundamental principles of Swedish law.

The now relevant question is whether the application for a summons shall be dismissed due to procedural impediment (*res judicata*).

Through a judgment of 9 December 2016 in case no. T 2675-14, the Court of Appeal rejected a case brought by Kazakhstan challenging the Arbitral Award. The judgment has become final and binding. In that case, Kazakhstan moved, in the main, that the Court of Appeal should declare the Arbitral Award invalid in its entirety or at least in those parts which concerned a so-called LPG plant and, in the alternative, that the Court of Appeal should set aside the Arbitral Award in its entirety or partially. As legal grounds, Kazakhstan argued, as regards the motion for invalidity, that the Arbitral Award and the manner in which it was rendered was in obvious violation of fundamental principles of Swedish law, i.e. in violation of *ordre public*, and therefore was invalid in its entirety or partially under item 2 of the first paragraph of Section 33 of the Swedish Arbitration Act.

Kazakhstan and Anatolie Stati *et al.* have submitted submissions.

Following a presentation of report, the Court of Appeal makes the following

DECISION (to be given on 9 March 2020)

The Court of Appeal dismisses the application for a summons submitted by the Republic of Kazakhstan.

The grounds for the decision

The Swedish Code of Judicial Procedure, Chapter 17, Section 11, paragraphs 1 and 3 stipulate that a judgment, after the period for appeals has expired, is final and binding as regards the matter which the case concerned, and a matter which has been decided thereby cannot be subjected to renewed court review. In simple terms, the binding nature of the judgment can be described such that the matter which was decided by the judgment should not be tried in a new trial. If a new trial is opened concerning the same matter that was decided in trial no. 1, then the case in trial no. 2 shall be dismissed due to procedural impediment. Amongst other things, by way of the rules on the binding and final nature of judgments, the winning party's interest in the certainty that a final decision is not upended by a new trial is protected. However, the fourth paragraph of the provision stipulates that extraordinary measures, including relief for a substantive defect (*SW: resning*), can break the binding and final nature of the judgment. Thus, the binding and final nature is not absolute.

It is generally accepted in jurisprudence that it is the legal effect of a motion that determines the scope of the binding effects of a judgment (see, amongst others, Ekelöf *et al.*, *Rättegång III*, 8th ed., p. 140 ff.). The fact that the legal effect is the starting point in the determination of whether or not a subsequent trial concerns the same matter has been confirmed by the Supreme Court through case law established in the 1990's (see, amongst others, NJA 1999 p. 520 and NJA 1999 p. 656, cf. NJA 1984 p. 783). The Court of Appeal finds no reason that the rules on the binding and final nature of judgments should apply differently in a motion to have an arbitral award declared invalid.

To the contrary, the fact that the legislator has not implemented a time-limit for the possibility of opening invalidity trials rather implies that a strict application of the rules on the binding and final nature of judgments should apply. As opposed to the general rule for dispositive disputes based on challenge, notice of defect or statute of limitation, a party who wishes to move for the invalidity of an arbitral award is able to take its time and carry out the required investigations prior to opening a trial and moving for invalidity. In this respect, the Court of Appeal further finds that it should be taken into account that one of the fundamental principles of the Swedish Arbitration Act is that a dispute in general shall be finally resolved by way of the arbitral award.

In the earlier trial, Kazakhstan moved that the Court of Appeal should declare the Arbitral Award invalid in its entirety. In the present proceeding, Kazakhstan again has moved that the Arbitral Award shall be declared invalid. The Arbitral Award which is the object of both trials is the same, and so are the parties. The legal effect which the motion aims to achieve is thus identical to the one requested in the previous trial and which has been resolved by way of a binding and final judgment. Moreover, Kazakhstan's own information in the present trial indicates that its case is based on circumstances which could have been referenced in the previous trial.

In view of the foregoing, the Court of Appeal finds that the matter is identical in both trials and that a procedural impediment is at hand. Thus, Kazakhstan's application for a summons shall be dismissed.

Appeals

The second paragraph of Section 43 of the Swedish Arbitration Act provides that the judgment of the Court of Appeal may be appealed only if the Court finds that it is of importance for the development of case-law that an appeal is reviewed by the Supreme Court.

The Court of Appeal finds no reason to grant leave to appeal.

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

HC

Minutes shown/