Stockholm Arbitration Report

2003:1

Contents:

Articles

New Developments in the Legal Framework of International Arbitration in the Russian Federation:

- A View from Moscow Alexander S. Komarov
 - A View from Paris Jeffrey M. Hertzfeld
- A View from St. Petersburg Ilya Nikiforov

New Norwegian Arbitration Act - Draft Statute • Thomas Svensen

Applicable Law Chosen by Arbitrators A Critical View on the Arbitrator's Use of the Method of Voie
Directe, Lex Contractus and Equity • Declan Mac Guinness

Arbitral Awards

Court Decisions On Arbitration

Notes & Information



ARBITRATION INSTITUTE

OF THE STOCKHOLM CHAMBER OF COMMERCE





ARBITRATION INSTITUTE

OF THE STOCKHOLM CHAMBER OF COMMERCE

P.O.Box 16050, SE-103 21 Stockholm
Visiting address: Jakobs Torg 3
Tel: +46 8 555 100 50, Fax: +46 8 566 316 50
E-mail: arbitration@chamber.se
http://www.sccinstitute.com

JURIS PUBLISHING INC.

71 New Street, Huntington, New York 11743 USA
Phone: +1 631 350 0200 Fax: +1 631 351 5712
E-mail: info@jurispub.com
http://www.jurispub.com

STOCKHOLM ARBITRATION REPORT 2003:1



STOCKHOLM ARBITRATION REPORT

Volume 2003:1

Table of Contents

EDITORIAL

By Sigvard Jarvin, General Editor

ARTICLES

ARTICLES	
New Developments in the Legal Framework of International Arbitration in the Russian Federation – A View from Moscow Alexander S. Komarov	1
New Developments in the Legal Framework of International Arbitration in the Russian Federation – A View from Paris <i>Jeffrey M. Hertzfeld</i>	19
New Developments in the Legal Framework of International Arbitration in the Russian Federation – A View from St Petersburg Ilya Nikiforov	31
New Norwegian Arbitration Act – Draft Statute Thomas Svensen	47
Applicable Law Chosen by Arbitrators – A Critical View on the Arbitrator's Use of the Method of Voie Directe, Lex Contractus and Equity Declan Mac Guinness	61

ARBITRAL AWARDS

Separate Arbitral Award, Final Arbitral Award rendered in 2000	89
in SCC case 34/1999	
Subject-matters:	

- (1) Introduction of a new party in the arbitration. The seller requested to introduce as party the manufacturer of the goods who had signed a modification to the agreement, but not the original agreement.
- (2) Availability of separate award and dissenting opinion under the SCC Rules.
- (3) Applicable law. Whether a stipulation in the contract takes over the CISG.

Observations by Alain Prujiner and Christophe Imhoos

Final Arbitral Award rendered in 2002 in SCC case 129/2000 119 *Subject-matters:*

- (1) Party succession and choice of applicable law to decide who are the parties to the agreement.
- (2) Choice of applicable law to decide the costs.

Observations by Carita Wallgren and Helle Lindegaard, and Eric M. Runesson and Mikael Swahn

Final Arbitral Award rendered in 2002 in SCC case 7/2001 *Subject-matters:*

145

173

207

- (1) Letter of credit and unjust enrichment whether the purchaser had fulfilled its obligations concerning payment under the contract by obtaining the letter of credit.
- (2) Invalidity of contract whether the contract was duly signed and dealt with past events.
- (3) Calculation of interest.

Observations by Michael Pryles and Jon Stokholm

COURT DECISIONS ON ARBITRATION

Canada

Judgment of the Ontario Superior Court of Justice rendered in 2002 in case [2002] O.J. No. 665

Subject-matters:

- (1) Electronic commerce. Whether a contract might be amended and an arbitration clause included through the posting of a website notice.
- (2) Whether the arbitration agreement was invalid because it was unconscionable.

Observations by Bradley J. Freedman and Edward C. Chiasson

England

Judgment of the English Court of Appeal rendered in 2001 in case [2001] EWCA Civ 1755

Subject-matter:

Costs incurred in foreign jurisdiction. A party was unable to recover costs in foreign proceedings. Whether party was entitled to recover foreign costs as damages for breach of exclusive jurisdiction clause in subsequent proceedings.

Observations by Otto Sandrock, Jean-Louis Delvolvé and Claes Zettermarck

Sweden

Judgment by the Svea Court of Appeal rendered in 2000 in case 8090-99

251

Subject-matter:

Whether an award was based on matters not submitted by the parties to the arbitrators.

Observations by Martin Wallin

Jurisdictional Award rendered in 1998 in SCC cases 38/1997 and 39/1997 & Judgment of the Stockholm District Court rendered in 2001 in case T 1510-99 & Judgment of the Svea Court of Appeal rendered in 2002 in case T 4496-01 - The Government Guarantee case Subject-matters: (1) Application, under Swedish law, of an arbitration clause laid down in a business contract, to a third party guarantor. (2) Applicable law. Whether a choice of "governing law" in a supply contract is applicable when determining whether a guarantor is bound by an arbitration clause in the supply contract. (3) Is state sovereign immunity a bar to arbitration?	273
Observations by Hans Smit	
Switzerland	
Judgment of Switzerland's Supreme Court rendered in 2002 in case 4P.226/2001	309
Subject-matters:	
(1) Request to set aside an arbitral award on the ground that one co-arbitrator failed to attend the deliberation (Swiss PILS -LDIP, Art 190, para 2, lit.a).	
(2) Request to set aside an arbitral award on the ground that the parties were not treated equally and a party was refused the opportunity to be heard (PILS, Art. 190, para 2, lit.d).	
(3) Alleged failure by the arbitral tribunal to deal with all the claims (PILS, Art. 190, para 2, lit.c).	
(4) Alleged violation of public order on the ground that the arbitrators had failed to examine a violation of Greek and European competiti law (PILS, Art. 190, para 2, lit.e).	
Observations by Konstantin Razumov	
USA	
Judgment of the Supreme Court New York County Appellate Division rendered in 2003 in case 754 N.Y.S. 2D 264 Subject-matter:	333
Punitive damages in arbitral award. Observations by Steven C. Bennett	
·	
NOTES & INFORMATION	
Book review: Andreas F. Lowenfeld and Linda J. Silberman: The Hague Convention on Jurisdiction and Judgments	353
Book review: Frank-Bernd Weigand: Practitioner's Handbook on International Arbitration	359

Book review: Thomas E. Carbonneau: Cases and Materials on the Law and Practice of Arbitration Spanish translation of the Swedish Arbitration Act 1999 The 1958 New York Convention, list of Contracting States	36.
	367
	389
How to subscribe to the Stockholm Arbitration Report	393