Swedish Arbitration-Related Case Law 2020-2021*

CHRISTER DANIELSSON**

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1.01 INTRODUCTION

This chapter will account for court cases relevant to arbitration law from Swedish appellate courts for the period 1 May 2020-30 April 2021.[1] It does not purport to be exhaustive; the aim is to highlight cases that can be assumed to be of interest to a non-Swedish reader.

1.02 BACKGROUND

The Swedish Arbitration Act of 1999[2] (the Act) applies to all arbitration proceedings seated in Sweden, whether the parties have any connection to Sweden or not.[3] The Act also sets out the requirements for foreign arbitral awards to be recognized and enforced in Sweden.[4]

Sweden has a three-tier court system: district courts, six regional appellate courts and the Supreme Court. However, district courts are only rarely

* Previously published in red. Axel Calissendorff och Patrik Schöldström, Stockholm Arbitration Yearbook 2021, Wolters Kluwer.

** Independent arbitrator, former president of the Swedish Bar Association.

1 The Supreme Court has not decided any arbitration-related cases in the period covered herein.

2 Lagen (1999:116) om skiljeförfarande.

3 The Act, section 46.

4 The Act, sections 52 et seq.

involved in arbitration cases since the appellate courts are *Court of First Instance* for invalidity and set aside cases as well as for enforcement cases.

A Swedish arbitral award can be *declared invalid* if it determines an issue which under Swedish law cannot be decided by arbitrators, or if the award, or the manner in which it came about, is clearly incompatible with the basic principles of the Swedish legal system, i.e., *ordre public*.[5]

An arbitral award can be *set aside* at the request of a party, *inter alia*, when the arbitrators have exceeded their mandate and when, without fault of the party, an irregularity has occurred in the course of the proceedings which probably influenced the outcome of the case.[6]

An action to invalidate or set aside an arbitration award shall be considered by the Court of Appeal within whose district the arbitral proceedings were seated.[7] The Court of Appeal's permission is required in order to appeal its judgment.[8] Such leave to appeal is denied in the large majority of cases. For the case to be tried by the Supreme Court, leave is also required from that court.[9]

Historically, invalidity and set aside actions have very rarely been successful. A statistical survey for the period 1 January 2004-31 May 2014 shows that seven arbitral awards were set aside pursuant to section 34 of the Act while one award was declared invalid pursuant to section 33 of the Act, equal to 6% of all decided cases.[10]

In the period covered by this chapter, no award was declared invalid or set aside. Moreover, the number of such cases decided by the appellate courts were fewer than in recent years.

5 The Act, section 33. In addition, under this provision an award is invalid if it does not fulfil the Act's requirements with regard to written form and signature.

6 The Act, section 34(1), items 3 and 7. Section 34 provides for five other grounds for setting aside an arbitral award but the two mentioned are those most frequently invoked in set aside proceedings.

7 The Act, section 43(1). The large majority of invalidity and set aside proceedings are brought before the Svea Court of Appeal. The reason for this is that most Swedish arbitrations are seated in Stockholm.

8 The Act, section 43(2), which provides that leave to appeal shall be granted 'where it is of importance, as a matter of precedent, that the appeal be considered by the Supreme Court'.

9 The Act, section 43(2). Such requirement was introduced in an amendment to the Act which entered into force on 1 March 2019.

10 Översyn av lagen om skiljeförfarande ('Review of the arbitration act'), SOU 2015:37, p. 79.

1.03 REPUBLIC OF POLAND V. PL HOLDINGS S.A.R.L.

[A] Introduction

As reported in the 2019 and 2020 Stockholm Arbitration Yearbook,[11] the Svea Court of Appeal in February 2019 rendered a judgment in a case similar to *Achmea,*[12] the *Republic of Poland v. PL Holdings S.a.r.l.* (PL Holdings).[13] The Court of Appeal's judgment was appealed to the Supreme Court. The Supreme Court granted leave. On 4 February 2020, the Supreme Court decided to request a preliminary ruling from the Court of Justice of the European Union (CJEU). On 22 April 2021, Advocate General Kokott issued her opinion. The CJEU had not yet rendered its preliminary ruling when this article was written. However, since the case is of significant interest, the background of the case and the opinion of the Advocate General will be presented below as a part of this article.

[B] Facts

In 1987, Poland, on the one hand, and Luxembourg and Belgium, on the other hand, entered into an investment treaty (the Investment Treaty) with a dispute resolution clause (section 9) pursuant to which investors in any of the states party to the treaty have the right to initiate arbitration proceedings in accordance with three different options, one of which is the Arbitration Rules of the Stockholm Chamber of Commerce (the SCC Rules). Thus, the Investment Treaty is an intra-EU Bilateral Investment Treaty or BIT for short.

PL Holdings, a company registered in Luxemburg, initiated arbitration proceedings against Poland in accordance with the SCC Rules with Stockholm as the seat of arbitration. This was prior to the CJEU's judgment in *Achmea*. PL Holdings submitted that Poland had violated its obligations under the Investment Treaty by expropriating assets of PL Holdings in Poland. PL Holdings claimed damages from Poland.

In June 2017, the arbitration tribunal rendered a partial arbitral award in which it found that Poland had violated its obligations under the Investment

[11] Pages 9 et seq. in the 2019 edition and pp. 2 et seq. in the 2020 edition.

[12] Judgment by the European Court of Justice of 6 March 2018, *Slovak Republic v. Achmea BV*, Case No. C-284/16.

[13] Judgment by the Svea Court of Appeal dated 22 February 2019 in Case Nos T 8538-17 and T 12033-7.

Treaty by expropriating PL Holdings' shareholding in a bank and that PL Holdings was entitled to damages. In the final award in September 2017, the arbitration tribunal ordered Poland to pay substantial damages (app. EUR 150 million).

[C] The Judgment by the Court of Appeal

Poland filed actions with the Svea Court of Appeal with regard to both the partial award and the final award. Poland requested that the awards be declared invalid (section 33 of the Act) or be set aside (section 34 of the Act) in light of *Achmea*. With regard to the set aside claim, Poland submitted that the awards should be set aside since they were not based on a valid arbitration agreement.

The Court of Appeal made the following statement with regard to the meaning of *Achmea*:

> The conclusion from the Achmea ruling is therefore that articles 267 and 344 TFEU[14] would not as such preclude Poland and PL Holdings from entering into an arbitration agreement and participating in arbitral proceedings regarding an investment-related dispute. What the TFEU precludes is that Member States conclude agreements with each other meaning that one Member State is obligated to accept subsequent arbitral proceeding with an investor and that the Member States thereby establish a system where they have excluded disputes from the possibility of requesting a preliminary ruling, even though the disputes may involve interpretation and application of EU law. Since the TFEU thus does not preclude arbitration agreements between a Member State and an investor in a particular case, a Member State is, based on party autonomy, free – even though the Member State is not bound by a standing offer as such as that in article 8 of the Achmea case or article 9 in this case – to enter into an arbitration agreement with an investor regarding the same dispute at a later stage, e.g. when the investor has initiated arbitral proceedings. An arbitration agreement and arbitral proceedings between, on the one hand, an investor from a Member State and, on the other hand, a Member State, is therefore as such not in violation of the TFEU.[15]

The Court of Appeal found that the awards should not be declared invalid pursuant to section 33 of the Act.

With regard to setting aside of the awards pursuant to section 34 of the Act, PL Holdings *inter alia* argued that Poland was precluded from invoking

[14] The Treaty on the Functioning of the European Union.

[15] Unofficial translation.

that the arbitral awards were not covered by a valid arbitration agreement since Poland had participated in the arbitral proceedings without raising this objection. Under the applicable rules for the proceedings, PL Holdings argued, Poland was obligated to raise an objection concerning the alleged invalidity of the arbitration agreement no later than in its statement of defence, which Poland had not done.

The Court of Appeal found that pursuant to the applicable SCC Rules the objection should have been made no later than in the statement of defence. Since it was not made until in the statement of rejoinder, the court concluded, with reference to section 34(2) of the Act, that Poland must be considered to have waived its right to raise the objection.

[D] The Supreme Court's Request for Preliminary Ruling

The judgment was appealed to the Supreme Court which, as noted, requested a preliminary ruling from the CJEU. In its decision, the Supreme Court stated the following under the heading 'The need for a preliminary ruling':[16]

> The question is what the implications of the principles elaborated by the CJEU in *Achmea* have for the outcome of the case before the Supreme Court.
>
> It is clear that the provision regarding dispute resolution in the investment agreement of relevance in this case before the Supreme Court is invalid. Thus, a possible conclusion is that the standing offer to initiate arbitration proceedings, which the state can be said to have extended to an investor through the dispute resolution provision, is also invalid, considering that the offer is closely linked to the investment agreement.
>
> In the case before the Supreme Court, it has also been argued that the situation is different in this case since it is the request for arbitration that constitutes an offer. The state would then, as a result of its freely expressed wishes, expressly or tacitly, be able to accept the jurisdiction of the arbitral tribunal, in accordance with the principles explained by the CJEU with regard to commercial arbitration.
>
> The Supreme Courts does not consider it to be clear, or clarified, how EU law shall be interpreted with regard to the issues that arise in this case. Therefore, there are reasons for requesting a preliminary ruling from the CJEU in order to avoid the risk of an incorrect interpretation of EU law.

[16] Decision by the Supreme Court 21 February 2020 in Case No. 1568-19 (unofficial translation).

The Supreme Court formulated the question to the CJEU as follows:

> Do Articles 267 and 344 TFEU, as interpreted in *Achmea*, mean that an arbitration agreement is invalid if it has been entered into by a member state and an investor – when there is an arbitration clause in an investment treaty which is invalid because the treaty was entered into by two member states – when the member State, after the investor having requested arbitration, as a result of the state's free will refrains from objecting to jurisdiction?

[E] Opinion by Advocate General Kokott

On 22 April 2021, Advocate General Kokott issued her opinion.[17] She proposed the following answer to the questions put by the Supreme Court:

> Individual arbitration agreements between Member States and investors from other Member States concerning the sovereign application of EU law are compatible with the duty of sincere cooperation under Article 4(3) TFEU and the autonomy of EU law under Articles 267 and 344 TFEU only if courts of the Member States can comprehensively review the arbitration award for its compatibility with EU law, if necessary after requesting a preliminary ruling under Article 267 TFEU. Such arbitration agreements must furthermore be compatible with the principle of equal treatment under Article 20 of the Charter of Fundamental Rights of the European Union.

Set out below is a summary of the Advocate General's opinion.

In *Achmea*, the CJEU ruled that arbitration clauses in favour of investors in investment treaties between Member States are incompatible with Articles 267 and 344 TFEU and must therefore be disapplied. What are the consequences, however, she asked, if a Member State does not invoke the invalidity of the arbitration clause before the award is made? A Swedish court concluded from this, in the context of examining the validity of an arbitration award, that the Member State concerned had entered into an arbitration agreement for the dispute in question on an ad hoc basis by entering an appearance in the arbitration proceedings without raising an objection. However, the Swedish Supreme Court has doubts as to whether this approach is compatible with *Achmea* and has therefore referred the matter to the CJEU.

In the case at hand, Poland brought an action against PL Holdings before the Swedish courts in which it sought to have both the separate and final award annulled. The Svea Court of Appeal dismissed Poland's action.

[17] CJEU case C-109/20.

According to the court, although the arbitration clause of the investment treaty is invalid in accordance with *Achmea*, that invalidity does not prevent a Member State and an investor from concluding an arbitration agreement in respect of the same dispute at a later stage. In such a case, that arbitration agreement is one which is based on the common intention of the parties and concluded in accordance with the same principles as commercial arbitration proceedings. However, the judgment in *Achmea* did not specifically preclude the permissibility of such agreements. In the present case, the agreement came about because Poland appeared in the proceedings without raising the objection that the arbitration clause was invalid in due time.

The Swedish Supreme Court wishes to ascertain whether the findings in *Achmea* also preclude an individual arbitration agreement.

Advocate General Kokott noted that *Achmea* concerned a general provision that permitted recourse to an arbitration tribunal in certain cases. In contrast, the question to be decided in the present case is whether Articles 267 and 344 TFEU preclude an individual arbitration agreement between a Member State and an investor.

In *Achmea*, the CJEU took objection to the agreement between two Member States that was the subject matter of those proceedings on the ground that, by virtue of that agreement, they agreed to remove from the system of judicial remedies, which the second subparagraph of Article 19(1) Treaty on European Union (TEU) requires them to establish in the fields covered by European Union (EU) law, disputes which may concern the application or interpretation of EU law. In so far as arbitration tribunals are not entitled to make a reference, they are not part of that system.

An individual arbitration agreement between a Member State and an investor can remove disputes concerning the application and interpretation of EU law from the EU judicial system in the same way as a general investment treaty between Member States that provides for the settlement of disputes between a Member State and an investor by way of arbitration. Whether an individual case is removed from the judicial system depends on the specific dispute and not on whether the dispute is brought before an arbitration tribunal under a general investment treaty between Member States or under an individual arbitration agreement between an investor and a Member State.

In the present case, the parties, according to their own submissions, are in dispute as to the application of banking supervision rules that arise from EU law, in particular from Article 21(2) of Directive 2006/48/EC of the

European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions. PL Holdings also invokes freedom of establishment. Although the Swedish courts would have to examine whether that plausible argument is well founded, it appears, at least according thereto, that the arbitration agreement did in fact concern an EU law dispute.

The arbitration award does not apply the provisions of EU law on banking supervision, but is based on the rules of the Investment Treaty. Nevertheless, it proceeds on the basis of standards which, in the view taken by the arbitration tribunal, Poland should have observed when exercising the banking supervision provided for under EU law, for example, with regard to proportionality or effective legal protection. While the arbitration tribunal assumes that those standards are in line with EU law, it does not comprehensively examine this question.

According to *Achmea*, the removal of such a dispute from the EU judicial system by means of an individual arbitration agreement between a Member State and an investor from another Member State would in fact be incompatible with Articles 267 and 344 TFEU. At the very least, it would constitute a circumvention of that judgment. Advocate General Kokott went on to note that the arbitration tribunal in these proceedings is not part of the EU judicial system and, in particular, cannot refer doubts concerning EU law to the CJEU.

It is true, she noted, that the CJEU regularly derives a threat to the autonomy of EU law from situations in which a body outside the EU system interprets provisions of EU law. That risk would be low if the arbitration tribunal – as appears to be the case here – primarily applies the provisions of an investment protection agreement of Member States under international law. Moreover, despite the fundamental importance of the principle of proportionality in EU law, the arbitration tribunal also applied that principle not as part of EU law but because it also applies in other legal systems and in particular in the area of investment protection under international law.

Nevertheless, under the Investment Treaty, the arbitration tribunal was required to consider EU law as being, in principle, part of domestic law. In particular, however, there is a risk that the arbitration tribunal will take decisions that will *ultimately* result in an infringement of EU law.

Accordingly, in the present case, the Advocate General found, it cannot be ruled out that the arbitration tribunal misconceived the obligations of the Polish banking supervisory authority under the relevant directive. Moreover,

there would be a risk that not only the Polish banking supervisory authority but also bodies of other Member States would take the decision of an arbitration tribunal into account in the future application of that EU legislation, especially if the CJEU has not yet taken a position on that question. This is because the arbitration award could set a precedent and lead to other investors in similar cases being awarded compensation.

It is true, Advocate General Kokott noted, that both the risk of an infringement of EU law and the risk of divergent interpretation could be limited or even eliminated if compliance with EU law by arbitration awards were comprehensively reviewed by the national courts – where appropriate, after having conducted a preliminary-ruling procedure.

She then referred to section 33 of the Act which provides that an arbitration award is void if it involves the examination of a question which under Swedish law may not be decided by arbitrators and void if the manner in which the award was arrived at is manifestly incompatible with the Swedish legal order. The court must raise the grounds of invalidity of its own motion. Only the Swedish courts can assess the extent to which those provisions allow for comprehensive enforcement of EU law. However, she noted, this prima facie constitutes only a very limited review in the sense of *ordre public*, which also corresponds to the standard of review applied by the Court of Appeal in the main proceedings.

The recognition of individual arbitration agreements between Member States and investors from other Member States would therefore, according to Advocate General Kokott, create the risk of an infringement of EU law by the arbitration tribunals in so far as the national courts could not ensure that arbitration awards comply with EU law.

However, she went on to note, the CJEU has at least implicitly recognized that the settlement of certain disputes by arbitration is permissible, and has thereby accepted a limited review of compliance with EU law. This related to what is referred to as commercial arbitration. Here, Advocate General Kokott discussed the *Nordsee* and *Eco Swiss* cases[18] and stated that both allow disputes to be referred to arbitration tribunals for a ruling, although they are unable to ensure the correct and uniform application of EU law through requests for a preliminary ruling under Article 267 TFEU. *Eco Swiss* even

[18] Judgment of 23 March 1982, *Nordsee* (102/81, EU:C:1982:107) and judgment of 1 June 1999, *Eco Swiss* (C-126/97, EU:C:1999:269).

accepts an infringement of EU law by arbitration awards if the provisions concerned are not fundamental in nature.

The judgment in *Achmea* distinguishes commercial arbitration between private parties, which is permissible in accordance with that case law, from the impermissible arbitration between a private party and a Member State on the basis of investment treaties, in that the former originates in the freely expressed wishes of the parties, whereas the latter derives from a treaty between the Member States.

As stated by PL Holdings, Luxembourg, Finland and Sweden, an individual arbitration agreement between an investor and a Member State would be permissible on the basis of that distinction. This is because such an agreement also originates in the freely expressed wishes of the parties to the arbitration proceedings. In such a case, it would be permissible to limit the national courts' review of the arbitration award in cases concerning investment protection to compliance with the fundamental rules of EU law. However, she considered that Italy was to be agreed with in that the demarcation is not conclusively defined by merely referring to the will of the parties.

Advocate General Kokott noted that her colleague Advocate General Szpunar recently understood the distinction of commercial arbitration in the judgment in *Achmea* to mean that that judgment only precludes Member States from systematically removing EU law disputes from the EU judicial system by means of a prior obligation.[19] Such an understanding would also allow the present arbitration agreement.

Advocate General Kokott is not convinced by this view. Why, she asked, should Member States be allowed to remove EU law disputes from the EU judicial system in individual cases if they are not allowed to enter into a foreseeable general obligation of this kind? In addition to the risks to the uniform application of EU law, there would also be the risk of unequal treatment of different investors.

It is expressly only in relation to *commercial arbitration* that the court has advanced the argument regarding the autonomy or freely expressed wishes of the parties. Such arbitration relates to disputes between parties operating on an equal footing. In such disputes, it is not only the arbitration agreement but also the disputed legal relationship itself that is based on the autonomous will of the parties.

19 Opinion in *Komstroy* (C-741/19, EU:C:2021:164, points 61 and 62).

However, the case in the main proceedings is not a commercial dispute between parties on an equal footing, but relates to the exercise of sovereign powers by Polish authorities. If a private party is subjected to a sovereign measure – *in casu*, banking supervision – there can be no question of free will, at least on the part of that party. For that reason alone, it seems unlikely that a Member State would subsequently enter into an arbitration agreement with the private party in relation to such a measure of its own free will. Above all, however, Member States may not remove disputes relating to the sovereign application of EU law from the EU judicial system.

This is because, in accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, it is the task of all bodies of the Member States to ensure compliance with EU law within the scope of their respective competences. Article 344 TFEU gives concrete expression to that obligation of the Member States. It is not limited to compliance with fundamental rules, but concerns *all* rules of EU law.

As a consequence, a structured network of principles, rules and mutually interdependent legal relations which justifies the autonomy of EU law with respect both to the law of the Member States and to international law binds the EU and its Member States reciprocally and binds its Member States to each other.

Private parties who freely submit to commercial arbitration are not subject to those obligations. In particular, Article 344 TFEU does not apply to disputes between private parties. Therefore, despite the risk of an infringement of EU law, it is consistent to permit arbitration proceedings concerning disputes between private parties.

In contrast, it is problematic when authorities of the Member States in EU law disputes use an arbitration tribunal which is neither part of the EU system nor subject to comprehensive review by national courts with regard to compliance with EU law. This is because it cannot be ruled out in such cases that the arbitration award will fail to have regard to EU law and will thereby impair its effectiveness.

The CJEU accepts the risk of an infringement of EU law if the arbitration is based on an agreement between the EU and non-Member States or on old agreements concluded by Member States with *non-Member States* before their accession to the Union, which continue to be effective under Article 351 TFEU. By contrast, EU law takes precedence over international agreements concluded between the Member States. Similarly, it is not compatible with the effectiveness of EU law for Member States to conclude with

certain investors individual arbitration agreements in relation to sovereign measures for enforcing EU law, where such agreements create a risk that the arbitration award will infringe EU law.

However, the risk of an infringement of EU law can be countered if the courts of the Member States not only review the arbitration award with regard to whether it complies with fundamental provisions of EU law but also comprehensively verify compliance with EU law and refer the matter to the CJEU if necessary.

As already explained, it is doubtful whether Swedish law guarantees such verification. In any event, the Swedish Court of Appeal did *not* comprehensively examine the compatibility of the arbitration award with EU law, but only ruled out the existence of a breach of fundamental obligations. In so doing, it confined itself to the question of whether the arbitration agreement was compatible with EU law, without, however, taking a view on the relevant requirements of EU law for banking supervision.

Consequently, Advocate General Kokott concluded, individual arbitration agreements between Member States and investors from other Member States concerning the sovereign application of EU law are compatible with the duty of sincere cooperation under Article 4(3) TFEU and the autonomy of EU law under Articles 267 and 344 TFEU only if courts of the Member States can comprehensively review the arbitration award for its compatibility with EU law, if necessary after requesting a preliminary ruling under Article 267 TFEU.

After this main finding, Advocate General Kokott also briefly discussed equal treatment, the form of the arbitration agreement and possible limitations in time.

With regard to *equal treatment*, her opinion can be summarized as follows. The principle of equal treatment is a general principle of EU law which is enshrined in Article 20 of the Charter of Fundamental Rights of the European Union. If some investors were referred to national courts for disputes with the Member State, but others could have recourse to an arbitration tribunal, there would be unequal treatment. It is difficult to conceive of a legitimate objective with which a Member State could justify entering into an arbitration agreement with some investors in relation to a dispute that has already arisen while referring others to the national courts. It is ultimately for the national court to examine whether there is any such justification, however. For the purposes of the present proceedings, it is sufficient to note that individual arbitration agreements between Member States and investors

from other Member States concerning the sovereign application of EU law must also be compatible with the principle of equal treatment under Article 20 of the Charter of Fundamental Rights of the European Union.

With regard to the *form of the agreement*, Advocate General Kokott stated, *inter alia*, the following. Based on the considerations made above, the incompatibility of the arbitration agreement with EU law does not depend upon whether it was concluded in the form of an entering of an appearance in the arbitration proceedings without raising an objection. Therefore the significance of that form is considered only for the event that the CJEU takes a different view on the points already examined.

The recognition of arbitration agreements concluded by way of an entering of an appearance without raising an objection would temporally limit the effectiveness of the judgment in *Achmea* to a certain extent, namely with regard to certain arbitration proceedings already pending at that time, even though the CJEU did not address such a limitation in that judgment. However, if the previous considerations do not convince the CJEU that the compatibility of the present arbitration agreement with EU law is doubtful, the effectiveness of the judgment in *Achmea* will also not be of any decisive importance for the assessment of the form of the arbitration agreement.

More generally, EU law does not contain any rule that would prohibit Member States from entering into an arbitration agreement in the form of an entering of an appearance without raising an objection. On the contrary, EU law recognizes the concept of an entering of an appearance without raising an objection in various rules that are not applicable in the present case.

Since EU law does not regulate this question in respect of the present case, the form of the arbitration agreement has no relevance for its compatibility with EU law.

Finally, PL Holdings has requested that the *temporal effect* of the judgment be limited in the event that the CJEU declares individual arbitration agreements to be incompatible with EU law. At the very least, arbitration proceedings that are already pending and thus, *a fortiori*, those that have been concluded should not be affected. However, Advocate General Kokott found that it is not possible to limit the temporal effect of the judgment to be delivered in the present proceedings.

The case before the CJEU is still pending. The CJEU's preliminary ruling and the Swedish Supreme Court's award will be discussed in SAY 2022 or later editions as the case may be.

1.04 GE POWER SWEDEN AB V. NATURA FURNITURE UAB

In 2005 a construction contract was entered into between Swedish company Alstom Power Sweden AB and a state-owned Lithuanian company. Alstom Power, who was employed to rebuild a power plant outside Vilnius, hired a Lithuanian company (here referred to as Kruonio) as subcontractor. Kruonio performed construction work in the period 2006-2009. Following Kruonio's bankruptcy in 2010, Lithuanian company Natura Furniture UAB bought claims against Alstom Power from Kruonio's estate.

In 2016 Natura initiated arbitration under the ICC Rules against Alstom Power (now renamed GE Power Sweden AB after having been acquired by General Electric Company) seeking payment for claims bought from Kruonio's estate. The seat of the arbitration was Stockholm and the applicable law was Swedish law.

One objection made by GE Power in the arbitration proceedings was that it would be contrary to *ordre public* to issue an award in favour of Natura since the claim was based on an agreement that had come about as a result of bribes being paid. However, the sole arbitrator found that bribery had not been sufficiently proven. In the arbitration award rendered in late 2018, Natura was partially successful with its claim. In 2019, GE Power requested that the Svea Court of Appeal invalidate the award pursuant to section 33 of the Act. GE Power alleged that: (i) the manner in which the award came about was clearly incompatible with the basic principles of the Swedish legal system, i.e., *ordre public*; and (ii) the award determined an issue which under Swedish law cannot be decided by arbitrators.

The factual basis for GE Power's request to invalidate the award was that bribes to Lithuanian politicians and civil servants had been channelled through Kruonio, that the bribes had been a prerequisite for Kruonio to be hired as subcontractor and that therefore the agreement had been tainted by corruption.

The Court of Appeal stated that agreements tainted by corruption are invalid under Swedish law and that such agreements are incompatible with the basic principles of the Swedish legal system. Accordingly, the court concluded, there is no doubt that arbitral awards involving corruption shall be declared invalid. However, the Court of Appeal found that GE Power had not proven the facts on which it based its request and therefore upheld the award. The Court of Appeal gave leave for GE Power to appeal to the

Supreme Court which, as noted above, is rare.[20] GE Power has sought leave from the Supreme Court. Whether leave will be granted is not decided at the time of writing.

[20] Judgment by the Svea Court of Appeal dated 22 April 2021 in Case No. T 603-19.