

Court Confirms Narrow Application of Public Order

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On December 29 2003 the West Sweden Court of Appeal held that the fact that an arbitrator has settled a dispute without observing an EU directive and/or a decision of the Council of the European Union does not mean that the arbitral award is in conflict with Swedish public order, as long as the provisions not observed do not express any fundamental principle.

Facts

A party challenged an arbitral award in the West Sweden Court of Appeal (Case T 4366-02), claiming it to be invalid under Article 33 of the Arbitration Act, as it was incompatible with the foundations of the Swedish legal system. The regulations allegedly not considered by the arbitrator consisted of an EU directive, a decision by the Council of the European Union and the French Penal Code.

The court dismissed the challenge. It first stated that public order is applied narrowly in Sweden. However, the court made it clear that public order could be applicable in disputes involving EU legal regulations. Since none of the EU regulations in question had a direct horizontal effect and therefore could not in themselves lead to any obligation for the other party, and since the provisions allegedly disregarded did not appear to express any fundamental principle, a failure of the arbitrator to observe these provisions did not, according to the court, contravene Swedish public order. Furthermore, the court stated that a contravention of the French Penal Code did not mean that the arbitral award contravened Swedish public order.

Comment

Swedish legislative history and doctrine results in the *ordre public* concept being applied very restrictively. In Sweden, public order regulations are considered applicable only where fundamental principles of law have been disregarded and where cases are highly offensive. The decision of the court therefore confirms the prevailing opinion in Sweden regarding the narrow application of public order regulations.

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