INDIAN JOURNAL OF ARBITRATION LAW

THE ROLE OF DOMESTIC PROCEDURAL RULES IN SETTING THE SCOPE FOR THE PRAYERS FOR RELIEF IN AN INTERNATIONAL COMMERCIAL ARBITRATION WITH A SWEDISH SEAT

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Abstract

*A question that sometimes presents an unnecessary delay in an international commercial arbitration ["**ICA**"] is when, how, and whether domestic procedural rules should be applicable by analogy or be used for guiding purposes. In this note, the authors deal with the situation where international arbitrators are requested to dismiss a prayer for relief for not meeting the pre-requisites in the domestic code of judicial procedure. More specifically, the authors focus on declaratory relief.*

Even though the note is focused on a narrow question in Sweden, the authors believe that it may shed light on the practice in other jurisdictions. Moreover, the authors believe that it underscores important underlying theoretical and practical matters for practitioners and scholars alike.

The authors' position is that international arbitrators should not look at domestic procedural rules when assessing the admissibility of prayers for relief. If the lex arbitri and the arbitration rules are silent, that should not be treated as an invitation to analogise or draw guidance from the domestic procedural code. Instead, international arbitrators should exercise their broad discretionary powers in light of the key characteristics and the mental representation of ICA constituting an autonomous or at least a semi-autonomous dispute resolution regime.

I. Introduction

This note sheds light on the issue of whether domestic codes of judicial procedure should be either applicable by *analogy* or else *guiding* when arbitrators are requested to dismiss a prayer for relief in an ICA for not meeting the pre-requisites in the domestic code of judicial procedure. The authors will focus on ICA matters in Sweden, and therefore on arbitrators asked to consider the applicability of the Swedish Code of Judicial Procedure ["**Procedural Code**"] as a possible extension of the *lex arbitri*. More specifically, the authors will narrow their exercise here to focus on the request for a declaratory relief.

Even though the discussion focuses largely on Sweden and is limited to a discussion on a declaratory relief, the authors believe that it has practical significance for other pro-arbitration jurisdictions where a respondent may seek dismissal on similar grounds. Moreover, even though the discussion is limited to prayers for relief, in general, and declaratory relief, in particular, the problem formulation and reasoning can be applied in other situations where parties seek to shoehorn-in rules of domestic procedure in an ICA process. Apart from practical aspects, the discussion also underscores an

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important underlying theoretical issue; that is, whether ICA is free from domestic procedural intricacies and if so, to what extent, scope, and degree. The scholarly inclined reader may ask him or herself whether ICA is indeed an autonomous dispute resolution regime. For the arbitrator dealing with the objection, the pressing question is slightly different; that is, they must deal with how to exercise their powers and discretion when the *lex arbitri* and the arbitral rules are silent. Not all that, seldomly, this may include determining whether the domestic procedural rules can or should be applicable by analogy or for guiding purposes. The authors' unequivocal position is that arbitrators should not, as a general position, look at domestic procedural rules and that ICA is indeed largely autonomous. The authors' are not of the same semi-categorical position for purely domestic arbitrations.

Finally, the authors' are of the position that raising an inadmissibility argument in ICA on the basis of a domestic procedural rule should have practical and adverse consequences. Such unnecessary diversions should be reflected in the apportioning of costs. Apportioning costs to the party making such objections may serve as an instrumental whip in eliminating unnecessary back-and-forth that only frustrates the efficiency and expeditiousness of the arbitral procedure. In so doing, we may elevate ICA to be truer to its underlying key characteristics, including the avoidance of a specific legal order, improving speed, and reducing costs.

For illustrative purposes, the following is a typical scenario that unfortunately occurs every now and then. Party A commences arbitration against Party B requesting declaratory relief (e.g., declaring material breaches of a contract). In turn, Party B may invoke that Party A is abusing the process (e.g., building a case against another party or exercising a fishing expedition) or is bringing a superfluous claim (e.g., stating that the overreaching goal has already materialised), and therefore *inter alia* that the declaratory relief should be found inadmissible. Party B may also argue that Party A is seeking to establish a legal fact where there is no effective remedy as a consequence (i.e., that damage is a pre-requisite). Party B may argue that the costs for arbitration are unnecessary and unmotivated. In the Procedural Code, it is mentioned that declaratory relief may be adjudicated only if the legal matter in question is uncertain, and this uncertainty is to the detriment of the claimant.[1] The threshold is high and the burden of proof is cumbersome. Thus, a request for a declaratory relief requires a so-called "*declaratory interest.*" In a Swedish court procedure, without a declaratory interest, the claim shall be dismissed.[2] Thus, if a party requests the court to interpret a section in a contract, without requesting a specific remedy as a consequence (mostly compensation for damages, termination, penalties, liquidated damages, etc.), the request is often dismissed. For that reason, declaratory relief is not frequently sought in court. When sought, it is mostly dismissed. Conclusively then, if arbitrators in Sweden would follow the Procedural Code, the remedy of declaratory relief would be significantly limited in arbitration. Such is not an acceptable outcome in ICA, which is an autonomous procedure resting on the bedrock principle of party autonomy, i.e., a dispute based on a voluntary agreement entered into by commercial parties to settle their differences. In ICA, the parties pay out of their own means to settle their differences and are not relying on the public purse. This makes all the difference

1 13 ch. 2 § SWEDISH CODE ON CIVIL PROCEDURE (Svensk författningssamling [SFS] 1942:740) (Swed.).
2 13 ch. 3 § SWEDISH CODE ON CIVIL PROCEDURE (Svensk författningssamling [SFS] 1942:740) (Swed.).

in the world. Party B can instead challenge Party A on the merits and request the apportioning of costs on Party A accordingly. Moreover, if Party B agrees with the request, they can enter a settlement agreement or seek to shift the costs on Party A for an unnecessary procedure. Unfortunately, this is not the logic of obstructionists and those engaging in guerrilla tactics. Oftentimes, they seek to have their cake and eat it, too.

II. ICA: The Arbitrator in the Process

ICA is the preferred method of dispute resolution for commercial entities.[3] ICA is especially useful for commercial entities when redressing grievances stemming from transborder commerce, trade, and investment. The reasons as to why ICA is preferred are many, and they include, but are not limited to, the ease of enforcement, *avoidance of specific legal systems* and national courts, and *flexibility*.[4] Other traditional advantages include confidentiality and additional (greater) powers of arbitrators.[5] Within these characteristics, arbitrators have certain powers. Such powers include establishing the arbitral procedure and exercising their discretion in handling the dispute in an impartial, practical, purposive, and speedy manner, while never undercutting due process. In particular, arbitrators generally enjoy broad powers to establish the appropriate arbitral procedure as long as it is done within the realms of due process and equal treatment of the parties.[6] To put simply, in exercising their discretion to honour the key characteristics of ICA, arbitrators make the procedure more efficient and expeditious.

The jurisdiction, powers, and duties of an arbitrator arise from a "*complex mixture of the will of the parties* [i.e., '*party autonomy*'], *the law governing the arbitration agreement, the law of the place of arbitration* [i.e., '*lex arbitri*'], *and the law of the place in which recognition or enforcement of the award may be sought.*"[7] Thus, even if party autonomy is indeed the starting point, the "*balance of power, in effect, shifts from the parties to the arbitral tribunal.*"[8] Arbitrators have powers conferred by the parties, conferred by law (e.g. to determine procedural matters), and *common powers* of arbitrators.[9]

Conclusively, it can be said that arbitrators in ICA have wide discretionary powers when conducting the arbitral procedure. This is indeed by design. More importantly, it has stood the test of time due to

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3 WHITE & CASE & QUEEN MARY SCHOOL OF INTERNATIONAL ARBITRATION, 2018 International Arbitration Survey: the Evolution of International Arbitration (2018), at 2, *available at* https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2018-19.pdf [*hereinafter* "WHITE & CASE (2018)"]; WHITE & CASE, 2021 International Arbitration Survey: Adapting arbitration to a changing world, *available at* https://www.whitecase.com/sites/default/files/2021-06/qmul-internationaxl-arbitration-survey-2021-web-single-final-v2.pdf.

4 WHITE & CASE (2018), *supra* note 3.

5 Nigel Blackaby, Constantine Partasides, Alan Redfern, and Martin Hunter, REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION 30 (6th ed., 2015).

6 *Id.* 309.; *See* also KAJ HOBÉR, INTERNATIONAL COMMERCIAL ARBITRATION IN SWEDEN 158 (1st ed. 2011) [*hereinafter* "HOBÉR"].

7 Blackaby et al., *supra* note 4 at 305.

8 *Id.* 307. See also HOBÉR, *supra* note 6, at 158 ("*The starting point for determining the arbitral tribunal's powers is the arbitration agreement and the lex arbitri, including powers with respect to the conduct of the arbitration proceedings*.").

9 Blackaby et al., *supra* note 4, at 306-319.

its veracity. By and large, contractually appointed experts are doing an expert job—the beneficiaries being its consumers and the rule of law.

III. ICA in Sweden

Sweden has a *strong rule of law* and is considered *a neutral liberal democracy that embraces capitalism*.[10] Thus, the *Swedish jurisdiction has had the right ingredients to perform as a world-leading pro-arbitration jurisdiction* and it has delivered in that capacity – primarily through the Arbitration Institute of the Stockholm Chamber of Commerce ["**SCC**"].[11] The SCC is one of the major service providers for institutional arbitration – commercial and investment – and competes globally for arbitration business.[12] SCC, on one hand, and the Swedish courts' liberal and pragmatic decisional law, on the other, has led the way in an unwavering pro-arbitration direction. *Swedish courts have made sure that the last link of the arbitral legal order remains effective* and that bogus challenges in post-award proceedings have been denied.[13] Leading scholars have rightly noted that:

> *"Sweden has a modern arbitration law and a very well-functioning legal system. A long tradition of arbitration practice gives it the foundation to offer not just reliable, but also a responsive, arbitration service. This is also reflected when it comes to recognition and enforcement of foreign arbitral awards."*[14]

Now to the topic for this note, i.e., the applicability of the Procedural Code vis-à-vis prayers for relief for arbitrations with a Swedish seat. Both domestic and international arbitrations will be briefly covered. Scholars and practitioners are divided on this point domestically speaking, but rather united on the matter as pertaining to ICA. Separating the ICA procedure from domestic intricacies, therefore detaching the process from the Procedural Code, should be the general rule for any pro-arbitration and trade-friendly jurisdiction.

IV. The Difference Between Domestic and International Arbitration

It is an undisputed fact that it is common for arbitral tribunals sitting in international arbitrations to grant declaratory relief or specific performance when requested by a party.[15] Sometimes the right is expressly provided for in the applicable arbitration rules or in the *lex arbitri*. But sometimes it is not, i.e., the law and rules are *silent*. The crux of the matter is whether the silence should be understood as: (a) a prohibition on the arbitrators' discretion, or (b) as a reference to the Procedural Code being applicable either by *analogy* or serving as *guidance*. In Nytt Juridiskt Arkiv 2000 s. 335, the Swedish Supreme Court noted that:

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10 Ylli Dautaj, *Chapter 13: Sovereign Immunity from Execution of Foreign Arbitral Awards: Sweden's Liberal and Pragmatic Contribution*, in AXEL CALISSENDORFF, PATRIK SCHÖLDSTRÖM, 2 STOCKHOLM ARBITRATION YEARBOOK 234 (2020) [*hereinafter* "Ylli Dautaj"].

11 *Id.* 234.

12 *Ibid.*

13 *Ibid.*; The court rejects enforcement in very few cases. *See Compilation of enforcement decisions of the Court of Appeal (2000-2012)* in Ulf Franke, et al, INTERNATIONAL ARBITRATION IN SWEDEN 300-302 (Wolter Kluwer, 2013).

14 *Id.* 296; Ylli Dautaj, *supra* note 10 at 234.

15 Blackaby et al., *supra* note 4 at 523; Ewan McKendrick & Iain Maxwelly, Specific Performance in International Arbitration, 1 CHINESE J. COMP. L. (2), 195-220 (2013).

> *"Neither SML [i.e., the old arbitration act] nor the new law [i.e., the Swedish Arbitration Act] include any specific rules on procedure, and the [Swedish Code on Judicial Procedure] can only in limited scope be considered applicable by analogy."*[16]
>
> (translated from Swedish)

The authors believe that the question of prohibition on the arbitrators' discretion should be left without consideration, especially so in any pro-arbitration jurisdiction. The reason why a declaratory relief may be more cumbersome in terms of admissibility in court than, for example, damages, is due to the fact that the procedure is paid through the public purse. The public interest in, for example, interpreting two commercial parties' contracts is limited from an external stakeholder perspective. Potential backlog in courts would be another consequence. On the other hand, arbitration is a contractual undertaking, funded by the parties that voluntarily agreed to the process. Thus, the arbitrators should have an unequivocal power to find any prayer for relief admissible or inadmissible without having to look at the practices in domestic litigation.[17]

Whether the Procedural Code should be applicable by analogy or for guiding purposes, we can disagree with merit on either side. That being said, there should be a difference in position depending on if we are dealing with *domestic arbitration* or *international arbitration*. The authors are of the position that arbitrators in a purely domestic arbitration may exercise their discretion to, in some disputes, either apply the Procedural Code by analogy or else at least consider it for guiding purposes. Arbitrators in a domestic context may also exercise their discretion so as to reject such analogies or guidance. Either way, they would be sticking within their mandate and what was legitimately expected between the contractual parties. That said, the authors adhere to the latter position also for domestic arbitration matters.

Regardless of what the authors believe to be the case domestically; the position is very different in an international arbitration. The dispute is often *international* and/or the parties are often from different countries. In such matters, the arbitrators should not exercise their mandate to interpret the Procedural Code by analogy or even for guiding purposes when assessing the admissibility of prayer for relief. The authors will explain why below. Again, the authors focus on the Swedish context for illustrative purposes.

Former Chief Justice Stefan Lindskog is the leading scholar on domestic arbitration in Sweden, while Professor Kaj Hobér could lay claim as the leading scholar on ICA in Sweden.[18] Reading their respective positions is therefore a good stepping-point for further analysis. In Sections 4.3.2 and 4.3.3 of his seminal treatises, Lindskog comments as follows:

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16 Nytt Juridiskt Arkiv [NJA] [Supreme Court Reports] 2000 p. 335 (Swed.).

17 *See, e.g.,* Gary B. Born, INTERNATIONAL ARBITRATION: LAW AND PRACTICE 3327 (3d ed., 2021).

18 *See* STEFAN LINDSKOG, SKILJEFÖRFARANDE - EN KOMMENTAR (2020) [hereinafter "STEFAN LINDSKOG"]; KAJ HOBÉR, INTERNATIONAL COMMERCIAL ARBITRATION IN SWEDEN (2021) [*hereinafter* "HOBÉR (2021)"].

> *"The fact that so few procedural rules are taken-up in the [Swedish Arbitration Act] leads to the question of whether and to what degree the rules of [the Procedural Code] are applicable. A generally applicable answer to that question could likely not be provided for.*
>
> *[...]*
>
> *Especially in international arbitration, the facts and circumstances can be such to motivate procedural handling that deviates from what is normal for the Swedish procedural order."*[19]
>
> (translated from Swedish)

The authors agree with Lindskog that international arbitration should be treated differently from domestic arbitration. Hobér makes a similar point where he states that:

> "*[i]t is generally accepted that the [Swedish Arbitration Act] must be applied autonomously, i.e., without recourse to the Procedural Code. This is particularly important if the arbitrators, the parties, or their counsel come from other jurisdictions.*"[20]

Lindskog goes on to states that "*it is important to understand that the Procedural Code […] not applicable to arbitrations in Sweden, not even by analogy; clearly, arbitration and court litigation are two different methods of resolving disputes, a fact which is recognized by the Swedish legislator.*"[21] Notwithstanding this, Hobér, makes the point, again which the authors agree with as a general matter, that arbitrators are free to look to the Procedural Code for guidance, but that it "*must not be mistaken for a general acceptance of applying the Procedural Code to arbitrations, not even in purely domestic arbitrations […].*"[22] It is a big difference between finding guidance as a matter of discretion and feeling the need to look at the Procedural Code. In light of this, the authors are of the view that arbitrators hearing ICA matters in Sweden should not entertain the Procedural Code at all, while arbitrators hearing domestic matters *could* look at the Procedural Code either analogously or for guiding purposes without undercutting its jurisdiction, powers, nor duties. Meanwhile, the authors would not be in favour of giving a role to the Procedural Code even in purely domestic matters.

Moving onto the topic for the note – seeking declaratory relief in an ICA matter with a Swedish seat. In such a situation, the Procedural Code's pre-requisites are not binding and should not be applied. In ICA, rendering a declaratory relief is common practice. The pre-requisites in the Procedural Code are meant to *inter alia* protect the public purse from expenditure assisting in clarifying positions stemming out of purely commercial and private matters (e.g., interpreting the meaning of a specific clause in a contract) or rendering judgments that may be hard, if not impossible, to enforce in the enforcement/execution stage (e.g., disclosure of documents or acting in a specific manner). In arbitration, parties have agreed to solve disputes privately through arbitration and pay accordingly.

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19 STEFAN LINDSKOG, *supra* note 18, at sections 4.3.2 and 4.3.3.
20 HOBÉR (2021), *supra* note 11, at 185.
21 *Ibid.*
22 *Ibid.*

V. Seeking Declaratory Relief

The Swedish Arbitration Act ["**SAA**"] and SCC Arbitration Rules ["**SCC Rules**"] are silent on prayers for relief. The SAA has sixty sections in total and none deal with prayers for relief, let alone with declaratory relief. In contrast, the Procedural Code that has fifty-nine chapters and hundreds, if not thousands, of sections regulating court procedures in Sweden. In comparison to the SAA, the Procedural Code does deal with prayers for relief and with the scope of declaratory relief. Chapter 13 of the Procedural Code deals *inter alia* with the request for declaratory relief. In order to be granted a declaratory relief in Sweden, certain pre-requisites need to be met. Chapter 13, Section 2 of the Procedural Code states that:

> "*An action for a declaration of whether or not a certain legal relationship exists may be entertained on the merits if uncertainty exists as to the legal relationship, and the uncertainty exposes the plaintiff to a detriment.*
>
> *If the determination of the matter at issue depends upon the existence or non-existence of a certain disputed legal relationship, a request for a declaration thereon may be entertained.*
>
> *Actions for declaratory judgments may be entertained in other cases where legislation so prescribes*."[23]

Two pre-requisites are put forth: (i) there must be an uncertainty as to the legal relationship; and, (ii) this uncertainty must expose the plaintiff to a detriment.[24] The required *uncertainty* can be a consequence of a counterparty's attitude or from the assessment of a situation from a legal standpoint. The uncertainty of a legal relationship is considered to expose the plaintiff to a detriment as soon as it affects the plaintiff's actions, for example, financial planning. It is also required that the detriment must be proven to limit the plaintiff's opportunity or freedom to disposition, which is dependent on the disputed legal relationship. When these pre-requisites are met, the plaintiff is considered to have a declaratory relief.

As stated, the SAA and the SCC are silent on the subject-matter. In fact, the SAA has only one section that deals with the arbitrator's role in conducting the procedure. The one and only rule is of a general and overreaching character and is set forth in Section 21 of the SAA, which reads as follows:

> "*The arbitrators shall handle the dispute in an impartial, practical, and speedy manner. They shall act in accordance with the decisions of the parties, unless they are impeded from doing so.*"[25]

That being said, parties typically refer to institutional rules which include more detailed procedural guidance. In Sweden, parties mostly refer to the SCC Rules. However, the SCC Rules remain silent with respect to the scope of prayers for relief, too. Notwithstanding this, Article 2 of the SCC Rules clarifies that:

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23 13 ch. 2 § SWEDISH CODE ON CIVIL PROCEDURE (Svensk författningssamling [SFS] 1942:740) (Swed.).

24 Even though this article mentions "*two*" pre-requisites, a declaratory relief can, according to the Procedural Code, only be given regarding the existence or non-existence of a concrete "*legal relationship*". For example, an abstract examination of a rule is therefore not permitted. One could potentially consider this a "*third*" pre-requisite.

25 21 § SWEDISH ARBITRATION ACT (Svensk författningssamling [SFS] 1999:116, 2018:1954) (Swed.) [*hereinafter* "SAA"].

"*(1) Throughout the proceedings, the SCC, the Arbitral Tribunal and the parties shall act in an efficient and expeditious manner.*

(2) In all matters not expressly provided for in these Rules, the SCC, the Arbitral Tribunal and the parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that any award is legally enforceable."[26]

Article 2 should be read together with Article 23 of the SCC Rules which deals with the conduct of the arbitration. Article 23 reads as follows:

"*(1) The Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, subject to these Rules and any agreement between the parties.*

(2) In all cases, the Arbitral Tribunal shall conduct the arbitration in an impartial, efficient and expeditious manner, giving each party an equal and reasonable opportunity to present its case."[27]

Section 21 of the SAA (*lex arbitri*) together with Articles 2 and 23 of the SCC Rules makes it clear that arbitrators have broad discretionary powers to conduct the arbitration in the manner it considers appropriate. In doing, arbitrators have duties under the autonomous or semi-autonomous regime of ICA. Arbitrators are not bound by domestic intricacies. This is different from stating that they cannot be persuaded by pragmatic domestic procedural rules.

Now, attention must be drawn to the question put forth by this note, namely, whether international arbitrators sitting in Sweden should look at the Procedural Code by analogy or for guiding purposes. Exceptional scholars disagree. Lindskog writes that:

"*A distinction should be made between rules that only concern the form of the procedure and rules that typically affect the outcome. In questions pertaining to rules of the latter kind, there should typically be no difference between arbitration and litigation.*"[28]

(translated from Swedish)

Lindskog goes on and explicitly deals with the pre-requisites for prayers for relief, including declaratory relief. He is of the position that "*certain restrictions apply regarding the admissibility of prayers for relief.*"[29] With respect to declaratory relief in arbitration, he states that:

"In arbitral proceedings, as a starting point, the same restrictions should apply to bringing a declaratory relief as in a general court […] A claimant in an arbitration thus has a little right to bring a declaratory relief as a claimant in litigation, when there is a lack of declaratory interest."[30]

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26 Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, 2017, art. 2 [*hereinafter* "SCC Rules"].

27 SCC Rules, art. 23.

28 Lindskog, *supra* note 11, at section 0–4.3.2.

29 Lindskog, *supra* note 11, at section III-0.3.1.1.

30 Lindskog, *supra* note 11, at section III-0.3.3.2.

(translated from Swedish)

However, we agree more with Hobér on this point. He states, inter alia, as already mentioned in the previous part of this paper, that "*it is important to understand that the Procedural Code is, however, not applicable to arbitrations in Sweden, not even by analogy; clearly, arbitration and court litigation are two different methods of resolving disputes, a fact which is recognized by the Swedish legislator.*"[31] Furthermore, in their concise guide to arbitration in Sweden, Oldenstam, Löf, et al write that:

> "*There are no explicit requirements as to how the request for relief should be formulated. An arbitral tribunal has the power to order performance, either of a specific action or payment of monies, and to grant injunctive and declaratory relief, if either of the parties so requests. Declaratory claims seeking to establish the existence of a certain fact or an alleged interpretation of a contract may also be granted by the arbitral tribunal. However, since the request for relief to some extent defines the limits of the arbitral tribunal's mandate, it has to be specified to such a degree that there is no doubt as to how the award is to be phrased if the relief is granted. The parties must explicitly and unequivocally state what they wish the arbitral tribunal to decide. An undefined request for 'appropriate relief' or similar is not sufficient.*"[32]

For obvious reasons, when dealing with declaratory relief, there is no mention of the Procedural Code. Put simply, in ICA matters with a Swedish seat, there is no need for a party to meet the pre-requisites of a legal question being *uncertain* and that such uncertainty *leads to a detriment*. There is no practice in ICA of requiring a *declaratory interest*. Like compensation for damages, the admissibility of a declaratory relief should be admissible almost *ipso facto*. If arbitrators nevertheless reason on admissibility, they should consider only whether the declaratory relief seeks a meaningful resolution of the parties' disagreement. At this stage, it is not the arbitrator's role to determine whether the resolution will carry effective consequences. It is sufficient that there is a disagreement that is meaningful. Some arbitrators try to identify the potential detriment. This is also largely subjective and leads to judging unnecessarily on the effective remedy of a declaratory order. Even though the pre-requisite of *detriment* is not as cumbersome as those found in the Procedural Code, it is nevertheless unnecessary as the element is largely subjective, and arbitration is a freely undertaken process. The parties are free to agree and disagree with respect to their legal relationship. There are other ways to sanction a superfluous and unnecessary proceeding, primarily through the apportionment of costs.

VI. Concluding Remarks

The authors' main argument is that international arbitrators should not, as a general position, look at domestic procedural rules when conducting the arbitral procedure, including when assessing the admissibility of prayers for relief.

Where the *lex arbitri* and the arbitration rules are silent on the prayers for relief, it should not be construed as a prohibition on the admissibility of declaratory relief. More than that, in an international

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31 HOBÉR, *supra* note 11, at 185.

32 Robin Oldenstam, Kristoffer Löf Alexander Foerster, Azadeh Razani, Fredrik Ringquist & Aron Skogman, CONCISE GUIDE TO ARBITRATION IN SWEDEN 52 (2d ed., 2019).

arbitration, silence should not be construed as an invitation to interpret the domestic code of judicial procedure by *analogy* nor for *guiding* purposes. The silence should be seen in light of the arbitrators' wide discretionary powers to conduct the arbitration as it considers appropriate (within certain boundaries).[33]

In purely domestic arbitrations, however, the code of judicial procedure may be applied either by analogy or for guiding purposes. Arbitrators sitting in a domestic context may also reject such an exercise. The authors believe that the latter resonates better with the idea of arbitration, but others would disagree. The bottom line is this: declaratory relief is a commonly sought remedy, and international arbitrators should find such requests admissible almost *ipso facto*. Where a party seeks to obstruct the arbitral procedure by invoking inadmissibility by referring to the domestic code of judicial procedure in an ICA, such a request and conduct should be rejected, and sanctioned through the apportioning of costs.

[33] *See, e.g.*, 21 § SAA (Svensk författningssamling [SFS] 1999:116, 2018:1954) (Swed.); SCC Rules, art. 23.