

Challenging Arbitral Awards in the Nordics 2023 Survey

Punet



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Westerberg

Denmark

Finland

Norway

Sweden

Introduction

This is the first report on challenging arbitral awards in the Nordics, encompassing Denmark, Finland, Norway and Sweden.

It is intended to be a recurring publication with a goal to facilitate the development of arbitration in the Nordics.

Separate in-depth country reports on challenges of arbitral awards may be released for respective countries, in which case they will be made available on the homepages and social media accounts of the contributing firm.



Table of contents

Introduction	2
Executive summary	7
Methodology	8
The law on challenging arbitral awards	10



2023 data **14**

Court cases decided **14**

Successful cases **14**

Settled cases **14**

International or local parties **15**

Institutional or ad hoc arbitration **15**

Length of the proceedings **17**

Legal grounds invoked **18**

Conclusions **20**





Executive summary

The survey shows that the number of challenge cases is very low and successful challenges are uncommon in all Nordic countries.

The legal systems and the courts are arbitration friendly and the bar for a challenge of an arbitral award is set high.

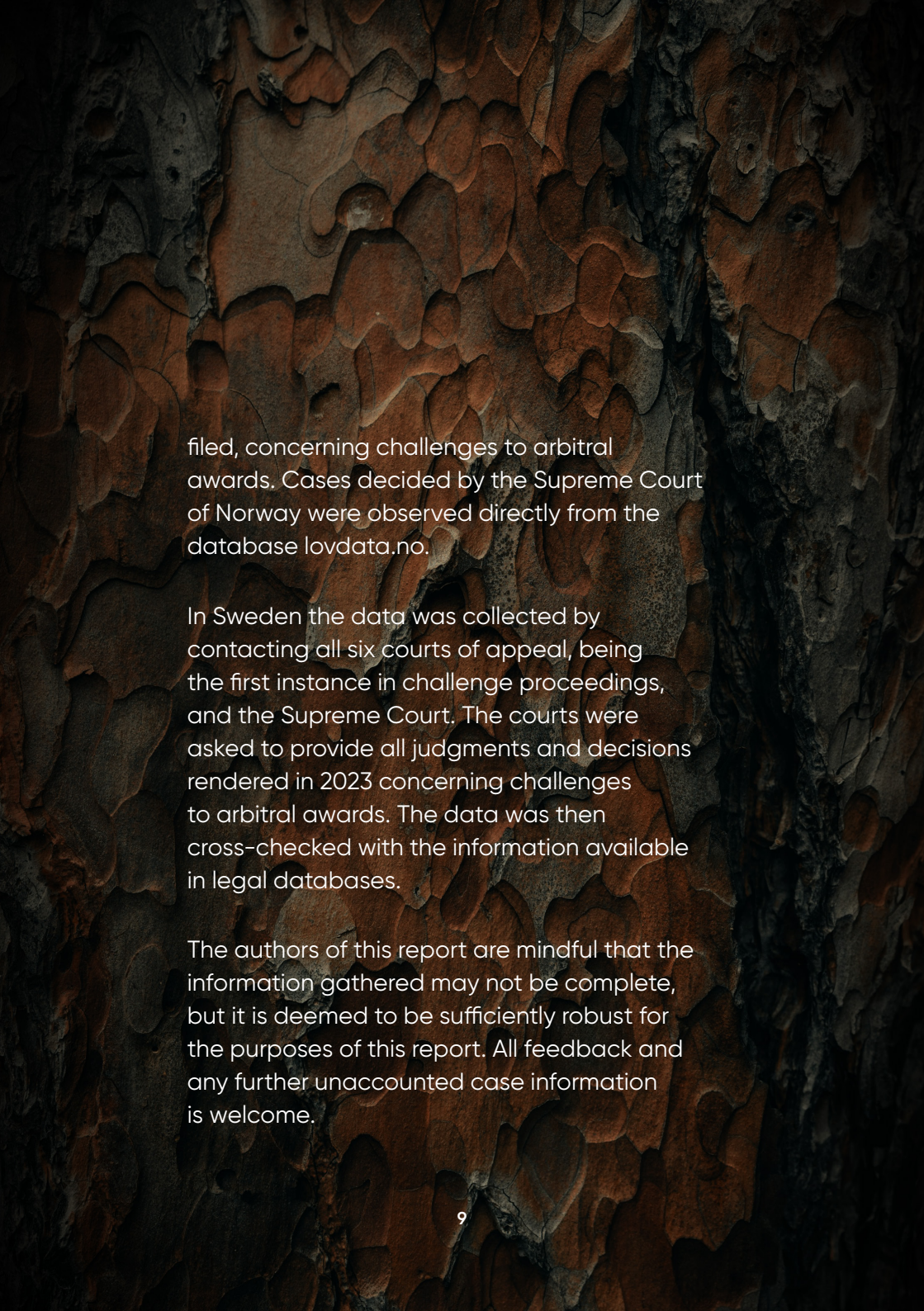
However, if a clear breach of fundamental procedural rights is at hand, the courts will not hesitate to exercise their public control function entrusted by the state.

Methodology

In Denmark the data was collected by contacting the Danish Institute of Arbitration (DIS) as well as the Danish Building and Construction Arbitration Board in combination with outreach to the Danish arbitration community via social media, the newsletter of the Danish Institute of Arbitration and through search in published court rulings.

In Finland the data was collected by contacting all courts of first and second instance. The courts were asked to provide all judgments rendered in 2023 concerning the set-aside and annulment of arbitral awards. Cases decided by the Supreme Court of Finland were observed from relevant databases. The collection of data also included requesting case files for matters that are still pending.

Like in Finland, the data in Norway was collected by contacting the courts of first and second instance and asking them to provide all judgments rendered in 2023, as well as cases



filed, concerning challenges to arbitral awards. Cases decided by the Supreme Court of Norway were observed directly from the database lovdata.no.

In Sweden the data was collected by contacting all six courts of appeal, being the first instance in challenge proceedings, and the Supreme Court. The courts were asked to provide all judgments and decisions rendered in 2023 concerning challenges to arbitral awards. The data was then cross-checked with the information available in legal databases.

The authors of this report are mindful that the information gathered may not be complete, but it is deemed to be sufficiently robust for the purposes of this report. All feedback and any further unaccounted case information is welcome.

The law on challenging arbitral awards

The four Nordic countries have elected different forms of legislation in respect of challenge proceedings. Denmark and Norway have based their arbitration acts on the UNCITRAL Model Law. Finland and Sweden rely on a national approach to their arbitration acts which are also largely aligned with the Model Law.

The main difference between the Danish/Norwegian approach and the Finnish/Swedish one is that the latter distinguishes between awards that can be set aside and awards that are invalid. A party can challenge an award and request it to be set aside, while invalid awards are null and void *per se* without any further action by the parties. Unless an award is contrary to public policy, a common feature for all four countries is that the courts cannot review the merits of an arbitral award.

The legal prerequisites for challenging an award are similar in all four countries.

The common legal grounds for challenge are:

<p>Ruling on a non-arbitrable issue ▶</p>	<p>Disputes that cannot be subject to out-of-court settlement cannot be resolved through arbitration.</p>
<p>Violation of public policy (<i>ordre public</i>) ▶</p>	<p>An award that is clearly incompatible with the fundamental principles of the national legal system is invalid.</p>
<p>No valid arbitration agreement ▶</p>	<p>If the arbitral tribunal's jurisdiction does not rest on a valid and binding arbitration agreement, the award may be set aside.</p>
<p>Invalid appointment of arbitrator ▶</p>	<p>The parties' agreement on the appointment of an arbitrator and the applicable mandatory procedural rules must be complied with when appointing an arbitrator.</p>
<p>Lack of impartiality, independence or legal capacity ▶</p>	<p>An award can be successfully challenged if an arbitrator lacks legal capacity, is not independent from the parties or has a conflict of interest.</p>
<p>Tribunal's excess of mandate ▶</p>	<p>An arbitral tribunal cannot rule on issues falling outside its mandate.</p>
<p>Violation of due process ▶</p>	<p>An arbitral tribunal must comply with the parties' agreement on the procedure and the applicable mandatory procedural law. Sufficient opportunity to present one's case is an example of such a mandatory procedural rule.</p>

In addition to these common grounds, national legislation allows for an arbitral award to be challenged in a few further situations.

In both Finland and Sweden, an arbitral award must be in writing and signed by the arbitrators. If an award lacks one of these prerequisites, it is considered invalid.

In Finland, an award will be invalid if it is obscure or incomplete to the degree that it is not possible to establish what the arbitrators have decided. Such failure in the drafting of the award could also constitute a procedural irregularity under Swedish law and be a ground for setting aside the award.

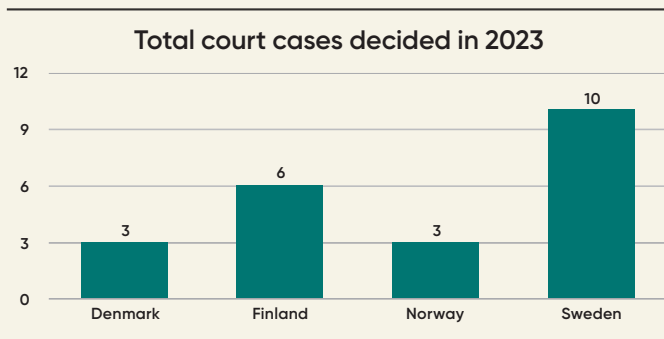
In Sweden, it is also possible to challenge an award if it has been rendered after the agreed deadline or if the arbitration should not have taken place in Sweden.



2023 data

Court cases decided

During 2023 there was a total of 22 challenge cases decided in all four countries (some of these are still subject to possible appeal).



Successful cases

Two challenge cases were successful, both seated in Sweden:

- (i) The award was set aside in accordance with a party's request as a part of the settlement agreement.
- (ii) The investment arbitration award was annulled as being contrary to Swedish public policy (ordre public) due to the prohibition to conduct intra-EU investment arbitration. The judgment has been appealed

Settled cases

Four challenge cases were settled, all seated in Sweden.

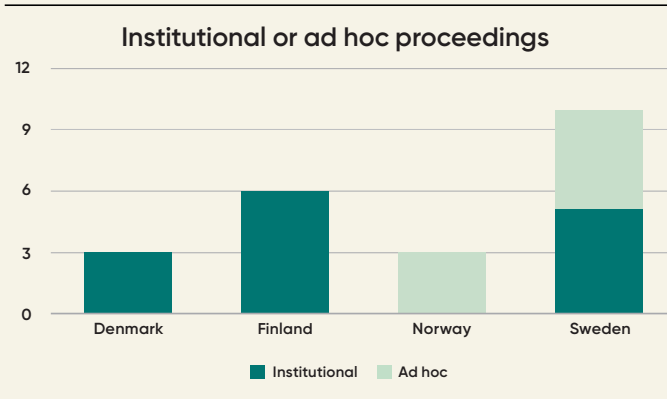
International or local parties

Out of the 22 decided cases, 7 were international, with one or both of the parties incorporated abroad, and 15 were local.



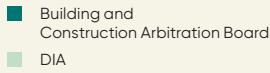
Institutional or ad hoc arbitration

Out of the 22 decided cases, 14 were conducted under institutional arbitration rules and 8 were conducted as ad hoc proceedings.



A further breakdown of arbitral awards rendered under the institutional rules shows the prevalence of the local institution, but not only.

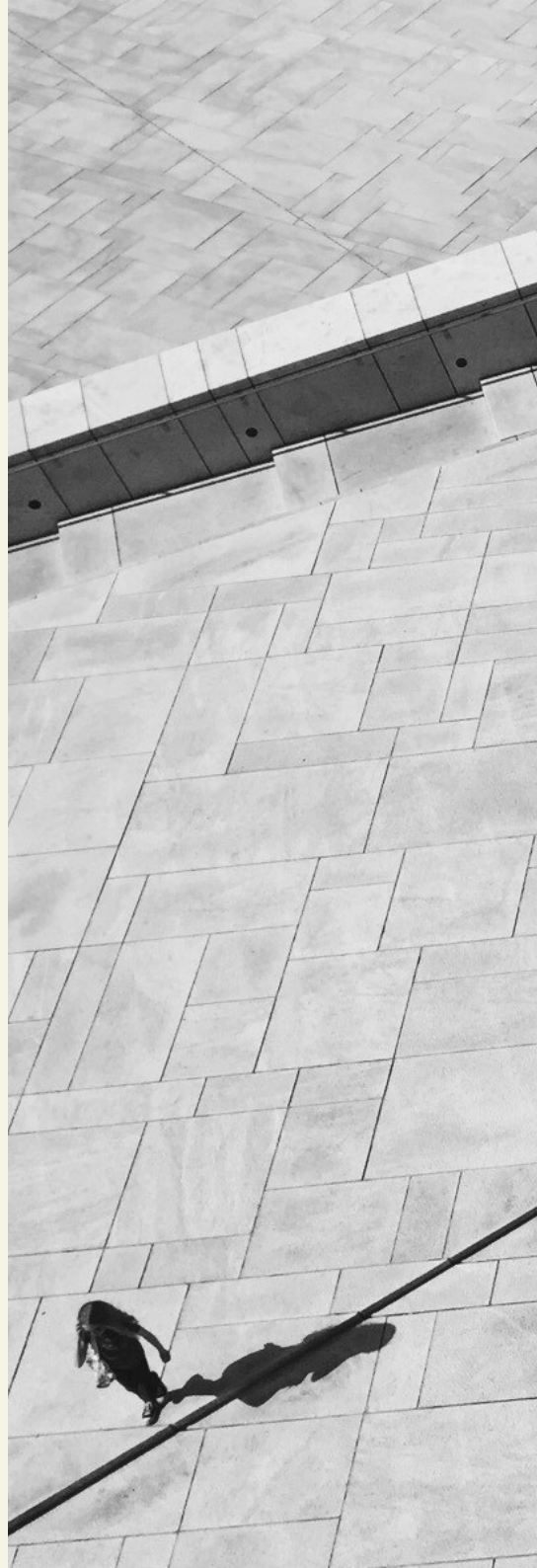
Denmark



Finland



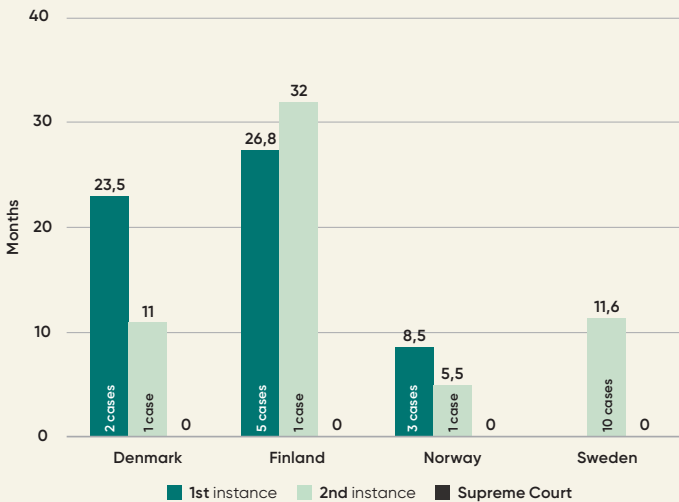
Sweden



Length of the proceedings

The length of the proceedings is measured from the receipt of the application for a summons by the court until the date of the judgment.

Average length of proceedings per court instance



Legal grounds invoked	Denmark	Finland	Norway	Sweden	Total
Ruling on a non-arbitrable issue	0	2	1	1	4
Violation of public policy (ordre public)	0	4	0	3	7
No valid arbitration agreement	0	0	0	4	4
Invalid appointment of arbitrator	0	1	0	0	1
Lack of impartiality, independence or legal capacity	1	2	2	1	6
Tribunal's excess of mandate	1	3	1	5	10
Violation of due process (procedural irregularity)	1	4	2	8	15
Award is not in writing or is not signed	N/A	0	N/A	1	1
Award rendered after agreed deadline	N/A	N/A	N/A	1	1



Conclusions

The number of challenge cases decided per year is very low.

Awards are set aside or annulled only in exceptional circumstances pertaining to breaches of the most fundamental procedural principles.

Settlement is possible also in challenge cases as confirmed by the data from Sweden, where as many as 4 out of 10 cases were settled.

Both cases with international parties and cases with local parties are challenged. However, the 2023 data shows that the majority of the cases pertained to domestic arbitration.

Two-thirds of the challenged awards were rendered under institutional arbitration rules.

This distribution can be attributed to the very strong position of the local arbitral institutions in Denmark, Finland and Sweden.

The length of the proceedings varies considerably depending on the number of court instances that handle the case. In Denmark, Finland and Norway, the challenge cases are initiated before the court of first instance, the judgment of which

can be appealed to the court of second instance and, ultimately, if leave to appeal is granted, to the supreme court. In Sweden, the challenge cases are submitted to the court of second instance, the judgment of which can be appealed only if the court itself as well as the supreme court grant leave to appeal.

In nearly all challenge cases multiple legal grounds were invoked. The one that stands out as the most often used is violation of due process (procedural irregularity). The second most popular ground was the tribunal's excess of mandate, closely followed by other grounds. Interestingly, violation of public policy (*ordre public*), used in 7 cases in Finland and Sweden, was not used at all in Denmark and Norway.







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