Swiss Supreme Court dismisses Libya's belated challenge to eight-year-old arbitral award

by *Practical Law Arbitration*, with *Schellenberg Wittmer Ltd*

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In *Decision 4A_412/2025*, the Swiss Supreme Court declared inadmissible Libya's application to set aside a March 2017 award rendered by a sole arbitrator, seated in Geneva. Libya argued that the award was not properly notified and that the deadline to challenge the award had never started to run. The court rejected this. As Libya had been aware of the award since May 2017 but had failed to raise the defective notification with the tribunal, it was precluded from relying on this defect now. Therefore, its challenge was made out of time.

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The Swiss Supreme Court has dismissed a challenge to an arbitral award, which arose from a mediation in which Libya agreed to pay CHF20 million to a businessman. A sole arbitrator, seated in Geneva, ratified the parties' settlement as an "arbitral judgment" reflecting the settlement's terms (Award) in March 2017.

In 2024, a Geneva court granted the businessman's request to seize a Libyan-owned building to enforce the Award.

In 2025, Libya petitioned the Swiss Supreme Court to declare the Award null and void or, alternatively, set it aside.

The court dismissed Libya's challenge as out of time. Swiss arbitration law requires that requests to set aside awards be filed within 30 days of notification of an award. The Award was delivered to Libya's Finance Ministry by private courier in May 2017, at the initiative of Libya's mediation representative. Before the Supreme Court, Libya argued that this did not constitute valid notification under its domestic law and that, therefore, the time limit for challenging the Award never started to run.

It was unnecessary for the court to determine whether the notification was defective because Libya had actual knowledge of the Award. However, it failed to inform the arbitrator of the allegedly defective notification.

The court recalled that parties are required to raise (alleged) procedural violations immediately. Therefore, a party that becomes aware of an award, which it alleges was not properly notified to it, must promptly inform the arbitral tribunal. If it does not do so, it forfeits its right to a renewed and proper notification of the award. Accepting Libya's position would allow parties with actual knowledge of an award to challenge it years later, if they are dissatisfied with its result. In the court's view, this outcome would breach good faith and undermine legal certainty.

The court also rejected Libya's contention that the Award was null and void because there was no arbitration agreement. An award may only be declared null and void in exceptional circumstances and if the court has been seized of an admissible challenge. Here, the challenge was manifestly out of time and inadmissible.

This decision serves as a reminder that the parties' duty to act in good faith and raise any procedural defects immediately extends beyond the end of the actual arbitration proceedings. Failure to promptly raise such defects will mean a party forfeits the right to rely on them at a later stage.

Case: *Decision 4A_412/2025 (Swiss Supreme Court) (9 December 2025)* (French language).

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