Swiss Supreme Court refuses to set aside award containing no reasons issued by rabbinical arbitral tribunal

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

Legal update: case report | Published on 16-Jun-2023 | Switzerland

In *Decision 4A_41/2023*, the Swiss Supreme Court refused to set aside an award issued by a rabbinical arbitral tribunal which did not contain findings of fact or reasons. The Swiss Supreme Court held that it was de facto not in a position to assess whether the alleged grounds for setting-aside were met.

Anya George (Partner) and Géraldine Ineichen (Associate), Schellenberg Wittmer Ltd

In a recently published German-language decision, intended for official publication in the court reporter, a party sought to set aside an award rendered by a rabbinical arbitral tribunal (*Bais Din*). The dispute originated from a real estate investment. The involved parties entered into an arbitration agreement, agreeing to refer the matter to a three-member rabbinical arbitral tribunal seated in Zurich. The arbitration agreement also specified that the proceedings would be conducted following Jewish procedural law.

The tribunal held a one-hour hearing, for which it prepared written minutes that it did not sign. Shortly afterwards, it rendered an award that did not contain any factual findings or legal reasons. One of the parties sought to challenge the award before the Swiss Supreme Court.

According to the court, the award met the requirements of an arbitral award under article 189 of the Federal Act on Private International Law (PILA) and it was therefore open to a challenge under article 190 of PILA. Additionally, it noted that the prohibition on ecclesiastical jurisdiction did not apply and that rabbinical arbitral tribunals can rule on arbitrable matters.

In assessing the possibility of reviewing the award, the court noted that the arbitration procedure, the form and the content of the arbitral award were primarily determined by party autonomy, which permits parties to agree that the award does not have to contain reasons.

The court observed that, under Jewish procedural law, the principle of orality prevails, and that in line with this, the award issued by the rabbinical arbitral tribunal consisted only of the operative part, with no findings on the procedure or merits. Although this did not render the award invalid, the court held that, as a result, it was not in a position to effectively assess whether the grounds for setting aside raised by the petitioner were fulfilled. It therefore dismissed the application.

This decision highlights that although an arbitral award that contains no written findings of fact or reasons may be valid as a matter of Swiss law and may in theory be challenged under article 190 of PILA, *de facto* it is not open to review by the Supreme Court.

Case: *Decision 4A_41/2023 (Swiss Supreme Court) (12 May 2023)*.

END OF DOCUMENT

