Swiss Supreme Court refuses to set aside domestic arbitral award on grounds of arbitrariness or violation of right to be heard

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In *decision 4A_587/2015*, the Swiss Supreme Court considered an application to set aside a domestic arbitral award based on alleged arbitrariness and a violation of right to be heard.

In an Italian-language decision dated 15 February 2017, and published on 31 March 2017, the Swiss Supreme Court rejected an application to set aside a domestic arbitral award on the alleged basis that the award was arbitrary under Article 393(e) of the Swiss Civil Code of Procedure (CCP) or that the petitioner's right to be heard had been violated under Article 393(d) of the CCP.

In an award dated 22 September 2015, a tribunal found the termination of the petitioner's (A) employment contract to be lawful. Before the Swiss Supreme Court, A argued that his right to be heard had been violated, and that the arbitration award rendered was arbitrary because the tribunal had denied A's request to question the authors of two witness statements produced by the opposing party. Additionally, A argued that the tribunal should have suspended the procedure pending the outcome of criminal proceedings.

In its decision, the Supreme Court reiterated the limited reach of Article 393(e) of the CCP to instances where an award is arbitrary in its result because it is based on findings that are manifestly contrary to the facts stated in the case file, or because it constitutes a manifest violation of law or equity. Furthermore, the Supreme Court confirmed that the assessment of evidence, even if anticipated, is beyond the scope of the courts review and does not concern a violation of the right to be heard under Article 393(d) of the CCP. While arbitrariness is specific to Swiss domestic arbitration the right to be heard is the same for international and domestic arbitration.

Case: *Decision 4A_587/2015* (Swiss Supreme Court).

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