Swiss Supreme Court refuses to vacate award for lack of arbitrator expertise

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In *decision 4A_322/2016*, the Swiss Supreme Court considered a petition to set aside an award, based on an alleged lack of expertise of the arbitrator in addition to his refusal to allow a second expert opinion.

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In a French-language decision of 28 July 2016, but only recently published, the Swiss Supreme Court rejected a petition which aimed to challenge a domestic arbitration award on the grounds that the arbitrator lacked the necessary expertise and had violated the petitioner's right to be heard.

The dispute concerned payment claims made in connection with the construction of a building. The underlying contract provided for ad hoc arbitration and a sole arbitrator. As the parties were unable to agree on a candidate, the arbitrator (a lawyer) was appointed by the state court and subsequently made an award in favour of the claimant. The defendant applied to the Supreme Court to vacate the award, arguing that the arbitrator lacked the necessary technical expertise to decide the case. Furthermore, the defendant objected that the arbitrator had dismissed its request to introduce a second expert opinion.

The Supreme Court refused to set aside the award. It initially clarified that an award cannot be set aside for a lack of expertise of the arbitrator unless the terms of the parties' agreement, the applicable arbitration rules, or the law at the seat of the arbitration, specify certain minimum qualifications. Undisputedly, this was not the case. Furthermore, the court held that, while the parties are generally entitled to contest the findings in an expert opinion, the defendant had in fact failed to respond to the original expert opinion, and instead made a belated attempt to introduce an expert opinion on a different subject matter. Consequently, the court upheld the arbitrator's decision.

Whilst the Supreme Court's decision was rendered with respect to a domestic case, the foregoing considerations are likely to also apply in an international context. It reminds counsel that if they want the tribunal to appoint an expert, they should request so at the outset of the arbitration.

Case: *Decision 4A_322/2016 (www.practicallaw.com/w-004-6340)* (Swiss Supreme Court).

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