Swiss Supreme Court insists on formally correct and timely submissions

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In *decision 4A_490/2016*, the Swiss Supreme Court considered an application to set aside an interim award on jurisdiction, where the petitioners argued that the tribunal had violated their right to be heard.

In a German language decision dated 6 March 2017, and published on 31 March 2017, the Swiss Supreme Court rejected an application to set aside an interim award on jurisdiction, in which the tribunal had accepted its jurisdiction.

In 2014, a Libyan corporation commenced arbitration proceedings against two Libyan respondents based on an International Federation of Consulting Engineers (FIDIC) contract entered into between the claimant and the first respondent. In the arbitration, the respondents raised a jurisdictional objection, arguing that the dispute should be resolved by Libyan state courts, referring to a jurisdiction clause in a second contract. The tribunal dismissed the respondents' objection. The respondents appealed to the Supreme Court.

The Supreme Court rejected the application, holding that the tribunal had not violated the right to be heard. It found that the tribunal did not have to deal in detail with parallel Libyan state court proceedings. Importantly, it held that arguments put forward in emails that were not submitted in the correct format and in accordance with the timetable, did not have to be considered as submissions by the tribunal.

Further, the Supreme Court held that the respondents had been given a reasonable opportunity to comment, with regard to the second contract, on the issue of simulated contracts. Even if the tribunal had not considered certain parts of the claimant's submission, this would not have amounted to a violation of the respondents' right to be heard.

Lastly, the Court remarked that given that the second respondent did not raise in the arbitration proceedings that it was not a party to the FIDIC contract, it was precluded from invoking this objection in the setting aside proceedings. The Supreme Court confirmed that without such an objection, the tribunal did not have to search for reasons to refute the validity of the arbitration clause.

The decision contains a welcome clarification that an arbitral tribunal is not expected to take into account unduly filed (including unsolicited) submissions when rendering its award.

Case: *Decision 4A_490/2016* (Swiss Supreme Court).

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