Swiss Supreme Court upholds objective interpretation of pathological arbitration clause

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In *decision 4A_672/2016*, the Swiss Supreme Court considered the arbitral tribunal's jurisdiction based on an interpretation of the arbitral clause according to the principles of good faith.

In a German-language decision dated 24 January 2017, but only recently published, the Swiss Supreme Court held that by accepting its jurisdiction, the arbitral tribunal did not violate the principles of objective interpretation.

The dispute arose in connection with a sales contract concluded between X (the seller) and Y (the buyer). The contractual arbitration clause determined that all disputes shall be finally settled "by the International Chamber of Commerce of Geneva". Due to defects of the delivered machine, Y initiated an arbitration procedure against X under the International Chamber of Commerce (ICC) Arbitration Rules. In its final award dated 18 October 2016, the ICC arbitral tribunal, seated in Geneva, accepted jurisdiction and essentially granted the claim. Based on Article 190(2)(b) of the Private International Law Act (PILA), X appealed against this award, arguing that the tribunal had wrongly accepted jurisdiction.

Following a reiteration of the interpretation principles under the applicable Swiss law, the Supreme Court stated that no "International Chamber of Commerce of Geneva" exists and considered in detail the wording of the arbitral clause. The Supreme Court held that the alleged choice of an institution (that is – the "Geneva Chamber of Commerce, Industry and Services"), which (since the establishment of the Swiss Chambers' Arbitration Institution) does not generally administrate international arbitration proceedings, seemed a significantly less obvious choice than that of the ICC. Moreover, an objective interpretation according to the principles of good faith also considers appropriateness: the alleged jurisdiction of an arbitral tribunal of the "Swiss Chambers' Arbitration Institution", an institution applying primarily its own procedural rules (that is – the Swiss Rules), would, in view of the agreed application of ICC Rules, lead to procedural problems. Also, it cannot be assumed that the parties wanted such an inappropriate dispute resolution clause. Thus, the ICC arbitral tribunal, seated in Geneva, did not violate principles of Swiss law when accepting its jurisdiction.

Case: *Decision 4A_672/2016 (Swiss Supreme Court)*.

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