

# Arbitral cost decisions cannot violate the principle of equal treatment of parties

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In *decision 4A\_450/2017*, the Swiss Supreme Court considered the principle of equal treatment of the parties in an arbitral cost decision and the entitlement of parties in Swiss-seated arbitral proceedings to request the appointment of an expert by the arbitral tribunal.

In a French-language decision, the Swiss Supreme Court has refused to set aside an International Chamber of Commerce (ICC) award dated 9 August 2017.

The Supreme Court noted that a motion to set aside may be inadmissible if it is not properly substantiated. Unspecific references by the parties such as "as explained in the facts section" are insufficient. It is for the applicants to explain in detail how the decision violates their rights, taking into account the applicable legal provisions and the requirements stipulated in relevant case law. The Supreme Court will not, of its own accord, cure any shortcomings in this regard.

The Supreme Court examined the applicants' allegation that the arbitrator had violated the principle of equal treatment of the parties, by awarding costs exclusively to the respondent although no party had fully succeeded with its claims. The Supreme Court confirmed that the principle of equal treatment only applies during the evidentiary phase, but not during the subsequent deliberations phase, including decisions on costs. The Supreme Court held that, if errors of fact or law committed by an arbitrator were considered a violation of the principle of equal treatment, this would introduce an unapproved means of challenging an international arbitration award based on its alleged arbitrariness, a possibility which the Swiss federal legislator deliberately only intended for domestic arbitrations.

Finally, the Supreme Court confirmed previous case law regarding the parties' right to a tribunal-appointed expert. Under Swiss law, a party has the right to request that the arbitral tribunal appoint an expert if certain conditions are fulfilled: the request must be made expressly, in the agreed form and time, the requesting party must be willing to advance the costs and the expertise must be necessary and appropriate to prove a certain (technical) point of fact.

Case: [Decision 4A\\_450/2017 \(Swiss Supreme Court\) \(12 March 2018\)](#).

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