

Swiss Supreme Court safeguards arbitrator's discretion in procedural decisions

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In *decision 4A_236/2017*, the Swiss Supreme Court considered a request to set aside an award based on the petitioner's argument that the sole arbitrator had displayed bias in his conduct of the arbitral proceedings.

In a decision dated 24 November 2017, and published on 16 January 2018, the Swiss Supreme Court rejected a request to set aside an award issued under the arbitration rules of the International Chamber of Commerce (ICC).

The petitioner maintained that in several instances during the proceedings, the sole arbitrator had displayed bias in favour of the opposing party. In particular, the petitioner argued that it had been treated unfairly by the sole arbitrator's decision to admit evidence introduced by the opposing party during a hearing, whilst the petitioner had not been granted sufficient time to review the new evidence.

Furthermore, the petitioner submitted that the sole arbitrator lacked the required impartiality and independence, had violated the principle of equal treatment of the parties as well as the petitioner's right to be heard, and had rendered an award incompatible with Swiss procedural public policy as per Articles 190(2)(a), (d) and (e) of the Swiss Private International Law Act (PILA).

The Supreme Court rejected the request for setting aside. The court reiterated that it applies a strict standard when it comes to allegations pertaining to an arbitrator's impartiality and independence. The court referred to its established case law, whereby an arbitrator's procedural decisions, whether correct or not, cannot *per se* serve as grounds for objective suspicion of bias. However, the Supreme Court, based on its previous case law, allows for exceptions, that is, where an arbitrator makes blatant mistakes or repeated manifest errors, which qualify as severe breaches of duty, this can result in an appearance of bias.

Once more, the Swiss Supreme Court firmly stated that it will not review an arbitral tribunal's legal evaluation or its consideration of the evidence, under the cover of an alleged violation of the right to be heard, equal treatment, or public policy.

Case: [Decision 4A_236/2017](#)

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