Swiss Supreme Court refuses to set aside arbitral award based on an alleged violation of the right to be heard

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Abstract: In decision 4A_430/2017, the Swiss Supreme Court considered an application to set aside an award based on a violation of the right to be heard for alleged failure to address material arguments raised by the petitioners.

In a German-language decision dated 30 November 2017 and published on 18 January 2018, the Swiss Supreme Court rejected an application to set aside an award on the basis that the petitioners’ right to be heard had been violated.

In the underlying arbitration, the tribunal found that the three petitioners had not validly terminated the two framework agreements to which the four defendants were also parties and which has been concluded for 30 years. The tribunal further found that the requirements for an extraordinary termination of these agreements were not met and that therefore the agreed term of the contracts applied. Before the Swiss Supreme Court, the petitioners argued that their right to be heard had been violated because the tribunal had failed to address and consider their material argument regarding the application of a profit guarantee which was according to the petitioners relevant for assessing the right to an extraordinary termination.

In its decision, the Supreme Court rejected the petition. The court restated its well-established case law that the parties’ right to be heard under Article 190(2)(d) PILA imposes on tribunals a minimum duty to examine and address all relevant issues that are material to the outcome of the case. The right to be heard is violated if, inadvertently or due to a misunderstanding, the arbitral tribunal fails to take into consideration allegations, arguments or evidence that had been put on record by a party and that were apparently important to the outcome of the case. In the Supreme Court’s view, the petitioners did not specifically argue in their submissions that the profit guarantee had been applied throughout the term of the framework agreement. The court therefore found that the petitioners had not demonstrated that the tribunal overlooked any of its arguments.

Case: Decision 4A_430/2017 (Swiss Supreme Court).

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