

# Swiss Supreme Court sets aside renewed award due to non-compliance with earlier decision rendered in same arbitral proceedings

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In *Decision 4A\_462/2018*, the Swiss Supreme Court set aside a renewed final award. It held that the arbitral tribunal had not complied with an earlier decision of the Supreme Court in the same matter in which it had instructed the tribunal to substantively assess one of the applicant's prayers for relief. In disregarding the earlier decision, the tribunal (again) violated the applicant's right to be heard.

The Swiss Supreme Court has set aside a renewed award for non-compliance with an earlier decision rendered in the same arbitral proceedings.

A dispute between a Liechtenstein company (A), the Palestinian Authority (PA) and a Palestinian company (B) arose regarding the development of a casino and hotel. Arbitration was commenced and A demanded, among other things, that PA be ordered to procure a casino licence until 2028 and that the term of all other licences necessary to operate the hotel and casino be amended for the same period. The tribunal, in a first award, denied A's request because the performance of the main agreement, and hence the issue of a casino licence, could not be ordered for PA, as under Palestinian law, gambling is illegal.

The Supreme Court partially set aside the award and remanded it to the tribunal. It found that the tribunal had violated A's right to be heard by not considering the relief regarding the hotel licence, but rather rejecting the extension of all licences because the operation of a casino was illegal. The court rejected the tribunal's view that the request to amend the term for "all other licences necessary to operate the hotel and the casino" could only be understood for the entirety of all licences, rather than two distinct licences. Therefore, the tribunal should have dealt with the hotel licence separately (see *Decision 4A\_532/2016*, discussed in *Legal update, Swiss Supreme Court sets award aside for violation of right to be heard*).

The tribunal granted the parties an opportunity to comment on the Supreme Court's decision. It then rendered a renewed award, again rejecting the claim entirely, finding that A's prayers for relief did not include a separate request for the issuance of a hotel licence and, therefore, it did not have to be dealt with separately.

A appealed to the Supreme Court again, which set aside the renewed award due to a violation of the right to be heard. It concluded that the tribunal had disregarded its earlier decision that the tribunal address the hotel licence separately, notwithstanding the prohibition for gambling. The Supreme Court's earlier ruling was binding on the tribunal and the tribunal could not apply legal reasoning already expressly rejected in the Supreme Court's ruling. The Supreme Court also held that with its first decision it had not substantively reviewed the (first) award.

Case: *Decision 4A\_462/2018* (4 July 2019) (Swiss Supreme Court).

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