

Award granting Turkmen national gas company EUR1.5 billion upheld (Swiss Supreme Court)

by *Practical Law Arbitration*, with *Schellenberg Wittmer*

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In *Decision 4A_430/2020*, the Swiss Supreme Court upheld an ICC award ordering the National Iranian Gas Company to pay Türkmengaz EUR1.54 billion plus interest. The Supreme Court rejected an argument made by the National Iranian Gas Company that the arbitral tribunal had violated its right to be heard by basing the award on a point that was not explicitly pleaded by the parties.

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The Swiss Supreme Court has upheld an ICC award against the National Iranian Gas Company (NIGC). The dispute arose out of long-term contracts for the supply of gas by Türkmengaz, a Turkmen state-owned entity, to NIGC.

NIGC failed to make numerous payments under the contracts, in part as a result of economic sanctions imposed on Iran by the US and the EU in 2012. On 1 January 2017, Türkmengaz suspended supply. On 18 March 2017, NIGC indicated that it would make no further payments under the contracts.

Türkmengaz initiated arbitration proceedings, claiming EUR1.66 billion in damages. NIGC raised counterclaims, arguing that Türkmengaz had violated the contracts by suspending supply. In the final award, the arbitral tribunal ordered NIGC to pay Türkmengaz EUR1.54 billion plus interest, but also granted NIGC nearly EUR30 million on the basis that the suspension of supply by Türkmengaz between 1 January and 18 March 2017 was unjustified. NIGC challenged the award.

NIGC claimed that the arbitral tribunal had violated its right to be heard by "spontaneously" examining the legitimacy of the suspension of the gas supply as of a date that was not discussed in the arbitration, namely 18 March 2017, when NIGC refused to make any further payments under the contract. The Supreme Court rejected this argument, finding that even though the parties had focused their pleadings on the legitimacy of the suspension as of 1 January 2017, it was hardly unforeseeable that the arbitral tribunal might examine this question as of a later date. According to the court, parties to such a complex case can be expected to examine all possible scenarios and to anticipate that the arbitral tribunal might adopt a "middle way". Therefore, there was no violation of NIGC's right to be heard. The court also rejected NIGC's arguments that the arbitral tribunal had decided *ultra petita* (beyond that which is sought) and that the award violated public policy.

This decision confirms that the parties' prayers for relief and their pleadings serve as the "outer framework" for the award, but that the tribunal is free, within that framework, to reach its own conclusions based on the evidence on file, provided its reasons are within the realm of what is objectively foreseeable for the parties.

Case: *Decision 4A_430/2020 (10 February 2020)* (Swiss Supreme Court).

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