

# Challenge to award on jurisdiction in inheritance matter inadmissible (Swiss Supreme Court)

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In *decision 4A\_7/2019*, the Swiss Supreme Court held that an application to set aside a preliminary award, issued in the context of an inheritance dispute, was inadmissible on the basis that the appellant failed to meet the substantiation requirements.

In a recently published French-language decision, the Swiss Supreme Court declared that an application to set aside a preliminary award on jurisdiction rendered by a Geneva-seated tribunal was inadmissible.

The dispute arose in connection with an inheritance contract between the testator, his spouse and his children. The inheritance contract contained an arbitration clause and designated several estate executors, which were not privy to the contract. When the testator died, his spouse initiated arbitration proceedings against the children and one of the estate executors. The children and estate executor (appellants) objected to jurisdiction on the ground that the estate executor was not party to the arbitration clause.

In a preliminary award, the sole arbitrator asserted jurisdiction on the basis that the estate executor, by accepting and carrying out his mission in accordance with the terms of the inheritance contract and without reservation, had engaged in conduct by which he adhered to the arbitration agreement.

The appellants challenged the sole arbitrator's decision before the Supreme Court arguing that he had wrongly accepted jurisdiction.

The court reasoned that the appellants had failed to substantiate the grounds for annulment. In particular, the court held that the appellants had failed to show why the sole arbitrator incorrectly decided that the estate executor's conduct constituted acceptance to be bound by the arbitration clause.

Unfortunately, this finding prevented the court from discussing the subjective scope of an arbitration agreement in inheritance matters, a topic which has rarely been scrutinised by the Swiss courts. However, an estate executor designated in an inheritance contract is undoubtedly considered a third party to that contract. Such designation is characterised as a unilateral arbitration clause, similar to an arbitration clause stipulated in a will. What is disputed is whether, and under what circumstances, unilateral arbitration clauses are valid in Switzerland. In this context, the draft bill of the revised Swiss arbitration law, which is currently being discussed by the Swiss Parliament, contains an explicit provision allowing unilateral arbitration clauses (see *Legal update, Swiss Federal Council releases draft bill and report on revision of Swiss Private International Law Act*). It is only upon the entry into force of the revised arbitration law (expected in 2021) that this controversy will finally be resolved.

Case: *Decision 4A\_7/2019 (21 March 2019)* (Swiss Supreme Court).

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