

No violation of right to be heard or public policy in terminated proceedings (Swiss Supreme Court)

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

Legal update: case report | [Law stated as at 18-Nov-2020](#) | Switzerland

In *Decision 4A 156/2020*, the Swiss Supreme Court dismissed an application to set aside a cost award based on an alleged violation of the right to be heard and of public policy.

Anya George (Partner) and Dr Wolfgang Junge (Senior Associate), Schellenberg Wittmer Ltd

In a recently published French-language decision, the Swiss Supreme Court refused to vacate an UNCITRAL tribunal's costs award based on an alleged violation of the right to be heard and of public policy.

Two Indian investors brought claims against North Macedonia based on an alleged expropriation of mining concessions under the India-North Macedonia bilateral investment treaty. After the claimants failed to pay their advance on costs, despite the matter having been pending for over two years, the tribunal terminated the proceedings and ordered the claimants to reimburse North Macedonia's legal fees of approximately EUR650,000.

The claimants challenged the costs award before the Swiss Supreme Court, claiming that the tribunal had violated their right to be heard and that the award was contrary to public policy because the legal fees awarded to North Macedonia were "excessive", given that the arbitration was only in its early stages.

On the procedural rights violations, the claimants asserted that the tribunal had failed to extend deadlines that were allegedly impossible to meet and had denied the claimants an opportunity to comment on an unsolicited brief.

The court emphasised that the right to be heard guarantees each party the opportunity to present facts, legal argument and evidence. It does not imply a right to multiple deadline extensions, particularly where the grounds provided for an extension request arose after the deadline had expired. The claimants had also failed to demonstrate that they had suffered any prejudice due to the tribunal's refusal to extend a deadline.

The claimants' argument that they should have been allowed to respond to an unsolicited submission was likewise unsuccessful; the right to be heard did not include a right to a second exchange of written submissions and the claimants could have submitted an unsolicited brief themselves.

Finally, the court held that a costs award would only be contrary to public policy if it was wholly disproportionate to the costs that a party could reasonably expect to incur. Given the claimants' repeated procedural motions and delays, the court considered the legal fees awarded to North Macedonia could not be deemed unreasonable or disproportionate.

The decision confirms the court's restrictive approach to challenges based on the right to be heard and the necessity for parties to object immediately to potential procedural errors during the arbitration.

Case: *Decision 4A 156/2020 (1 October 2020)*.

END OF DOCUMENT

Related Content

Topics

[Arbitral Awards and Challenges](#)

[Investment Treaty Arbitration](#)

Practice notes

[Arbitration at the Court of Arbitration for Sport](#) • [Maintained](#)

[Arbitration in Switzerland](#) • [Maintained](#)

[Enforcing arbitration awards in Switzerland](#)

Country Q&A

[Arbitration procedures and practice in Switzerland: overview](#) • [Law stated as at 01-Feb-2020](#)