

Swiss Supreme Court declares English-language challenge against arbitral award manifestly inadmissible due to abuse of rights

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In *Decision 4A_114/2020*, the Swiss Supreme Court found that an applicant committed an abuse of rights by filing an application to set aside an arbitral award in English, despite being aware that a submission in an official language was required. As a result, the application was inadmissible.

In a French-language decision dated 20 May 2020 and published on 3 June 2020, the Swiss Supreme Court declared that an application to set aside a final award in Swiss Chambers' Arbitration Institution (SCAI) proceedings was inadmissible.

The award was notified to the appellant on 29 January 2020. On 27 February 2020, the appellant (who was not represented by counsel) filed an application to set aside the award which was in English and did not bear a handwritten signature. On 6 March 2020, the Supreme Court requested a signed translation in one of Switzerland's official languages. On 9 March 2020, the appellant submitted a French translation, but did not sign it.

Pursuant to the Swiss Supreme Court Act (SCA), written submissions must be made in an official language, that is, German, French, Italian or Romansh. The Supreme Court "may" refuse submissions filed in another language and set an appropriate time limit to remedy the defect. In principle, the Supreme Court is obliged to set this additional time limit, in order to avoid excessive formalism. However, there are exceptions, in particular, in cases of abuse of rights.

The application stated that it was "submitted in English language exclusively to meet the deadline stipulated in the SCA" and the appellant undertook to translate the appeal into one of the official languages shortly thereafter. Therefore, it appeared that the appellant had deliberately filed a flawed submission in order to extend the non-extendable statutory 30-day time limit for applications to set aside. In line with an earlier decision, the Supreme Court qualified this as an abuse of rights and therefore found that the appellant had not filed a timely challenge. In any case, the French translation ultimately provided was not signed. For these reasons, the Supreme Court, in simplified proceedings, declared the application manifestly inadmissible.

Notably, the SCA and the Swiss Private International Law Act (PILA) were recently revised. On 9 June 2020, the chambers of parliament agreed that parties will be able to file applications to set aside (and further written submissions) in English in arbitration-related proceedings before the Swiss Supreme Court in the future. The revised law is expected to enter into force on 1 January 2021.

Case: *Decision 4A_114/2020* (Swiss Supreme Court).

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