

# Challenge against interim award inadmissible (Swiss Supreme Court)

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

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In *Decision 4A\_300/2020*, the Swiss Supreme Court held that an application to set aside an interim award was inadmissible. The judgment reiterates the distinction between interim, partial and final awards and the extent to which these awards are subject to setting-aside in Switzerland.

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In a recently published French-language decision, the Swiss Supreme Court found that a setting-aside application was inadmissible because the award was not a partial award but an interim award.

The dispute relates to a 2001 gas supply contract. The seller never supplied any gas and, in June 2018, the buyers initiated arbitration proceedings, requesting damages of USD18.6 billion for the period between the date of a prior award in 2014 and the expiry of the contract in 2030. In September 2018, the buyers terminated the contract and the tribunal issued an award, finding that the termination was valid. The seller requested the Swiss Supreme Court to set aside the award, invoking a violation of its right to be heard.

The Swiss Supreme Court distinguished three types of awards:

- Final awards, which put an end to the proceedings on substantive or procedural grounds.
- Partial awards, which deal with only a portion of the claims or parties' prayers for relief and which can terminate the arbitration for one of the parties.
- Preliminary or interim awards, which decide on preliminary questions of substance or procedure.

The court recalled that all statutory grounds for challenge are available against final and partial awards.

By contrast, interim awards can only be challenged if the tribunal was irregularly constituted or if an incorrect ruling on jurisdiction was rendered. Only if a challenge relates strictly to these two grounds can other statutory grounds for setting aside (such as a violation of the right to be heard) be invoked. In addition, to the extent that an interim award influences the substance of a final or partial award, the interim award can be challenged as part of setting-aside proceedings against the final or partial award.

Referring to case law regarding state court decisions, the Swiss Supreme Court stated that an award is partial only if it definitively resolves part of the dispute which can be tried separately and if the remaining subject matter of the dispute can also be decided independently from the prayers for relief already decided. Here, the court held that the award on termination was not sufficiently independent from the remaining subject matter to be a partial award. The buyers had stated that the termination would have a "profound influence" on the period of time for which they could claim damages. The award was therefore an interim award and the challenge inadmissible.

Case: *Decision 4A\_300/2020 (24 July 2020)* (Swiss Supreme Court).

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