Award partially set aside due to tribunal's unexplained choice between two contradictory findings

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In a recently published decision, the Supreme Court set aside an arbitral award issued in a domestic arbitration on the grounds that the arbitral tribunal had drawn consequences from one of two contradictory findings without providing any reasons for its decision.\(^{(1)}\)

Facts

The dispute arose out of the principal's termination of an architects' mandate with immediate effect. In arbitration proceedings before a three-member arbitral tribunal seated in Geneva, the architects claimed payment of their fees as well as indemnification for untimely termination, while the principal claimed restitution of the payments already made on the basis of the architects' alleged inexistent or poor performance. The arbitral tribunal awarded the majority of the architects' claim and rejected all other requests for relief. The principal challenged this award before the Supreme Court on the grounds of:

- arbitrariness;
- violation of its right to be heard; and
- ultra petita (decision going beyond the claims submitted to the tribunal).

Decision

The Supreme Court rejected the principal's arguments concerning the alleged arbitrariness of the award because the principal had merely criticised the arbitral tribunal's assessment of evidence, its argument of a finding contrary to the record was unfounded and there had been no manifest violation of the law.\(^{(2)}\)

The Supreme Court also rejected the other arguments raised by the principal concerning the alleged violation of its right to be heard and ultra petita.\(^{(3)}\)

However, in relation to the principal's counterclaim for restitution of the payments already made, the Supreme Court found that the arbitral tribunal had made contradictory findings in the award and had then chosen one of the two alternatives without explaining the reasons for such choice. Considering that the Supreme Court could not substitute its own reasoning for the arbitral tribunal's lack of reasoning, it annulled the award on this point.\(^{(4)}\)

Comment

The arbitrariness of an award is grounds for setting aside domestic awards only. In the present case, it is not entirely clear whether the Supreme Court's decision to partially set aside the award was based on a violation of the principal's right to be heard or on the award's arbitrariness. Arguably, taking into account the Supreme Court's reasons for its decision, the setting aside of the award was based on the former violation. Therefore, considering that the test to admit a violation of the right to be heard is the same for domestic and international arbitration, this decision may be relevant for international arbitration, even though it pertained to domestic arbitration.
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Endnotes

(1) Supreme Court, 4A_642/2017, 12 November 2018 (in French).

(2) Grounds 4.1.3, 4.1.4 and 5.4.

(3) Grounds 4.2.3 and 7.2.3.

(4) Ground 6.3. On the one hand, the arbitral tribunal implicitly admitted that the architects had performed the work entirely and, on the other hand, it found that they had performed it only in part. Nevertheless, the arbitral tribunal then rejected the principal’s claim for restitution of the payments already made in its entirety.

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