

Arbitration - Switzerland

Uncooperative Arbitrators Need Not Delay Award

September 05 2002

The Swiss Supreme Court recently refused to set aside an award on the ground that a co-arbitrator had failed to attend the deliberation.

The co-arbitrator failed to attend without giving prior notice, but argued that the deliberation could not be held because the International Chamber of Commerce (ICC) was due to decide on the challenge of the arbitral tribunal's chairman. The ICC subsequently rejected the challenge. Upon receiving a new version of the draft award which reflected the discussions at the deliberation meeting held without the uncooperative co-arbitrator, the co-arbitrator refused to comment on the draft and stated that he would not participate in a second deliberation meeting if the new draft was not withdrawn. The chairman refused to withdraw the new draft and the co-arbitrator did not participate in the meeting. He also failed to respond to an invitation to comment on the changes made to the draft award at that meeting. The final award was signed by the chairman and the other co-arbitrator.

The court considered that the reasons advanced by the co-arbitrator were not sufficient, as it is generally recognized that a challenge against an arbitrator does not have the effect of automatically staying the proceedings.

According to the Swiss Supreme Court, this situation can be distinguished from a case where the arbitrator is dismissed and the court rules that the proceedings cannot be continued, without the parties' agreement, until a new arbitrator has been appointed.

Just as the parties' right to be heard is satisfied when each has been given the opportunity to present its case, an arbitrator's right to participate in the deliberation is satisfied once the arbitrator has been given the opportunity to present his point of view.

This solution aims to prevent one arbitrator from blocking the process of making the award. Similar solutions have been adopted by several institutions (eg, Article 12(1) of the Arbitration Rules of the London Court of International Arbitration and Article 35(a) of the Arbitration Rules of the World Intellectual Property Organization).

Source: *X Ltd v Y BV*, 4P.226/2001, February 1 2002, not yet published; available on the Swiss Supreme Court's website at www.bger.ch (using the French language version, select "jurisprudence", then "arrêts dès 2000").

For further information on this topic please contact [Pierre-Yves Tschanz](mailto:tschanz@ttv.ch) at Tavernier Tschanz by telephone (+41 22 347 77 07) or by fax (+41 22 347 9789) or by email (tschanz@ttv.ch).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Author

**Pierre-Yves
Tschanz**





Official Online Media Partner to the International Bar Association
An International Online Media Partner to the Association of Corporate Counsel
European Online Media Partner to the European Company Lawyers Association

© Copyright 1997-2009 Globe Business Publishing Ltd