

Arbitration - Switzerland

Principle of autonomy – temporal limitation of arbitration agreement denied

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Introduction

The principle of autonomy of arbitration agreements provides that an arbitration clause represents a stand alone agreement, independent of the main contract.⁽¹⁾

In a recent decision, the Supreme Court confirmed that, further to this principle, once the existence of such an agreement has been established it must be assumed that the parties intended to give the arbitral tribunal jurisdiction encompassing all the potential claims in connection with the main agreement, including those resulting from the latter's termination. The Supreme Court held that the parties' intent to limit the temporal scope of an arbitration agreement must be admitted only if such intent clearly results from an unequivocal agreement by the parties.⁽²⁾

Facts

The case pertained to a patent licence agreement, which granted X the right to use different patents belonging to Y against the payment of royalties. The agreement contained an arbitration clause in favour of an arbitral tribunal to be constituted pursuant to the Rules of Arbitration of the International Chamber of Commerce in Zurich.

X terminated the licence agreement in respect of one licensed patent. Following the termination, Y informed X that the patent was still valid and that X was prohibited from manufacturing and selling products falling under the patent's scope beyond the specific sale period provided for in the agreement.

Y started arbitration proceedings to obtain the payment of royalties and the prohibition of manufacturing and selling in violation of the patent. Subsequently, X terminated the entire licence agreement. X then objected to the arbitral tribunal's jurisdiction, arguing that the dispute did not fall under the scope of the arbitration clause. X's contention was that the arbitration clause could not extend to disputes arising after termination of the licence agreement.

The arbitral tribunal rejected X's jurisdictional objection in a preliminary award. X brought a challenge before the Supreme Court requesting that the award be annulled and that the arbitral tribunal's jurisdiction to decide the dispute be denied.

Decision

First, the Supreme Court recalled that an exception to the cassatory nature of challenges against arbitral awards must be made if the dispute pertains to the jurisdiction or the composition of the arbitral tribunal. In these cases the Supreme Court may decide itself⁽³⁾ (for further details please see "[Violation of right to be heard and partial annulment](#)").

Then, the Supreme Court confirmed its well-established practice that arbitration agreements must be interpreted in accordance with the general principles of contract interpretation.⁽⁴⁾ The Supreme Court also confirmed that when interpreting an arbitration agreement, it must not be admitted lightly that the parties waived their right to seize state courts in favour of arbitration, but that once the existence of an arbitration agreement has been established there is no reason to interpret it restrictively. Rather, it must be assumed that the parties intended to provide the arbitral tribunal with broad jurisdiction.⁽⁵⁾

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Based on these principles, and referring to the broad wording of the arbitration clause, the Supreme Court held that in accordance with the principle of trust, the parties' hypothetical intent must have been to submit to the exclusive jurisdiction of the arbitral tribunal the entirety of the claims resulting from the licence agreement. More precisely, relying on the principle of autonomy of arbitration agreements, the Supreme Court made clear that arbitration clauses worded comprehensively, as in the case at hand, must include claims resulting from both the conclusion and validity of the main agreement and the termination thereof.⁽⁶⁾ Therefore, the Supreme Court held that Y's claims were within the scope of the arbitration clause.

Finally, the Supreme Court dealt with X's argument that the arbitral tribunal had ceased to have jurisdiction further to the termination of the licence agreement on the basis of two provisions contained therein. Considering the broad arbitration clause and the absence of any temporal restrictions in these provisions, the Supreme Court held that the parties' intent to limit the temporal scope of the arbitration clause to disputes arising before the termination of the licence agreement was not established.⁽⁷⁾ Therefore, the Supreme Court found that the arbitral tribunal had rightly admitted its jurisdiction and thus dismissed the challenge.

Comment

This decision naturally stems from the principle of autonomy. If the arbitration agreement is independent of the main agreement, the termination of the latter must have no effect on the former. Consequently, the jurisdiction of an arbitral tribunal based on the arbitration agreement is not affected by termination of the main agreement. Therefore, parties intending to derogate from this rule should say so expressly in the arbitration agreement.

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Endnotes

(1) ATF 121 III 495, Ground 5a; ATF 119 II 380, Ground 4a and ATF 116 Ia 56, Ground 3b.

(2) Supreme Court, 4A_438/2013, February 27 2014 (in German). Case available at www.bger.ch.

(3) Ground 2.3, referring to ATF 136 III 605, Ground 3.3.4.

(4) Ground 3.2.

(5) Ground 3.2, referring to ATF 138 III 29, Grounds 2.3.1 and 4.4 and to ATF 116 Ia 56, Ground 3b.

(6) Ground 3.3.2, referring to Supreme Court 4A_452/2007, February 29 2008, Ground 2.5.1.

(7) Grounds 3.3.3 to 3.3.5.

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