

Swiss Supreme Court dismisses Venezuela's public policy challenge to Clorox award

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

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In *Decision 4A_486/2023*, the Swiss Supreme Court rejected Venezuela's motion to set aside a final award obtained by Clorox for alleged incompatibility with public policy.

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The Swiss Supreme Court has rejected Venezuela's motion to set aside a final award made in favour of an award debtor on grounds of alleged incompatibility with Swiss public policy.

A PCA arbitral tribunal seated in Switzerland found that Venezuela had breached the Spain-Venezuela BIT by expropriating Spanish company Clorox's investment without adequate compensation, and awarded Clorox approximately USD100 million. Venezuela challenged the award, arguing that it was incompatible with public policy.

The Supreme Court noted that:

- An award is contrary to public policy if it disregards the essential and widely accepted values which, according to the conceptions prevailing in Switzerland, should form the foundations of any legal order.
- The court may not review the legal assessment made by the arbitral tribunal, but only consider whether the result of that assessment is incompatible with public policy.

The Supreme Court first questioned the admissibility of the challenge to the final award, noting that Venezuela was presenting its own account of the facts and assessment of the evidence and was, in essence, asking the court to review the case on the merits, a request which is not admissible in setting aside proceedings.

The Supreme Court found that, in any event, Venezuela's motion was devoid of merit, as it merely criticised the tribunal's reasoning, findings of fact and application of the law, but failed to explain in what way the result of the award was incompatible with public policy. The Supreme Court therefore rejected the motion.

This was the third time that this case was brought before the Supreme Court. Following Clorox initiating the arbitration in 2015, the Supreme Court admitted a challenge brought by Clorox against the tribunal's 2019 decision to decline jurisdiction. After the matter was remanded to the tribunal, it accepted jurisdiction in a further award, which was challenged by Venezuela. The Supreme Court rejected that challenge in 2022 and the tribunal went on to render its final award in 2023.

The Supreme Court's latest decision rejecting Venezuela's motion to set aside the final award puts a seal on a nearly decade-long saga and serves as a reminder that a public policy challenge to the award does not allow the unsuccessful party to replead its case or to obtain a review of the award on the merits.

Case: [Decision 4A_486/2023 \(Swiss Supreme Court\) \(26 April 2024\)](#).

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