4A_486/2014[1]

Judgment of February 25, 2015

First Civil Law Court

Federal Judge Kiss (Mrs.), Presiding
Federal Judge Kolly
Federal Judge Niquille (Mrs.)
Clerk of the Court: Mr. Carruzzo

A._____,
Represented by Mr. Antonio Rigozzi and Mr. Fabrice Robert-Tissot,
Appellant

v.

X.B._____,
Represented by Mrs. Sandra De Vito Bieri and Mr. Anton Vucurovic,
Respondent

Facts:

A.
A._____, a common stock company under the law of [name of country X. omitted] is one of the holdings of the eponymous group belonging to a [name of country X. omitted] family, operating worldwide in various sectors, in particular in the development of renewable energies. In collaboration with a citizen of [name of country Y. omitted], it prepared seven projects for the construction of hydroelectric power plants in various parts of the territory of [name of country Y. omitted] (hereafter: the HEPP Projects). A._____ owned the projects and controlled them alone in one case and with the citizen of [name of country Y. omitted] in the six others through six companies of [name of country omitted] law, which, but for one, belonged to a holding (hereafter: the Project Companies).

[1] Translator's Note: Quote as A._____ *v.* X.B._____, 4A_486/2014.
The original decision is in French. The full text is available on the website of the Federal Tribunal, www.bger.ch.

Organized under the law of [name of country Y. omitted], X.B._____ is a subsidiary of Group B._____, which operates in the field of energy, among other activities.

Further to two memoranda of understanding entered into on August 12, and October 21, 2009, by entities of the group to which each belonged, A._____, as a seller and X.B._____, as a purchaser, signed a Share Purchase Agreement (hereafter: the SPA) on January 12, 2010, supplemented by two shareholders agreements pursuant to which the former assigned to the latter among other shareholdings, half of the shares it held in a holding controlling five of the six Project Companies and 48.55% of the company controlling the sixth Project Company. The implementing of rules of this sale, such as the payment of the purchase price and the transfer of the shares, were the subject of detailed and complex clauses inserted into the SPA. Clause 3.1.3 of the SPA stated that the parties agreed to bear the costs of future investments in proportion to the shares each of them held, up to an investment cap of EUR 138 million, with A._____ undertaking to pay alone any amount exceeding this cap. Moreover, according to clause 4.2 of the SPA, X.B._____ could demand that his share be bought back by A._____ (the buy-back guarantee) in any HEPP Project which was not finalized after 12 months, except in *force majeure* cases, and for any project that the parties decided not to complete or which became legally impossible to complete.

The performance of the SPA – the contract was governed by Swiss substantive law (clause 19.1) – and of the other agreements between the parties gave rise to several difficulties set forth in detail in A._____'s appeal brief (n. 23 to 60).

B.
On June 29, 2011, X.B._____ invoked the arbitration clause inserted in the SPA and filed a request for arbitration against A._____ on the one hand and three members of the family controlling the eponymous group on the other hand.

A three-member arbitral tribunal was constituted under the aegis of the Arbitration Court of the International Chamber of Commerce (ICC).

At the end of proceedings, certain parts of which will be set forth hereunder to the extent necessary, the Arbitral Tribunal issued a final award on June 30, 2014, partially upholding X.B._____'s claim against A._____ but rejecting it entirely insofar as it concerned the three individuals sued as co-defendants. The [name of country X. omitted] company was ordered to pay the [name of country Y. omitted] company an amount corresponding to several million Swiss francs.

C.
On September 2, 2014, A._____ (hereafter: the Appellant) filed a civil law appeal with the Federal Tribunal with a view to obtaining the annulment of the June 30, 2014, award.

In a letter of October 22, 2014, the Arbitral Tribunal stated that it would submit no observations as to the appeal.

At the outset of its answer of November 18, 2014, X.B._____ (hereafter: the Respondent) submitted that the appeal should be rejected if indeed it were capable of appeal.

In its reply of December 10, 2014, the Appellant affirmed its previous submissions, as did the Respondent in its rejoinder of January 5, 2015.

Reasons:

1.
According to Art. 54(1) LTF,[2] the Federal Tribunal issues its decision in an official language,[3] as a rule in the language of the decision under appeal. Where the decision was issued in another language (here: English), the Federal Tribunal resorts to the official language chosen by the parties. Before the Arbitral Tribunal, they used English, whist in the briefs submitted to the Federal Tribunal, they used French. In accordance with its practice, the Federal Tribunal shall consequently issue its decision in French.

2.
In the field of international arbitration, a civil law appeal is admissible against the decisions of arbitral tribunals pursuant to the requirements of Art. 190 to 192 PILA[4] (Art. 77(1)(a) LTF). Whether as to the object of the appeal (a final award), the standing to appeal, the time limit to appeal, the Appellant's submission, or the grounds of appeal invoked, none of these admissibility requirements raises any problems in the case at hand. Thus, there is no reason not to address the merits. A review of the admissibility of the various grievances raised in the appeal brief is reserved. It must be recalled in this respect – something the Appellant seems to have somewhat overlooked, according to its reply – that an appellant may not use that brief to invoke factual or legal arguments that were not presented in a timely manner, namely before the non-extendable time limit expired (Art. 100(1) LTF in connection with Art. 47(1) LTF), or to supplement insufficient reasons beyond the time limit (judgment 4A_199/2014 of October 8, 2014, at 3.1 and the case quoted).

3.

The Appellant specifically acknowledges that the corrections made by the Arbitral Tribunal as to various headings of the operative part of the award in an addendum dated November 3, 2014, pursuant to the

[2] Translator's Note: LTF is the French abbreviation of the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173. 110.
[3] Translator's Note: The official languages of Switzerland are German, French, and Italian.
[4] Translator's Note: PILA is the most commonly used English abbreviation for the Federal Statute on International Private Law of December 18, 1987, RS 291.

Appellant's *ad hoc* request rendered one of its grievances moot (reply n. 37). Formulated at n. 87 to 89 of the appeal brief, the latter argument will consequently not be examined.

4.
In a first argument based on Art. 190(2)(d) PILA, the Appellant submits that the Arbitral Tribunal committed a denial of formal justice to its detriment (appeal n. 73 to 86).

4.1. As guaranteed by Art. 182(3) and 190(2)(d) PILA, the right to be heard is not different in principle from that which is consecrated in constitutional law (ATF 127 III 576 at 2c; 119 II 386 at 1b; 117 II 346 at 1a, p. 347). Thus it was held with regard to arbitration that each party has the right to state its views on the facts that are essential for judgment, to submit its legal argument, to propose evidence on pertinent facts, and to participate in the hearings of the arbitral tribunal (ATF 127 III 576 at 2c; 116 II 639 at 4c, p. 643).

The right to be heard in contradictory proceedings within the meaning of Art. 190(2)(d) PILA does not require that an international arbitral award should be reasoned (ATF 134 III 186[5] at 6.1 and the references). However, it imposes upon the arbitrators a minimal duty to review and handle the pertinent issues (ATF 133 III 235 at 5.2, p. 248 and the cases quoted). This duty is breached when, inadvertently or due to a misunderstanding, the arbitral tribunal does not take into consideration some statements, arguments, evidence and offers of evidence submitted by the parties and important to the decision to be issued. If the award totally overlooks some elements apparently important to resolve the dispute, it behooves the arbitrators or the respondent to justify the omission in their observations as to the appeal. They have to demonstrate that, contrary to the appellant's claims, the items omitted were not pertinent to decide the case at hand, or if they were, that they were implicitly refuted by the arbitral tribunal. However, the arbitrators do not have the obligation to discuss all arguments invoked by the parties so that they cannot be held in violation of the right to be heard in contradictory proceedings for not refuting, albeit implicitly, an argument devoid of any pertinence (133 III 235 at 5.2 and the cases quoted).

4.2. In substance, the Appellant argues that the Arbitral Tribunal failed to apply the rules of interpretation established by Swiss law at Art. 18(1) CO[6] as interpreted by case law. Emphasizing that the legal provision is not even quoted in the award under appeal, it complains that the Arbitrators did not research either the real and concordant will of the parties or, in the absence of evidence of such will, their presumed will to be determined by applying the principle of reliance. Yet, they had been reminded of the necessity to do so, in particular at paragraph 116 to 118 of its reply, which drew their attention to this issue.

According to the Appellant, the arguments it developed in the arbitral proceedings consisted of submitting that, in view of the circumstances – such as the changes to the HEPP Projects decided by mutual agreement or ordered by the competent authorities – the guarantees connected to the Investment Cap (clause 3.1.3 of the SPA) and the delivery times (clause 4.2 of the SPA) must be interpreted as given for

[5] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/right-to-be-heard-equality-between-the-parties

[6] Translator's Note: CO is the French abbreviation for Swiss Code of Obligations.

the projects as they were at the time the SPA was concluded or the respective license was issued. In other words, if properly interpreted, the guarantees necessarily had to be adapted in accordance with the changes made to the HEPP Projects, which required raising the investment cap and extending the delivery times.

However, the Arbitral Tribunal applied the principle *in claris non fit interpretatio*, which is prohibited in Swiss law, and held that the SPA raised no issue of interpretation, thus refusing to address the argument and violating the Appellant's right to be heard. The latter concludes its demonstration by specifying "*as a starting point*" (sic) that it does not intend to argue a wrong application of the rules of Swiss law as to interpretation of contracts by the Arbitral Tribunal, as the argument would be inadmissible in an appeal seeking the annulment of an international arbitral award, but instead to condemn the fact that the Arbitrators did not take into consideration its contention, based on Art. 18 CO, as a consequence of oversight or misunderstanding. This is why the Appellant emphasizes the formal nature of the right to be heard and states that the award under appeal must be annulled, regardless of the interpretation that the Arbitrators would have performed if they had not breached the aforesaid procedural guarantee.

4.3.
4.3.1. Pursuant to Art.18(1) CO, the court must first of all enquire as to the real and common will of the parties. Clues to that are not only the contents of the declarations of intent but also the general context, namely all circumstances that make it possible to determine the intent of the parties, whether by statements before the contract was concluded, drafts of the contract, correspondence exchanged, or the attitude of the parties after the contract's conclusion (judgment 4A_65/2012 of May 21, 2012, at 10.2 and the writers quoted). This subjective interpretation relies on the assessment of the evidence (ATF 132 III 626 at 3.1; 131 III 606 at 4.1, p. 611).

If the real intent of the parties cannot be established or if their innermost wills diverge, the court must interpret the statements and the behavior of the parties according to the principle of reliance, by researching how a statement or an attitude could be understood in good faith under all circumstances (ATF 133 III 61 at 2.2.1). This so-called objective interpretation, which is a matter of law, takes place not only according to the text and the context of the statements but also in view of all circumstances preceding or accompanying them (ATF 131 III 377 at 4.2.1; 119 II 449 at 3a), to the exclusion of circumstances after the conclusion (ATF 132 III 626 at 3.1).

4.3.2. The award under appeal does not quote Art. 18(1) CO. At first, the Appellant seemed to attach some importance to this (appeal brief n. 75). However, after the Respondent pointed out that even the Federal Tribunal may not specifically refer to that provision in its case law concerning interpretation of contracts (answer n. 31 with reference to ATF 132 III 268 at 2.3.2), it finally and rightly conceded that a specific reference to the rule was not indispensable, whilst erroneously insisting it sees in the absence of such reference a clue to the failure to address the respective argument (reply n. 26).

The only decisive point with a view to the formal guarantee of the right to be heard invoked by the Appellant is to determine whether or not the Arbitral Tribunal interpreted the pertinent clauses of the SPA in conformity with the principles of Art. 18(1) CO just recalled above, even though it did not quote the provision. In the affirmative, the argument based on Art. 190(2)(d) PILA would fail, regardless of the result of the interpretation, namely even if the result were to prove wrong, or even untenable because how the pertinent substantive law was applied, it remains outside the scope of the judicial review of the Federal Tribunal when addressing an appeal against an international arbitral award.

Whether the Arbitral Tribunal effectively interpreted, in the light of the aforesaid principles, the SPA clauses concerning the guarantees to be given by the Appellant if the investment cap or the performance time of the projects was exceeded is beyond dispute, no matter what the Appellant says when it manifestly seeks to challenge the result of this interpretation under the cloak of a violation of its right to be heard, though it denies doing so, because it is not satisfied with the result. Indeed, the Arbitral Tribunal devoted more than 40 pages of the award to this issue, stating in detail the opposing position of the parties and deciding the points in dispute in favor of one of the two assertions each time (award p. 80 to 123, n. 288 to 446; see also: award p. 45 to 51, n. 133 to 152). The Federal Tribunal will not be carried along to assess the soundness of this interpretation, which the Appellant indirectly seeks to lead the Court to. It will merely state a few remarks hereunder in order to demonstrate that the Arbitrators did not escape their duty to seek to determine the meaning to be given to the guarantees in dispute.

With its reply of December 13, 2012, the Appellant submitted two expert reports – the first was technical (the R-72 report) and the other was legal (the R-73 report) – with a view to proving the changes to the HEPP Projects. The Respondent challenged the admissibility of this evidence and the Arbitral Tribunal agreed and decided to exclude them from the file because they did not concern any pertinent facts (n. 2 of the operative part of Procedural Order n. 6 of July 13, 2013). Eventually, the Appellant expressed its refusal to accept this decision several times and the Arbitral Tribunal explained its grounds in a part of the chapter of the final award entitled “X.2 The Respondents’ ‘defenselessness’” (award n. 133 *ff.*). Reserving to revisit the issue, it points out in particular that it reached the conclusion that although the parties were aware of the evolving nature of the projects to be realized, the guarantees they introduced in the SPA were not tied to any specifically determined projects; so they did not need to be adapted to take into account the changes made to the projects, failing any evidence of an agreement to the contrary, and this even in case of modifications jointly decided by the representatives of the parties (award n. 139). This in itself indicates that the issue of the interpretation of the clauses of the SPA in dispute was not overlooked by the Arbitral Tribunal, which devotes its first recitals to it.

Subsequently, at Chapter X.4 of the award (p. 80 to 123), the Arbitral Tribunal again addressed the issue of the interpretation of the contractual guarantees given to the Respondent by the Appellant, even though the opinions preferred and the decisions made in this respect were by the majority of its members. Thus, after quoting the text of the guarantees in dispute, it addressed first the issue of the Investment Cap (Investment Cap; Chapter X.4.1). First of all, it set forth in detail the contentions of all parties in this respect (award n. 193 to 214). Then, it addressed and refuted three specific arguments the Appellant had put forward to

justify its interpretation of section 3.1.3 of the SPA (award n. 315 to 368). In this context, the majority Arbitrators relied in particular on the behavior of the parties before and after the contract was entered into and held, among other points, that it would have been easy for the parties, who had negotiated the SPA at length, to insert there a specific clause going in the direction advocated by the Appellant, as they had done on two other accounts (award n. 355), so that in the absence of such specific agreement it was not established that the parties agreed, albeit implicitly, to raise the investment cap as a consequence of the cost overruns due to the modifications made to the initial projects (award n. 356). Further, they confirmed the result of this analysis by stating that the silence of the SPA as to the restriction that the Appellant would like to make today to the scope of the guarantees in dispute was not a lacuna that they should fill, in their view, but rather an intentional abstention, which meant that the parties did not intend to accompany the aforesaid guarantees of an amendment mechanism, whether automatic or not, which would make it possible to take into consideration any change that could take place in the performance of the projects as compared to their initial status (award n. 367 and 368). The Arbitral Tribunal then sought to determine the meaning of the guarantees at issue (Chapter X.4.2. *The scope of the guarantees according to the Arbitral Tribunal's majority*). By majority, it rejected that which the Appellant proposed. In its view, the text of the SPA indeed accurately reflected the intent of the parties as to the absence of any impact of the modifications of the projects on the guarantees given by the seller (award n. 381), confirmed by the manner in which the parties negotiated the SPA (award n. 391 to 392). By majority, the Arbitral Tribunal then sought to refute the Appellant's argument under n. 116 to 118 of its rejoinder, according to which the interpretation proposed by the Respondent would be absurd as it would give the latter an unlimited right to enjoy what the *Project Companies* would build, irrespective of the final result. It emphasized in this respect that the apportionment of the votes in the decision making bodies of these companies had been made with a view to giving the Appellant the possibility to block a decision at any time, which would have raised the cost of the projects or postponed their execution, so that it would have been easy for the Appellant to subject its consent to the adoption of such a decision to the prior agreement of the Respondent that the guarantees should be adapted to the modifications contemplated. That the Appellant did not so act could therefore only be explained, in the view of the majority Arbitrators, by its own conviction that the guarantees would remain valid, irrespective of the modification of the projects, particularly because the file did not show any circumstance which would have enabled that party to believe that the Respondent had agreed to adapting the guarantees in case there were changes that would increase the costs or the construction time (award n. 396). The latter conclusion was moreover confirmed *a contrario* by the fact that the Appellant did not consider it necessary to preserve any evidence as to the impact, in time and money, of the modifications made to the projects (award n. 404). In conclusion, it had to be found that the Appellant failed to demonstrate that the purpose of the guarantees in dispute was limited to the HEPP Projects as they had been authorized at the time of execution of the SPA (award n. 408). The Arbitral Tribunal then set forth the similar reasons leading the majority of its members to the same conclusion as to the guarantees concerning the execution time of the projects (Chapter X.4.3. *The Time Guarantee*).

This short summary of the reasons in the award under appeal shows that the Arbitral Tribunal did indeed resort to subjective interpretation of the topical clauses of the SPA, no matter what the Appellant says, and that such interpretation enabled the majority of its members to establish the real and common intent of the

parties as to the meaning to be given to the guarantees given by the seller. Therefore, it was not necessary to enquire as to the objective meaning of the clauses at issue by interpreting the statements and the behavior of the parties according to the principle of trust. Some passages of the award under appeal indeed suggest that, in the view of the majority Arbitrators, the result of an objective interpretation would have been unlikely to differ from the result of the subjective interpretation of the pertinent clauses (see, for example, n. 396 *i.f.*).

Subjective interpretation also enabled the Arbitral Tribunal to give meaning to the absence of any mention in the text of clauses 3.1.3 and 4.2 of the SPA of any mechanism to adapt the contractual guarantees, should the HEPP Projects not be modified in a way that would generate additional costs or an extension of the execution time of the works. This is therefore not a case in which the Arbitral Tribunal, reasoning exclusively on the basis of the burden of proof, would have set aside the Appellant's argument simply because the latter, which had the burden of proof, did not succeed in its demonstration that the aforesaid clauses had the meaning it wished to give to them, despite the absence of any *ad hoc* indication. To the contrary, the Arbitral Tribunal resorted to subjective interpretation taking into account all the pertinent circumstances of the case at hand and sought to determine the meaning that the clauses in dispute should be given and this process led the majority of its members to hold that the wording of the aforesaid clauses did not show the existence of a lacuna in the contract to be filled by researching the hypothetical intent of the parties, but instead of a qualified silence which did not require any supplementing of the SPA on this issue (see in this respect Wolfgang Wiegand, *Commentaire bâlois, Obligationenrecht I, 5th ed.* 2011, n. 65 ad Art. 18 CO; Jäggi and Gauch, *Commentaire zurichois,* vol. V/1b, 1980, n. 488 ad Art. 18 CO; Ernst A. Kramer, *Commentaire bernois, Das Obligationenrecht*, vol. VI/1/1, 1986, n. 216 ad Art. 18 CO). It is in this sense that we can understand the obiter remark of the Arbitral Tribunal, made in a particular context, which the Appellant makes an issue out of (appeal brief n. 78 *f.*), that the SPA does not raise any issues of interpretation (award n. 324).

Furthermore, as was already emphasized, the result of the interpretation does not matter. Were it arbitrary, the Appellant could still not seek a corresponding finding by the Federal Tribunal.

That being so, the argument under review does not appear founded.

5.
Still from the point of view of the violation of the right to be heard, the Appellant argues further that the Arbitral Tribunal violated its right to submit evidence by failing to take into consideration the expert opinions R-72 and R-73, which it had submitted in a timely manner and in the format prescribed.

5.1. According to solidly-established case law, an arbitral tribunal may refuse to adduce evidence without violating the right to be heard if the evidence is unfit to base a conviction, if the fact to be proved is already established, if it is without pertinence, and also if the tribunal, by assessing the evidence in anticipation, reaches the conclusion that its decision is already made and that the result of the evidence proposed cannot modify it. The Federal Tribunal cannot review an anticipated assessment of the evidence except

from the extremely restrictive point of view of public policy. The right to be heard does not entitle a party to demand an evidentiary measure that is unfit to provide proof (judgment 4A_150/2012[7] of July 12, 2012 at 4.1 and the precedents quoted).

5.2. The Appellant seeks a modification of this case law insofar as it limits the power of review of the Federal Tribunal as to the anticipated assessment of the evidence by arbitrators in the framework of an international arbitration (appeal brief p. 27, footnote 11). Yet, the issue it raises does not arise in the case at hand so that it need not be addressed. Indeed, what is involved here is not the evidentiary value of the two expert opinions which the Arbitral Tribunal rejected in advance but rather the absence of pertinence of the facts that the opinions R-72 and R-73 were intended to establish (see 4.3.2, 4th §, above).

Moreover, it must be observed that the Appellant itself ties the outcome of the argument under review to the previous one, which it had formulated to criticize the fact that the Arbitral Tribunal failed to examine its arguments as to the interpretation of the SPA in the light of Art. 18(1) CO. Therefore, the latter is as doomed as the former. Thus, the Arbitral Tribunal may not be found in violation of the Appellant's right to submit evidence for refusing to take into consideration the expert opinions meant to prove the modifications the HEPP Projects underwent and such impacts on the costs and the execution time, as it held on the basis of an interpretation of the pertinent clauses of the SPA, which is beyond the review of the Federal Tribunal, that the Appellant had to assume the contractual guarantees given to the Respondent, even though some modifications took place during the performance of these projects and irrespective of their scope.

6.
Furthermore, the Appellant argues a violation of the principle of contradiction guaranteed by Art. 182(3) and 190(2)(d) PILA, which requires each party to be able to state its views as to its opponent's arguments, to review and discuss the evidence the opponent submits and to refute them by its own evidence (judgment 4A_440/2010[8] of January 7, 2011, at 4.1, unpublished in ATF 137 III 85[9]; ATF 117 II 346 at 1a). The alleged violation would apparently consist of the fact that the Arbitral Tribunal authorized the Respondent to amend its initial submissions seeking a declaratory award in favor of submissions that payment should be ordered, though it refused to admit the expert opinions R-72 and R-73 submitted by the Appellant in support of its defense into the arbitration file.

As formulated, the argument is actually a mere presentation in a different light of the argument examined at 5, above. Be this as it may, it is not because the Arbitral Tribunal held that the Respondent was entitled to

[7] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/federal-tribunal-reiterates-principle-pacta-sunt-servanda-violated-only-when-arbitral-tribunal

[8] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/claim-of-award-ultra-petita-rejected-claim-of-violation-of-publi

[9] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/claim-of-award-ultra-petita-rejected-claim-of-violation-of-publi

amend its submissions *pendente lite*, despite the Appellant's complaints that pursuant to the principle of equality of arms, that it should necessarily have authorized the latter to introduce new evidence purporting to establish some facts which were devoid of any pertinence to decide the dispute. Consequently, the argument cannot succeed.

7.
The aforesaid remark also justifies rejecting the following argument, based on equality of the parties, which does not contain any specific arguments and really is another presentation of the same argument.

8.
Finally, the last argument, based on violation of procedural public policy (Art. 190(2)(e) PILA) clearly duplicates the previous arguments based on the violation of the right to be heard (Art. 190(2)(d) PILA). Besides the fact that it is only an alternate guarantee (ATF 138 III 270[10] at 2.3) it too is doomed, like the previous arguments.

9.
The Appellant loses and shall pay the costs of the federal proceedings (Art. 66(1) LTF) and compensate the Respondent (Art. 68(1) and (2) LTF).

Therefore the Federal Tribunal pronounces:

1.
The appeal is rejected.

2.
The judicial costs set at CHF 40'000 shall be borne by the Appellant.

3.
The Appellant shall pay CHF 50'000 to the Respondent for the federal proceedings.

4.
This judgment shall be notified to the representatives of the parties and to the chairman of the ICC Arbitral Tribunal.

Lausanne, February 25, 2015

[10] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/an-international-arbitral-tribunal-seating-in-switzerland-is-gen

In the name of the First Civil Law Court of the Swiss Federal Tribunal

Presiding Judge:	Clerk:
Kiss (Mrs.)	Carruzzo