

1. Read the case below and fill out the missing words. The words belong to various categories of speech.
2. Explain the case below and the Supreme Court's Reasoning.

**Cases relating to the UNCITRAL Model Law on International
Commercial Arbitration (MAL)**

Case 1748: MAL 29

Greece: Hellenic Supreme Court of Civil and Penal Justice
(Areios Pagos) Case No. 1713/2008

*ALPHA national broadcaster SA v. WIND Hellas telecommunications
SA*

13 October

2008 Original

in Greek

Available at: www.dsanet.gr (website of the Athens Bar Association)

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[**Keywords:** *arbitral proceedings; arbitrators; presiding arbitrator; decisions*]

On 26 February 1998, the claimant initiated arbitration proceedings against the (1) r_____ on the basis of the arbitration clause contained in the cooperation agreement which the parties had previously (2) c_____. The agreement provided for the cooperation between the parties in relation to mobile phone services of pay-as-you-go nature. When the respondent terminated the contract, the claimant sought compensation for alleged unlawful termination before the arbitral tribunal. The arbitral tribunal partially accepted the claimant's request, and the claimant was awarded a certain amount of money plus interest (award No. 30/2006).

The respondent filed applications before the Athens Civil Court of Second Instance requesting the (3) a_____ of the award on the basis of absence of real deliberation between the members of the arbitral tribunal. The Court of Second Instance (4) h_____ that no real deliberation took place and that the opinions of the arbitrators on the factual and legal context were not explained in the (5) a_____, which, thus, violated Article 897 paragraph 5 of the Hellenic Code of Civil Procedure. Such provision refers, among others, to the application of the majority principle to all decisions taken by an arbitration panel, unless otherwise agreed in the arbitration agreement, and to the requirement that all (6) a_____ sign the arbitral award (save for a few exceptions where the award can be signed by the chairman of the panel and one of the arbitrators only). Based on the evidence brought before it, the Court of Second Instance annulled the arbitral

award because, as it was stated and proved, the presiding arbitrator arrived at the final meeting of the arbitral tribunal having already drafted the award. He simply asked the other arbitrators to sign the award, despite their potential reservations that could be included but not reported in a thorough way. One of the co-arbitrators insisted on reviewing the draft award and having time to add his dissenting opinion, while pointing out the lack of a deliberative (7) p_____. The presiding arbitrator denied him that opportunity arguing that granting additional time would amount to a delay that would constitute denial of justice.

Further to the decision of the Athens Civil Court of Second Instance (decision No. 4113/2007), the claimant (8) f_____ an application for appeal (9) b_____ the Hellenic Supreme Court of Civil and Penal Justice, arguing that the decision interpreted a provision of substantive law in a wrongful way or that there was a wrongful assumption of the facts under that provision and more specifically that the annulment ground invoked was not included in the restrictive list of grounds described in the context of the law 2735/1999, which was the applicable law concerning international arbitration.

Citing law 2735/1999 (which enacts the MAL), the Supreme Court held that lack of real deliberations or improper deliberations between the members of the arbitral tribunal is a ground for setting aside an arbitral award, as it is specified in Article 34 paragraph 2dd of such law. The Supreme Court also noted that any breach of Article 29 of law 2735/1999, which mirrors Article 29 MAL, is considered to be a breach of the arbitral procedure agreed upon by the parties and constitutes grounds for annulment under Article 34, paragraph 2dd, of the law 2735/1999.

The Supreme Court upheld the decision of the Court of Second Instance, although it based its reasoning on the provisions of law 2735/1999 (and not the Hellenic Code of Civil Procedure). The court thus rejected the appeal and affirmed the annulment of the arbitral award

