

Swiss Supreme Court confirms its strict approach to substantiating grounds for set aside

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In Decision 4A_70/2020, the Swiss Supreme Court dismissed a challenge to set aside a Court of Arbitration for Sport (CAS) award on the grounds of violation of the right to be heard and substantive public policy, confirming the importance of properly substantiating the grounds in an application to set aside.

In a French-language decision dated 18 June 2020, but only recently published, the Swiss Supreme Court dismissed an application to set aside a CAS award for alleged violation of the right to be heard and breach of substantive public policy.

The background of the case dates back to 26 May 2017, when a players' agent (Appellant) and a professional football player (Respondent) entered into an agreement (Intermediary Contract). A dispute arose regarding payment of the Appellant's fee. The CAS rendered an award ordering the Respondent to pay the Appellant its fees under the Intermediary Contract.

Unsatisfied with the quantification, the Appellant challenged the CAS award arguing that the CAS tribunal had breached his right to be heard and substantive public policy, namely the principle of good faith and prohibition of abuse of rights, and the principle of *pacta sunt servanda*. The Swiss Supreme Court dismissed both grounds. The Swiss Supreme Court confirmed its case law on the requirements to properly and sufficiently substantiate the ground of public policy (*Rügeprinzip*) and found that the Appellant has not satisfied this requirement. The court further considered that, in any event, the CAS tribunal did not breach the principle of *pacta sunt servanda*.

This decision confirms the Swiss Supreme Court's very strict approach to the requirement to substantiate the grounds on which a set aside application is made. In light of the revision of the Swiss Private International Law Act (PILA) introducing the right to file an application to set aside in the English language, EU and EFTA-admitted lawyers who are allowed to represent a party before the Supreme Court (Article 21 of the Swiss Act on Free Movement of Lawyers) should be mindful of this requirement under Swiss law and should carefully consider seeking the support of a Swiss-qualified counsel with in-depth knowledge of Swiss arbitration and procedural law as well as the strict practice of the Supreme Court.

Case: [Decision 4A_70/2020 \(18 June 2020\)](#) (Swiss Supreme Court).

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