

CAS independence and impartiality confirmed (Swiss Supreme Court)

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

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In *Decision 4A_644/2020*, the Swiss Supreme Court dismissed an application to set aside a Court of Arbitration for Sport (CAS) award, confirming that CAS is independent and impartial; that claims pertaining to the constitution of an arbitral tribunal, as well as the right to a public hearing, must be raised during the arbitral proceedings. The court also held that the principle of the presumption of innocence does not apply to sports arbitration.

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In a recently published French-language decision, the Swiss Supreme Court dismissed an application to set aside a Court of Arbitration for Sport (CAS) award, confirming that CAS is independent and impartial; claims pertaining to the constitution of an arbitral tribunal, as well as the right to a public hearing must be raised during the arbitral proceedings. The court also held that the principle of the presumption of innocence does not apply to sports arbitration.

The dispute concerned allegations of anti-doping rule violations (ADRV) by an athlete during the 2014 winter Olympic games in Sochi. The athlete appealed the decision rendered by a disciplinary commission to the CAS. A CAS panel found that the athlete had committed an ADRV within the meaning of the World Anti-Doping Code (WADC), disqualified the results obtained by the athlete during the Sochi games and declared the athlete ineligible for the next winter Olympic games. The athlete challenged the CAS award before the Swiss Supreme Court who dismissed all grounds of challenge.

First, the athlete argued that the influence of the International Council of Arbitration for Sport (ICAS) on the procedure for the selection and appointment of arbitrators impacted the arbitrators' independence and impartiality. The court found that the athlete had not questioned the constitution of the tribunal during the arbitral proceedings and was therefore precluded from raising such a claim. The court then referred to the *Mutu and Pechstein v Switzerland* decision (ECtHR), which found that CAS was an independent and impartial tribunal, to dismiss the ground of challenge based on Article 190(2)(a), Private International Law Act (PILA).

Second, the athlete claimed that she had not freely consented to the limitations to the right to a public hearing set by the panel due to the COVID-19 outbreak and that the panel had not addressed her request to broadcast the hearing on the CAS website. The court held that the athlete had not raised this claim at the hearing and that the limitations were justified given the health risk. Moreover, the court ruled that Article 6(1) ECHR is not a ground that can be raised as such in setting-aside proceedings and it dismissed the ground of challenge based on a violation of procedural public policy.

Finally, the athlete argued a violation of substantive public policy, specifically a violation of the presumption of innocence, which was also dismissed.

Case: *4A_644/2020 (Swiss Supreme Court)*.

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