

CAS decision to appoint a sole arbitrator not subject to challenge (Swiss Supreme Court)

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In *Decision 4A_146/2019*, the Swiss Supreme Court found that the appointment of a sole arbitrator by the Court of Arbitration for Sport cannot be challenged immediately before the Swiss Supreme Court.

In a recently published French-language decision, the Swiss Supreme Court declared a motion to set aside a decision of the Court of Arbitration for Sport (CAS) to appoint a sole arbitrator inadmissible.

Before the CAS, the appellant requested that the proceedings be resolved by a panel of three arbitrators, while reserving its right to request the appointment of a sole arbitrator, should the respondents not pay the advance on costs. Upon the respondents' failure to do so, the appellant requested that a sole arbitrator be appointed, while one respondent requested that three arbitrators resolve the dispute. The President of the CAS Appeals Arbitration Division decided to submit the dispute to a sole arbitrator, pursuant to Articles#R50(1) and R54 of the CAS Code.

One respondent challenged the decision before the Supreme Court.

The court held that decisions of arbitral institutions, such as the International Council of Arbitration for Sport (ICAS) or the International Chamber of Commerce (ICC), on challenges to arbitrators, or appointments of arbitrators, do not constitute awards that are subject to review.

In reaching its decision, the court referred, amongst other things, to a decision regarding a domestic commercial arbitration (see *Decision 4A_546/2016*, discussed in *Legal update, Swiss Supreme Court considers application to set aside decision of the Swiss Chambers' Arbitration Institution*). In that precedent, the court had found a challenge against a decision of the Swiss Chambers Arbitration Institution to appoint a sole arbitrator inadmissible on the grounds that such decision did not amount to an arbitral award, and thus, could not be reviewed by the Supreme Court immediately.

The court reasoned that the same principles apply to decisions of the President of the CAS Appeals Arbitration Division. The court noted that such decisions may only be reviewed in the context of a later challenge to the first award issued by the arbitrator(s).

This decision is a reminder for users of commercial and sports arbitration alike that there is, in principle, no immediate legal remedy against decisions of arbitral institutions to appoint arbitrators and that only awards are subject to judicial review.

Case: *Decision 4A_146/2019 (6 June 2019)* (Swiss Supreme Court).

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