

# Swiss Supreme Court refuses to revise arbitral award for lack of new conclusive evidence

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In *Decision 4A\_662/2018*, the Swiss Supreme Court considered a rare application for revision of a Court of Arbitration for Sport award pursuant to Article 123 of the Swiss Supreme Court Act, following the discovery of allegedly new evidence in a dispute related to the transfer of a professional football player.

In a German-language decision only recently published, the Swiss Supreme Court refused to revise an award rendered by a Court of Arbitration for Sport (CAS) Panel. The decision concerned a dispute between football clubs (A) and (B) in relation to the transfer of football player (D) from A to B. Pursuant to the transfer agreement, A was to receive some of the proceeds of a future transfer of D by B. Following D's transfer to another football club (C), A initiated arbitration proceedings against B, claiming that B had concealed the real transfer value by way of "simulated contracts" with C.

The CAS Panel, relying on the Swiss Civil Code of Procedure (CPC) regarding the authenticity of documents, found that A had not provided sufficient evidence in support of its allegations and dismissed the claim. On 27 June 2018, A motioned the Supreme Court for revision of the award, relying on several recent newspaper articles, as well as on a purported contemporaneous email allegedly showing that B had deliberately misled A regarding the actual transfer value.

The Supreme Court reiterated that the revision of an award requires that the applicant show that it had learned of new material facts or discovered probative evidence that existed at the time the award was rendered but that it was unable to submit in the initial proceedings. Therefore, it excludes facts and evidence that only arose after the decision in question. Applying these standards, the Supreme Court held that the newspaper articles were inadmissible given that they post-dated the issuance of the award by several years. With respect to the email, the Supreme Court noted that B had disputed its authenticity and that there were indeed indications of forgery. Applying the CPC, the Supreme Court ultimately found that B had failed to prove the document's authenticity and dismissed the application for revision of the award.

This decision provides a rare example of a party seeking to have an arbitration award revised (rather than set aside) based on an alleged discovery of new facts and/or evidence.

Case: *Decision 4A\_662/2018* (14 May 2019) (Swiss Supreme Court).

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