

# CAS award upheld in UEFA disciplinary case (Swiss Supreme Court)

by **Philippe Bärtsch** (Managing Partner) and **Simon Demaurex** (Associate), Schellenberg Wittmer Ltd

Legal update: case report | Published on 04-Sep-2020 | Switzerland

---

In *Decision 4A\_462/2019*, the Swiss Supreme Court held that a decision by a CAS panel, upholding disciplinary measures ordered by the UEFA, did not breach the principles of *ne bis in idem* (prohibition of double jeopardy) and *nulla poena sine lege* (no punishment without law).

---

In a recently published French-language decision, the Swiss Supreme Court rejected an application to set aside an award by a Court of Arbitration for Sport (CAS) panel upholding disciplinary measures ordered by the Union of European Football Associations (UEFA).

The dispute relates to allegations of match-fixing against an Albanian football club. The UEFA first prevented the club from participating in the then ongoing 2016/2017 UEFA Champions League, which was confirmed by a CAS panel. Following that first award, the UEFA initiated new (disciplinary) proceedings against the club in relation to the very same match-fixing allegations, on the ground that, under the UEFA disciplinary rules, the club was liable for the actions of its players, trainers and officials. The club was ultimately suspended from any and all European competitions for the next ten seasons and was fined EUR 1 million. The CAS panel rejected the club's appeal against those disciplinary measures.

The club filed an application before the Swiss Supreme Court to set aside the CAS award. It argued, among other things, that the award violated the (criminal law) principles of *ne bis in idem* (prohibition of double jeopardy) and *nulla poena sine lege* (no punishment without law).

The Supreme Court held that, while the principle of *ne bis in idem* was part of procedural public policy, it was unclear whether this criminal law principle also applied to sports disciplinary proceedings. Referring to *Decision 4A\_324/2014*, the Supreme Court confirmed that, in any event, the two-step procedure under the UEFA rules does not contravene the principle of *ne bis in idem*. Even though both proceedings are based on the same factual background, the first step is administrative in nature, whereas the second one is disciplinary or punitive (or both).

The Supreme Court also rejected the club's argument that the award breached the principle of *nulla poena sine lege*, on the ground that the club was in fact challenging the panel's interpretation and application of the UEFA bylaws. Such matters fall outside of the Supreme Court's power of review. Nevertheless, the Swiss Supreme Court went on and confirmed that the panel's interpretation was correct. Regrettably, the Supreme Court left open the questions of whether the principle of *nulla poena sine lege* forms part of substantive public policy and if it applies in sports disciplinary matters. These important questions therefore remain unsettled.

Case: Decision 4A\_462/2019 (29 July 2020) (Swiss Supreme Court).

---

END OF DOCUMENT

Related Content

**Topics**

[Arbitral Awards and Challenges](#)

**Practice notes**

[Arbitration in Switzerland](#) • [Maintained](#)

[Arbitration at the Court of Arbitration for Sport](#) • [Maintained](#)

**Toolkit**

[Enforcing international arbitration awards toolkit](#) • [Maintained](#)