

# Swiss Supreme Court dismisses revision application as new evidence arose after CAS award was made

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In Decision 4A\_597/2019, 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. The application followed the discovery of allegedly new material evidence in a dispute relating to a ban on an Olympian racewalker.

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In a recently published Italian-language decision, the Swiss Supreme Court dismissed an application to revise an award issued by a Court of Arbitration for Sport (CAS) arbitral tribunal.

The decision concerned a racewalker who was initially banned for four years for doping in 2012. At the end of his period of suspension in 2016, two of the athlete's urine samples showed traces of prohibited substances. World Athletics (formerly, the International Association of Athletics Federation (IAAF)) provisionally suspended the athlete again just prior to the 2016 Summer Olympics in Rio. The athlete then sought to lift his second suspension before the CAS. Finding that the athlete's contention that a third party manipulated his samples was unsubstantiated, the CAS tribunal rejected the athlete's appeal and sanctioned him with an eight-year ban for his second doping offence.

More than three years later, the athlete applied for revision of the CAS award before the Supreme Court. He essentially argued that the findings of a forensic expert report of 2019, produced in criminal proceedings in Italy, evidenced that his urine samples had an abnormally high concentration of DNA. The athlete submitted that the findings of the forensic expert report demonstrated that his argument before the CAS tribunal, that the samples had been manipulated, was well founded. He also argued that it would have led the CAS tribunal to reach a different award, had it been aware of this evidence.

The Supreme Court underscored that an award is only open to revision where the applicant can establish that material facts and cogent evidence existed before the award was issued but that the applicant was unable to bring that evidence forward in the previous proceedings. Facts and evidence emerging after the issuance of the award do not fall within the narrow scope of a revision application. Applying these principles, the Supreme Court found that the expert report was not admissible since it was made several years after the award was rendered.

This decision is a rare example dealing with an application for revision of an award. It shows that the Supreme Court will only revoke awards tainted by defects that the applicant learns about after the award is made if strict conditions are met.

Case: *Decision 4A\_597/2019 (17 March 2020)*.

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