

# High threshold for violation of right to be heard based on reasoning in award (Swiss Supreme Court)

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

Legal update: archive | Published on 19-Nov-2020 | Switzerland

---

In *Decision 4A\_62/2020*, the Swiss Supreme Court dismissed an application to set aside a CAS award. The Supreme Court held that the panel's reasoning did not violate the applicant's right to be heard, confirming that a high threshold applies in this regard.

---

*Philippe Bärtsch (Managing Partner) and Konrad Staeger (Associate), Schellenberg Wittmer Ltd*

In a recently published French-language decision, the Swiss Supreme Court dismissed an application to set aside an award by a CAS panel. The Supreme Court found that the panel's allegedly incomplete and surprising reasoning did not violate the appellant's right to be heard.

A dispute arose between a football club and a player who was transferred from a different team for 2018, with an option to permanently recruit the player. The club and the player agreed to a sign-on fee of USD1.5 million, which was not paid. At the end of 2018, the club did not use its option for a permanent transfer. Both the FIFA Dispute Resolution Chamber and, upon appeal, a CAS panel ordered the club to pay the sign-on fee. The club requested the Swiss Supreme Court to set aside the award, arguing that the CAS' reasoning violated its right to be heard.

First, the club argued that the CAS had failed to examine its argument that the sign-on fee was only due if the player was permanently transferred. The court rejected this argument given that the panel had explicitly dealt with it. The court recalled that a party cannot use alleged violations of the right to be heard related to an award's reasoning in order to obtain a review of the substantive law's application. In addition, alleged violations of public policy (specifically, of the principle of *pacta sunt servanda* (agreements must be kept)) cannot be used to review an award's interpretation of a contract.

Second, the club contended that the panel had relied on an argument neither raised by the parties nor discussed during the proceedings, namely an interpretation of the contract against the club as its drafter. The court recalled that unforeseeable legal reasoning only restrictively constitutes a violation of the right to be heard. In addition, a party invoking a violation of the right to be heard must demonstrate that violation's influence on the outcome of the dispute. This was not the case, given that this argument was one of several arguments relied on by the panel. In addition, the interpretation principle was, as a matter of substantive law, not applicable given the specific facts. Therefore, the appeal was dismissed.

The decision confirms the high threshold for setting aside an award based on a violation of the right to be heard due to incomplete and surprising reasoning.

Case: *Decision 4A\_62/2020 (30 September 2020)* (Swiss Supreme Court).

---

END OF DOCUMENT

Related Content

**Topics**

[Arbitral Awards and Challenges](#)

[Applications to Court](#)

**Practice notes**

[Enforcing arbitration awards in Switzerland](#)

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

**Country Q&A**

[Arbitration procedures and practice in Switzerland: overview](#) • [Law stated as at 01-Feb-2020](#)