Swiss Supreme Court upholds CAS tribunal ruling denying request for additional analysis differing from that provided for in anti-doping rules

by Dr. Christopher Boog (Partner) and Dr. Annabelle Möckesch (Associate), *Schellenberg Wittmer Ltd*

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In *decision 4A_80/2017*, the Swiss Supreme Court considered an application to set aside a Court of Arbitration for Sport (CAS) award, rejecting a request for an additional sample analysis using a different testing method than the one provided for in the applicable anti-doping rules.

In a German language decision dated 25 July 2017, and published on 6 October 2017, the Swiss Supreme Court refused to set aside a Court of Arbitration for Sport (CAS) award.

The CAS tribunal had dismissed an appeal filed by a Russian weightlifter against a decision by the International Weightlifting Federation (IWF), in which the IWF had, among other things, imposed a four-year ban on the athlete because traces of a prohibited substance were found in the athlete's A- and B-samples.

During the CAS proceedings, the petitioner requested that an additional analysis of his B-sample be performed using a different testing method than the one provided for in the applicable anti-doping rules. The tribunal denied this request on the grounds that the petitioner did not raise sufficient doubts as to the accuracy of the existing test results and, therefore, was not entitled to an additional analysis. The tribunal further found that, in any event, the additional testing method requested was unsound.

The athlete applied to the Swiss Supreme Court to set aside the CAS tribunal's award, arguing, among other things, that the tribunal had unlawfully rejected his request for an additional test, thereby violating his right to be heard, the principle of equal treatment of the parties and procedural public policy.

The Supreme Court rejected the application. The court found that the tribunal's finding constituted an "anticipated assessment of evidence", which can only be reviewed by the Supreme Court to the extent that it violates public policy. In the court's view, the petitioner could not demonstrate such a violation. The court also noted that the petitioner had failed to explain how a right to an analysis other than the one provided for in the anti-doping rules could be derived from the right to be heard or the equal treatment of the parties.

Case: *Decision 4A_80/2017* (Swiss Supreme Court).

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