Swiss Supreme Court addresses alleged decisions in equity by arbitral tribunals

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In decision *4A_40/2017*, the Swiss Supreme Court considered an application to set aside a Court of Arbitration for Sport (CAS) award which was allegedly improperly made by the CAS panel in equity rather than in law.

In a French-language decision of 8 March 2017, but only recently published, the Swiss Supreme Court refused to set aside an award finding that the Court of Arbitration for Sport (CAS) panel had not decided a dispute in equity rather than in law.

In an award dated 17 November 2016, the CAS had partially rejected appeals brought by both parties against a decision by the FIFA Dispute Resolution Chamber, ordering a football club (X) to pay outstanding salary to a football player (Z), while dismissing Z's further request for damages. X applied to the Supreme Court to vacate the award, arguing that the CAS panel had improperly and in violation of an express agreement between the parties decided the dispute in equity rather than in law.

In accordance with previous case law, the Supreme Court first held that such a transgression would not concern the panel's jurisdiction, but rather its proper determination of the applicable law. Consequently, the Supreme Court discarded the appellant's argument that the CAS panel had exceeded its jurisdiction.

The Supreme Court subsequently addressed X's further contention that the panel, by allegedly deciding in equity, had also violated its right to be heard. The court first recalled the content of the right to be heard under Swiss law and ultimately concluded that the panel had decided the dispute not in equity, but in conformity with the applicable CAS and FIFA rules and in due consideration of the applicant's right to be heard. Therefore, the appeal was dismissed.

This case serves as an example of the Supreme Court’s very efficient handling of requests for setting aside awards. The request was submitted on 27 January 2017 and decided on 8 March 2017, within one and a half months, without hearing the other side.

Case: *Decision 4A_40/2017* (Swiss Supreme Court).

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