# Swiss Supreme Court refuses to set aside CAS award confirming sanctions against Mr Platini

by *Prof. Dr. Nathalie Voser (Partner) and Benjamin Gottlieb (Associate), Schellenberg Wittmer Ltd*

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In *decision 4A_600/2016*, the Swiss Supreme Court considered whether to set aside a Court of Arbitration for Sport (CAS) award based on alleged arbitrariness.

In a recently published decision dated 29 June 2017, the Swiss Supreme Court rejected an application by Mr Platini (the former president of the Union of European Football Associations (UEFA)) to set aside an arbitral award on the ground of arbitrariness, under Article 393(e) of the Swiss Code of Civil Procedure (CCP).

In an arbitral award dated 16 September 2016, a Court of Arbitration for Sport (CAS) tribunal confirmed sanctions (although it did reduce them) imposed by the ethics commission and the FIFA appellate body against Mr Platini, for violations of the FIFA code of ethics in connection with illicitly received payments.

Before the Supreme Court, Mr Platini argued that the findings of the tribunal were arbitrary, arguing in particular that the tribunal had incorrectly:

- Applied the temporal interplay between different versions of the FIFA code of ethics.
- Interpreted the FIFA code of ethics.
- Applied the burden of proof.

The Supreme Court analysed the allegations of arbitrariness in great detail but ultimately rejected them and confirmed the sanctions.

The Supreme Court stated as a preliminary matter that in considering the question of whether an arbitration is considered domestic or international (and hence whether the Private International Law Act or the CCP applies), the relevant point in time is the conclusion of the arbitration agreement. Given that Mr Platini was domiciled in France at the time the arbitration agreement became binding upon him, this arbitration was in fact international. Therefore, in theory, arbitrariness did not constitute a ground for setting aside the award, given that this ground is only available for domestic awards.

However, FIFA (the respondent in the arbitration) failed to object to the (incorrect) qualification by the tribunal of the arbitration as a domestic proceeding during the arbitration. For this reason, the Supreme Court held that FIFA could not now argue that the award was an international arbitration award and that therefore arbitrariness was not a ground for setting aside. In the view of the Supreme Court, this would have amounted to a violation of procedural good faith.

Case: *Decision 4A_600/2016* (Swiss Supreme Court).

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