# Swiss Federal Supreme Court Rejects Annulment and Revision of CAS Award

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In two recent decisions, the Swiss Federal Supreme Court rejected petitions for annulment and revision of an arbitral award by the Court of Arbitration for Sport. The decisions highlight the importance of raising new facts in arbitral proceedings without delay and as explicitly as possible.

In November 2007, company X (sponsor of a cycling team) entered into an employment agreement with cycling professional Y. In July 2008, X terminated the employment agreement with immediate effect due to a medical test of the urine and the blood of cycling professional Y that showed certain anomalies, which X considered a sign for the use of doping substances.
Cycling professional Y initiated proceedings before the Court of Arbitration for Sport (CAS), claiming damages based on breach of contract. In an award of 15 June 2009, CAS concluded that X had terminated the employment agreement based on a mere suspicion of the use of doping substances and without previously initiating the contractually prescribed ad-hoc proceedings. Subsequently, X submitted petitions for annulment and revision of the CAS award to the Swiss Federal Supreme Court.
In its petition for annulment, X claimed that it had raised new facts in its submission to CAS dated 12 June 2009. However, in denying its right to be heard,

CAS failed to take into account the newly submitted evidence in its decision. In particular, X claimed that it had notified CAS of a new technical directive of the World Anti-Doping Agency (WADA) that had entered into force on 31 May 2009. X claimed that under the new directive, the anomalies found in Y's medical test are deemed to establish the use of doping substances. Thus, X argued, its doping suspicions were well-founded and justified the termination with immediate effect of the employment agreement.

The Swiss Federal Supreme Court established that the relevant submission of X was dated 12 June 2009, but had not been faxed to CAS until 15 June 2009 at 8:12 pm. This was more than three hours after CAS had already faxed its award to the counsel of X. Based on this, the Swiss Federal Supreme Court found that the right to be heard of X was obviously not violated and rejected the petition for annulment (Decision of 13 October 2009, 4A_352/2009).

In its petition for revision, X argued that revision was warranted since the new WADA directive constituted a new fact that could not have been invoked in the previous proceedings.

The Swiss Federal Supreme Court rejected the petition for revision (Decision of 13 October 2009, 4A_368/2009). It noted that X had already signaled in a hearing on 29 April 2009 that a new WADA directive will enter into force soon. X had also alleged in its petition for revision that the cycling team doctor had in fact applied the new directive. As a result, the Swiss Federal Supreme Court considered it established that X had known, and could have introduced into the proceedings, the new WADA directive already before CAS rendered its award on 15 June 2009. The Swiss Federal Supreme Court noted that elementary prudence would have required X to request CAS already during the hearing on 29 April 2009 to take into account the new directive, if necessary even at the risk of requesting a suspension of the proceedings until the entry into force of the new directive.

It does not become clear from the published decisions why X had failed to submit the new WADA directive to CAS immediately after its entering into force on 31 May 2009, or at least on 12 June 2009, the date of the relevant submission of X. In any case, the decisions highlight the importance of raising new facts in arbitral proceedings as early and as explicitly as possible. In addition, the decision rejecting the petition for revision suggests that a party may be well advised to request the suspension of arbitral proceedings pending the outcome of potentially advantageous factual or legal developments.

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