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Aims & Scope

Switzerland is generally regarded as one of the World's leading place for arbitration proceedings. The membership of the Swiss Arbitration Association (ASA) is graced by many of the world's best-known arbitration practitioners. The Statistical Report of the International Chamber of Commerce (ICC) has repeatedly ranked Switzerland first for place of arbitration, origin of arbitrators and applicable law.

The ASA Bulletin is the official quarterly journal of this prestigious association. Since its inception in 1983 the Bulletin has carved a unique niche with its focus on arbitration case law and practice worldwide as well as its judicious selection of scholarly and practical writing in the field. Its regular contents include:

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- Notices of publications and reviews

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Revision of Arbitral Awards in Switzerland: An Extraordinary Tool or Simply a Popular Chimera?

A review of decisions rendered by the Swiss Supreme Court on
revision requests over the period 2009-2019

CATHERINE A. KUNZ*

*Switzerland – International arbitration – Revision of arbitral awards
– Federal Supreme Court Act – Revision of Chapter 12 PILA*

1. Introduction

One of the features of international arbitration is the finality of arbitral awards. Arbitral awards are final since, unlike court decisions, they are not subject to an appeal with a full merits review. This is not to say that there are no remedies. In Switzerland, there are two. The first, and by far the most frequent in practice, is the challenge of awards on one of the limited statutory setting aside grounds. The second, which is less common but has gained traction over the last decade, is the revision of awards.

Revision is an extraordinary means of recourse that aims at correcting an arbitral award that is already final and binding (*res judicata*). Since reopening awards that have already entered into force could seriously compromise legal certainty, this remedy is only available in exceptional circumstances where justice and equity command a revision because the factual premise on which the award is based is fundamentally flawed.¹

The possibility to request the revision of arbitral awards rendered in domestic arbitrations is expressly provided for in the Swiss Code of Civil Procedure, which applies to domestic arbitrations (“SCCP”).² By contrast, there is currently no express provision on the revision of international arbitral

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¹ See Swiss Supreme Court, Decision 118 II 199, 11 March 1992, para. 2b/cc, ASA Bull. 3/1992, p. 356 and, more recently, Decision 4A_386/2015, 7 September 2016, para. 2.1.

² Articles 396-399 SCCP.

awards in Chapter 12 of the Swiss private International Law Act (“PILA”), which governs international arbitrations seated in Switzerland.³ This lacuna was filled by the Swiss Supreme Court in 1992, when it found that revision, which existed as a remedy available against decisions of state courts including decisions rendered by the Supreme Court itself, should also be available for international arbitral awards.⁴

It is only a matter of time until the revision of arbitral awards will be anchored in statutory law. Indeed, the introduction of an express provision on the revision of international arbitral awards is one of the proposed amendments of the ongoing legislative reform of Chapter 12 PILA.⁵ The aim of this amendment is merely to clarify the existing legal situation. As a result, the case law developed by the Supreme Court to date in relation to the revision of international arbitral awards will largely remain relevant after the entry into force of the amended Chapter 12 PILA.⁶

To what extent is revision an effective remedy for parties disappointed with the outcome of the arbitration? This contribution explores this question by providing an overview of the decisions rendered by the Swiss Supreme Court on revision requests over the period 2009-2019.⁷

2. Procedural issues

Jurisdiction over revision requests

As set out in its landmark decision of 11 March 1992, the Supreme Court, Switzerland’s highest judicial authority, has jurisdiction over requests

³ Articles 176-194 PILA.

⁴ Swiss Supreme Court, Decision 118 II 199, 11 March 1992, para. 2, ASA Bull. 3/1992, p. 356, referring to the grounds for revision of decisions rendered by the Supreme Court under the Court Organisation Act (“COA”), which was subsequently replaced by the Federal Supreme Court Act (“FSCA”). The Supreme Court confirmed that the grounds previously available under the COA remained available under the corresponding provisions of the FSCA: Decision 134 III 286 (4A_42/2008), 14 March 2008, para. 2, ASA Bull. 4/2008, p. 765.

⁵ See Message of the Swiss federal Council 18.076 of 24 October 2018 regarding the amendment of the PILA, Chapter 12: International Arbitration, and Federal Gazette 2018, pp. 7201 *et seq.* (French version) / pp. 7213 *et seq.* (German version).

⁶ Rev.-PILA, in Federal Gazette 2018, pp. 7204-7205 of French version / pp. 7217-7218 of German version.

⁷ See Annex: List of Swiss Supreme Court decisions relating to the revision of international arbitral awards (1992-2019).

for the revision of international arbitral awards.⁸ This is now expressly stated in the bill of the revised PILA (“**Rev-PILA**”).⁹

In certain circumstances a revision request may exceptionally be considered admissible even if it is **addressed to the wrong authority** and **based on the wrong legal provisions**, as a recent decision confirms. In that case,¹⁰ the requesting party’s director had mistakenly addressed a request for the revision of an international Swiss Rules award to the High Court of Geneva, which declared itself incompetent and transferred it to the Supreme Court. Applying Article 48(3) FSCA, the Supreme Court accepted to hear the request on the proviso that it had been submitted to the High Court within the applicable time limit. This would not have been possible had it been a request to set aside the award, since Article 77(2) FSCA expressly excludes the application of Article 48(3) FSCA in such a case. Moreover, the Supreme Court accepted to hear the request even though it was mistakenly based on the provisions governing domestic arbitrations; in reaching this decision the Court took into account the fact that the request had not been filed by a lawyer but by the requesting party’s director and that the same ground existed for the revision of international arbitral awards.¹¹

2.1 Decisions capable of revision

Revision is available against all partial and final awards, as well as preliminary and interim awards, provided they are binding on the arbitral tribunal.¹² By contrast, revision cannot be sought against procedural orders or orders for interim relief which the arbitral tribunal can reverse or modify.

The Supreme Court recently had to decide **whether parties can waive the right to request revision in advance**.¹³ Specifically, the Court had to examine whether a waiver of the right to challenge the award pursuant to Article 192 PILA extended to its revision. The requesting party claimed to

⁸ Swiss Supreme Court, Decision 118 II 199, 11 March 1992, para. 2b/cc, ASA Bull. 3/1992, p. 356.

⁹ Art. 191 Rev-PILA.

¹⁰ Swiss Supreme Court, Decision 4A_506/2017, 3 October 2017, ASA Bull. 1/2020, p. 108.

¹¹ The ground invoked was the subsequent discovery of new facts and evidence pursuant to Article 396(1)(a) SCCP. The Supreme Court however rejected the request on the merits.

¹² Supreme Court, Decision 122 III 492 (4P. 100/196), 1 November 1996, para. 1b/aa-bb, ASA Bull. 2/2002, p. 258.

¹³ Supreme Court, Decision 143 III 589 (4A_53/2017), 17 October 2017, para. 3. The Supreme Court had until then left this question open: see Decisions 4A_368/2009, 13 October 2013, para. 2; 4A_144/2010, 28 September 2010, para. 2.1 and 4P.265/1996, 2 July 1997, para. 1a.

have discovered a ground for challenging one of the arbitrators after the award was rendered and argued that, on its plain terms, the waiver contained in the arbitration agreement (“There shall no be appeal”) only applied to the challenge of the award, not its revision.¹⁴ The Court considered that where parties have expressly excluded any right to challenge the award, it would be unfair if a party could then still challenge the irregular composition of the tribunal by the back door, by way of a revision request.¹⁵

The solution proposed in the **Rev-PILA** is in line with the Court’s findings, although slightly more nuanced: **revision may be waived in advance for all grounds for revision save where the ground invoked is that the award is tainted by criminal conduct.**¹⁶

Revision may also be sought against decisions of the Swiss Supreme Court on requests to set aside an arbitral award.¹⁷

2.2 Subsidiary nature of revision

The Supreme Court has held that when a ground for revision is discovered within the time period for challenging the award (*i.e.* 30 days from its notification), that ground must be invoked in the challenge proceedings, not by way of a request for revision. In other words, revision is of a subsidiary nature.¹⁸

¹⁴ The relevant provision (as quoted in the decision) reads as follows: “Awards rendered in any arbitration hereunder shall be final and conclusive and judgment thereon may be entered into any court having jurisdiction for enforcement thereof. There shall be no appeal to any court from awards rendered hereunder”: Supreme Court, Decision 143 III 589 (4A_53/2017), 17 October 2017, ASA Bull. 4/2017, p. 970, paras. 2.2 and 3.

¹⁵ Supreme Court, Decision 143 III 589 (4A_53/2017), 17 October 2017, para. 3.1.

¹⁶ Art. 192(1) Rev-PILA. See Message of the Swiss federal Council 18.076 of 24 October 2018 regarding the amendment of the PILA, Chapter 12: International Arbitration, p. 7189.

¹⁷ See *e.g.* Supreme Court, Decision 4F_8/2013, 10 December 2013, ASA Bull. 1/2020, p. 193; Decision 4F_16/2018, 10 December 2013, ASA Bull. 1/2020, p. 188.

¹⁸ Supreme Court, Decision 4A_310/2016, 6 October 2016, ASA Bull. 1/2017, p. 145; Supreme Court, Decision 4A_458/2009, 10 June 2010, ASA Bull. 3/2010, p. 520. As a result, if the requesting party simultaneously files a request for challenge and a request for revision, the request for challenge will be examined first: see *e.g.* Supreme Court Decision, 4A_352/2009, 13 October 2009, para. 3, ASA Bull. 3/2010, p. 634 and Decision 4A_368/2009 of the same date, ASA Bull. 3/2010, p. 639.

2.3 Formal requirements

The revision request must comply with the formal requirements that apply to all proceedings before the Swiss Supreme Court.¹⁹ Accordingly, the request must be made in writing, state the conclusions, the grounds and evidence on which it is based, and be signed. The request must be sufficiently reasoned, be it with respect to the grounds invoked or the compliance with the time limit for requesting revision.²⁰

The request must, at least for the time being, be written in one of Switzerland's national languages (German, French, Italian or Romansch). One of the proposals made in the Rev-PILA was that revision requests (and setting aside requests) directed against international arbitral awards could also be filed in English;²¹ this proposal has been hotly debated; it remains to be seen whether or not it will ultimately be accepted by Swiss Parliament.²²

If the revision request is not filed in one of the national languages, the Supreme Court should, as a general rule, invite the requesting party to file a translation in one of the national languages.²³ However, there are exceptions to this rule, in particular where there is an abuse of rights.²⁴

2.4 Standing to request revision

The Supreme Court has held that revision may only be sought by a party to the arbitral proceedings or by its legal successor.²⁵ A company that has been liquidated since the award was rendered no longer exists and, thus, cannot request revision. Conversely, revision may be sought by a company that has been placed in bankruptcy but has not yet been liquidated.²⁶

¹⁹ Article 42 FSCA.

²⁰ On this last point, see Section 2.5 below.

²¹ See proposed revision of Art. 119a FSCA and Art. 77(2bis) FSCA: Federal Gazette 2018, pp. 7207 of French version / p. 7219 of German version.

²² At the time of writing, while this proposal had been adopted by the Swiss National Council, it was rejected by the Swiss Council of State.

²³ See Article 42(6) FSCA.

²⁴ See *e.g.*, Supreme Court, Decision 4F_8/2018, 14 March 2018, para. 3.

²⁵ Supreme Court, Decision 4A_688/2012, 9 October 2013, ASA Bull. 1/2020, p. 139, para. 3.

²⁶ *Ibid.*

2.5 Time limits

Applicable time limits

The provisions of the FSCA provide for different time limits according to the ground for revision invoked in support of the revision request. Where the request is based on the discovery of new facts or the award being tainted by criminal conduct – which are the two grounds most frequently invoked in practice –²⁷ the request must be filed **within 90 days of the discovery of the ground for revision** (Article 124(1)(d) FSCA).

However, the **maximum time period** during which a party is entitled to request revision is **10 years from the notification of the award**, except in cases where the request is based on the award having been tainted by criminal conduct (Article 124(2) FSCA). Those time limits have been maintained in Art 190(a)(2) Rev.-PILA, which reads as follows:

*The revision request must be brought within 90 days of the discovery of the ground for revision. The right to request revision expires 10 years from the arbitral award's entry into force, except in cases falling under art. 190(a)(1)(b) [award tainted by criminal conduct].*²⁸

Calculation of the 90-day time limit

In practice, it is not always easy to determine when the 90-day time limit starts to run and whether a revision request has been made in a timely fashion. Decision 4A_666/2012 provides useful guidance on how to calculate the 90-day time limit for revision requests.²⁹

It concerns a dispute between two French companies, X. and Y., arising out of a contract for the renovation of a hotel in the French Antilles, which gave rise to an ICC arbitration. In its award, the arbitral tribunal found the works carried out by X. to be defective and ordered X. to pay damages corresponding to the remedial costs. The arbitral tribunal subsequently issued an addendum correcting the final award, as it had omitted to take into account payments made by an insurance company in the amounts awarded to Y.

X. resisted Y.'s attempts to enforce the award in France on the basis that the award was tainted by procedural fraud committed by the claimant in the arbitration. In parallel, X. applied for revision before the Swiss Supreme

²⁷ See Section 3 below.

²⁸ Rev.-PILA, in Federal Gazette 2018, pp. 7204-7205 of French version / pp. 7217-7218 of German version (Unofficial English translation).

²⁹ Supreme Court, Decision 4A_666/2012, 3 June 2013, ASA Bull. 1/2020, p. 153.

Court on two separate grounds: (i) the discovery of new facts and evidence and (ii) the award was allegedly tainted by procedural fraud. X. argued that Y. had deliberately withheld the invoices for the so-called remedial works it had undertaken during the arbitration and only produced them in subsequent proceedings before the French courts. According to the respondent, those invoices showed that the cost estimates on which the arbitral tribunal had relied to quantify the damages had to a large extent nothing to do with the works required to remedy the defects for which it was liable.

The Supreme Court dismissed the request for revision on the ground that it had not been submitted within the 90-day time limit from the discovery of the ground for revision (Article 124(1)(d) FSCA). In reaching that decision, the Court made several interesting findings. The Court thus found that “[w]hen several grounds for revision are invoked, the time limit runs for each of them separately; the longest time limit therefore does not apply to the request for revision as a whole.”³⁰

Turning to the first ground for revision invoked, namely the discovery of new facts and evidence (Article 123(2)(a) FSCA), the Court held that the “discovery [of that ground for revision] implies that the requesting party **knows of the new fact with sufficient certainty** to be in a position to invoke it, even if it cannot provide clear evidence of that fact; a mere conjecture is not sufficient. As for new evidence, the requesting party must either be able to submit documentary evidence or have sufficient knowledge thereof to request the taking of the necessary evidence.”³¹

In this case, the Supreme Court found that, in the French proceedings, X. had relied on a court-ordered expert opinion in support of its allegations that the cost estimates did not correspond to the invoices. On that basis, the Court considered that X. had conclusive evidence of the “new facts” relied on in the revision proceedings already at that time; it was irrelevant that the invoices were only communicated to the defendant a few weeks later. In this regard the Supreme Court held that “[i]t would indeed be contrary to the exceptional nature of revision proceedings and to the spirit of the case law relating to art. 124(1)(d) FSCA to allow a party having discovered conclusive evidence to postpone its revision request and seize the opportunity of a subsequent discovery of new means of evidence that merely corroborates the

³⁰ Supreme Court, Decision 4A_666/2012, 3 June 2013, ASA Bull. 1/2020, p. 153, para. 5.1 (free English translation of French original) (emphasis added).

³¹ *Ibid.*

previous evidence to artificially benefit from a prolongation of the time limit set out in this provision.”³²

Since the time limit runs at the earliest “from the complete notification of the decision” (Article 124(d) FSCA), the Supreme Court then examined whether the start of the time limit was the date of notification of the award or that of the addendum correcting the award. The Court found that “...it is appropriate to apply here, by analogy, the case law pursuant to which the procedure for correcting an award and setting aside proceedings concerning the same award must not interfere with each other (ATF 131 III 164 para. 1.2.4). It follows that if, as in the instant case, the error underlying the request for correction (*i.e.* the correction of a material computational error), has nothing to do with the grounds for revision invoked, there is **no reason to postpone the start of the time limit provided for under Art. 124(1)(d) FSCA until the date on which the correction of the award is notified.**”³³

Based on the above findings, the Supreme Court found the request for revision was filed too late insofar as it was based on the discovery of new facts and evidence.

The revision request was also found to be inadmissible with respect to the second ground invoked, *i.e.* Y’s alleged procedural fraud, but for the opposite reason: the request was premature. The Supreme Court recalled that, when revision request is based on the award having been tainted by a criminal offence (Article 123(1) FSCA), “the time limit starts running from the moment the requesting party knows of a criminal conviction which has entered into force or, if such conviction is no longer possible, from the moment the requesting party knows of the offence and of evidence establishing such offence.”³⁴ The Supreme Court found that since the criminal proceedings were still pending, the revision request was premature.

This decision shows that when several grounds are invoked, different time limits might apply according to the grounds invoked. If so, the requesting party will have to demonstrate separately for each ground that the revision request was filed in a timely manner.

³² Supreme Court, Decision 4A_666/2012, 3 June 2013, ASA Bull. 1/2020, p. 153, para. 5.2.1 (free English translation of French original).

³³ *Ibid.*, para. 5.2.2 (free English translation of French original) (emphasis added).

³⁴ *Ibid.*, para. 5. 1 (free English translation of French original).

Compliance with the 90-day time limit must be established

As indicated above, the revision request will only comply with the formal requirements if it is reasoned and supported by all relevant evidence.³⁵ This not only applies with respect to the grounds for revision invoked by the requesting party, but also its compliance with the applicable time limits and, in particular, the time of discovery of the grounds for revision.

Thus, the Supreme Court has found that it is **not sufficient** for the requesting party **to claim that it has “recently” become aware** of the new facts invoked as this did not allow the Court to determine whether the 90-day time limit from the discovery of the new fact or evidence had indeed been complied with.³⁶ If the requesting party fails to demonstrate its compliance with the 90-day time limit in its request, including by reference to supporting evidence, its request will be dismissed on the basis that is insufficiently motivated. If compliance with the 90-day time limit is not established, the Supreme Court will consider the revision request to be inadmissible and dismiss it without examining its merits.

2.6 Consequences of a successful revision request

If the revision request is successful, the Supreme Court will annul the award and remand the matter to the arbitral tribunal for a new decision. If it is not possible to reconstitute the original arbitral tribunal, a new tribunal must be formed.³⁷

3. Grounds for revision

The Supreme Court has granted requests for the revision of an international arbitral award on the basis of the following grounds:

- (a) The party seeking revision **subsequently discovers relevant facts or conclusive evidence** that it was unable to submit in the arbitration despite having acted with the required diligence (Article 123(2)(a) FSCA).
- (b) The **award was tainted by criminal conduct** (*e.g.* forged documentary evidence, false witness testimony, bribery) to the

³⁵ See Section 2.3 above.

³⁶ Supreme Court, Decision 4A_506/2017, 3 October 2017, ASA Bull. 1/2020, p. 108.

³⁷ See *e.g.* Swiss Supreme Court, Decisions 118 II 199, 11 March 1992, para. 3, ASA Bull. 3/1992, p. 356; 134 III 286 (4A_42/2008), 14 March 2008, para. 2, ASA Bull. 4/2008, p. 765.

detriment of the party requesting its revision (Article 123(1) FSCA).

In a decision of 2016, the Supreme Court examined whether the **subsequent discovery of a ground for challenge of an arbitrator** should allow parties to request the revision of the award if the discovery is made after the expiry of the time limit for requesting the setting aside of the award. The Court ultimately left this question open, considering it preferable to let the legislator settle this issue in the context of the revision of Chapter 12 PILA.³⁸

This has now been done: the subsequent discovery of a ground for revision is one of the three grounds for the revision of international arbitral awards that are set out in Article 190(a)(1) Rev.-PILA as follows:

¹ A party may request the revision of an arbitral award if:

a. the requesting party subsequently discovers relevant facts or conclusive evidence that it was unable to invoke in the prior proceedings despite having acted with all due diligence;

b. criminal proceedings establish that the arbitral award was tainted by a criminal offence or misdemeanour to the detriment of the requesting party, even in the absence of a criminal conviction; if criminal prosecution is not possible, evidence may be adduced in another manner,

c. [despite the parties having acted with all due diligence],³⁹ a ground for challenge of an arbitrator is only discovered after the arbitration proceedings were closed and there is no other means of recourse available.⁴⁰

The following sections provide an overview of the decisions rendered by the Supreme Court on each of those grounds over the last decade.

3.1 Subsequent discovery of material facts or conclusive evidence

The first ground for the revision of an international arbitral award, and by far the most frequently invoked in practice – although with limited success

³⁸ Supreme Court, Decision 142 III 521 (4A_386/2015), 7 September 2016, para. 2.3. See also, Supreme Court, Decision 143 III 589 (4A_53/2017), 17 October 2017, ASA Bull. 4/2017, p. 970, para. 3.1.

³⁹ The subsequent amendments proposed to the initial bill of the Rev.-PILA and adopted by the Swiss Parliament are shown in brackets.

⁴⁰ Rev.-PILA, in Federal Gazette 2018, pp. 7204-7205 of French version / pp. 7217-7218 of German version (Unofficial English translation).

– is the discovery of new material facts and/or conclusive evidence after the award is rendered (**Article 123(2)(a) FSCA**).⁴¹ Importantly, the facts themselves must have occurred before the award was rendered (so-called “improper nova”); the same holds true for new evidence. In other words, what is “new” is the discovery of the facts and evidence, rather than the facts and evidence themselves.

The rationale is that these facts and evidence would – and should – have been submitted in the arbitration had they been known, respectively available, to the party requesting revision at the time. To succeed with its revision request, the requesting party must demonstrate that, although it acted with all due diligence, for one reason or another it was unable to present those facts and evidence in the arbitration itself.

Not all “new” facts and evidence open the door to revision. Indeed, revision is only justified if the facts are “material” and the evidence is “conclusive”. In other words, the new facts and evidence relied on would likely have had an impact on the outcome of the arbitration and changed it in the requesting party’s favour.

The Supreme Court’s decisions on requests for the revision of international arbitral awards based on the discovery of new material facts and/or conclusive evidence can be grouped under the following categories:

- (i) The new facts and evidence invoked could and should have been brought in the arbitration;
- (ii) New facts are discovered after the award was rendered but before its notification;
- (iii) There are new facts but those facts are not material;
- (iv) The authenticity of the new evidence is disputed;
- (v) New evidence is obtained in subsequent criminal proceedings.

The new facts and evidence invoked could and should have been brought in the arbitration

Decision 4A_688/2012, 9 October 2013

Decision 4A_688/2012 concerned the revision of an award rendered in relation to a license for the exclusive use of a manufacturing system and the sale of a line of machinery required to operate the system. Defects were identified in the manufacturing line upon delivery.⁴² The seller then

⁴¹ Once the Rev.-PILA has entered into force: Article 190(a)(1)(a) Rev-PILA.

⁴² Supreme Court, Decision 4A_688/2012, 9 October 2013, ASA Bull. 1/2020, p. 139.

undertook to deliver a new manufacturing line and issue a bank guarantee. As the seller, however, failed to honour those undertakings, the buyer rescinded the contract and initiated arbitration proceedings against the seller and another company, B.K., in which it sought to recover the amounts paid under the contract. In its award, the arbitral tribunal ordered the seller and B.K. to reconstitute the amounts received from the buyer, remove the defective manufacturing line from the buyer's premises at their costs and pay damages.

Within the two years after the award was rendered, the seller, B.K. as well as X., who controlled B.K., and several other companies and individuals requested its revision. They based their request on their discovery of the existence of a company to which the other party, the buyer, had assigned all its rights under the contract a few years before the start of the arbitration. The requesting parties claimed that, had the arbitral tribunal been aware of those facts, it would have rejected the buyer's claims on the basis that the buyer lacked standing as a result of the assignment and did not suffer any damage as he had ceased to be the owner of the machinery. They also claimed to have discovered, upon inspection of the machinery recovered from the buyer's premises, that contrary to the arbitral tribunal's findings the machinery did not, in fact, present any defects.

First, the Supreme Court found that only B.K. had standing to request revision, as the seller had been liquidated and the other requesting parties had not participated in the arbitration.⁴³ It also rejected the request on the merits.

With respect to the first ground invoked by the requesting parties, the Court found that contemporaneous documents showed that the requesting parties were aware of the existence of the company before the end of the arbitration. Not only should they have raised this issue in the arbitration itself, they had also failed to request revision within the 90-day time limit. As for the second ground, the Court found that the transfer of the machines and their inspection constituted "new facts" (real nova) which had occurred after the close of the arbitration proceedings and, as such, fell outside of the scope of Article 123(2)(a) FSCA. The requesting parties should have requested the taking of evidence to demonstrate that the machinery was not defective during the arbitration and not waited until after the award was rendered.

Decision 4A_763/2011, 30 April 2012

In another case,⁴⁴ which concerned a post-M&A dispute, the requesting party, the seller of the shares, had sought revision of three awards rendered

⁴³ See Section 2.3 above.

⁴⁴ Supreme Court, Decision 4A_763/2011, 30 April 2012, ASA Bull. 4/2013, p. 831.

by an ICC tribunal. He claimed to have discovered that the purchaser had agreed, in an annex to a joint venture agreement (JVA) with a third party, not to seek specific performance of the seller's obligation to transfer the shares but to seek damages instead. According to the seller, this was relevant to the outcome of the arbitration given that the arbitral tribunal had ordered him to transfer the shares to the purchaser.

The Supreme Court rejected the seller's revision request. It considered that the agreement between the purchaser and the third party was not a "new" fact but should have been known to the seller had he been diligent. Indeed, the JVA was publicly available on the website of the US Securities and Exchange Commission (SEC) and specifically provided that the terms of the agreement between the purchaser and the third party concerning the claims raised in the arbitration would be set out in an annex. The most elementary prudence should have led the seller to query the scope and content of that annex and request the production of this document in the arbitration.

One point of interest from a procedural perspective, is the purchaser's submission of a protective brief (*mémoire préventif*; *Schutzschrift*) a few weeks before the revision request to object to the stay of enforcement of the award pending the outcome of the revision proceedings, which the purchaser anticipated the seller would seek (and indeed did) in its revision request.

New facts discovered after the award was rendered but before its notification

Decision 4A_247/2014 clarifies that revision can be requested in relation to facts discovered after the award is rendered but before its notification to the parties.⁴⁵

In order to obtain assistance in the preparation and submission of tenders for the construction and renovation of electric power plants, Y., a group of companies, entered into two consultancy agreements. The consultant provided consultancy services in accordance with the agreements and, in exchange, was paid part of the agreed consultancy fees. The consultant initiated an ICC arbitration in which it sought payment of the balance. Y. applied for the stay of the arbitration until light could be shed on the consultant's activities. According to Y., there were pending criminal investigations on potential cases of corruption in relation to projects in which Y. was involved in several jurisdictions, including in the US and the UK. Y. argued that it had no choice but to suspend the payment of the consultant's fees as it would otherwise be exposed to criminal sanctions under the UK Bribery Act and US Foreign

⁴⁵ Supreme Court, Decision 4A_247/2014, 23 September 2014, ASA Bull. 1/2020, p. 124.

Corrupt Practices Act (FCPA). The arbitral tribunal refused to stay the arbitration proceedings pending the outcome of the criminal investigations. On 3 March 2014, the arbitral tribunal rendered its final award in which it ordered Y. to pay the outstanding consultancy fees. On the same day, Y. informed the arbitral tribunal of the indictment in the U.S. of a third party, who was accused of having received bribes from consultants such as the respondent. The arbitral tribunal responded on the following day that the final award, although it had not yet been notified to the parties, had already been signed by all three members of the tribunal. Y. initiated both setting aside proceedings⁴⁶ and separate revision proceedings against the award.⁴⁷

In the setting aside proceedings, Y. invoked a public policy violation on the basis that it would be exposed to criminal sanctions under the UK Bribery Act and U.S. FCPA if it complied with the award. The Supreme Court rejected the argument. In accordance with its well-established case law, the Court refused to review the arbitral tribunal's finding that Y. had failed to prove its corruption allegations. The Court also found that Y.'s reliance on the indictment in support of its setting aside application was misplaced, since an award cannot be set aside based on new facts which were only brought to the arbitral tribunal's attention after the award was rendered.

The Court however accepted that the indictment was a new fact that opened the door to a revision of the award. It reasoned that although it had been issued before the signature of the award, it could not be introduced in the arbitration because the award had already been rendered (even though it had not been notified). It also considered that the lapse of three weeks, between the moment the indictment was made public and Y.'s notification of this new fact to the arbitral tribunal, was reasonable.

The Supreme Court ultimately denied the revision request on the basis that the indictment was not material to the outcome of the arbitration. The Court considered that Y's main argument related in fact to the risks of facing criminal sanctions in the US or the UK, rather than the illegality of the consultancy agreements themselves – which had been one of the key issues in the arbitration. It held that the indictment of the third party had no bearing on the illegality of those agreements since it was not tantamount to a criminal conviction and the consultant himself was not directly involved in any pending criminal proceedings. The Supreme Court stressed that the revision of an award should only be ordered exceptionally and that particular restraint should be exercised when the purpose, or at least the effect, of the revision

⁴⁶ Supreme Court, Decision 4A_231/2014 of 23 September 2014, ASA Bull. 1/2020, p. 124.

⁴⁷ Supreme Court, Decision 4A_247/2014, 23 September 2014, ASA Bull. 1/2020, p. 133.

would be to allow a party having benefitted from services rendered by another party to withhold payment for those services in full or in part. This decision illustrates well the high threshold applied by the Swiss Supreme Court to the revision of arbitral awards, including in cases involving corruption allegations.

There are new facts but those facts are not material

Decision 4A_212/2010, 10 February 2011

A further case in which the Supreme Court found that the new facts relied on were not material concerns a dispute that arose under a license agreement for the sale and distribution of board games which gave rise to an ICC arbitration between the licensee and the licensor.⁴⁸ In its award, the arbitral tribunal rejected the licensee's claims and accepted the licensor's defence that the agreement had terminated since the licensor had failed to reach the agreed sales targets. The licensee requested the revision of the award as it claimed it had subsequently learnt from one of the licensor's regional directors that the licensor, contrary to what it had suggested in the arbitration, no longer intended to distribute one of the games in the relevant market, as the sales data confirmed. The licensee argued that the outcome of the arbitration would have been entirely different as a result, since the question would then have been whether the licensor, which had lost all interest in the distribution of the game, could still invoke termination on the basis the licensee's failure to reach the minimum sales quotas.

The Supreme Court found that the licensor's intention to abandon the sale of one of its games was a new fact that had occurred before the end of the arbitration. The Court, however, considered that this fact was predictable, since the issue of the licensor's lack of interest for that game and attempts to limit its sale in breach of its contractual obligations had already been discussed before the arbitral tribunal. The Court concluded that the licensee should have taken steps to adduce evidence to establish that fact in the arbitration itself had it considered it to be decisive for its outcome and had failed to explain why the evidence it relied on in its revision request would not have been available at the time.

⁴⁸ Supreme Court, Decision 4A_212/2010, 10 February 2011, ASA Bull. 1/2020, p. 113.

Decision 4A_570/2011, 23 July 2012

In another case,⁴⁹ a state requested the revision of an award rendered in a BIT arbitration on the basis that it had discovered the existence of a contract and a side letter between the defendant and a third party, to which the defendant had sold its participation in a public company, Z. Under the contract and the side letter, the defendant had granted the third party the right to obtain from the defendant the withdrawal of the BIT arbitration. The state claimed that it first discovered the existence of these documents, some two years after the award had been rendered, when they were mentioned and produced by the third party before the general attorney in the context of the third party's acquisition of a majority shareholding in the company Z. and its forthcoming listing on the stock exchange.

The Supreme Court rejected the state's request for revision because of the *belated filing* of such request beyond the 90-day time limit (which is a procedural question leading to the inadmissibility of the request), or alternatively, because of the *belated discovery* of a relevant fact or evidence within the meaning of Article 123(2)(a) FSCA (which is a substantive question as to whether there exists a ground for revision).

The Court considered that the requesting party was aware of the existence of the third party's right to request the withdrawal of the BIT during the arbitration. The Supreme Court further held that it was irrelevant that the requesting party was not aware of the side letter itself, since it knew that the third party had begun arbitration proceedings against the defendant for breach of its undertaking to withdraw the BIT arbitration, which is precisely the obligation that was set out in the side letter. The Court also took the view that the state could have applied for the taking of evidence with respect to the content and scope of the agreements between the defendant and the third party during the arbitration itself.

Belated new facts or evidence, not material – sports arbitration

The discovery of new facts and evidence is often invoked in the context of sports arbitration, as we can see from the decisions below.

Decisions 4A_750/2011, 21 August 2012; 4A_645/2014, 20 February 2015

In one case, the same award gave rise to two separate requests for revision, both of which were rejected by the Supreme Court.⁵⁰ The underlying

⁴⁹ Supreme Court, Decision 4A_570/2011, 23 July 2012, ASA Bull. 1/2020. p. 166.

⁵⁰ Supreme Court, Decisions 4A_750/2011, 21 August 2012, ASA Bull. 1/2020, p. 162 and 4A_645/2014, 20 February 2015, ASA Bull. 1/2020, p. 119.

case concerned a sponsorship contract between an Italian sponsorship company and a Spanish company in charge of managing a cycling team. In its award, an *ad hoc* arbitral tribunal rejected the sponsor's contention that the contract had been rescinded and ordered the sponsor to pay the sponsorship fee until the expiry of the contractual term.

After a couple of months, the sponsor lodged a first request to revise the award.⁵¹ According to the sponsor, it had discovered, through the press, that doping charges had been brought against one of the leading cyclists and "poster boy" of the team, who also figured on a list of athletes suspected of doping. The sponsor argued that those facts would have had an impact on the outcome of the arbitration: the sponsor would have been entitled to terminate the contract for breach by the management company of its undertaking to ensure that the cyclists did not use performance-enhancing drugs. The Supreme Court rejected the revision request. It found that the news of doping charges being brought against the cyclist or his inclusion on a list of doping suspects did not modify the factual premise on which the award was based. As those facts were not material to the outcome, they could not justify a revision of the award.

Two years later, the sponsor lodged a second revision request.⁵² This time the sponsor relied on its discovery in the press of a decision of the *Union Cycliste Internationale* (UCI) imposing sanctions on the cyclist for violation of the anti-doping rules, including a two-year ban and the cancellation of his *Tour de France* results of previous years. The sponsor argued that it would never have entered into the sponsorship contract had it known that a cyclist on the team had repeatedly violated the UCI's anti-doping rules. Invoking a fundamental mistake, the sponsor claimed that it was entitled to rescind the contract. The sponsor also argued that the management company had breached the contract as it was aware of the doping at the time of its conclusion and of the subsequent amendment. Again, the Supreme Court rejected the revision request. The Supreme Court found that a rescission of the contract for mistake further to the sponsor's discovery of the new facts required a declaration under the applicable law (Italian law) which would only have taken place after the award had been rendered. Since the rescission had not occurred at the time of the arbitration itself, it did not justify a revision of the award. The Supreme Court also found that the new facts relied on by the sponsor, namely the sanctions imposed by the UCI on the cyclist, were not material to the outcome of the award. It could not be

⁵¹ Supreme Court, Decision 4A_750/2011, 21 August 2012, ASA Bull. 1/2020, p. 162.

⁵² Supreme Court, Decision 4A_645/2014, 20 February 2015, ASA Bull. 1/2020, p. 119.

inferred from those facts that the management company had any knowledge of the cyclist's conduct or had breached its contractual obligations.

4A_144/2010, 28 September 2010

One of the many episodes of the well-known “Pechstein saga”, a doping dispute opposing the German professional speed skater, Claudia Pechstein, to the International Skating union, included a request for revision of a TAS award.⁵³ The TAS rendered this award after having heard no less than 12 medical experts, and confirmed the two-year suspension for doping ordered by the competent disciplinary commission. Claudia Pechstein requested its revision on the basis that a mere two days after the award was rendered, she had discovered the existence of a new medical algorithm which allowed for a more specific diagnosis and supported her defence that her high blood levels were not caused by doping, but by a hereditary blood anomaly.

The Supreme Court recalled that the impossibility for a party to invoke a fact during the arbitration is admitted only restrictively, in particular when the discovery of new evidence invoked in the revision proceedings aims at supporting allegations which were dismissed by the arbitral tribunal after a comprehensive taking of evidence process involving numerous experts. It found that the requesting party could not rely on scientifically recognized methods supported by medical reports and expert testimonies in the arbitration, and wait until it is faced with an unfavourable award to invoke unpublished methods that are not well established for the first time in the revision proceedings. The requesting party had not established why she could not have invoked the discovery of the new diagnosis in the arbitration had she acted with the required diligence in gathering the evidence.

The Supreme Court also found that it was in any event doubtful that the new evidence invoked would satisfy the materiality criterion, since it failed to address the arbitral tribunal's finding that even an unlikely diagnosis concluding to a hereditary blood problem would not explain the significant fluctuations of her blood levels, which were abnormally high during the competition and suddenly dropped thereafter. The Supreme Court considered that those allegations were made with the sole purpose of obtaining a new assessment of the facts. It dismissed them on the basis that a mistaken fact finding by the arbitral tribunal was not in itself a ground for revision.

⁵³ Supreme Court, Decision 4A_144/2010, 28 September 2010 (Claudia Pechstein vs International Skating Union), ASA Bull. 1/2011, p. 147; for further information on the “Pechstein saga” see: Caroline dos Santos, European Court of Human Rights Rules upon Sports-Related Decision: Switzerland Condemned, ASA Bull. 1/2019, p. 117.

Decision 4A_237/2010, 6 October 2010

This decision concerns a request for revision against two TAS awards rendered in a dispute opposing a professional cyclist to the international cyclist union, in which the TAS ordered first the cyclist's suspension and then a lifelong ban for doping.⁵⁴ The cyclist claimed that when he was tested positive for doping he underwent a second series of tests (Sample B) but was not provided with the detailed laboratory's report or the complete analysis report. He claimed to have discovered only several years later that both the first and the second series of tests had been carried out by the same laboratory staff, in breach of the rules of the international standard for laboratories and that this should have led to his acquittal in the first proceedings and to a milder sanction in the second proceedings.

The Supreme Court found that the cyclist had in fact been aware of the existence of a more detailed laboratory report and could, therefore, have suggested that it be compared with the the detailed report produced in the arbitration with respect to the first series of tests in support of his allegations. The Court also found that it was not established that the cyclist had made any further efforts to inspect the report during the arbitration, and recalled that the impossibility for a party to invoke a fact during the arbitration is admitted only restrictively. The fact that his request to see the complete laboratory report was allegedly ignored by the arbitral tribunal was not in itself a ground for revision and should rather have been raised in setting aside proceedings.

4A_284/2009, 24 November 2009

In an earlier case, a horse rider requested both the setting aside and the revision of a CAS award rendered in a dispute against the German Equestrian Federation.⁵⁵ The International Equestrian Federation had suspended the horse rider for 120 days for doping and ordered him to pay a fine. The German Equestrian Federation appealed the decision to the CAS on the basis that the suspension should be extended to eight months, a request which the CAS granted. The horse rider challenged the CAS award before the Supreme Court on the basis that the German Equestrian Federation had no legitimate interest in the outcome of the arbitration, which he therefore considered abusive and tantamount to a public policy violation. He also sought the revision of the award, as he claimed to have discovered new facts and evidence which would have had an impact on the CAS' decision on the

⁵⁴ Supreme Court, Decision 4A_237/2010, 6 October 2010, ASA Bull. 1/2011, p. 141.

⁵⁵ Supreme Court, Decision 4A_284/2009, 24 November 2009, ASA Bull. 1/2020, 1/2020, p. 179.

validity and legitimacy of the German Equestrian Federation's claims. Relying on a press release and an article in the media, he argued that the German team's veterinarian was aware of the alleged doping and had failed to disclose it. The Supreme Court rejected the request on the basis that those facts would not have had any impact on the outcome of the CAS arbitration.⁵⁶

Authenticity of new evidenced not established

Decision 4A_662/2018 concerns a case in which the defendant disputed the authenticity of the so-called new evidence relied on by the requesting party in support of its request for revision of a CAS award.⁵⁷ This case concerned a player transfer contract between two football clubs, A. and B., under which Club B. undertook to pay Club A. the agreed fee for the transfer of a player and, in addition, to pay half of any future fees received in the event of that player's retransfer to another club. Following the player's retransfer to another club, Club A. claimed that Club B. had entered into sham contracts to conceal the true amount of the retransfer fee. Club A. initiated arbitration proceedings before the CAS, which dismissed Club A.'s claims on the basis that it had failed to establish that Club B. had received a higher amount for the player's retransfer than the fee communicated to Club A. or had concluded sham contracts.

Some two years later, Club A. applied for the revision of the CAS award on the basis that it had discovered new facts and evidence, namely an email exchange between Club B.'s CEO and its legal advisor dated a couple of days prior to the conclusion of the retransfer contract and press articles referring to that email exchange, that allegedly demonstrated that Club B. had entered into sham contracts to conceal the true amount of the retransfer fee. Club B. contested the authenticity of that email exchange, explaining that several documents had been manipulated and disclosed following the hack of its IT system, as confirmed by a decision and letter from the competent media supervisory authority. Club B. argued that, since Club A. had only produced a photocopy of that email, it was impossible to verify its origin. Club B. also pointed out several irregularities, including in the CEO's signature or the missing attachment referred to in the email, which indicated that it had been manipulated. In addition, Club B. produced an anonymous Tweet that confirmed that the email had been fabricated so that Club A. could use it in legal proceedings against Club B.

⁵⁶ Supreme Court, Decision 4A_284/2009, 24 November 2009, ASA Bull. 1/2020, p. 179.

⁵⁷ Swiss Supreme Court, Decision 4A_662/2018, 14 May 2019, ASA Bull. 1/2020, p. 99.

The Supreme Court held that, in accordance with the applicable procedural rules,⁵⁸ the party relying on a document must prove its authenticity if it is contested. The Supreme Court found that, whereas Club B. had substantiated its objections, Club A. had not given any indication as to how it intended to prove the authenticity of the document he relied on. The Supreme Court concluded that, in those circumstances, this was not evidence that could justify a revision of the award. The press articles did not justify a revision either as they were published after the award had been rendered.

New evidence obtained in subsequent criminal proceedings

Decision 4A_412/2016 is one of the rare instances in which the Supreme Court **granted a request for revision** of an arbitral award.⁵⁹

It concerns a dispute between a German manufacturer of diesel engines for power plants, C., and a Panamanian company, B. Inc., which undertook to provide consultancy services to C. in relation to the supply of powerplants to a state-owned operating company, D. The consultancy agreement contained an anti-corruption clause, pursuant to which the parties agreed that the consultant, B. Inc., would lose its right to the agreed fee in case of non-compliance with the applicable anti-corruption laws. In the years following the conclusion of the consultancy agreement, C. entered into a dozen contracts for the supply of diesel engines to another state-owned company, which was closely related to D. B. Inc. subsequently commenced an ICC arbitration in which it requested the payment by C. of the consultancy fee due in relation to those contracts. In the arbitration, C. opposed the consultant's right to any fees on the basis that it had not in fact provided any consultancy services and had bribed public officials in violation of the anti-corruption clause. The arbitral tribunal found that C. had failed to prove its allegations of corruption and granted B. Inc.'s claims.

In the revision proceedings, C's legal successor, A., relied on new facts and evidence obtained in subsequent criminal proceedings directed against one of C.'s former employees who had been responsible for major projects, F. Specifically, A. relied on the "Formula A" (*i.e.* one of the bank account opening documents used to verify the identity of the beneficial owner) pertaining to one of the consultant's bank accounts which had come to light in the criminal proceedings. According to the Formula A, the consultant's beneficial owner was none other than C's former employee, F. A. argued that

⁵⁸ In this case the rules of the SCCP, and in particular, Article 178 SCCP, which had been applied by the arbitral tribunal pursuant to Article 182(2) PILA as the parties had not agreed on any procedural rules.

⁵⁹ Supreme Court, Decision 4A_412/2016, 21 November 2016, ASA Bull. 1/2020, p. 113.

this new evidence, which existed at the time the arbitral award was rendered, demonstrated that B. Inc. was not an independent third party providing real services under the consultancy agreement but merely a vehicle for paying bribes to obtain contracts with state-owned companies, as it had already alleged in the arbitration. B. Inc did not respond to A.'s revision request.

The Supreme Court granted A.'s revision request as it found that the new evidence (the Formula A) established the consultant's beneficial owner and could have changed the outcome of the arbitration. Indeed, the arbitral tribunal had considered B. Inc.'s beneficial ownership to be decisive for its determination on the corruption allegations and had, accordingly, ordered B. Inc. to produce the relevant bank documents, albeit unsuccessfully. Whether the fact that F. had concealed his beneficial ownership of B. Inc. and lied about his interest in the outcome of the dispute in the witness testimony he provided in the arbitration could also give rise to a revision of the award pursuant to Article 123(1) FSCA, was left open.

3.2 Award tainted by criminal conduct

A second ground for revision is when a criminal offence or misdemeanour has affected the outcome of the arbitration (**Article 123(1) FSCA**).⁶⁰ To date, there is only one decision in which the Supreme Court accepted to revise an arbitral award on this ground: Decision 4A_596/2008, which relates to the infamous "French Frigates" affaire.

French company Thales requested the revision of an ICC award rendered in a dispute between Thales and consultant that had assisted it in relation to the sale of war ships – the frigates, to Taiwan. Under the award, Thales had been ordered to pay the consultant the agreed remuneration. Thales had failed to obtain the setting-aside of the award before the Swiss Supreme Court and had filed a criminal complaint in France on the basis that one of the consultant's witnesses, who had been one of the key players of the underlying transaction, had given a false testimony during the arbitration. As the witness had in the meantime passed away, no indictment was possible; however, that did not stop the French investigating judge from reaching the conclusion that the witness had indeed committed procedural fraud, as he was found to have given a patently false testimony in the arbitration. It is on the basis of those findings that Thales brought its revision request.

The Supreme Court granted the request as it found that procedural fraud was a criminal offence under Swiss law and had directly influenced the

⁶⁰ Once the Rev.-PILA has entered into force: Article 190(a)(1)(b) Rev.-PILA.

outcome of the arbitration. The Court therefore annulled the award and remanded the matter to an arbitral tribunal to be newly constituted, one of the arbitrators of the original tribunal having in the meantime passed away.

3.3 Subsequent discovery of a ground for challenge of an arbitrator

As explained above, the Supreme Court referred the question of whether a subsequent discovery of a ground for challenge of an arbitrator gives rise to a ground for the revision of an award to the Swiss legislator, which has now included this as a ground for revision in the Rev.-PILA.⁶¹

4. Conclusion

The Swiss Supreme Court has up to now been extremely restrictive in its approach to the revision of arbitral awards. From 1992 when the Supreme Court first accepted the availability of revision for arbitral awards until the end of 2019, revision was requested in some 40 cases; it was granted in only three.⁶² The slim number of successful revision requests coupled with the high costs (court costs and legal costs awarded to the defendant) if they are unsuccessful, makes revision quite a risky venture.

That said, revision can also be quite an effective tool in certain cases, in particular when evidence of a criminal offence subsequently comes to light. This is of course true, as we have seen, where the award itself is tainted by criminal conduct. It is however also true when allegations of corruption that have an impact on the merits of the dispute are made in the arbitration but are rejected by the arbitral tribunal for lack of sufficient evidence, and new conclusive evidence is discovered subsequently, once the award has already been rendered. In such cases, revision is a very effective tool to correct the award and obtain a more equitable outcome. It remains to be seen whether the new ground for revision of arbitral awards included in the Rev-PILA based on the subsequent discovery of a ground for challenge of an arbitrator will lead to an increase in the number of – successful – revision requests.

⁶¹ Article 190(a)(1)(c) PILA; See Supreme Court, Decision 142 III 521 (4A_386/2015), 7 September 2016, para. 2.3, and Decision 143 III 589 (4A_53/2017), 17 October 2017, ASA Bull. 4/2017, p. 970, para. 3.1.

⁶² See Annex: List of Swiss Supreme Court decisions relating to the revision of international arbitral awards (1992-2019).

**Annex: List of Swiss Supreme Court decisions relating to the
revision of international arbitral awards (1992-2019)**

Nr	Date	Reference	ASA Bull.	Grounds (FSCA)
1.	14.05.2019	4A_662/2018	1/2020, 99	123(2)(a)
2.	31.08.2018	4F_16/2018	1/2020, 188	121(a)
3.	14.03.2018	4F_8/2018	--	[Request not admissible]
4.	03.10.2017	4A_506/2017	1/2020, 108	123(2)(a)
5.	21.11.2016 [Request granted]	4A_412/2016	1/2020, 113	123(2)(a)
6.	07.09.2016	142 III 521 (4A_386/2015)	2/2020	121(a), 123(2)(a)
7.	20.02.2015	4A_645/2014	1/2020, 119	123(2)(a)
8.	23.09.2014	4A_247/2014	1/2020, 124	123(2)(a)
9.	27.01.2014	4A_509/2013	3/2014, 809	123(1)
10.	13.01.2014	4F_2/2014*	--	121(c), 121(d)
11.	10.12.2013	4F_8/2013*	1/2020, 193	121(d)
12.	09.10.2013	4A_688/2012 4A_126/2013	1/2020, 139 1/2020, 139	123(2)(a) 124(1)(d)
13.	03.06.2013	4A_666/2012	1/2020, 153	123(1) 123(2)(a)
14.	07.01.2013	4A_325/2012	--	[Request not admissible]
15.	21.08.2012	4A_750/2011	1/2020, 162	123(2)(a)
16.	23.07.2012	4A_570/2011	1/2020, 166	123(2)(a), 124(1)(d)
17.	30.04.2012	4A_763/2011	4/2013, 831	123(2)(a)

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Nr	Date	Reference	ASA Bull.	Grounds (FSCA)
18.	22.08.2011	4A_222/2011	1/2013, 83	123(2)(a), 124(1)(d)
19.	10.02.2011	4A_212/2010	1/2020, 174	123(2)(a)
20.	06.10.2010	4A_237/2010	1/2011, 141	123(2)(a)
21.	28.09.2010	4A_144/2010	1/2011, 147	123(2)(a)
22.	24.11.2009	4A_284/2009	1/2020, 179	123(2)(a)
23.	13.10.2009	4A_368/2009	3/2010, 639	123(2)(a)
24.	06.10.2009 [Request granted]	4A_596/2008	2/2010, 318	123(1)(a)
25.	14.08.2008	4A_234/2008	3/2009, 512	121(a) 123(2)(a)
26.	04.04.2008	4A_528/2007	3/2008, 580	121(a) 123(2)(a)
27.	14.03.2008	(134 III 286) 4A_42/2008	4/2008, 765	123(2)(a)
28.	10.01.2007	4P.148/2006	3/2007, 569	123(2)(a)
29.	29.08.2006 [Request granted]	4P.102/2006	3/2007, 550	137(b) COA (= 123(2)(a))
30.	02.02.2006	4P.237/2005	3/2007, 522	137(b) COA (= 123(2)(a))
31.	16.10.2003	4P.117/2003	4/2007, 777	137(b) COA (= 123(2)(a))
32.	03.09.2002	4P.120/2002	3/2003, 578	137(b) COA (= 123(2)(a))
33.	27.06.2002	5P.218/2002	--	137(b) COA (= 123(2)(a))
34.	11.05.1999	4P.213/1998	2/ 2000, 323	137(b) COA (= 123(2)(a))

Nr	Date	Reference	ASA Bull.	Grounds (FSCA)
35.	08.04.1998	4P.225/1997	--	137(b) COA
36.	09.07.1997	4P.76/1997	3/1997, 506	137(b) COA (= 123(2)(a))
37.	02.07.1997	4P.265/1996	3/1997, 494	137(b) COA (= 123(2)(a))
38.	25.11.1993	4P.104/1993*	2/1994, 251	137(b) COA
39.	11.03.1992	118 II 199	3/1992, 356	137(b) COA (= 123(2)(a))

* Request for revision of Supreme Court Decision on request to set aside an award.

Catherine A. KUNZ, *Revision of Arbitral Awards in Switzerland: An Extraordinary Tool or Simply a Popular Chimera? A Review of Decisions Rendered by the Swiss Supreme Court on Revision Requests over the Period 2009-2019*

Summary

Revision is an extraordinary means of recourse that aims at correcting a decision or an arbitral award that is already final and binding (*res judicata*). This article presents an overview of the decisions rendered by the Swiss Supreme Court on revision requests over the period 2009-2019. The main finding is that the chances of success are very slim. From 1992 when the Supreme Court first accepted the availability of revision for arbitral awards until the end of 2019, revision was requested in some 40 cases; it was granted in only three. Revision remains, however, a very effective remedy in certain cases.