

## Appeal against sports federation's decision to reinstate third party in lieu of disqualified team must be directed against federation and third party (Swiss Supreme Court)

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In *Decision 4A\_548/2019*, the Swiss Supreme Court dismissed applications to set aside two awards rendered by the Court of Arbitration for Sport (CAS) relating to a sports federation's decisions to disqualify a football team and reinstate a third-party football team. The CAS had dismissed the appeals against the decisions on the basis that the appellant failed to designate the third-party as co-respondent in the CAS appeal proceedings.

In a recently published French-language decision, the Swiss Supreme Court dismissed applications to set aside two CAS awards, in which the CAS dismissed appeals against decisions rendered by a sports federation on the grounds that the third party benefitting from such decisions was not a party to the CAS proceedings.

Several bodies of the African Football Confederation (CAF) rendered decisions relating to the under 17's African Cup. An investigation revealed that two players of a team that qualified for the under 17's World Cup (team M) were above the age limit. Two decisions followed: one by the CAF disciplinary jury, confirmed by an appeal jury, disqualifying team M from the under 17's World Cup; and another by the CAF executive committee, approving the participation of another team (team N of federation E) in the under 17's African Cup in lieu of team M.

Team M's national federation and the two players (claimants), appealed both CAF (respondent) decisions to the CAS. The CAS found that where a decision grants rights to a third party (here, a replacement in a competition), that third party must be a party to the proceedings to preserve its right to be heard. Therefore, the CAS dismissed the two appeals because federation E was not a co-respondent in the proceedings.

The claimants challenged the decisions before the Swiss Supreme Court based on articles 190(2)(d) (right to be heard) and 190(2)(e) (breach of procedural public policy) of the Private International Law Act. They argued that the CAS had misinterpreted their position, and that in limiting its decision to the issue of (non) participation of federation E, had "sacrificed" their right to be heard on other arguments. They argued that federation E could have been heard by other means (for example, by intervention) and that the CAS had violated their right to a fair trial. The Swiss Supreme Court joined the procedures and dismissed both challenges.

The Supreme Court confirmed that the CAS need not examine the claimants' other arguments. Further, even if the CAS had misinterpreted the claimants' position, the claimants did not demonstrate a violation of their right to be heard. An incorrect or even arbitrary application of procedural rules does not automatically constitute a breach of public policy and it is not for the Supreme Court to determine whether the CAS correctly applies its own procedural rules.

Case: [Decision 4A\\_548/2019](#) (Swiss Supreme Court).

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