

Swiss Supreme Court confirms that CAS Termination Order was not excessively formalistic

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In Decision 4A_556/2018, the Swiss Supreme Court considered, among other things, whether a Court of Arbitration for Sport (CAS) Termination Order due to the appellant's failure to file its Appeal Brief by courier was excessively formalistic (and thus potentially contrary to procedural public policy).

In a French-language decision of 5 March 2019, the Swiss Supreme Court rejected an application to set aside a Termination Order issued by the Court of Arbitration for Sport (CAS) following the appellant's failure to file his Appeal Brief by courier.

In this case, a football player filed a Statement of Appeal with the CAS against a decision of the FIFA Disciplinary Committee. The CAS informed the appellant that the Appeal Brief had to be filed by courier in at least six copies (Article R31 of the CAS Code).

The appellant submitted his Appeal Brief by facsimile within the deadline set by the CAS, but failed to file it by courier, apparently due to a clerical error on the part of the appellant's counsel. The CAS subsequently issued a Termination Order, as the appeal was deemed to have been withdrawn pursuant to the applicable procedural rules (Article R51 of the CAS Code). The appellant applied to the Supreme Court to set aside this decision, arguing *inter alia* that it was excessively formalistic and thus contrary to procedural public policy (Article 190(2)(e) PILA).

The Supreme Court rejected the application. It first confirmed its [earlier case law](#) that a Termination Order, rendered by the Vice President of the CAS Appeals Division, constitutes a final decision open to challenge before the Supreme Court. It then referred to two recent decisions (from [2017](#) and [2018](#)), in which it held that the CAS did not display excessive formalism by ruling that a Statement of Appeal sent by facsimile only was inadmissible; the requirement that a Statement of Appeal be filed by courier does not constitute a mere administrative formality. This reasoning also applies to the filing of an Appeal Brief, which is "*of particular importance*" in CAS proceedings, as the appeal is deemed to have been withdrawn if the Appeal Brief is not filed timely. The Supreme Court finally mentioned that strict adherence to procedural requirements (especially regarding deadlines) is necessary to ensure the proper application of substantive law and the parties' equal treatment.

Case: [Decision 4A_556/2018](#) (Swiss Supreme Court).

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