Swiss Supreme Court upholds CAS decision refusing to open appeal proceedings due to late filing of hard copy of statement of appeal

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In Decision 4A_238/2018, the Swiss Supreme Court upheld a decision by the Court of Arbitration for Sport (CAS) refusing to open appeal proceedings where the statement of appeal had been filed by email within the time limit, but the hard copy was not filed by courier within the deadline, as required by the CAS Code.

The Swiss Supreme Court has upheld a decision by the Court of Arbitration for Sport (CAS) refusing to open appeal proceedings due to the appellant's late filling of a hard copy of its statement of appeal. Under the CAS Code (Article R31(3)), the electronic submission of a statement of appeal is valid provided that it is also sent by courier to the CAS Court Office on the subsequent business day of the relevant time limit, failing which, the CAS shall not proceed.

In the present case, the appellant filed its statement of appeal by email and by fax within the applicable time limit, but failed to file the hard copy by the end of the first subsequent business day. The appellant's counsel dispatched the hard copy of the statement 13 days later, explaining that the delay was due to "an unfortunate mistake of Counsel's secretariat". The CAS Court Office refused to open the appeal proceedings.

The appellant challenged this decision, arguing that the decision not to proceed with the appeal proceedings breached its rights to be heard under Article 190(2)(d) of the Private International Law Act (PILA) and violated public policy under Article 190(2)(e) of the PILA on the ground that the CAS Court Office applied its rules with excessive formalism.

The Swiss Supreme Court dismissed the challenge to the CAS Court Office's decision, which constituted a challengeable final award. The court considered that the appellant's right to be heard had not been violated, since the appellant had the opportunity to explain the reason for the delay. The Swiss Supreme Court also dismissed the public policy argument, holding that the CAS had not been overly formalistic in applying the requirements of Article R31(3) of the CAS Code strictly. The decision is a useful reminder to parties using the CAS Court system that deadlines will be applied strictly.

Case: Decision 4A_238/2018 (dated 12 September 2018, but only recently published).