

Swiss Supreme Court upholds CAS Termination Order despite excessive formalism allegations

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In *Decision 4A_54/2019*, the Swiss Supreme Court rejected the application to set aside a Court of Arbitration for Sport (CAS) Termination Order. The Supreme Court examined whether CAS was excessively formalistic in terminating the proceedings solely due to the fact that the appellant's appeal brief was not filed by courier.

In a French-language decision dated 11 April 2019, but only recently published, the Swiss Supreme Court refused to set aside a Termination Order issued by the Court of Arbitration for Sport (CAS). The Supreme Court found that the CAS was not excessively formalistic in terminating the proceedings because the hard copies of the appeal brief were not filed by courier.

Pursuant to Article R31 of the CAS Code, written submissions may be filed in advance by electronic mail. However, the filing is only valid if the written submissions are also filed by courier within the first subsequent business day of the relevant time limit.

In the case at hand, although the appellant submitted its appeal brief to the CAS via electronic mail on the final day of the time limit, the hard copies were never received by the CAS. Subsequently, the appellant was unable to prove that it had indeed timely filed the hard copies. In its Termination Order, the President of the CAS Appeals Division held that the hard copies of the appeal brief were not received in time and that the appeal was therefore deemed to have been withdrawn pursuant to Article R51 of the Code.

The appellant applied to the Supreme Court to set aside this order, arguing, among other things, that it was excessively formalistic and therefore, contrary to procedural public policy (*Article 190(2)(e) PILA*).

The Swiss Supreme Court confirmed in recent case law that the CAS was not being excessively formalistic by ruling that a submission sent by electronic mail only is inadmissible (see *Case Number: 4A_556/2018*). The Supreme Court found that the requirement that the appeal brief must also be filed by courier in hard copy does not constitute a mere administrative formality, but rather a condition for the validity of the appeal. The Supreme Court finally recalled 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_54/2019 (11 April 2019) (Swiss Supreme Court)*.

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