Swiss Supreme Court clarifies dead-line for set-aside applications

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In *decisions **4A**_**444**/**2016** and **4A**_446/2016*, the Swiss Supreme Court considered whether two challenges were inadmissible for being unsupported.

Speedread

In a French-language decision dated 17 February 2017, but only recently published, the Swiss Supreme Court ruled that set aside applications submitted by two athletes were inadmissible for being unsupported. The applications lacked legal grounding because at the time the applicants filed their set-aside applications, the petitioners had only been notified of the operative part of the awards and could therefore not ground their request on the underlying reasoning of the arbitrators.

Although rendered in summary form, the decision of the Supreme Court is important as it clarifies that the deadline for filing a set-aside application only starts to run once the parties have received a fully reasoned award (as opposed to the operative part of the award only). (*Decisions **4A**_**444**/**2016** and **4A**_446/2016.*)

In a French-language decision dated 17 February 2017, but only recently published, the Swiss Supreme Court ruled that challenges submitted by two athletes were inadmissible for lack of justification. Indeed, at the time they filed their set aside application, the petitioners had only been notified of the operative part of the awards and could therefore not ground their request on the underlying reasoning.

The dispute related to two athletes disputing bans imposed by the International Association of Athletics Federation in the aftermath of the doping scandal. On 21 July 2016, an arbitral tribunal acting under the auspices of the Court of Arbitration for Sport (CAS) issued two awards confirming the ban on the two athletes, preventing them from participating in the Olympic Games in Brazil.

On 4 August 2016, after receiving the operative part of the awards, the two athletes immediately filed separate applications to set aside the awards, suspend their effect and obtain provisional measures that would have allowed them, had they been granted, to participate in the Olympic Games. In their applications, the athletes indicated that they would submit a detailed and grounded request, based on the reasoning of the arbitrators after receiving the full awards. On 8 August 2016, the applications to suspend the effect of the awards and for provisional measures were rejected by the Swiss Supreme Court.

On 12 December 2016, the reasoned awards were notified to the athletes but the latter failed to re-submit their applications to the Supreme Court and failed to discuss the reasoning within the statutory 30-day time limit. Since the set aside application had been filed on 4 August 2016, and therefore was formally pending before the Supreme

Court, the Supreme Court had to consider it and rendered a decision. It held that the request filed by the petitioners on 4 August 2016 lacked the necessary grounding as it did not discuss the reasoning in the award and, as the time limit had expired, the set-aside application was rendered inadmissible.

Although rendered in summary form, the decision of the Supreme Court is important as it clarifies that the deadline for filing a set-aside application starts to run once the parties have received the fully reasoned award and not when the operative part only of the award has been communicated.

Cases: *Decisions 4A_444/2016 and 4A_446/2016* (Swiss Supreme Court)

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Published on 28-Mar-2017

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