Swiss Supreme Court finds termination orders issued by CAS division President are appealable awards

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In *decision 4A_384/2017*, the Swiss Supreme Court considered whether a Court of Arbitration for Sport (CAS) termination order, issued by the President of the appeals arbitration division of the CAS, was subject to appeal, and also considered a petitioner challenge to that order.

In a French-language decision dated 4 October 2017, but only recently published, the Swiss Supreme Court found that a termination order issued by the President of the appeals arbitration division of the Court of Arbitration for Sport (CAS) was subject to appeal to the court.

The petitioner is a middle-distance runner, who, due to a positive doping test, was suspended for four years by the disciplinary chamber of his professional sports' organisation. Eight months after receiving the decision on suspension, the runner appealed to the CAS. However, the President of the appeals arbitration division issued a termination order, declaring the appeal inadmissible for being submitted too late. The petitioner challenged the termination order before the Swiss Supreme Court.

The court held that although the termination order was not an arbitral award in the strict sense, it was also not a simple procedural order (which could not be challenged) as it was not susceptible to modification during the arbitral proceedings. Rather, the order terminated the CAS proceedings by an inadmissibility ruling, and must, therefore, be subject to appeal before the court. That such order was issued by the division President prior to the constitution of an arbitration panel did not hinder its qualification as an appealable award.

The petitioner challenged the termination order for allegedly partially failing to decide its claim (*infra petita*) and for violating procedural public policy. The court rejected the petitioner's arguments on all counts. It reasoned, amongst other things that:

- A petitioner may not directly rely on violations of the European Convention for the Protection of Human Rights (ECHR) when challenging awards.
- The right to appeal an arbitral award is not part of public policy.

The court added that legal certainty would be in jeopardy if filing deadlines and formal requirements were not strictly adhered to.

This is one of the rare cases in which a petitioner kept the 30 day appeal deadline in respect of its appeal of the termination order to the court, by filing with a Swiss diplomatic representation abroad in time.

Case: *Decision 4A_384/2017*.

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